

SECURITIES AND EXCHANGE COMMISSION

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies

ACTION: Notice.

SUMMARY: The Securities and Exchange Commission (“Commission”) has submitted the sponsored information collection request (ICR) titled, “Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies,” to the Office of Management and Budget (OMB) for review and clearance under the emergency processing procedures in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35) (“PRA”) and 5 CFR 1320.13. OMB approval has been requested by January 19, 2016. In addition, this notice solicits comment on the three-year extension of the same information collection under 5 CFR 1320.12.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at

<http://www.reginfo.gov/public/do/PRAMain>

OMB Control Numbers 3235-0065 (Form S-1) and 3235-0258 (Form F-1)

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to:

Shagufta_Ahmed@omb.eop.gov; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, N.E., Washington, DC 20549 or send an e-mail to: PRA_Mailbox@sec.gov.

SUPPLEMENTARY INFORMATION:

The Securities and Exchange Commission (“Commission”) is requesting that OMB authorize emergency processing of the submission of collection of information for “Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies.” This request should also serve to notify the public that the Commission is seeking PRA approval from OMB on an emergency basis for the collections of information associated with the interim final rule amendments to Form S-1 and Form F-1 adopted by the Commission on January 13, 2016¹ to implement Sections 71003 and 84001 of the Fixing America’s Surface Transportation (“FAST”) Act, which was enacted on December 4, 2015.² In addition, the Commission is providing notice of the three-year extension under 5 CFR 1320.12.

As adopted, the amendments implement Sections 71003 and 84001 of the FAST Act, which require that the Commission revise Forms S-1 and F-1, OMB Control Numbers, 3235-0065 (Form S-1) and 3235-0258 (Form F-1), to permit emerging growth companies to omit financial information for certain historical periods and revise Form S-1 to permit forward incorporation by reference for smaller reporting companies.

Form S-1 (17 CFR 239.11) is the form used by domestic issuers to register the offer and sale of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) when no other form is authorized or prescribed, and Form F-1 (17 CFR 239.31) is the corresponding form used by

¹ See Release No. 33-10003 [81 FR 2743].

² Pub. L. No. 114-94.

foreign private issuers. Item 512 of Regulation S-K (17 CFR 229.512) describes the undertakings that an issuer must include in a registration statement.

The amendments revise Form S-1 and Form F-1 to make them conform to the requirements in Sections 71003 and 84001 of the FAST Act. Section 71003 of the FAST Act allows an emerging growth company that is filing a registration statement (or submitting the registration statement for confidential review) on Form S-1 or Form F-1 to omit financial information for historical periods otherwise required by Regulation S-X if it reasonably believes the omitted information will not be required to be included in the filing at the time of the contemplated offering, so long as the issuer amends the registration statement prior to distributing a preliminary prospectus to include all financial information required by Regulation S-X at the time of the amendment. The amendments revise the general instructions to Form S-1 and Form F-1 to reflect this self-executing change, as directed by Section 71003.

Section 84001 of the FAST Act requires the Commission to revise Form S-1 to permit a smaller reporting company to incorporate by reference into its registration statement any documents filed by the issuer subsequent to the effective date of the registration statement. The amendments add a new paragraph to Item 12 of Form S-1 and make a conforming change to Item 512(a) of Regulation S-K to effect this provision.

The Commission, for good cause, found that notice and comment were unnecessary because the amendments merely conform the specified forms to the requirements of a newly enacted statute, the FAST Act. The amendments revised the Commission's forms to make them consistent with the provisions of the FAST Act pertaining to simplified disclosure requirements for emerging growth companies and forward incorporation by reference for smaller reporting companies on Form S-1 and therefore did not involve the exercise of Commission discretion.

Section 71003 of the FAST Act was effective 30 days after enactment, and Section 84001 required the Commission to revise Form S-1 within 45 days of enactment. The Commission also found there was good cause for the amendments to take effect on January 19, 2016 because without the amendments the Commission's applicable forms did not conform to the requirements of Sections 71003 and 84001 of the FAST Act. Additionally, the Commission found that the amendments relieve restrictions in the Commission's forms.

This information collection is subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6. The SEC obtains OMB approval for this information collection under OMB ICR Reference Numbers 201409-3235-039 (Form S-1) and 201407-3235-008 (Form F-1).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within 15 days of publication of this notice in the Federal Register. In order to help ensure appropriate consideration, comments should reference OMB Control Numbers 3235-0065 (Form S-1) and 3235-0258 (Form F-1). The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

For purposes of the PRA, we estimate the total annual decrease in the paperwork burden for all affected issuers to comply with our collection of information requirements to be approximately 70,214 hours of company personnel time and the reduction in cost to be approximately \$84,256,400 for the services of outside professionals. These estimates include the time and cost of preparing and reviewing disclosure, filing documents, and retaining records. We estimate that 25% of the burden of preparation is carried by the issuer internally and is reflected in hours, and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of \$400 per hour.³ Our methodologies for deriving the above estimates are discussed below.

1. Omission of financial information for historical periods by emerging growth companies

For purposes of the PRA, we estimate that the amendment to allow emerging growth companies to omit financial information for historical periods that the issuer reasonably believes will not be required to be included in the Form S-1 or F-1 at the time of the contemplated offering would reduce incrementally the annual paperwork burden by approximately 17,089 hours of issuer personnel time and by a cost of approximately \$20,506,400 for the services of

³ Consistent with other recent rulemakings, we estimate an average hourly rate of \$400 for hiring outside professionals to assist issuers in preparing disclosures and conducting registered offerings.

outside professionals. The estimate reflects the reduction in disclosure preparation time resulting from the omission of one year of audited financial statements⁴ multiplied by the average number of Forms S-1 and F-1 filed by emerging growth companies over a three-year period.⁵

Table 1. Revised PRA Burden under the amendment permitting emerging growth companies to omit financial information for certain historical periods:

	Number of Responses (A)	Incremental Burden Hours ⁶ /Form (B)	Total Incremental Burden Hours (C)=(A)*(B)	25% Company (D)=(C)*0.25	75% Professional E=(C)*0.75	Professional Costs (F)=(E)*\$400
Form S-1	401	(155)	(62,155)	(15,539)	(46,616)	\$(18,646,400)
Form F-1	40	(155)	(6,200)	(1,550)	(4,650)	\$(1,860,000)
Total			(68,355)	(17,089)		\$(20,506,400)

2. Forward incorporation by reference on Form S-1 by smaller reporting companies

For purposes of the PRA, we estimate that all smaller reporting companies will take advantage of the election to forward incorporate by reference. We estimate that the amendments to permit smaller reporting companies to incorporate by reference into the prospectus contained in the registration statement on Form S-1 all documents subsequently filed by the issuer with the Commission after the effective date of the registration statement would reduce incrementally the annual paperwork burden by approximately 53,125 hours of issuer personnel time and by a cost of approximately \$63,750,000 for the services of outside professionals. The estimate reflects the decrease in disclosure preparation time by eliminating the need to file certain post-effective

⁴ We estimated the audit fee for emerging growth companies by using the median audit fee of \$46,300 for smaller reporting companies. See John Pakaluk, *Audit Fees for Smaller Reporting Companies*, AUDIT ANALYTICS (Feb. 26, 2015), <http://www.auditanalytics.com/blog/audit-fees-for-smaller-reporting-companies>.

⁵ The number of responses equals the average number of Forms S-1 or Form F-1, respectively, filed by emerging growth companies (EGCs) during a three-year period. In 2012, EGCs filed 295 Forms S-1; in 2013, EGCs filed 404 Forms S-1; and in 2014, EGCs filed 504 Forms S-1. In 2012, EGCs filed 25 Forms F-1; in 2013, EGCs filed 31 Forms F-1; and in 2014, EGCs filed 65 Forms F-1.

⁶ We estimate that \$46,300 divided by \$400, or 116 hours, represents the cost of services of outside professionals, or 75% of the burden, and we estimate that the reduction in burden hours for the issuer equals 39 hours, or 25% of the burden. These estimates were rounded up to nearest whole hour.

amendments when that information is disclosed in Exchange Act filings after the effectiveness of the Form S-1. We estimate that forward incorporation by reference would reduce the paperwork burden in Form S-1 for smaller reporting companies by 212,500 hours on the assumption that the burden to complete a Form S-1 that incorporates by reference would be the same as the burden currently imposed by Form S-3 (472 hours). Therefore, the amount of time eliminated for each Form S-1 that incorporates by reference would be 500 hours (972 hours for a Form S-1 that does not incorporate information by reference minus 472 hours for a Form S-1 that does incorporate information by reference).

Table 2. Revised PRA Burden under the amendment permitting smaller reporting companies to forward incorporate by reference on Form S-1:

	Number of Responses ⁷ (A)	Incremental Burden Hours/Form (B)	Total Incremental Burden Hours (C)=(A)*(B)	25% Company (D)=(C)*0.25	75% Professional E=(C)*0.75	Professional Costs (F)=(E)*\$400
Form S-1	425	(500)	(212,500)	(53,125)	(159,375)	\$(63,750,000)

⁷ The number of responses equals the average number of Forms S-1 filed by smaller reporting companies (SRCs) during a three-year period. In 2012, SRCs filed 394 Forms S-1; in 2013, SRCs filed 432 Forms S-1; and in 2014, SRCs filed 448 Forms S-1.

Title of Collection: Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies

OMB Control Numbers: 3235-0065 (Form S-1) and 3235-0258 (Form F-1)

Type of Review: Emergency

Requested Duration of Authorization: 6 Months

Bent J. Fields
Secretary

January 19, 2016