

adopting those rules as final regulations in the **Federal Register**.

Reliance on the 2016 Proposed Regulations

For periods after October 13, 2019 (the expiration date of the Temporary Regulations), a taxpayer may rely on the 2016 Proposed Regulations until further notice is given, provided that the taxpayer consistently applies the rules in the 2016 Proposed Regulations in their entirety.

Request for Comments

The Treasury Department and the IRS request comments on all aspects of the rules described in part III of this advance notice of proposed rulemaking. In particular, the Treasury Department and the IRS request comments on the appropriate standard for determining the existence of a connection between a debt instrument and a distribution or economically similar transaction under the funding rule. For example, the funding rule could apply solely in cases in which a debt instrument is issued as part of an overall plan to fund the distribution or economically similar transaction. The Treasury Department and the IRS also request comments on whether the proposed regulations should include particular factors that indicate when the funding rule applies and factors that indicate when the funding rule does not apply. The Treasury Department and the IRS also request comments on what additional guidance, if any, should be issued (or which provisions should be eliminated from the final regulations) to reduce the compliance burdens associated with the Distribution Regulations. The Treasury Department and the IRS also request comments on how the Distribution Regulations may affect small businesses. All comments will be available at <http://www.regulations.gov> or upon request.

Effect on Other Documents

Notice 2019–58, 2019–44 I.R.B. 1022 (October 28, 2019), which addresses the status of the 2016 Proposed Regulations after October 13, 2019, is obsolete.

Statement of Availability

IRS Notices and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of this advance notice of proposed rulemaking is Azeka

J. Abramoff of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

31 CFR Part 150

RIN 1505–AC59

Assessment of Fees on Certain Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board To Cover the Expenses of the Financial Research Fund

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (“Treasury”) is requesting comment on a proposed rule to implement section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (the “Economic Growth Act”), which amends section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). As amended, section 155 requires the Secretary of the Treasury to establish, by regulation, an assessment schedule applicable to bank holding companies with total consolidated assets of \$250 billion or greater and nonbank financial companies supervised by the Board of Governors of the Federal Reserve System (“the Board”), to collect assessments equal to the total expenses of the Office of Financial Research (the “OFR”). The Department is also proposing other amendments to the part to simplify the method for determining the amount of total assessable assets for foreign banking organizations, which have been made possible by the introduction of a new regulatory data source.

DATES: Comments must be received by December 4, 2019.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>, or by mail to: U.S. Department of the Treasury, Office of Financial Research, Attn: John Zitko, 717 14th Street NW, Washington, DC 20220. Because mail in the Washington, DC area may be subject to delay, it is recommended that comments be

submitted electronically. Please include your name, affiliation, address, email address, and telephone number in your comment. Comments will be available for public inspection on www.regulations.gov. In general, all comments received, including attachments and other supporting materials, are part of the public record and will be made available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: John Zitko, Senior Counsel, OFR, (202) 927–8372, john.zitko@ofr.treasury.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 155(d) of the Dodd-Frank Act directs the Secretary of the Treasury to establish, by regulation, and with the approval of the Financial Stability Oversight Council (the “Council”), an assessment schedule to collect assessments from certain companies equal to the total expenses of the OFR. Included in the OFR’s expenses are expenses of the Council, pursuant to section 118 of the Dodd-Frank Act, and certain expenses of the Federal Deposit Insurance Corporation (the “FDIC”), pursuant to section 210 of the Dodd-Frank Act. Section 401 of the Economic Growth Act, Public Law 115–174, also provides that any bank holding company, regardless of asset size, that has been identified as a global systemically important bank (“G–SIB”) under § 217.402 of title 12, Code of Federal Regulations, shall be considered a bank holding company with total consolidated assets equal to or greater than \$250 billion for purposes of section 155(d) of the Dodd-Frank Act. On May 21, 2012, Treasury published a final regulation implementing section 155(d) in the **Federal Register**, codified at 31 CFR part 150 (the “Original Rules”). Before the enactment of the Economic Growth Act, pursuant to section 155(d) and the implementing regulation, Treasury collected assessments from bank holding companies with total consolidated assets of \$50,000,000,000 or greater and nonbank financial companies supervised by the Board.

On May 24, 2018, the Economic Growth Act was signed into law. Section 401(c)(1) of the Economic Growth Act replaced the \$50 billion reference in section 155(d) of the Dodd-Frank Act with \$250 billion. In addition, section 401(f) of the Economic Growth Act required any bank holding company identified as a G–SIB pursuant

to 12 CFR 217.402 to be considered a bank holding company with total consolidated assets equal to or greater than \$250 billion for purposes of section 155(d) of the Dodd-Frank Act. As a result of this statutory amendment, bank holding companies with less than \$250 billion in total consolidated assets that are not G–SIBs are not to be assessed under Dodd-Frank Act section 155(d).

The Economic Growth Act sets forth two different effective dates. For bank holding companies with total consolidated assets of less than \$100 billion, it became effective on May 24, 2018 (the date of enactment). For bank holding companies with total consolidated assets of \$100 billion or more and for G–SIBs, the effective date is November 24, 2019 (18 months after the date of enactment). This proposed rule is, in part, intended to implement section 401.

Under section 118 of the Dodd-Frank Act, the expenses of the Council are treated as expenses of, and are paid by, the OFR. In addition, under section 210 of the Dodd-Frank Act, certain implementation expenses of the FDIC associated with the FDIC's orderly liquidation authority are treated as expenses of the Council,¹ and the FDIC is directed to periodically submit requests for reimbursement to the Chairperson of the Council. The total expenses for the OFR therefore include the combined expenses of the OFR and the Council and certain expenses of the FDIC. All of these expenses are paid out of the Financial Research Fund (the "FRF"), a fund managed by Treasury.

The Council was established by the Dodd-Frank Act to identify risks to U.S. financial stability, promote market discipline, and respond to emerging threats to the stability of the U.S. financial system. The Council is chaired by the Secretary of the Treasury, and its 15 members include all of the federal financial regulators, an independent member with insurance expertise appointed by the President, and state financial regulators.

The OFR was established within Treasury by the Dodd-Frank Act to support the Council and its member agencies. Among the OFR's key duties are:

- Collecting data on behalf of the Council and proving such data to the Council and member agencies;
- Standardizing the types and formats of data reported and collected;
- Performing research;
- Developing tools for risk measurement and monitoring; and
- Reporting to Congress and the public on the OFR's assessment of significant financial market developments and potential emerging threats to U.S. financial stability.

II. This Proposed Rule

Under this proposed rule, Treasury would implement the changes to the FRF assessments required by the Economic Growth Act. The proposed rule would also make certain other amendments to 31 CFR part 150 to simplify the method for determining the amount of total assessable assets for certain entities and would remove outdated references to the initial assessment period, which concluded in 2013, and other non-substantive changes to add clarifying or remove redundant language.

Treasury is seeking comments on all aspects of this proposed rulemaking.

a. Determination of Assessed Companies

To impose assessments under section 155 of the Dodd-Frank Act, Treasury must identify companies that are subject to the assessment. As described in the Original Rules, and below, Treasury works closely with the Board to determine the population of assessed companies.

The original text of Dodd-Frank Act section 155(d) required assessments to be collected from bank holding companies with total consolidated assets of \$50 billion or greater and nonbank financial companies supervised by the Board. The Economic Growth Act raised the asset threshold for bank holding companies to \$250 billion and also stated that a bank holding company, regardless of asset size, that has been identified as a G–SIB under § 217.402 of title 12, Code of Federal Regulations, shall be considered a bank holding company with total consolidated assets equal to or greater than \$250 billion for purposes of section 155(d) of the Dodd-Frank Act.

Accordingly, we are proposing changes to the definitions of "Assessed Company" and "Total Assessable Assets" in 12 CFR 150.2, as well as the deletion of a reference to foreign banking organizations with less than \$50 billion in 12 CFR 150.5, in accordance with the clear mandate of the Economic Growth Act with respect

to an increase in the asset threshold from \$50 billion to \$250 billion and the inclusion of G–SIBs within the scope of companies subject to assessments under section 155.

b. Determination of Total Assessable Assets

i. Foreign Banking Organizations

At the time of adoption of the Original Rules, there was no single regulatory reporting form that provided a foreign banking organization's total assets of combined U.S. operations, including its U.S. branches, agencies, and subsidiaries. The preamble to the Original Rules specifically noted the possibility that reporting requirements for foreign banking organizations would change over time and that the list of reports would need to be adjusted.² To allow for the possibility of these changes, the Original Rules did not include a list of specific reference reports for foreign banking organizations, in contrast to U.S. bank holding companies. It was noted that calculating banking organizations' total assets of combined U.S. operations based on multiple reports could result in double-counting.³ The preamble to the Original Rules stated that Treasury would make every effort to avoid double-counting, consulting with the Board and the affected firms as necessary, and that any questions could be addressed through the appeals process.⁴

After the adoption of the Original Rules, the Board modified its form FR Y–7Q by adding a line item for reporting the total combined assets of a foreign banking organization's U.S. operations. Line item 6 of part 1A of FR Y–7Q now requires reporting of the total combined assets of a top-tier foreign banking organization's U.S.-domiciled affiliates, branches, and agencies, excluding intercompany balances and intercompany transactions between those entities to the extent such items are not already eliminated in consolidation.⁵ Accordingly, to simplify the method for determining the amount of total assessable assets for foreign banking organizations and to adopt an approach for foreign banking organizations that is comparable to the approach under the Original Rules for U.S. bank holding companies, we are proposing changes to the definition of

² 77 FR 29890 (May 21, 2012).

³ 77 FR 29888–89 (May 21, 2012).

⁴ 77 FR 29889 (May 21, 2012).

⁵ See Federal Reserve, The Capital and Asset Report for Foreign Banking Organizations—FR Y–7Q, available at https://www.federalreserve.gov/reportforms/forms/FR_Y-7Q20190331_f.pdf.

¹ Under Section 210(n)(10)(C) of the Dodd-Frank Act the term implementation expenses "(i) means costs incurred by [the FDIC] beginning on the date of enactment of this Act, as part of its efforts to implement [Title II] that do not relate to a particular covered financial company; and (ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the [FDIC] consistent with carrying out [Title II]."

“total assessable assets” by specifying that the calculation of a foreign banking organization’s total assessable assets shall be based on the data reported in the FR Y–7Q.

ii. Timing of Determination Dates, Billing, and Collection

Under the Original Rules, assessments are semiannual. On the specified determination date before each assessment period, Treasury determines the pool of assessed companies, which receive confirmation statements. After any appeals, assessments are debited from assessed companies’ accounts on the assessment payment date.

The Original Rules generally use a period of four calendar quarters to measure the total assessable assets of both U.S. and foreign entities for assessments. Thus, for the assessment period with a November 30 determination date, total assessable assets are based on the company’s regulatory filings for the fourth quarter of the previous calendar year and the first three quarters of the same calendar year. For the assessment period with a May 31 determination date, total assessable assets are based on the company’s filings for the last three quarters of the previous year and the first quarter of the same calendar year.

Both the Federal Reserve’s form FR Y–9C, which the Original Rules require to be used to determine total assessable

assets of U.S. bank holding companies, and the FR Y–7Q, which we are now proposing to use to determine the total assessable assets of foreign banking organizations, are quarterly reports. Their filing deadlines, however, are asynchronous, as the FR Y–9C generally must be filed within 40 calendar days after each calendar quarter,⁶ and the FR Y–7Q generally must be filed within 90 calendar days after the quarter ends. The timing of updated reports therefore varies. For example, on the determination date of May 31 under the Original Rules, the FR Y–9C reports are already available for Q1 of the same year, but Q1 reports on FR Y–7Q are not due until approximately one month later (June 29).

To enable consistency in the timing of determining assessable assets for U.S. and foreign entities we are proposing to move each of the two semiannual determination dates one month earlier. Accordingly, the first determination date in each calendar year would be April 30 instead of the current May 31, and the second determination date would be October 31, instead of November 30. This proposed change would enable each assessment to be based on companies’ filings for the last two calendar quarters of the previous year and the first two quarters of the current calendar year for assessment periods with an October 31

determination date, and all four quarters of the previous calendar year for assessment periods with an April 30 determination date.

Consistent with Treasury’s existing process, before each assessment period, after determining the pool of assessed companies and publishing an assessment fee rate, Treasury will calculate the assessment fee for each assessed company, send an electronic billing notification to each assessed company, and, on the assessment payment date, initiate a direct debit to each company’s account through *www.pay.gov* to collect the assessments. Treasury proposes to retain the existing process, with one additional month added to the beginning of each cycle, as described above, while keeping the existing dates for the notice of fees, billing, and payment. In order to provide additional clarity as to when redetermination requests must be received from companies wishing to appeal their status as an assessed company or the total assessable assets that the Department has determined will be used for calculating the company’s assessment, Treasury proposes to amend the reference to such date in 12 CFR 150.6(b) from “one month” to “30 calendar days.”

The table below shows approximate dates of the proposed assessment billing and collection process:

Assessment period	Determination date	Confirmation statement date	Redetermination request deadline	Initial response to redetermination request	Publication of notice of fees*	Billing date	Payment date
1st semiannual assessment period (April–September).	October 31 ...	November 15 (or next business day).	30 calendar days from date of Confirmation Statement.	21 calendar days from receipt of Redetermination Request.	February 15 (or next business day).	March 1 (or prior business day).	March 15 (or next business day).
2nd semiannual assessment period (October–March).	April 30	May 15 (or next business day).	30 calendar days from date of Confirmation Statement.	21 calendar days from receipt of Redetermination Request.	August 15 (or next business day).	September 1 (or prior business day).	September 15 (or next business day).

* Rate published in the Notice of Fees.

The timeframe for sending confirmation statements and receiving appeals would remain the same. Specifically, confirmation statements would continue to be mailed no later than 15 calendar days after the determination date, and appeals by assessable companies would continue to be due one month later. In addition to promoting consistent measurements of U.S. and foreign entities, as noted above, adding a month to the beginning of the FRF assessments cycle would also afford assessed companies additional time to address appeals and make payment arrangements, and would provide Treasury additional time to

calculate assessments and administer the billing process.

III. Administrative Law Matters

a. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (the “RFA”) to address concerns related to the effects of agency rules on small entities.⁷ Treasury is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule for which general

notice of proposed rulemaking is required, or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.⁸

Under regulations issued by the Small Business Administration, a “small entity” includes those firms within the “Finance and Insurance” sector with asset sizes that vary from \$7.5 million in assets to \$550 million or less in assets.⁹ For purposes of the RFA, entities that are banks are considered small entities if their assets are less than or equal to \$550 million.

⁶ Reports as of December 31 are due 45 calendar days later.

⁷ 5 U.S.C. 601 *et seq.*

⁸ 5 U.S.C. 603(a).

⁹ 13 CFR 121.201.

As discussed above, under section 155 of the Dodd-Frank Act, as amended by the Economic Growth Act, only bank holding companies with more than \$250 billion in total consolidated assets, G-SIBs, and nonbank financial companies supervised by the Board will be subject to assessments under this proposed rule. As such, this proposed rule will not apply to small entities and a regulatory flexibility analysis is not required.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

b. Paperwork Reduction Act

We estimate that there are certain direct costs associated with complying with these rules. On a one-time basis, assessed entities would be required to set up a bank account for fund transfers and provide the required information to Treasury through an information collection form. The form includes bank account routing information and contact information for the individuals at the company that will be responsible for setting up the account and ensuring that funds are available on the billing date. We estimate that approximately 20 companies could be affected, and that completing the form and submitting it to Treasury would take approximately 15 minutes. The aggregate paperwork burden is estimated at 5.0 hours. However, all of these companies have already established an account for payments or collections to the U.S. government pursuant to the Original Rules.

On a semiannual basis, assessed companies have the opportunity to review the confirmation statement and assessment bill. The Original Rules do not require the companies to conduct this review, but do permit it. We anticipate that at least some of the companies will conduct reviews, in part because the cost associated with it is very low.

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d).

Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to: U.S. Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or by email to

oira_submission@omb.eop.gov. A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the collection of information should be received by January 3, 2020.

Treasury specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The information collections are included in § 150.6.

c. Regulatory Planning and Review (Executive Orders 12866 and 13563)

This rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 as supplemented by Executive Order 12563.

List of Subjects in 31 CFR Part 150

Bank holding companies, Financial Research Fund, Nonbank financial companies.

■ For the reasons set forth in the preamble, Treasury proposes to revise title 31, part 150, of the Code of Federal Regulations to read as follows:

PART 150—FINANCIAL RESEARCH FUND

Sec.	
150.1	Scope.
150.2	Definitions.
150.3	Determination of assessed companies.
150.4	Calculation of assessment basis.
150.5	Calculation of assessments.
150.6	Notice and payment of assessments.

Authority: 12 U.S.C. 5345; 31 U.S.C. 321; 12 U.S.C. 5365 *note* (Section 401(d), Pub. L. 115–174, 132 Stat. 1358; Section 401(f), Pub. L. 115–174, 132 Stat. 1359).

§ 150.1 Scope.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 5345.

§ 150.2 Definitions.

As used in this part:

Assessed company means:

(1) A bank holding company that has \$250 billion or more in total assessable assets; or

(2) A bank holding company, regardless of asset size, that has been identified as a global systemically important bank holding company under § 217.402 of title 12, Code of Federal Regulations; or

(3) A nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act shall be supervised by the Board.

Assessment basis means, for a given assessment period, an estimate of the total expenses that are necessary or appropriate to carry out the responsibilities of the OFR and the Council as set out in the Dodd-Frank Act (including an amount necessary to reimburse reasonable implementation expenses of the Corporation that shall be treated as expenses of the Council pursuant to section 210(n)(10) of the Dodd-Frank Act).

Assessment fee rate, with regard to a particular assessment period, means the rate published by the Department for the calculation of assessment fees for that period.

Assessment payment date means:

(1) For any assessment period ending on March 31 of a given calendar year, September 15 of the prior calendar year; and

(2) For any assessment period ending on September 30 of a given calendar year, March 15 of the same year.

Assessment period means:

(1) Any period of time beginning on October 1 and ending on March 31 of the following calendar year; or

(2) Any period of time beginning on April 1 and ending on September 30 of the same calendar year.

Bank holding company means:

(1) A bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

(2) A foreign banking organization.

Board means the Board of Governors of the Federal Reserve System.

Corporation means the Federal Deposit Insurance Corporation.

Council means the Financial Stability Oversight Council.

Department means the Department of the Treasury.

Determination date means:

(1) For any assessment period ending on March 31 of a given calendar year, April 30 of the prior calendar year; and

(2) For any assessment period ending on September 30 of a given calendar year, October 31 of the prior calendar year.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Foreign banking organization means a foreign bank or company that is treated

as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

OFB means the Office of Financial Research established by section 152 of the Dodd-Frank Act.

Total assessable assets means:

(1) For a bank holding company other than a foreign banking organization, the average of the company's total consolidated assets for the four quarters preceding the relevant determination date, as reported on the bank holding company's four most recent Consolidated Financial Statements for Bank Holding Companies—FR Y–9C filings;

(2) For any foreign banking organization, the average of the company's total assets of combined U.S. operations for the four quarters preceding the relevant determination date, as reported on the foreign banking organization's four most recent quarterly Capital and Asset Report for Foreign Banking Organizations—FR Y–7Q filings, or, if the foreign banking organization only files such form annually, the average of the two most recent annual filings on such form; or

(3) For a nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act shall be supervised by the Board, either the average of the company's total consolidated assets for the four quarters preceding the relevant determination date, if the company is a U.S. company, or the average of the total assets of the company's combined U.S. operations for the four quarters preceding the relevant determination date, if the company is a non-U.S. company.

§ 150.3 Determination of assessed companies.

(a) The determination that a bank holding company or a nonbank financial company is an assessed company will be made by the Department.

(b) The Department will apply the following principles in determining whether a company is an assessed company:

(1) For tiered bank holding companies for which a holding company owns or controls, or is owned or controlled by, other holding companies, the assessed company shall be the top-tier, regulated holding company.

(2) In situations where more than one top-tier, regulated bank holding company has a legal authority for control of a U.S. bank, each of the top-tier regulated holding companies shall be designated as an assessed company.

(3) In situations where a company has not filed four consecutive quarters of the financial reports referenced above for the most recent quarters (or two consecutive years for annual filers of the FR Y–7Q or successor form), such as may be true for companies that recently converted to a bank holding company, the Department will use, at its discretion, other financial or annual reports filed by the company, such as Securities and Exchange Commission (SEC) filings, to determine a company's total consolidated assets.

(4) In situations where a company does not report total consolidated assets in its public reports or where a company uses a financial reporting methodology other than U.S. generally accepted accounting principles (GAAP) to report on its U.S. operations, the Department will use, at its discretion, any comparable financial information that the Department may require from the company for this determination.

(c) Any company that the Department determines is an assessed company on a given determination date will be an assessed company for the entire assessment period related to such determination date, and will be subject to the full assessment fee for that assessment period, regardless of any changes in the company's assets or other attributes that occur after the determination date.

§ 150.4 Calculation of assessment basis.

For each assessment period, the Department will calculate an assessment basis that shall be sufficient to replenish the Financial Research Fund to a level equivalent to the sum of:

(a) Budgeted operating expenses for the OFB for the applicable assessment period;

(b) Budgeted operating expenses for the Council for the applicable assessment period;

(c) Budgeted capital expenses for the OFB for the 12-month period beginning on the first day of the applicable assessment period;

(d) Budgeted capital expenses for the Council for the 12-month period beginning on the first day of the applicable assessment period; and

(e) An amount necessary to reimburse reasonable implementation expenses of the Federal Deposit Insurance Corporation as provided under section 210(n)(10) of the Dodd-Frank Act.

§ 150.5 Calculation of assessments.

(a) For each assessed company, the Department will calculate the total assessable assets in accordance with the definition in § 150.2.

(b) The Department will allocate the assessment basis to the assessed companies in the following manner:

(1) Based on the sum of all assessed companies' total assessable assets, the Department will calculate the assessment fee rate necessary to collect the assessment basis for the applicable assessment period.

(2) The assessment payable by an assessed company for each assessment period shall be equal to the assessment fee rate for that assessment period multiplied by the total assessable assets of such assessed company.

§ 150.6 Notice and payment of assessments.

(a) No later than fifteen calendar days after the determination date, the Department will send to each assessed company a statement that:

(1) Confirms that such company has been determined by the Department to be an assessed company; and

(2) States the total assessable assets that the Department has determined will be used for calculating the company's assessment.

(b) If a company that is required to make an assessment payment for a given assessment period believes that the statement referred to in paragraph (a) of this section contains an error, the company may provide the Department with a written request for a revised statement. Such request must be received by the Department via email within 30 calendar days and must include all facts that the company requests the Department to consider. The Department will respond to all such requests within 21 calendar days of receipt thereof.

(c) No later than the 14 calendar days prior to the payment date for a given assessment period, the Department will send an electronic billing notification to each assessed company, containing the final assessment that is required to be paid by such assessed company.

(d) For the purpose of making the payments described in § 150.5, each assessed company shall designate a deposit account for direct debit by the Department through *www.pay.gov* or successor website. No later than the later of 30 days prior to the payment date for an assessment period, or [EFFECTIVE DATE OF THE FINAL RULE], each such company shall provide notice to the Department of the account designated, including all information and authorizations required by the Department for direct debit of the account. After the initial notice of the designated account, no further notice is required unless the company designates a different account for assessment debit

by the Department, in which case the requirements of the preceding sentence apply.

(e) Each assessed company shall take all actions necessary to allow the Department to debit assessments from such company's designated deposit account. Each such company shall, prior to each assessment payment date, ensure that funds in an amount at least equal to the amount on the relevant electronic billing notification are available in the designated deposit account for debit by the Department. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment. The Department will cause the amount stated in the applicable electronic billing notification to be directly debited on the appropriate payment date from the deposit account so designated.

(f) In the event that, for a given assessment period, an assessed company materially misstates or misrepresents any information that is used by the Department in calculating that company's total assessable assets, the Department may at any time recalculate the assessment payable by that company for that assessment period, and the assessed company shall take all actions necessary to allow the Department to immediately debit any additional payable amounts from such assessed company's designated deposit account.

(g) If a due date under this section falls on a date that is not a business day, the applicable date shall be the next business day.

Dated: October 28, 2019.

Kipp Kranbuhl,

*Principal Deputy Assistant Secretary,
Financial Markets, Department of the
Treasury.*

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BILLING CODE 4810-25-P

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R06-OAR-2019-0043; FRL-10001-20-Region 6]

**Air Plan Approval; Texas; Revisions To
Control of Air Pollution by Permits for
New Construction or Modification**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the United

States Environmental Protection Agency (U.S. EPA) is proposing to approve revisions to the Texas (TX) State Implementation Plan (SIP) submitted on February 22, 2019 that revise the State's New Source Review (NSR) permitting rules contained in Title 30 of the Texas Administrative Code (TAC) Chapter 116. The EPA is also addressing portions of an April 16, 2014, SIP submittal pertaining to provisions regarding Greenhouse Gas (GHG) emissions that were invalidated by the United States Supreme Court. The February 22, 2019, SIP submittal appropriately revises the April 16, 2014, SIP provisions that were impacted by the Court's ruling.

DATES: Written comments must be received on or before December 4, 2019.

ADDRESSES: Submit your comments, identified by Docket No. 2017-1641-RUL, at <https://www.regulations.gov> or via email to layton.elizabeth@epa.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 Elizabeth Layton, 214-665-2136, layton.elizabeth@epa.gov. 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>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the U.S. EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Elizabeth Layton, Air Permits Section (ARPE), U.S. EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75270,

214-665-2136, layton.elizabeth@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Elizabeth Layton or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" is used, we mean the United States Environmental Protection Agency.

I. Background

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160-51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. This action addresses revisions to the Texas SIP submitted on February 22, 2019 by the Texas Commission on Environmental Quality (TCEQ) that amend the State's NSR permitting rules by amending the criteria for air pollution control permits for new construction or modification, as well as make other non-substantive revisions.

Additionally, this action addresses portions of an April 16, 2014, Texas SIP submittal that relate to the permitting of Greenhouse Gas Emissions (GHGs) for Step 2 or "non-anyway" sources.¹ The April 2014 submittal was affected by a United States Supreme Court ruling titled *Utility Air Regulatory Group (UARG) v. EPA* (134 S.Ct. 2427 (2014)) where the Court invalidated those portions of the federal rules that related

¹ For more detailed information please see our Federal Register action at 79 FR 66626 (November 10, 2014). Step 2 or "non-anyway" sources are sources that that would have been considered "major" under EPA's permitting program for PSD only because of their greenhouse gas emissions.