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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2017–0655; FRL–9981–57–OAR]

RIN 2060–AT82

Renewable Fuel Standard Program: Grain Sorghum Oil Pathway

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) determines that biodiesel and heating oil produced from distillers sorghum oil via a transesterification process, and renewable diesel, jet fuel, heating oil, naphtha, and liquefied petroleum gas (LPG) produced from distillers sorghum oil via a hydrotreating process, meet the lifecycle GHG emissions reduction threshold of 50 percent required for advanced biofuels and biomass-based diesel under the Renewable Fuel Standard (RFS) program. Based on these analyses, EPA is adding these pathways to the list of approved renewable fuel production pathways in the RFS regulations. EPA is also amending the RFS regulations by adding a new definition of ''distillers sorghum oil,'' and replacing existing references to ''non-food grade corn oil'' with the newly defined term ''distillers corn oil.''

DATES: The final rule is effective October 1, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0655. All the documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Diana Galperin, Office of Air and Radiation, Office of Transportation and Air Quality, Mail Code: 6401A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–5687; email address: *galperin.diana@epa.gov*.

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I. General Information

A. Does this action apply to me?

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, heating oil, renewable diesel, naphtha and liquefied petroleum gas. Potentially regulated categories include:

Examples of potentially affected entities	NAICS[1] codes
Petroleum refineries (including importers)	324110
Ethyl alcohol manufacturing	325193
Other basic organic chemical manufacturing	325199
Chemical and allied products merchant wholesalers	424690
Petroleum bulk stations and terminals	424710, 424720
Other fuel dealers	454310

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by

[1] North American Industry Classification System.

this action. Other types of entities not listed in the table could also be affected. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the agency taking?

EPA is amending the RFS regulations to add a new definition of ''distillers sorghum oil'' and to replace existing references to ''non-food grade corn oil'' with the newly defined term ''distillers corn oil.'' This rule also adds the following pathways to rows F and H of Table 1 to 80.1426: (1) Biodiesel and heating oil produced from distillers sorghum oil and commingled distillers sorghum and corn oil via a transesterification process; and (2) renewable diesel, jet fuel, and heating oil produced from distillers sorghum oil and commingled distillers sorghum and corn oil via a hydrotreating process. Pathways for naphtha and LPG produced from distillers sorghum oil via a hydrotreating process are also added to row I of Table 1 to 40 CFR 80.1426. These pathways are approved for biomass-based diesel (D-code 4) or advanced biofuel (D-code 5) renewable identification numbers (RINs), depending on the fuel type and whether the production process involves co-processing renewable biomass and petroleum.[2]

C. What is the agency's authority for taking this action?

Statutory authority for this action comes from Clean Air Act sections 114, 208, 211, and 301.

D. What are the incremental costs and benefits of this action?

There are no incremental costs from this action. This action allows for additional flexibility and feedstock production options for participating in the Renewable Fuel Standard (RFS) program.

II. Introduction

Section 211(o) of the Clean Air Act (CAA) establishes the RFS program, under which EPA sets annual percentage standards specifying the amount of renewable fuel, as well as three subcategories of renewable fuel, that must be used to reduce or replace fossil fuel present in transportation fuel, heating oil, or jet fuel. Non-exempt renewable fuels must achieve at least a 20 percent reduction in lifecycle greenhouse gas (GHG) emissions as compared to a 2005 petroleum baseline.[3] Advanced biofuel and biomass-based diesel must achieve at least a 50 percent reduction, and cellulosic biofuel must achieve at least a 60 percent reduction.

In addition to the lifecycle GHG reduction requirements, there are other definitional criteria for renewable fuel (*e.g.,* produced from renewable biomass as defined in the statute and regulations, and used to reduce or replace the quantity of fossil fuel present in transportation fuel, heating oil, or jet fuel) in CAA section 211(o) and the RFS regulations at 40 CFR part 80 subpart M.

Since the formation of the RFS program, EPA has periodically promulgated rules to add new pathways to the regulations.[4] In addition, EPA has approved facility-specific pathways through the petition process in 40 CFR 80.1416. There are three critical components of approved fuel pathways under the RFS program: (1) Fuel type; (2) feedstock; and (3) production process. Each pathway is associated with a specific ''D-code'' that corresponds to one of the four categories of renewable fuel—general renewable fuel, advanced biofuel, cellulosic biofuel, or biomass-based diesel.

EPA's lifecycle analyses are used to assess the overall GHG emissions of a fuel throughout each stage of its production and use. The results of these analyses, considering uncertainty and the weight of available evidence, are used to determine whether a fuel meets the necessary GHG reductions required under the CAA. Lifecycle analysis includes an assessment of emissions related to the full fuel lifecycle, including feedstock production, feedstock transportation, fuel production, fuel transportation and distribution, and tailpipe emissions. Per the CAA definition of lifecycle GHG emissions, EPA's lifecycle analyses also include an assessment of significant indirect emissions, such as those from land use changes and agricultural sector impacts.

EPA received a petition from the National Sorghum Producers (NSP), submitted under partial claims of confidential business information (CBI), requesting that EPA evaluate the GHG emissions associated with biofuels produced using as a feedstock grain sorghum oil derived from dry mill ethanol production, and that EPA provide a determination of the renewable fuel categories, if any, for which such biofuels may be eligible. EPA issued a proposed rule in December 2017[5] to establish approved pathways for the use of grain sorghum oil, and received comments on this proposal. In this action, EPA is amending the RFS program regulations to define the term ''distillers sorghum oil.'' We are also adding pathways to rows F, H and I of Table 1 to 40 CFR 80.1426 for biodiesel, renewable diesel, heating oil, naphtha, and LPG produced from distillers sorghum oil, via transesterification or hydrotreating processes.

This preamble describes EPA's analysis of the GHG emissions associated with distillers sorghum oil when used to produce specified biofuels via particular processes. The analysis considers a scenario where distillers sorghum oil is recovered from distillers grains with solubles (DGS) at dry mill plants that produce biofuel from grain sorghum and where the remaining reduced-oil DGS co-product is used as animal feed. The distillers sorghum oil is then used as a feedstock for conversion into certain biofuels. As described in section III.B.8 of this preamble, we find that, under these circumstances, biodiesel and heating oil produced from distillers sorghum oil via a transesterification process meets the 50 percent GHG reduction threshold required for advanced biofuel and biomass-based diesel. We also find that, under these circumstances, renewable diesel, jet fuel, naphtha, and LPG produced from distillers sorghum oil via a hydrotreating process meets the 50

[2] The term ''biomass-based diesel'' is defined in the statute to exclude any renewable fuels derived from co-processing biomass with a petroleum feedstock. CAA Section 211(o)(1)(D).

[3] A baseline volume of renewable fuel produced from facilities that commenced construction on or before December 19, 2007, and which completed construction by December 19, 2010, without an 18-month hiatus in construction, is exempt from the minimum 20 percent GHG reduction requirement that otherwise applies to renewable fuel. In addition, a baseline volume of ethanol from facilities that commenced construction after December 19, 2007, and on or before December 31, 2009, qualifies for the same exemption if construction was completed within 36 months without an 18-month hiatus in construction; the facility was fired with natural gas, biomass, or any combination thereof, at all times the facility operated between December 19, 2007, and December 31, 2009; and the baseline volume continues to be produced through processes fired with natural gas, biomass, or any combination thereof.

[4] Please see information on Pathways I and Pathways II in 40 CFR part 80 subpart M, and in the **Federal Register** at 78 FR 14190 (March 5, 2013) and 79 FR 42128 (July 18, 2014). More information on these can be found at: *https://www.epa.gov/renewable-fuel-standard-program/final-rule-identify-additional-fuel-pathways-under-renewable-fuel* and *https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-pathways-ii-final-rule-identify-additional-fuel.*

[5] 82 FR 61205 (December 27, 2017).

percent GHG emission reduction threshold required for advanced biofuel.

As discussed in section IV of this preamble, EPA is also amending the RFS regulations to add a new definition for ''distillers corn oil'' that is consistent with the new definition of distillers sorghum oil. The definitional change for distillers corn oil was proposed in the November 2016 Renewable Enhancement and Growth Support proposed rule (the ''November 2016 REGS proposed rule'').[6] Although that rule proposed to revise the definition of corn oil extraction, after considering the comments received, we decided it was more appropriate to leave the definition of corn oil extraction unchanged, and instead add and define the term distillers corn oil. This new term, distillers corn oil, will replace the existing term, non-food grade corn oil (which some parties have found unclear) in rows F and H of Table 1 to 40 CFR 80.1426. The primary difference between the existing and new terms is that the new definition of distillers corn oil allows for the recovery of corn oil at additional points in the ethanol production process (provided certain conditions are met). Thus, although the new definition allows additional corn oil to be used as a feedstock in the relevant pathways, the same life cycle considerations apply and the analyses for those pathways are unaffected.[7] The purpose and practical effect of this final rule, to allow corn oil extraction at more stages of ethanol production, closely match the notice of proposed rulemaking on this topic. In light of the practical similarity between ''non-food grade corn oil'' and ''distillers corn oil'' and to avoid implementation difficulties from continuing to administer registrations with obsolete terms, fuel producers who are currently registered for pathways that include non-food grade corn oil as a feedstock will need to update their registration to include distillers corn oil feedstock through a company update in EPA's Central Data Exchange (CDX). After the effective date of this final rule, including a reasonable transition period to allow for adequate time for registration updates to be initiated and processed, the non-food grade corn oil feedstock code will be removed and RINs will not be able to be generated using that feedstock code.[8] Fuel producers will be instructed on how and when to remove the non-food grade corn oil feedstock from their registration.

With no known exceptions, ethanol plants that recover grain sorghum oil also, and in most cases simultaneously, recover corn oil by the same methods. Thus, for practical implementation purposes, it is important to finalize the distillers corn oil definitional changes in this rulemaking, to provide consistency between these regulatory definitions. Finally, we also include in this rulemaking pathways for biodiesel and heating oil produced from commingled distillers sorghum oil and distillers corn oil via a transesterification process, and renewable diesel, jet fuel, and, heating oil produced from commingled distillers sorghum and corn oil via hydrotreating processes.

III. Analysis of GHG Emissions Associated With Production of Biofuels From Distillers Sorghum Oil

A. Overview of Distillers Sorghum Oil

Sorghum is native to Africa, but was introduced to the U.S. in the early 17th century. Grain sorghum belongs to the species *Sorghum bicolor* (L.) Moench,[9] which has been bred for different purposes including use as a grain (grain sorghum), a source of sugar (sweet sorghum), and animal forage (biomass sorghum). In the U.S., grain sorghum is commonly used as animal feed similar to feed corn, although in some parts of the world it is more often grown for human consumption. Pathways for ethanol produced from grain sorghum were approved in a rule published on December 17, 2012 (77 FR 74592). We also discussed biomass sorghum in a **Federal Register** Notice published on December 31, 2014 (79 FR 78857). In that notice, we stated that EPA does not consider hybrids of *Sorghum bicolor* and Johnsongrass (*Sorghum halepense)* to be biomass sorghum. We would also not consider such hybrids to be grain sorghum. Johnsongrass hybrids are explicitly excluded due to concerns regarding their potential to behave as an invasive species.

Dry mill ethanol and butanol[10] plants grind and ferment grain sorghum,[11] produce ethanol or butanol from the fermented grain sorghum starch, and also produce a DGS co-product (made of non-fermentable solids, solubles syrup, and sorghum oil) that is sold as a type of livestock feed. A portion of the oil that would otherwise reside in the DGS can be recovered at the biofuel plant, typically through mechanical extraction. Sorghum oil is recovered through methods identical to that of corn oil recovered from DGS, and corn and sorghum oil recovery can occur at the same facilities.

The recovered distillers corn and sorghum oils contain a high concentration of free-fatty acids, greater than ten percent by weight,[12] and are unsuitable for human consumption without further refining. It can, however, be used without further refining as a biofuel feedstock or as an ingredient in animal feed. There are existing approved RFS fuel pathways for biofuels produced from distillers corn oil[13] to qualify for advanced biofuel (D-code 5) or biomass-based diesel (D-code 4) RINs, depending on the production process used (see rows F and H of Table 1 to 40 CFR 80.1426). This rulemaking establishes similar pathways for the use of distillers sorghum oil as currently exist for the use of distillers corn oil, and also establishes an additional pathway in row I of Table 1 to 40 CFR 80.1426, as discussed further below.

In previous actions, EPA has approved pathways for the production of ethanol from grain sorghum made through a dry mill process as qualifying for renewable fuel (D-code 6) RINs, and in some cases advanced biofuel (D-code 5) RINs, depending on process energy sources used during production.[14] In December 2016, EPA also approved (with conditions) a facility-specific pathway for advanced butanol (qualifying for (D-code 5) RINs)

[6] 81 FR 80828 (November 16, 2016).

[7] *See* 81 FR 80828, 80900 (''[W]e believe that the precise timing and method of corn oil extraction is not relevant for GHG reductions to be accomplished pursuant to pathways F and H, provided that: (1) The corn is converted to ethanol; (2) The corn oil is extracted at a point in the dry mill ethanol production process that renders it unfit for food uses without further refining; and (3) The resulting DGS from the dry mill operation is marketable as animal feed.'')

[8] For more information on EPA's guidelines for registration updates see memo to the docket, ''Registration Approach for Fuel Producers Transitioning from Non-Food Grade Corn Oil to Distillers Corn Oil Feedstock,'' in Air Docket EPA–HQ–OAR–2017–0655.

[9] See, U.S. Department of Agriculture Natural Resource Conservation Service, *https://plants.sc.egov.usda.gov/core/profile?symbol=SOBI2,* accessed July 02, 2018.

[10] Given that ethanol production far exceeds that of butanol, for the sake of brevity, this preamble often refers only to dry mill ethanol plants, but butanol plants are implied to be included in such references, unless stated otherwise.

[11] Grain sorghum refers to Sorghum bicolor (L.) Moench ssp. Bicolor, see: *https://plants.usda.gov/core/profile?symbol=sobib.*

[12] A Moreau, Robert & B Hicks, Kevin & Johnston, David & P. Laun, Nathan. (2010). The Composition of Crude Corn Oil Recovered after Fermentation via Centrifugation from a Commercial Dry Grind Ethanol Process. *Journal of the American Oil Chemists' Society.* 87. 10.1007/s11746–010–1568–z.

[13] This rulemaking replaces the term ''non-food grade corn oil'' in the feedstock column of rows F and H of Table 1 to 40 CFR 80.1426 with ''distillers corn oil.'' See section VI of this preamble for further discussion.

[14] Table 1 to 40 CFR 80.1426, Rows R and S.

produced from grain sorghum as a feedstock.[15]

Currently about 30 percent of grain sorghum grown, or 120 million bushels a year, goes towards ethanol production.[16] Most of this production occurs in Texas, Oklahoma, and Kansas.[17] For comparison, in recent years over 5,200 million bushels of corn have been used for ethanol production annually.[18] Distillers sorghum oil can be produced at these facilities and used for biofuel production or other uses. However, it is still a relatively niche product, and the NSP petition anticipates that with approval of an RFS pathway, a potential of 12 to 21 million ethanol-equivalent gallons of biofuel would be produced from the distiller sorghum oil per year.

To the extent that distillers sorghum oil is used as a biofuel feedstock, it will often be produced together with distillers corn oil at ethanol plants using a combination of grain sorghum and corn as feedstocks for ethanol production. The commingled distiller sorghum and corn oils will then be shipped as a mixture to a different biofuel production facility for use as a feedstock.[19] Due to the recovery process of the oils from the DGS, where the ethanol plant is using a feedstock that combines grain sorghum and corn, it is not possible to physically separate the distillers sorghum and corn oils into two streams, nor is it possible to account for the volume of sorghum oil or corn oil in this mixture. Due to this specific recovery process and inability to separate or allocate volume associated with each oil in the mixture, we are allowing the mixture of distiller sorghum and corn oil to be reported together as one volume. For example, the RFS regulations at 40 CFR 80.1451(b)(ii)(K) require renewable fuel producers to submit RIN generation reports that include the ''types and quantities of feedstocks used'' for each batch of renewable fuel produced or imported. The regulations do not specify a method for fuel producers to use in determining the quantity of each feedstock when the feedstocks are received as a commingled shipment, as would likely be the case for distillers corn oil and distillers sorghum oil. A number of commenters recommended that EPA clarify the treatment of mixed distillers corn and sorghum oil in the final rule. Based on these comments, we believe it is appropriate to clarify the treatment of commingled distillers corn and sorghum oils in this rule. Given our expectation that a large share of distillers sorghum oil will be mixed with distillers corn oil when it is recovered, from a practical standpoint, approving a distillers sorghum oil pathway without clearly allowing for the use of commingled shipments would unnecessarily constrain the use of these potential feedstocks. Further, we acknowledge that it is not practical to require parties to separate the oils from this mixture and report the distillers sorghum and corn oils as individual feedstocks. Taking these factors into consideration and for ease of implementation, we are adding ''Commingled distillers corn and sorghum oils'' as a feedstock to rows F and H of Table 1 to 40 CFR 80.1426. Thus, facilities producing fuel through these pathways can treat commingled distillers corn oil and distillers sorghum oil as a single feedstock and report the combined volume of these oils in RIN generation reports under 40 CFR 80.1451(b)(ii)(K). They may also generate RINs in accordance with the formula in 40 CFR 80.1426(f)(2) for renewable fuel that can be described by a single pathway.

At this time, EPA is not adding ''commingled distillers corn and sorghum oil'' as a feedstock to row I of Table 1 to 40 CFR 80.1426 for the production of naphtha and LPG via a hydrotreating process. Non-food grade corn oil is not currently listed in that row, nor has EPA proposed to add it (or distillers corn oil). Thus, it would be premature for EPA to add either distillers corn oil or commingled distillers corn and sorghum oil as feedstocks in row I. Through the fuel pathway petition process, EPA previously approved two petitions allowing the generation of advanced biofuel (D-code 5) RINs for naphtha and LPG produced from non-food grade corn oil via a hydrotreating process.[20] We intend to inform companies with existing facility-specific pathway approvals for non-food grade corn oil, granted through the 40 CFR 80.1416 petition process, that such pathway approvals will be interpreted by EPA as approvals for distillers corn oil. (This gives such producers the same treatment as producers who registered for non-food grade corn oil feedstock without first being approved for a facility-specific petition.) In order to generate (D-code 5) RINs for naphtha and/or LPG produced from distillers corn oil and/or commingled distillers corn and sorghum oil, a fuel producer would first need to petition EPA pursuant to 40 CFR 80.1416, have EPA review and approve their requested pathway, and then submit and have EPA accept the registration for the new pathway.

EPA sought comment in the December 2017 sorghum oil proposed rule on a proposed definition for distillers sorghum oil. We summarize comments received below, with a more detailed summary and analysis included in the docket for this rulemaking. EPA received one comment on the proposed definition, asking that EPA clarify the phrase ''rendered unfit for food uses'' to specify that this means human food uses and not animal food uses. In this comment EPA was also asked to finalize revisions to the definition of corn oil extraction that was proposed in the November 2016 REGS proposed rule. The requested clarification is consistent with EPA's intended meaning, and we are finalizing a definition that says, ''the oil is unfit for human food use without further refining.'' We are also removing the word ''rendered'' from this part of the definition, as it is unnecessary and seemed to raise questions for commenters without any clear benefit.

EPA received a number of comments on the November 2016 REGS proposed rule related to the proposed changes to the definition of corn oil extraction contained in that proposed rule. Based on these comments, we have made a number of changes to the proposed definition of distillers sorghum oil to ensure that it aligns with the definition of distillers corn oil. These comments and associated changes are discussed in section IV, and in more detail in a response to comment document in the docket for this rulemaking.

As part of this rule, we are adding a definition of distillers sorghum oil in 40 CFR 80.1401. So long as the criteria in the definition are met, a variety of recovery methods could be

[15] December 22, 2016 pathway approval for Gevo, Inc., *https://www.epa.gov/renewable-fuel-standard-program/gevo-inc-approval.*

[16] Sorghum Checkoff, ''Renewables,'' *http://www.sorghumcheckoff.com/market-opportunities/renewables,* accessed 09-05-2017, (EPA-HQ-OAR-2017-0655-0015).

[17] USDA, NASS, ''Sorghum for Grain 2016 Harvested Acres by County for Selected States,'' *https://www.nass.usda.gov/Charts_and_Maps/graphics/AS-HA-RGBChor.pdf,* (EPA-HQ-OAR-2017-0655-0019).

[18] USDA, ERS, ''Table 5—Corn supply, disappearance, and share of total corn used for ethanol,'' *U.S. Bioenergy Statistics, https://www.ers.usda.gov/data-products/us-bioenergy-statistics/us-bioenergy-statistics/#Feedstocks,* accessed 09–05–2017, (EPA–HQ–OAR–2017–0655–0021).

[19] See comment from the Renewable Fuels Association (EPA–HQ–OAR–2017–0655–0039) and NSP petition, (EPA–HQ–OAR–2017–0655–0005), pp. 8.

[20] Renewable Energy Group's facility in Geismar, LA (*https://www.epa.gov/renewable-fuel-standard-program/reg-geismar-approval-0*) and Diamond Green Diesel's facility in Norco, LA (*https://www.epa.gov/renewable-fuel-standard-program/diamond-green-diesel-llc-approval*).

implemented. For example, this would include recovery of sorghum oil before fermentation from the slurry or from liquefaction tanks. It would also include recovery of sorghum oil after fermentation from the thin stillage and/or DGS. Further, it would also include recovery of sorghum oil by a third-party, and/or at a separate location from the biofuel plant. The definition of distillers sorghum oil is consistent with the definition of distillers corn oil, which is also being finalized in this rule (see section IV of this preamble).

B. Analysis of Lifecycle GHG Emissions

EPA evaluated the GHG emissions associated with using distillers sorghum oil as a biofuel feedstock based on information provided by the petitioner, input from the U.S. Department of Agriculture (USDA), public comments, and other available data sources. GHG emissions include emissions from production and transport of grain sorghum, the production and transport of distillers sorghum oil; the processing of the oil into biofuel; transport of the biofuel from the production facility to the fuel-blender; and, ultimately the use of the biofuel by the end consumer.

EPA's lifecycle analyses include significant direct and indirect GHG emissions (including such emissions from land use changes) associated with producing a feedstock and transporting it to the processing facility. All of the emissions associated with growing, harvesting, and transporting grain sorghum as a biofuel feedstock were calculated and taken into account in EPA's evaluation of the lifecycle GHG emissions associated with grain sorghum ethanol and butanol.[21]

In the proposed rule we described our preliminary finding that biofuels produced from distillers sorghum oil reduce lifecycle GHG emissions by approximately 80 percent compared to the petroleum baseline. These results assumed zero indirect GHG emissions related to compensating for oil removal from DGS, based on the premise that certain types of livestock benefit from lower-fat DGS and therefore removing the sorghum oil would not result in significant indirect impacts. EPA received two comments arguing that extracting distillers sorghum oil from DGS reduces the mass, calorific, and fat content of the DGS, and that there would be significant indirect GHG emissions associated with replacing these losses with other sources of livestock feed. As discussed below, we have adjusted our analysis based on these comments and conducted further analysis to estimate the potential indirect GHG emissions associated with replacing the extracted distillers sorghum oil. After accounting for these emissions, based on available information and reasonable assumptions to account for uncertainties, our revised analysis continues to show that biofuels produced from distillers sorghum oil satisfy the 50 percent lifecycle GHG reduction threshold required to qualify as advanced biofuel or biomass-based diesel. Finally, some commenters on the proposed distillers sorghum oil rule suggested that EPA has an obligation to engage in consultation with the United States Fish and Wildlife Service and/or that National Marine Fisheries Service under Section 7 of the Endangered Species Act prior to finalizing the rule. Such consultation is required for actions in which the Agency has discretion to tailor its actions for the benefit of threatened or endangered species, or their critical habitat, and where the action in question ''may effect'' listed species. However, as described in the Response to Comments Document accompanying this rule, EPA does not have discretion under the statute to take into consideration possible impacts to threatened or endangered species or their critical habitat in determining which biofuels qualify under the renewable fuel standard program as advanced biofuel or biomass-based diesel and, even if it did have such discretion, today's rule will have no effect on threatened or endangered species. As a result, Section 7 consultation is not required.

1. Livestock Sector Impacts

During a typical dry mill fermentation process, DGS are produced. These DGS are then used as animal feed, thereby displacing feed crops and the GHG emissions associated with growing and transporting those feed crops. After distillers sorghum oil is removed, DGS continue to be produced and sold as livestock feed, but with reduced oil content.

We do not expect sorghum oil removal to have significant impact on the types and quantities of feed used in the livestock market. EPA's modeling for the December 2012 grain sorghum ethanol final rule assumed average dried DGS yield of 17 pounds per bushel of grain sorghum feedstock.[22] The oil content of full oil DGS is approximately 1.71 pounds per bushel,[23] of which approximately 0.67–0.88 pounds per bushel of grain sorghum feedstock can be recovered using commercially available mechanical extraction technologies.[24] When oil is recovered from the DGS, the total mass of DGS produced could be reduced by up to approximately 6 percent. However, DGS from grain sorghum represents less than 3 percent of DGS fed to domestic livestock.[25] Even if all distillers sorghum oil were removed from livestock feed, the overall impact on the livestock sector would be extremely small. To the extent that sorghum DGS are likely to be fed in combination with corn DGS and other livestock feed ingredients, the changes in oil content on the combined feed could potentially be too small to discern.[26] In that case, it is unlikely that feedstock suppliers would find a need to replace the distillers sorghum oil with other oils. As mentioned previously, EPA has an existing pathway approved for non-food grade corn oil, now referred to as distillers corn oil. Much of the current corn DGS on the feed market is already de-oiled, and because all known current facilities using sorghum blend with corn DGS, we do not expect any significant changes in oil concentrations from what already exists on the market. However, based on the comments received, we have conducted additional analysis on the potential indirect GHG emissions impacts on a per pound of oil extracted basis.

Chemically, full-oil and reduced-oil sorghum DGS share similar compositions; they are primarily made up of crude protein, fat, and natural and acid detergent fibers.[27] Where the two products differ most significantly is in their acid detergent fiber and fat concentrations.

[21] See the December 17, 2012 grain sorghum ethanol final rule (77 FR 74592).

[22] See 77 FR 74592 (December 17, 2012).

[23] NSP petition (EPA–HQ–OAR–2017–0655–0005), Attachment 4, pp. 7.

[24] 0.88 pounds removal is at the highest end of the information NSP provided and corresponds to a fat content in reduced-oil distillers grains of 3.91% rather than 7.2% which NSP considers as a more likely outcome.

[25] NSP petition (EPA–HQ–OAR–2017–0655–0005), pp. 19. And, AgMRC, ''Estimated U.S. Dried Distillers Grains with Solubles (DDGS) Production & Use,'' *https://www.extension.iastate.edu/agdm/crops/outlook/dgsbalancesheet.pdf*, (EPA–HQ–OAR–2017–0655–0006).

[26] See Air Docket EPA–HQ–OAR–2017–0655, U.S. Department of Agriculture, Office of the Chief Scientist and Office of the Chief Economist, ''Memorandum: Technical responses on EPA assumptions related to the lifecycle GHG assessment of the proposed grain oil sorghum biofuel pathway,'' March 15, 2018, pp. 4.

[27] Neutral detergent fibers measure the amount of structural component of plants, while acid detergent fibers measure the least digestible plant components.

Table III.1 shows the key constituents that make up dried full-oil and reduced-oil DGS.

TABLE III.1—KEY NUTRIENT MAKE-UP OF FULL-OIL AND REDUCED-OIL DRIED DISTILLERS GRAINS WITH SOLUBLES (DDGS) DERIVED FROM GRAIN SORGHUM [28]

Nutrient	Full-oil sorghum DDGS	Reduced-oil sorghum DDGS
Crude Protein, %	30.80	31.36
Crude Fat, % (aka Ether Extract)	9.75	3.91
Neutral Detergent Fiber (NDF), %	33.60	37.23
Acid Detergent Fiber (ADF), %	22.68	31.91
Ash, %	6.62	7.60
Calcium, %	0.12	0.08
Phosphorus, %	0.76	0.96
Lysine, %	0.82	0.62
Methionine, %	0.54	0.47
Cystine, %	0.53	0.61
Tryptophan, %	0.25	0.23

EPA received two comments [29] regarding the potential greenhouse gas impacts on the livestock sector if the distillers oil is removed. One potential impact is based on whether a lower crude fat concentration would require changes in the livestock feed composition to make up for the nutritional loss to the livestock (nutritional impacts). The second potential impact is related to the physical reduction in DGS mass resulting from the oil recovery (mass loss). We address both of these potential impacts in the following sections.

a. Nutritional Impacts

The key issue associated with the first potential impact is whether the reduced calories would impact the amount of feed displaced through the use of sorghum DGS. Should fat content not be at sufficient levels, livestock producers might need to add nutrients or other types of feed to meet appropriate nutritional targets. This is reflected in the ''displacement rate'' of a DGS, which indicates how much weight a pound of distillers grain can replace of another feed. A lower feed displacement rate for a reduced-oil distillers grain as compared to a full-oil distillers grain could result in additional GHG emissions as it suggests that additional feed is required to replace the missing oil. Displacement rates are calculated by taking into account nutrient and energy requirements of livestock and their respective recommended DGS inclusion rates to maintain animal performance.[30] The next section (III.B.1.b. Mass Loss), describes how we used the displacement rate to analyze the emissions impacts associated with the removal of oil from sorghum DGS.

Research suggests that for several livestock types there are performance improvements, per pound of DGS, when oil content of fed-DGS is removed. For instance, for poultry and swine, ''increased concentrations of free fatty acids have a negative impact on lipid digestion and energy content.'' [31] Free fatty acids are a class of acids that form part of a lipid molecule. Full-oil DGS typically contain higher levels of free fatty acids and thus may have a negative impact on the fat digestion of poultry and swine. Thus, while the fat content may be lower for reduced-oil DGS, per pound feeding values of this product may not be lower than full-oil DGS for poultry and swine and the feed displacement rate may not be lower for reduced-oil versus full-oil DGS.

For dairy, there are also benefits from feeding reduced-oil DGS as compared to full-oil DGS. Research on dairy cows shows that reduced-oil DGS produce a lessened likelihood of the onset of milk fat depression.[32] Milk fat depression occurs when milk fat is reduced by 0.2 percent or more.[33] If milk fat depression occurs over the long term, a decline in overall milk production may occur as well as worsened health conditions of the herd. High fat diets have been linked with this condition and have been shown to worsen the rumen environment of dairy cattle.[34] Therefore, dairy producers seek to avoid high fat diets. Given the benefits of reduced-oil DGS over full-oil DGS for milk fat production, it is expected that reduced-oil DGS will be preferred over full-oil DGS by dairy producers and that feed displacement rates will be no lower than those of full-oil DGS.

An impact on displacement rates may occur when reduced-oil instead of full-oil DGS are used for beef cattle, which require additional fat. Table III.2 shows the displacement ratios for the livestock sectors where dried DGS (DDGS) are used. In this table, for instance, 1 pound of reduced-oil DDGS fed to beef cattle displaces 1.173 pounds of corn, as opposed to 1.196 pounds of corn for full-oil DDGS. A pound of full-oil and reduced-oil DDGS also displaces equal amounts (0.056 pounds) of urea. Urea is a non-protein nitrogen compound that is typically fed to cattle for aiding the production of protein by rumen microbes.[35] These values show that for dairy, swine, and poultry, reduced-oil DDGS replace the same amounts of alternative feed despite containing less oil than full-oil DDGS. This is not the case, however, with respect to beef cattle.

[28] The chart lists the most prominent constituents in distillers grains. Data provided by the National Sorghum Producers, see Air docket EPA–HQ–OAR–2017–0655. Data for full-oil sorghum DDGS is sourced from *Nutrient Requirements of Swine,* 2012 National Academies Press, Washington, DC, pp 329. Data for reduced-oil Sorghum DDGS was calculated by National Sorghum Producers using the ratio of (1) corn DDGS, between 6 to 9 percent Oil; and (2) corn DDGS, less than 4 percent oil from *Nutrient Requirements of Swine,* 2012 National Academies Press, Washington, DC, pp. 266 and 267.

[29] EPA–HQ–OAR–2017–0655–0041, 0042.

[30] For more detail see, Arora et al., (2008). Argonne National Laboratory. ''Update of distillers grains displacement ratios for corn ethanol life-cycle analysis'' (EPA–HQ–OAR–2017–0655–0007).

[31] Kerr, B.J., W.A. Dozier, and G.C. Shurson. (2016). ''Lipid digestibility and energy content of distillers' corn oil in swine and poultry,'' *Journal of Animal Science.* 94:2900–2908. doi:10.2527/jas.2016–0440, pp. 2905 (EPA–HQ–OAR–2017–0655–0010).

[32] H.A. Ramirez-Ramirez, E. Castillo Lopez, C.J.R. Jenkins, N.D. Aluthge, C. Anderson, S.C. Fernando, K.J. Harvatine, P.J. Kononoff, (2016). ''Reduced-fat dried distillers grains with solubles reduces the risk for milk fat depression and supports milk production and ruminal fermentation in dairy cows,'' *Journal of Dairy Science,* Volume 99, Issue 3, Pages 1912–1928, ISSN 0022–0302, *http://dx.doi.org/10.3168/jds.2015-9712.* (*http://www.sciencedirect.com/science/article/pii/S0022030216000515*), (EPA–HQ–OAR–2017–0655–0014).

[33] University of Kentucky, ''Preventing Milk Fat Depression in Dairy Cows,'' *https://afs.ca.uky.edu/dairy/preventing-milk-fat-depression-dairy-cows.* Accessed September 08, 2018, (EPA–HQ–OAR–2017–0655–0017). On the herd level milk fats range from 3 to 5 percent normally. Oetzel, Garret R., ''Subacute Ruminal Acidosis in Dairy Herds: Physiology, Pathophysiology, Milk Fat Responses, and Nutritional Management.'' Preconference Seminar 7A: Dairy Herd Problem Investigation Strategies: Lameness, Cow Comfort, and Ruminal Acidosis, American Association of Bovine Practitioners, 40th Annual Conference, September 17, 2007—Vancouver, BC, Canada, *https://www.vetmed.wisc.edu/dms/fapm/fapmtools/2nutr/sara1aabp.pdf* pp.98. (EPA–HQ–OAR–2017–0655–0012).

[34] Penn State Extension, ''Troubleshooting Problems with Milkfat Depression,'' August 14, 2017, *https://extension.psu.edu/troubleshooting-problems-with-milkfat-depression.* Accessed September 08, 2017, (EPA–HQ–OAR–2017–0655–0016).

[35] Penn State Extension, ''Urea in Beef Cattle Rations,'' August 08, 2017, *https://extension.psu.edu/urea-in-beef-cattle-rations.* Accessed October 18, 2017, (EPA–HQ–OAR–2017–0655–0018).

TABLE III.2—FULL-OIL AND REDUCED-OIL SORGHUM DISTILLERS GRAINS WITH SOLUBLES DISPLACEMENT RATIOS [36]

[lb of ingredient/lb of sorghum distillers grains with solubles, dry matter basis]

Ingredient	Beef cattle		Dairy cattle		Swine		Poultry [37]	
	Full-oil	Reduced-oil	Full-oil	Reduced-oil	Full-oil	Reduced-oil	Full-oil	Reduced-oil
Corn	1.196	1.173	0.731	0.731	0.890	0.890	0.292	0.292
Soybean Meal	.....	.....	0.633	0.633	0.095	0.095	.....	.....
Urea	0.056	0.056	.....	.....	.....	.....	.....	.....

b. Mass Loss

The second issue raised by the commenters on potential livestock indirect GHG impacts [38] relates to the potential impacts of mass reduction from the removal of oil from sorghum DGS. The commenters also suggested that EPA consider the impacts of feeding reduced-oil sorghum DGS to all types of livestock rather than those where performance gains were likely to be seen. In evaluating these comments, EPA has undertaken additional analysis to account for the potential indirect GHG emissions associated with this ''mass loss'' effect. Since sorghum accounts for less than 3 percent of the domestically consumed distillers grains, there is very little market data on the impacts of removing oil from the sorghum DGS on the livestock sector. EPA, therefore, has relied on the expertise of USDA to inform the livestock sector impact analysis described below.[39]

When oil is removed from the sorghum DGS, the distillers grains decrease in mass. Although feed rations are complex, for the purposes of conducting this analysis, in USDA's judgement it is a reasonable assumption to use corn to substitute for the mass loss due to sorghum oil recovery. Corn is a relatively low cost primary product that is readily available in the locations where sorghum oil is produced.[40] Furthermore, USDA experts noted that to the extent that other materials such as crop residues or waste from the human food supply system were available and used instead, they would likely have a lower GHG profile than corn.[41] To the extent that these other materials may be used, assuming corn substitutes for mass loss is a conservative assumption for a GHG emissions perspective.[42]

To calculate the impact of the mass loss and the greenhouse gas emission impacts from the substitution of corn for sorghum DGS, EPA used data obtained from a study conducted by Argonne National Laboratory and estimates from NSP for the displacement of feed by DGS by livestock type (see Table III.2). Using these data, we calculated a substitution rate for how much corn would be needed for every pound of grain sorghum oil diverted to biofuel production, by livestock type (see Table III.3 below).[43]

TABLE III.3—FEED SUBSTITUTION RATIO

Livestock type	Feed substitute	Substitution ratio (lb feed substitute/lb oil extracted)
Beef	Corn	1.551
Dairy	Corn	0.731
Swine	Corn	0.890
Poultry	Corn	0.292

Using the national average shares for DDGS use by livestock type,[44] we calculated a weighted average 1.2 pounds of corn substituted per pound of distillers sorghum oil removed. Based on our modeling for the March 2010 RFS rule, we have used an emissions factor of 0.27 $kgCO_2e$ per pound of corn produced, transported and consumed.[45] The product of these values gives a livestock sector impact of 0.31 $kgCO_2e$ per pound of distillers sorghum oil, which represents the potential indirect emissions resulting from additional corn produced to substitute for a loss in sorghum DGS on a per pound of oil extracted basis. The product of this value and the yield for each type of biofuel (pounds of distillers sorghum oil per mmBtu of fuel) results in the livestock sector GHG impacts listed in the results table in section III.B.8 of this preamble.

[36] Information provided by National Sorghum Producers, see Air docket EPA–HQ–OAR–2017–0655, using the following sources Arora et al., (2008). Argonne National Laboratory. ''Update of distillers grains displacement ratios for corn ethanol life-cycle analysis,'' (EPA–HQ–OAR–2017–0655–0007); Kerr et al., (2016). ''Lipid digestibility and energy content of distillers' corn oil in swine and poultry,'' *Journal of Animal Science* 94:2900–8, (EPA–HQ–OAR–2017–0655–0010); Opheim et al., (2016). ''Biofuel feedstock and blended coproducts compared with deoiled corn distillers grains in feedlot diets: Effects on cattle growth performance, apparent total tract nutrient digestibility, and carcass characteristics,'' *Journal of Animal Science* 94:227, (EPA–HQ–OAR–2017–0655–0013); Ramirez et al., (2016). ''Reduced-fat dried distillers grains with solubles reduces the risk for milk fat depression and supports milk production and ruminal fermentation in dairy cows,'' *Journal of Dairy Science* 99:1912–28, (EPA–HQ–OAR–2017–0655–0014). Poultry displacement ratios were provided by the National Sorghum Producers and calculated based on data from the Iowa State Extension Services, Agricultural Marketing and Resources Center, ''Estimated U.S. Dried Distillers Grains with Solubles (DDGS) Production and Use,'' *https://www.extension.iastate.edu/agdm/crops/outlook/dgsbalancesheet.pdf* (EPA–HQ–OAR–2017–0655–0006).

[37] Protein sources such as soybean meal can be used to supplement sorghum DGS for poultry.

[38] EPA-HQ-OAR–2017–0655–0041, 0042.

[39] See, U.S. Department of Agriculture, Office of the Chief Scientist and Office of the Chief Economist, ''Memorandum: Technical responses on EPA assumptions related to the lifecycle GHG assessment of the proposed grain oil sorghum biofuel pathway,'' March 15, 2018, Air Docket EPA–HQ–OAR–2017–0655.

[40] Corn is demonstrably cheaper than other feedstock replacements. For instance, in the U.S. corn in the 2016/2017 season averaged $0.06/lb whereas, soy oil in 2017 averaged $0.32/lb and corn oil averaged $0.28. See USDA ERS, Feed Grains Yearbook, *https://www.ers.usda.gov/data-products/feed-grains-database/feed-grains-yearbook-tables.aspx* (accessed on June 14, 2018) and USDA Vegetable Oils and Animal Fats, Oil Crop Yearbook, *https://www.ers.usda.gov/data-products/oil-crops-yearbook.aspx* (accessed on June 06, 2018).

[41] See, U.S. Department of Agriculture, Office of the Chief Scientist and Office of the Chief Economist, ''Memorandum: Technical responses on EPA assumptions related to the lifecycle GHG assessment of the proposed grain oil sorghum biofuel pathway,'' March 15, 2018, Air Docket EPA–HQ–OAR–2017–0655.

[42] The purpose of lifecycle assessment under the RFS program is not to precisely estimate lifecycle GHG emissions associated with particular biofuels, but instead to determine whether or not the fuels satisfy specified lifecycle GHG emissions thresholds to qualify as one or more of the four types of renewable fuel specified in the statute. Where there are a range of possible outcomes and the fuel satisfies the GHG reduction requirements when ''conservative'' assumptions are used, then a more precise quantification of the matter is not required for purposes of a pathway determination.

[43] See, Summary for the Final Rule of Key Assumptions for EPA's Analysis of the Lifecycle Greenhouse Gas Emissions Associated with Biofuels Produced from Distillers Sorghum Oil and Distiller Sorghum Oil LCA Spreadsheet, Air Docket EPA–HQ–OAR–2017–0655.

[44] The data comes from the medium projections for the year 2016–2017 from AgMRC, ''Estimated U.S. Dried Distillers Grains with Solubles (DDGS) Production & Use,'' *https://www.extension.iastate.edu/agdm/crops/outlook/dgsbalancesheet.pdf,* (EPA–HQ–OAR–2017–0655–0006).

[45] See the docket memo ''Summary for the Final Rule of Key Assumptions for EPA's Analysis of the Lifecycle Greenhouse Gas Emissions Associated with Biofuels Produced from Distillers Sorghum Oil,'' Air Docket EPA–HQ–OAR–2017–0655, for more details.

2. Feedstock Production

Distillers sorghum oil is removed from DGS at dry mill biofuel plants using the same equipment and technologies used for distillers corn oil recovery. Oil recovery requires thermal energy to heat the DGS and electricity to power centrifuges, pumps and other oil recovery equipment. Our analysis for the March 2010 RFS final rule,[46] the NSP petition, and two studies,[47] [48] indicate that although extracting oil from DGS uses thermal energy, it also leads to relatively less thermal energy being used later in the process to dry the DGS, resulting in an overall negligible change in thermal energy requirements for plants that dry their DGS. Our analysis here includes both the thermal and electrical energy requirements to remove the distillers sorghum oil. We do not account for the reduction in thermal energy needed for DGS drying mentioned above, so this can be viewed as a conservative approach (*i.e.,* resulting in higher estimated GHG emissions) for plants that dry their DGS. Based on our review of the data,[49] we assume 200 Btu (British thermal units) of grid electricity and 800 Btu of natural gas are used to recover distillers sorghum oil from DGS, per pound of distillers sorghum oil recovered. These parameters are based on energy requirements associated with extracting oil from DGS at dry mill ethanol plants, but we believe they are also appropriate and conservative in cases where the oil is recovered at any point downstream from sorghum grinding.[50]

3. Feedstock Transport

In our analysis, distillers sorghum oil is transported 50 miles by heavy duty truck from the dry mill ethanol plant to the biodiesel or hydrotreating facility where it is converted to transportation fuel. GHG emissions associated with feedstock transport are relatively small, and modest changes in transport distance would not affect the threshold determinations based on our analysis.

4. Feedstock Pretreatment

For emissions from feedstock pretreatment and fuel production, we perform two analyses. In the first analysis, we calculate the emissions from biodiesel and heating oil produced using transesterification. In the second analysis, we calculate the emissions from renewable diesel, jet fuel, LPG, and naphtha, produced using hydrotreating.

Before distillers sorghum oil is converted to biodiesel via transesterification, it is processed to remove free-fatty acids. This process requires thermal energy. Our evaluation of yellow grease for the March 2010 RFS final rule included 14,532 Btu of natural gas per gallon of biodiesel produced for pretreatment, and we have applied the same assumption for this analysis. According to the NSP petition, distillers sorghum oil has free fatty acid content near or below 15 percent, which is in the range of yellow grease free fatty acid contents (<15 percent).[51] Our assumption on pretreatment thermal energy use for distillers sorghum oil is higher than thermal energy use in other (non-EPA) lifecycle assessments of high free-fatty acid biodiesel feedstocks that we have reviewed,[52] and can be viewed as a conservative assumption (*i.e.,* resulting in higher GHG emissions).

Pretreatment to remove free-fatty acids is not required when distillers sorghum oil is used to produce renewable diesel, jet fuel, LPG and naphtha through a hydrotreating process.

5. Fuel Production

For biodiesel production, we used the transesterification analysis for the March 2010 RFS rule for yellow grease biodiesel.[53] Based on comparison of this yellow grease analysis and the mass and energy balance data in the NSP petition, submitted under claim of CBI, the conversion of yellow grease and distillers sorghum oil are expected to require similar energy inputs and yield similar amounts of biodiesel as output.

For production of renewable diesel, jet fuel, naphtha and LPG via a hydrotreating process, we used the same data and approach as used in the March 2013 Pathways I rule,[54] and subsequent facility-specific petitions involving hydrotreating processes.[55] The March 2013 Pathways I rule evaluated two hydrotreating configurations: One optimized for renewable diesel production and one optimized for jet fuel production. For this analysis we evaluated a hydrotreating process maximized for renewable diesel production, as that is the most common configuration. The jet fuel configuration results in higher emissions (approximately 5 $kgCO_2e$/mmBtu higher), but the threshold GHG reduction results discussed below are not sensitive to this assumption.

Our previous analyses of hydrotreating processes have applied an energy allocation approach for RIN-generating co-products that qualify as renewable fuel.[56] This approach results in higher lifecycle GHG emissions for each of the fuel products than other approaches considered, such as a displacement approach, and thus can be viewed as a conservative approach. We have used this approach in assessing GHG emissions impacts of fuels derived from distillers sorghum oil.

In the allocation approach, all the emissions from the hydrotreating process are allocated across all co-products. There are a number of ways to do the allocation, for example on the basis of energy, mass, or economic value. Consistent with the approach taken in the hydrotreating analysis for the March 2013 RFS rule, for this analysis of fuels produced from distillers sorghum oil feedstock through a hydrotreating process, we allocated emissions to the renewable diesel, naphtha and LPG based on the energy content (using lower-heating values) of the products produced. Emissions from the process were allocated equally to all of the Btus of fuel produced. Therefore, on a per Btu basis, all of the primary products coming from the hydrotreating facility have the same emissions from the fuel production stage of the

[46] See section 1.4.1.3 of USEPA (2010). Renewable fuel standard program (RFS2) regulatory impact analysis. U.S. Environmental Protection Agency Office of Transportation Air Quality, EPA–420–R–10–006. Washington, DC. *https://www.epa.gov/sites/production/files/2015-08/documents/420r10006.pdf.*

[47] Wang, Z., et al. (2015). ''Influence of corn oil recovery on life-cycle greenhouse gas emissions of corn ethanol and corn oil biodiesel.'' *Biotechnology for Biofuels* 8(1): 178, (EPA–HQ–OAR–2017–0655–0020).

[48] Mueller, S., Kwik, J. (2013). ''2012 Corn Ethanol: Emerging Plant Energy and Environmental Technologies.''

[49] See sources referenced in footnotes 20 and 21 for energy use associated with oil extraction, and California Air Resources Board (2014), (EPA–HQ–OAR–2017–0655–0011). ''California-Modified GREET Fuel Pathway: Biodiesel Produced in the Midwestern and the Western U.S. from Corn Oil Extracted at Dry Mill Ethanol Plants that Produce Wet Distiller's Grains with Solubles.'' Staff Summary, Method 1 Fuel Pathway (EPA–HQ–OAR–2017–0655–0009).

[50] There are limited data on the energy efficiency of alternative oil extraction technologies. Oil extraction earlier in the dry mill process would offer energy efficiency benefits later in the process, as moving oil through the fermentation and ethanol recovery processes tends to increase energy requirements. Recovery further downstream at a separate location would likely include chemical extraction techniques that would yield higher levels of oil. Overall, we expect any differences to be small in the context of this distillers sorghum oil analysis.

[51] See Table 15 in the January 5, 2012 Pathways I direct final rule (77 FR 722).

[52] See for example: California Environmental Protection Agency Air Resources board, *https://www.arb.ca.gov/fuels/lcfs/2a2b/apps/co_bd_wdgs-rpt-102414.pdf,* (EPA–HQ–OAR–2017–0655–0008).

[53] For details see section 2.4 of the RIA for the March 2010 RFS final rule.

[54] See 78 FR 14190 (March 5, 2013).

[55] For determination documents responding to facility specific petitions, see: *https://www.epa.gov/renewable-fuelstandard-program/approved-pathways-renewable-fuel.*

[56] See the March 2013 Pathways I rule, specifically 78 FR 14198–14200 (March 5, 2013).

lifecycle. For this analysis, the energy content was the most appropriate basis for allocating emissions because all of the fuel products are used as sources of energy. Energy content also has the advantage of being a fixed factor as opposed to market prices which fluctuate over time.

6. Fuel Distribution

We used the fuel distribution results from the biodiesel analysis for the March 2010 RFS rule. Fuel distribution emissions are relatively small compared to baseline lifecycle GHG emissions (see Table III.4: Lifecycle GHG Emissions Associated With Biofuels Produced From Distillers Sorghum Oil ($kgCO_2$-eq/MJ) below), and although they may be different for different types of fuel, for the purposes of this analysis we assumed that heating oil, renewable diesel, jet fuel, LPG, and naphtha have the same fuel distribution emissions as biodiesel per mmBtu of fuel used.

7. Fuel Use

For this analysis we applied fuel use emissions factors developed for the March 2010 RFS final rule. We used the biodiesel emissions factor for biodiesel and biodiesel used as heating oil. For renewable diesel and jet fuel we used the emissions factors for non-CO_2 GHGs for baseline diesel fuel. For naphtha we used the emissions factors for non-CO_2 GHGs for baseline gasoline fuel. For LPG we used the LPG non-CO_2 emissions factor developed for the March 2010 RFS rule. The tailpipe emissions are relatively small, and the threshold GHG reduction results are not sensitive to these assumptions. More details on our analysis of fuel use emissions are described in a memo [57] to the rulemaking docket.

8. Results of GHG Lifecycle Analysis

Table III.4 shows the lifecycle GHG emissions associated with biofuels produced from distillers sorghum oil that result from our assessment. The table also shows the percent reduction relative to the petroleum baseline. All of the fuels are compared to the diesel baseline, except for naphtha which is compared to the gasoline baseline. Based on the lifecycle GHG emissions results presented above, all of the pathways evaluated meet the 50 percent GHG reduction threshold required for advanced biofuel and biomass-based diesel.

TABLE III.4—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH BIOFUELS PRODUCED FROM DISTILLERS SORGHUM OIL

[$kgCO_2$-eq/MJ]

Fuel	Biodiesel, heating oil	Renewable diesel, jet fuel	Naphtha	LPG	2005 Diesel baseline	2005 Gasoline baseline
Production process	Transesterification	Hydrotreating			Refining	
Livestock Sector Impacts	20.7	19.4	19.4	19.4	.....	.....
Feedstock Production	6.6	6.2	6.2	6.2	18.0	19.2
Feedstock Transport	0.3	0.3	0.3	0.3		
Feedstock Pretreatment	8.4					
Fuel Production	1.2	8.0	8.0	8.0		
Fuel Distribution	0.8	0.8	0.8	0.8		
Fuel Use	0.7	0.7	1.7	1.5	79.0	79.0
Total	38.7	35.4	36.4	36.2	97.0	98.2
Percent Reduction	60	64	63	63	.....	.....

IV. Definition of Distillers Corn Oil

In the March 2010 RFS final rule, EPA established two pathways (pathways F and H in Table 1 to 40 CFR 80.1426) for biomass-based diesel (D-code 4) or advanced biofuel (D-code 5) made from ''non-food grade corn oil.'' The lifecycle GHG analyses for these pathways were based on the EPA's modeling of corn oil recovered from DGS produced by a dry-mill corn ethanol plant through corn oil extraction. In the November 2016 REGS proposed rule, EPA proposed to revise pathways F and H in Table 1 to 40 CFR 80.1426 to specify that the feedstock is ''oil from corn oil extraction,'' rather than ''non-food grade corn oil,'' and to include a revised and somewhat broadened definition of ''corn oil extraction'' relative to the 2010 definition.[58]

The proposed definitional change was motivated by the evolution of corn oil extraction technology within the ethanol industry, which allows ethanol producers to recover corn oil at different locations in the ethanol production process, with potential energy efficiency and ethanol yield benefits.

In the November 2016 REGS proposed rule, EPA reasoned that the precise timing and method of corn oil extraction are not relevant for meeting the 50 percent GHG reduction threshold associated with pathways F and H, provided that a number of conditions are satisfied. Specifically, EPA proposed the following definition for corn oil extraction: ''Corn oil extraction means the recovery of corn oil at any point downstream of when a dry mill corn ethanol plant grinds the corn, provided that the corn is converted to ethanol, the oil is rendered unfit for food uses without further refining, and the oil extraction results in distillers grains marketable as animal feed.'' This definitional change was intended to both address the developments in corn oil extraction and to define the conditions under which corn oil qualifies as a feedstock for the purposes of Table 1.

As explained below, rather than the approach proposed in the 2016 REGS proposed rule, which would have revised the term ''corn oil extraction'' and replaced ''non-food grade corn oil'' with ''oil from corn oil extraction'' in rows F and H, EPA is instead leaving the definition of ''corn oil extraction'' as-is and is finalizing a definition for the term ''distillers corn oil'' that will be used in Table 1. The substance of the definition of ''distillers corn oil'' finalized here is consistent with the proposed definition for ''corn oil

[57] See, ''Summary of Key Assumptions for EPA's Analysis of the Lifecycle Greenhouse Gas Emissions Associated with Biofuels Produced from Distillers Sorghum Oil,'' Air Docket EPA–HQ–OAR–2017–0655.

[58] See section VII.B of the November 2016 REGS proposed rule (81 FR 80900–01).

extraction,'' other than changes made in response to comments. Thus, based on the comments received on the November 2016 REGS proposed rule, EPA is taking the following actions in this rulemaking: (1) Table 1 to 40 CFR 80.1426 is revised to replace the term ''Non-food grade corn oil'' with ''Distillers corn oil'' in rows F and H; and (2) 40 CFR 80.1401 is revised to add a definition of ''distillers corn oil''.

The approach taken in this rule preserves the existing meaning of corn oil extraction for the purpose of the second row of Table 2 to 40 CFR 80.1426 (the ''corn oil extraction advanced technology''); our intent was to broaden the non-food grade corn oil pathways listed in Table 1 to 40 CFR 80.1426, not to modify the corn oil extraction advanced technology specified in Table 2, which is relevant for corn starch ethanol pathways. The corn oil extraction advanced technology was included in the regulations based on analysis completed in the March 2010 RFS rule for pathways in rows A and B of Table 1 that can include extracting oil from whole stillage and/or derivatives of whole stillage, thus reducing energy use at dry mill ethanol plants.[59] In order to avoid altering the scope of corn oil extraction for the purpose of Table 2 (which involves different pathways than rows F and H), it is most appropriate to create a new definition for distillers corn oil and to preserve the existing definition of corn oil extraction. Incidentally, we generally anticipate that corn oil recovered through corn oil extraction as listed in Table 2 to 40 CFR 80.1426 should be able to qualify as distillers corn oil (provided it satisfied all of the definitional requirements) for the purpose of the pathways in rows F and H in Table 1; however, not all distillers corn oil will necessarily be recovered by processes that qualify as corn oil extraction. The comments received on EPA's proposed corn oil definitional changes are summarized below, with a more detailed summary and analysis included in the docket for this rulemaking.

Four commenters on the November 2016 REGS proposed rule supported EPA's proposed revision to the definition of corn oil extraction.[60] They said the proposed changes were needed to update the definition based on technological changes in the industry, and to provide a level playing field for new oil extraction methods. Seven commenters supported the proposed revisions and recommended the relatively small revisions discussed below.[61] EPA also received four comments on the December 2017 sorghum oil proposed rule that supported finalizing the expanded definition of corn oil as part of this rulemaking.[62] While EPA is not finalizing the definition of ''corn oil extraction'' that was proposed in the REGS rule, EPA believes that the approach being finalized today addresses the concerns of these commenters, as well as those of other commenters who raised questions about continued use of the term ''non-food grade corn oil.''

While no commenters objected to EPA's overall proposal to revise and expand the types of extracted corn oil that qualify as approved feedstocks in rows F and H of Table 1 to 40 CFR 80.1426, a number of commenters requested clarifications or modifications to EPA's proposed definition. Four commenters suggested that EPA should expand the definition of corn oil extraction even further to include corn oil recovered at butanol plants, because the dry mill process for butanol is very similar to those for dry mill ethanol with respect to conversion of corn to liquefied mash and recovery of distillers grains and thin stillage.[63] Five commenters suggested that EPA should expand the definition of corn oil extraction to include corn oil from wet milling.[64] These commenters stated that all corn oil meets the requirements of the RFS program and thus should be eligible feedstocks under the program. Four commenters requested that EPA expand the definition of corn oil extraction to include corn oil extracted after corn fractionation.[65] These commenters stated that the fractionation process can be set up at a dry grind ethanol plant and the resulting extracted corn oil will still meet all the requirements for corn oil extraction. Two commenters requested that EPA clarify the proposed definition of corn oil extraction by stating that ''the oil is rendered unfit for human food uses without further refining.''[66] One commenter requested that EPA clarify the proposed definition of corn oil extraction to state that the resulting distillers grains include those that have been subjected to further oil recovery by a dry mill or third party.[67] Three commenters stated that EPA's proposed addition of the phrase ''at any point downstream'' is inconsistent with its proposed approach for biointermediates and should be clarified.[68] The commenters also state that the phrase ''oil is rendered unfit'' is unnecessary since all corn oil obtained from extraction is unfit for food uses. One commenter recommended using the term ''distillers corn oil'' as that term is better understood in the industry, and USDA reporting, to reference corn oil from dry mills.

Based on these comments, EPA is finalizing a definition that has been modified in several ways compared to the one proposed in the November 2016 REGS proposed rule. First, EPA has decided to use the term ''distillers corn oil'' because we agree with the commenter that the term is better understood in the industry and thus enhances the clarity of the regulations. Second, the definition has been revised to include corn oil recovered at dry mill butanol plants, given their similarities in terms of the oil recovery technologies used, the characteristics of the oil recovered and the resulting DGS co-products. Third, we have clarified that distillers corn oil is limited to oil that is unfit for *human* food use without further refining. Fourth, we have removed the word ''rendered'' from the definition as it is unnecessary and seemed to raise questions for commenters. Finally, we replaced the word ''extraction'' with ''recovery'' to avoid any confusion about how the definition interacts with the term ''corn oil extraction'' in 40 CFR 80.1401 and Table 2 to 40 CFR 80.1426.

Other modifications recommended by commenters have not been incorporated into the definition finalized by this rulemaking. Corn oil from wet milling remains excluded from the definition. Corn oil produced at wet mills is

[59] EPA has consistently viewed the non-food grade corn oil pathways as only available for facilities that extract corn oil produced at dry mill corn ethanol plants (see letter from Karl Simon of EPA to John W. Bode of the Corn Refiners Association, dated October 24, 2013). The change from ''non-food grade corn oil'' to ''distillers corn oil'' and the associated definition will more clearly articulate this and other requirements for purposes of Table 1.

[60] EPA–HQ–OAR–2016–0041–0231, 0296, 0307 and 0313. For convenience, EPA is providing citations to the docket for the REGS proposed rule for comments that were filed in that docket on proposed changes to the regulations for corn oil, but these comments have also been included in the docket for this action.

[61] EPA–HQ–OAR–2016–0041–0243, 0246, 0260, 0266, 0267, 0277 and 0286.

[62] EPA–HQ–OAR–2017–0655–0034, 0039, 0028, 0038.

[63] EPA–HQ–OAR–2016–0041–0243, 0246, 0267 and 0286.

[64] EPA–HQ–OAR–2016–0041–0259, 0270, 0282, 0300 and 0311.

[65] EPA–HQ–OAR–2016–0041–0278, 0282, 0300 and 0311.

[66] EPA–HQ–OAR–2016–0041–0266 and 0277.

[67] EPA–HQ–OAR–2016–0041–0260.

[68] EPA–HQ–OAR–2016–0041–0282, 0300 and 0311.

commonly sold as cooking oil for human food uses, and thus may have significantly different impacts than distillers corn oil. The GHG emissions associated with substituting for oil removed from animal feed, and specifically DGS, may be significantly different than the GHG emissions associated with substituting for oil removed from cooking oil markets. Thus, we believe the current LCA is insufficient to extend the pathway to corn oil produced at wet mills and it would be more appropriate to address wet mill corn oil through a separate action, such as a new fuel pathway petition submitted pursuant to 40 CFR 80.1416. Fractionation is also not explicitly included, or otherwise mentioned, in the revised definition, as EPA has previously found that oil recovered through fractionation is likely to be sold for human food use;[69] use of such oil for biofuel production would require a modified lifecycle assessment that is beyond the scope of this rule. Finally, EPA does not believe the definition finalized in this rulemaking contradicts the biointermediate provisions in the November 2016 REGS proposed rule. Because it is listed as a feedstock in Table 1 to 40 CFR 80.1426, the current regulations accommodate distillers corn oil used through the pathways in rows F and H unless it is substantially altered at a separate facility before delivery to the fuel production facility.

V. Summary

Based on our GHG lifecycle evaluation described above, we find that biodiesel and heating oil produced from distillers sorghum oil via a transesterification process, and renewable diesel, jet fuel and heating oil produced from distillers sorghum oil via a hydrotreating process meet the 50 percent GHG reduction threshold requirement for advanced biofuel and biomass-based diesel. Based on this finding, and providing that all regulatory requirements are satisfied, these fuels are eligible for biomass-based diesel (D-code 4) RINs if they are produced through a process that does not co-process renewable biomass and petroleum, and for advanced biofuel (D-code 5) RINs if they are produced through a process that does co-process renewable biomass and petroleum. The RFS regulations are also amended to add new and consistent definitions for ''distillers sorghum oil'' and ''distillers corn oil.'' As discussed above, we are allowing commingled distillers sorghum and corn oil to be reported as one volume under the existing registration, reporting and recordkeeping requirements, and therefore are not amending these sections.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and therefore is not subject to these requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule enables distillers sorghum oil producers and producers of biofuels from distillers sorghum oil to participate in the RFS program, see CAA section 211(o), if they choose to do so in order to obtain economic benefits.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This final rule would affect only producers of distillers sorghum oil and producers of biofuels made from distillers sorghum oil. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This final rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the fuel programs and RFS regulations and therefore will not cause emissions increases from these sources.

[69] See the Regulatory Impact Analysis for the March 2010 RFS rule, section 1.1.3.2 (Corn Oil Extracted During Ethanol Production).

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel Fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: July 24, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 as follows:

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

■ 2. Section 80.1401 is amended by adding, in alphabetical order, definitions for ''distillers corn oil'' and ''distillers sorghum oil'' to read as follows:

§ 80.1401 Definitions.

* * * * *

Distillers corn oil means corn oil recovered at any point downstream of when a dry mill ethanol or butanol plant grinds the corn, provided that the corn starch is converted to ethanol or butanol, the recovered oil is unfit for human food use without further refining, and the distillers grains remaining after the dry mill and oil recovery processes are marketable as animal feed.

Distillers sorghum oil means grain sorghum oil recovered at any point downstream of when a dry mill ethanol or butanol plant grinds the grain sorghum, provided that the grain sorghum is converted to ethanol or butanol, the recovered oil is unfit for human food use without further refining, and the distillers grains remaining after the dry mill and oil recovery processes are marketable as animal feed.

* * * * *

■ 3. Section 80.1426 is amended in paragraph (f)(1), in Table 1 to § 80.1426, by revising entries ''F'', ''H'', and ''I'' to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

	Fuel type	Feedstock	Production process requirements	D-code
*	*	*	*	*
F	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum.	4
*	*	*	*	*
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; *Camelina sativa* oil; Distillers corn oil; Distillers sorghum oil; Commingled distillers corn oil and sorghum oil.	One of the following: Trans-Esterification Hydrotreating Includes only processes that co-process renewable biomass and petroleum.	5
I	Naphtha, LPG	*Camelina sativa* oil; Distillers sorghum oil.	Hydrotreating	5
*	*	*	*	*

* * * * *

[FR Doc. 2018–16246 Filed 8–1–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6059–N9]

Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of the Extension of Temporary Moratoria on Enrollment of Part B Non-Emergency Ground Ambulance Suppliers and Home Health Agencies in Designated Geographic Locations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Extension of temporary moratoria.

SUMMARY: This document announces the extension of statewide temporary moratoria on the enrollment of new Medicare Part B non-emergency ground ambulance providers and suppliers and Medicare home health agencies and branch locations in Florida, Illinois, Michigan, Texas, Pennsylvania, and New Jersey, as applicable, to prevent and combat fraud, waste, and abuse. This extension also applies to the enrollment of new non-emergency ground ambulance suppliers and home health agencies and branch locations in Medicaid and the Children's Health Insurance Program in those states.

DATES: Applicable July 29, 2018.

FOR FURTHER INFORMATION CONTACT: Jung Kim, (410) 786–9370.

News media representatives must contact CMS' Public Affairs Office at (202) 690–6145 or email them at *press@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. CMS' Implementation of Temporary Enrollment Moratoria

The Social Security Act (the Act) provides the Secretary with tools and resources to combat fraud, waste, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). In particular, section 1866(j)(7) of the Act provides the Secretary with authority to impose a temporary moratorium on the enrollment of new Medicare, Medicaid, or CHIP providers and suppliers, including categories of providers and suppliers, if the Secretary determines a moratorium is necessary to prevent or combat fraud, waste, or abuse under these programs. Regarding Medicaid, section 1902(kk)(4) of the Act requires States to comply with any moratorium imposed by the Secretary unless the State determines that the imposition of such moratorium would adversely impact Medicaid beneficiaries' access to care. In addition, section 2107(e)(1)(F) of the Act provides that the Medicaid provisions in section 1902(kk) are also applicable to CHIP.

In the February 2, 2011 **Federal Register** (76 FR 5862), CMS published a final rule with comment period titled, ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers,'' which implemented section 1866(j)(7) of the Act by establishing new regulations at 42 CFR 424.570. Under § 424.570(a)(2)(i) and (iv), CMS, or CMS in consultation with the Department of Health and Human Services' Office of Inspector General (HHS OIG) or the Department of Justice (DOJ), or both, may impose a temporary moratorium on newly enrolling Medicare providers and suppliers if CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type, or particular geographic locations, or both. At § 424.570(a)(1)(ii), CMS stated that it would announce any temporary moratorium in a **Federal Register** document that includes the rationale for the imposition of such moratorium. This document fulfills that requirement.

In accordance with section 1866(j)(7)(B) of the Act, there is no judicial review under sections 1869 and 1878 of the Act, or otherwise, of the decision to impose a temporary enrollment moratorium. A provider or supplier may use the existing appeal procedures at 42 CFR part 498 to administratively appeal a denial of billing privileges based on the imposition of a temporary moratorium; however, the scope of any such appeal is limited solely to assessing whether the temporary moratorium applies to the provider or supplier appealing the denial. Under § 424.570(c), CMS denies the enrollment application of a provider or supplier if the provider or supplier is subject to a moratorium. If the provider or supplier was required to pay an application fee, the application fee will be refunded if the application was denied as a result of the imposition of a temporary moratorium (see § 424.514(d)(2)(v)(C)).

Based on this authority and our regulations at § 424.570, we initially imposed moratoria to prevent enrollment of new home health agencies, subunits, and branch locations [1] (hereafter referred to as HHAs) in Miami-Dade County, Florida and Cook County, Illinois, as well as surrounding counties, and Medicare Part B ground ambulance suppliers in Harris County, Texas and surrounding counties, in a notice issued on July 31, 2013 (78 FR 46339).[2] We exercised this authority again in a notice published on February 4, 2014 (79 FR 6475) when we extended the existing moratoria for an additional 6 months and expanded them to include enrollment of HHAs in Broward County, Florida; Dallas County, Texas; Harris County, Texas; and Wayne County, Michigan and surrounding counties, and enrollment of ground ambulance suppliers in Philadelphia, Pennsylvania and surrounding counties.

Then, we further extended these moratoria in documents issued on August 1, 2014 (79 FR 44702), February 2, 2015 (80 FR 5551), July 28, 2015 (80 FR 44967), and February 2, 2016 (81 FR 5444). On August 3, 2016 (81 FR 51120), we extended the current moratoria for an additional 6 months and expanded them to statewide for the enrollment of new HHAs in Florida, Illinois, Michigan, and Texas, and Part B non-emergency ambulance suppliers in New Jersey, Pennsylvania, and Texas. Our August 3, 2016 publication also announced the lifting of temporary moratoria for all Part B emergency ambulance suppliers.[3] On January 9, 2017 (82 FR 2363) and July 28, 2017 (82 FR 35122), CMS again issued a

[1] As noted in the preamble to the final rule with comment period implementing the moratorium authority (February 2, 2011, 76 FR 5870), home health agency subunits and branch locations are subject to the moratoria to the same extent as any other newly enrolling home health agency.

[2] CMS has identified an error in the provider and beneficiary saturation data described in our July 31, 2013 **Federal Register** notice (78 FR 46339). We have subsequently revised the methodology by which we determine provider and beneficiary saturation. Following these revisions to the methodology, we simulated application of our current 2016 methodology to the 2013 data, and determined that the 2013 decision to impose the moratorium would not have been impacted had the revised methodology been applied. Provider saturation remains one of the criteria used to determine whether to implement a moratorium. CMS has made market saturation data publicly available at *https://data.cms.gov/market-saturation.*

[3] CMS also concurrently announced a demonstration under the authority provided in section 402(a)(l)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–l(a)(l)(J)) that allows for access to care-based exceptions to the moratoria in certain limited circumstances after a heightened review of that provider has been conducted. This exception process also applies to Medicaid and CHIP providers in each state. This announcement may be found in the **Federal Register** document issued on August 3, 2016 (81 FR 51116).

document to extend the temporary moratoria for a period of 6 months.

On September 1, 2017, CMS lifted the statewide temporary moratorium on the enrollment of new Medicare Part B non-emergency ground ambulance suppliers in Texas under the authority of § 424.570(d). This lifting of the moratorium also applied to Medicaid and CHIP in Texas. This decision was a result of the Presidential Disaster Declaration signed on August 25, 2017 for several counties in the State of Texas due to Hurricane Harvey. Upon declaration of the disaster, CMS carefully reviewed the potential impact of continued moratoria in Texas, and decided to lift the temporary enrollment moratorium on non-emergency ground ambulance suppliers in Texas in order to aid in the disaster response. CMS published a formal announcement of this decision on November 3, 2017 (82 FR 51274).

Most recently, on January 30, 2018 (83 FR 4147), CMS announced the extension of the temporary moratoria for an additional six months.

B. Determination of the Need for Moratoria

In imposing these enrollment moratoria, CMS considered both qualitative and quantitative factors suggesting a high risk of fraud, waste, or abuse. CMS relied on law enforcement's longstanding experience with ongoing and emerging fraud trends and activities through civil, criminal, and administrative investigations and prosecutions. CMS' determination of a high risk of fraud, waste, or abuse in these provider and supplier types within these geographic locations was then confirmed by CMS' data analysis, which relied on factors the agency identified as strong indicators of risk. (For a more detailed explanation of this determination process and of these authorities, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475)).

Because fraud schemes are highly migratory and transitory in nature, many of CMS' program integrity authorities and anti-fraud activities are designed to allow the agency to adapt to emerging fraud in different locations. The laws and regulations governing CMS' moratoria authority give us flexibility to use any and all relevant criteria for future moratoria, and CMS may rely on additional or different criteria as the basis for future moratoria.

1. Application to Medicaid and the Children's Health Insurance Program (CHIP)

The February 2, 2011, final rule also implemented section 1902(kk)(4) of the Act, establishing new Medicaid regulations at § 455.470. Under § 455.470(a)(1) through (3), the Secretary may impose a temporary moratorium, in accordance with § 424.570, on the enrollment of new providers or provider types after consulting with any affected State Medicaid agencies. The State Medicaid agency must impose a temporary moratorium on the enrollment of new providers or provider types identified by the Secretary as posing an increased risk to the Medicaid program unless the State determines that the imposition of such moratorium would adversely affect Medicaid beneficiaries' access to medical assistance and so notifies the Secretary. The final rule also implemented section 2107(e)(1)(D) of the Act by providing, at § 457.990 of the regulations, that all of the provisions that apply to Medicaid under sections 1902(a)(77) and 1902(kk) of the Act, as well as the implementing regulations, also apply to CHIP.

Section 1866(j)(7) of the Act authorizes imposition of a temporary enrollment moratorium for Medicare, Medicaid, and/or CHIP, ''if the Secretary determines such moratorium is necessary to prevent or combat fraud, waste, or abuse under either such program.'' While there may be exceptions, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. Many of the anti-fraud provisions in the Act reflect this concept of ''reciprocal risk'' in which a provider that poses a risk to one program poses a risk to the other programs. For example, section 1902(a)(39) of the Act requires State Medicaid agencies to terminate the participation of an individual or entity if such individual or entity is terminated under Medicare or any other State Medicaid plan. Additional provisions in the Act also support the determination that categories of providers and suppliers pose the same risk to Medicaid as to Medicare. Section 1866(j) of the Act requires us to establish levels of screening for categories of providers and suppliers based on the risk of fraud, waste, and abuse determined by the Secretary. Section 1902(kk) of the Act requires State Medicaid agencies to screen providers and suppliers based on the same levels established for the Medicare program. This reciprocal concept is also reflected in the Medicare moratoria regulations at § 424.570(a)(2)(ii) and (iii), which permit CMS to impose a Medicare moratorium based solely on a State imposing a Medicaid moratorium. Accordingly, CMS has determined that there is a reasonable basis for concluding that a category of providers or suppliers that poses a risk to Medicare also poses a similar risk to Medicaid and CHIP, and that a moratorium in all of these programs is necessary to effectively combat this risk.

2. Consultation With Law Enforcement

In consultation with the HHS Office of Inspector General (OIG) and the Department of Justice (DOJ), CMS previously identified two provider and supplier types in nine geographic locations that warrant a temporary enrollment moratorium. For a more detailed discussion of this consultation process, see the July 31, 2013 notice (78 FR 46339) or February 4, 2014 moratoria document (79 FR 6475).

3. Data Analysis

In addition to consulting with law enforcement, CMS also analyzed its own data to identify specific provider and supplier types within geographic locations with significant potential for fraud, waste or abuse, therefore warranting the imposition of enrollment moratoria.

4. Beneficiary Access to Care

Beneficiary access to care in Medicare, Medicaid, and CHIP is of critical importance to CMS and its State partners, and CMS carefully evaluated access for the target moratorium locations with every imposition and extension of the moratoria. Prior to imposing and extending these moratoria, CMS reviewed Medicare data for these areas and found no concerns with beneficiary access to HHAs or ground ambulance suppliers. CMS also consulted with the appropriate State Medicaid Agencies and with the appropriate State Departments of Emergency Medical Services to determine if the moratoria would create access to care concerns for Medicaid and CHIP beneficiaries. All of CMS' State partners were supportive of CMS' analysis and proposals, and together with CMS, determined that continuation of these moratoria would not create access to care issues for Medicaid or CHIP beneficiaries.

5. When a Temporary Moratorium Does Not Apply

Under § 424.570(a)(1)(iii), a temporary moratorium does not apply to any of the following: (1) Changes in practice

location (2) changes in provider or supplier information, such as phone number or address; or (3) changes in ownership (except changes in ownership of HHAs that require initial enrollment under § 424.550). Also, in accordance with § 424.570(a)(1)(iv), a temporary moratorium does not apply to any enrollment application that a Medicare contractor has already approved, but has not yet entered into the Provider Enrollment, Chain, and Ownership System (PECOS) at the time the moratorium is imposed.

6. Lifting a Temporary Moratorium

In accordance with § 424.570(b), a temporary enrollment moratorium imposed by CMS will remain in effect for 6 months. If CMS deems it necessary, the moratorium may be extended in 6-month increments. CMS will evaluate whether to extend or lift the moratorium before the end of the initial 6-month period and, if applicable, any subsequent moratorium periods. If one or more of the moratoria announced in this document are extended, CMS will publish a document regarding such extensions in the **Federal Register**.

As provided in § 424.570(d), CMS may lift a moratorium at any time if the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if circumstances warranting the imposition of a moratorium have abated, if the Secretary has declared a public health emergency, or if, in the judgment of the Secretary, the moratorium is no longer needed.

Once a moratorium is lifted, the provider or supplier types that were unable to enroll because of the moratorium will be designated to the ''high'' screening level in accordance with §§ 424.518(c)(3)(iii) and 455.450(e)(2) if such provider or supplier applies at any time within 6 months from the date the moratorium was lifted.

II. Extension of Home Health and Ambulance Moratoria—Geographic Locations

CMS currently has in place statewide moratoria on newly enrolling HHAs in Florida, Illinois, Michigan, and Texas and Part B non-emergency ambulance suppliers in New Jersey and Pennsylvania.

As provided in § 424.570(b), CMS may deem it necessary to extend previously-imposed moratoria in 6-month increments. Under this authority, CMS is extending the temporary moratoria on the Medicare enrollment of HHAs and Part B non-emergency ground ambulance providers and suppliers in the geographic locations discussed herein. Under the regulations at § 455.470 and § 457.990, these moratoria also apply to the enrollment of HHAs and non-emergency ground ambulance providers and suppliers in Medicaid and CHIP in those locations. Under § 424.570(b), CMS is required to publish a document in the **Federal Register** announcing any extension of a moratorium, and this extension of moratoria document fulfills that requirement.

CMS consulted with the HHS–OIG regarding the extension of the moratoria on new HHAs and Part B non-emergency ground ambulance providers and suppliers in all of the moratoria states, and HHS–OIG agrees that a significant potential for fraud, waste, and abuse continues to exist regarding those provider and supplier types in these geographic areas. The circumstances warranting the imposition of the moratoria have not yet abated, and CMS has determined that the moratoria are still needed as we monitor the indicators and continue with administrative actions to combat fraud and abuse, such as payment suspensions and revocations of provider/supplier numbers. (For more information regarding the monitored indicators, see the February 4, 2014 moratoria document (79 FR 6475)).

Based upon CMS' consultation with the relevant State Medicaid agencies, CMS has concluded that extending these moratoria will not create an access to care issue for Medicaid or CHIP beneficiaries in the affected states at this time. CMS also reviewed Medicare data for these states and found there are no current problems with access to HHAs or ground ambulance providers or suppliers. Nevertheless, the agency will continue to monitor these locations to make sure that no access to care issues arise in the future.

Based upon our consultation with law enforcement and consideration of the factors and activities described previously, CMS has determined that the current temporary enrollment moratoria should be extended for an additional 6 months.

III. Summary of the Moratoria Locations

CMS is executing its authority under sections 1866(j)(7), 1902(kk)(4), and 2107(e)(1)(D) of the Act to extend and implement temporary enrollment moratoria on HHAs for all counties in Florida, Illinois, Michigan, and Texas, as well as Part B non-emergency ground ambulance providers and suppliers for all counties in New Jersey and Pennsylvania.

IV. Clarification of Right to Judicial Review

Section 1866(j)(7)(B) of the Act states that there shall be no judicial review under section 1869, section 1878, or otherwise, of a temporary moratorium imposed on the enrollment of new providers of services and suppliers if the Secretary determines that the moratorium is necessary to prevent or combat fraud, waste, or abuse. Accordingly, our regulations at 42 CFR 498.5(l)(4) state that for appeals of denials based on a temporary moratorium, the scope of review will be limited to whether the temporary moratorium applies to the provider or supplier appealing the denial. The agency's basis for imposing a temporary moratorium is not subject to review. Our regulations do not limit the right to seek judicial review of a final agency decision that the temporary moratorium applies to a particular provider or supplier. In the preamble to the February 2, 2011 (76 FR 5918) final rule with comment period establishing this regulation, we explained that ''a provider or supplier may administratively appeal an adverse determination based on the imposition of a temporary moratorium up to and including the Department Appeal Board (DAB) level of review.'' We are clarifying that providers and suppliers that have received unfavorable decisions in accordance with the limited scope of review described in § 498.5(l)(4) may seek judicial review of those decisions after they exhaust their administrative appeals. However, we reiterate that section 1866(j)(7)(B) of the Act precludes judicial review of the agency's basis for imposing a temporary moratorium.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Impact Statement

CMS has examined the impact of this document as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory

Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)). 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, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major regulatory actions with economically significant effects ($100 million or more in any 1 year). This document will prevent the enrollment of new home health providers and Part B non-emergency ground ambulance suppliers in Medicare, Medicaid, and CHIP in certain states. Though savings may accrue by denying enrollments, the monetary amount cannot be quantified. Since the imposition of the initial moratoria on July 31, 2013, more than 1204 HHAs and 26 ambulance companies in all geographic areas affected by the moratoria had their applications denied. We have found the number of applications that are denied after 60 days declines dramatically, as most providers and suppliers will not submit applications during the moratoria period. Therefore, this document does not reach the economic threshold, and thus is not considered a major action.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any one year. Individuals and states are not included in the definition of a small entity. CMS is not preparing an analysis for the RFA because it has determined, and the Secretary certifies, that this document will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if an action may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS defines a small rural hospital as a hospital that is located outside of a metropolitan statistical area (MSA) for Medicare payment purposes and has fewer than 100 beds. CMS is not preparing an analysis for section 1102(b) of the Act because it has determined, and the Secretary certifies, that this document will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any regulatory action whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This document will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13771, titled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017 (82 FR 9339, February 3, 2017). It has been determined that this notice is a transfer notice that does not impose more than de minimis costs and thus is not a regulatory action for the purposes of E.O. 13771.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed regulatory action (and subsequent final action) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Because this document does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this document was reviewed by the Office of Management and Budget.

Dated: July 17, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[PS Docket No. 15–94; FCC 18–39]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules governing the Emergency Alert System (EAS) by establishing the Alert Reporting System (ARS), a comprehensive online filing system for EAS that combines the existing EAS Test Reporting System (ETRS) with a new, streamlined electronic system for the filing of State EAS Plans. By replacing paper-based State EAS Plans with an online filing system, the ARS will minimize the burdens on State Emergency Communications Committees (SECCs), and allow the FCC, the Federal Emergency Management Agency (FEMA), and other authorized entities to better access and use up-to-date information about the EAS, thus increasing its value as a tool to protect life and property for all Americans.

DATES: Effective September 4, 2018. Mandatory compliance dates: FCC will publish a document in the **Federal Register** announcing dates as outlined in paragraphs 54–55 and 72–73 in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Austin Randazzo, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at 202–418–1462, or by email at *Austin.Randazzo@fcc.gov*. For additional information concerning the information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*Report and Order*) in PS Docket No. 15–94, FCC 18–39, released on April 10, 2018. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–1257), 445 12th Street SW, Washington, DC 20554, or online at: *https://www.fcc.gov/document/fcc-make-emergency-alert-system-more-effective*.

Synopsis

1. This *Report and Order* revises the Commission's EAS rules to establish the Alert Reporting System (ARS), a comprehensive online filing system that will combine the existing EAS Test Reporting System (ETRS) with a new, streamlined electronic system for the filing of State EAS Plans. Further, to ensure that the rules for State EAS Plans are clear and unambiguous, the *Report and Order* combines all State EAS Plan

related rules into a single section (11.21) of part 11.

I. Background

2. The EAS is a national public warning system used by EAS Participants to deliver emergency alerts to the public. The primary purpose of the EAS is to allow the President of the United States (President) to provide information to the general public during periods of national emergency. State and local authorities also use the common distribution architecture of the EAS to distribute voluntary weather-related and other emergency alerts to the public.

3. There are two distribution methods for EAS alerts. The traditional method distributes alerts through a hierarchical, broadcast-based distribution system, in which an alert originator formats an alert using the EAS Protocol and initiates its transmission at a designated entry point. This ''daisy chain'' process relays the alert from one designated station to another until it is fully distributed. EAS alerts also are distributed over the internet through the Integrated Public Alert and Warning System (IPAWS), a national alerting system administered by FEMA. Under the IPAWS, EAS Participants monitor a FEMA-administered website for EAS messages that are written in the Common Alerting Protocol (CAP).

4. While IPAWS relies upon the centralized distribution of alerts using an alert aggregator and an internet-based interface, the EAS's ''daisy chain'' leverages the broadcast-based EAS distribution architectures in each of the states. The Commission's rules require each state to file a State EAS Plan with the Commission documenting its EAS distribution architecture. State Emergency Communications Committees (SECCs), along with associated Local Emergency Communications Committees (LECCs), draft and file these plans on behalf of the states. The SECCs and LECCs are volunteer organizations composed of state broadcast associations, EAS Participants, emergency management personnel, and other stakeholders. SECCs grew out of a 1963 Executive Order that directed the Commission to cooperate with other governmental entities to develop emergency communications plans related to the Emergency Broadcast System (EBS). At that time, the Commission provided SECCs with templates for State EAS Plans that described the kinds of information that their plans should provide.

5. *Nationwide EAS Tests.* On September 28, 2016 and September 27, 2017, FEMA, in collaboration with the Commission, conducted the second and third nationwide tests of the EAS, respectively. The purpose of the tests was to assess the reliability and effectiveness of the EAS, with a particular emphasis on testing IPAWS. On April 21, 2017, the Public Safety and Homeland Security Bureau (PSHSB) released a public version of the second test's results, which indicated that although the test had satisfied its primary purposes, there remained ''strong evidence that many test participants do not understand their roles in the EAS structure and are unfamiliar with the State EAS Plans that inform them of those roles.''

6. *EAS Test Reporting System (ETRS).* In connection with the test, the Commission launched the ETRS, an electronic filing system and related database that upgraded the system the Commission used for the first nationwide EAS test. The ETRS requires EAS Participants to submit detailed information regarding their receipt and propagation, if applicable, of the alert code, including an explanation of any complications in receiving and propagating the code. The ETRS enables the Commission to maintain a centralized database of all EAS monitoring assignments and alert distribution pathways.

II. Discussion

7. *Online State EAS Plan Filing in the Alert Reporting System.* State EAS Plans must describe state and local EAS operations and ''contain guidelines which must be followed by EAS Participants' personnel, emergency officials, and [NWS] personnel to activate the EAS.'' State EAS Plans must be reviewed and approved by the Chief, PSHSB, prior to their implementation ''to ensure that they are consistent with national plans, FCC regulations, and EAS operation.''

8. Following the first nationwide EAS test in 2011, PSHSB recommended converting the State EAS Plan filing process into an online system in light of inconsistencies identified in a post-test analysis of the structure of State EAS Plans. Subsequently, the Communications Security, Reliability and Interoperability Council (CSRIC) IV recommended that State EAS Plans also be filed online and recommended that the Commission revise its rules to adopt an online platform, State EAS Plan template design, and identification mechanisms for facilities and geographic areas contained within State EAS Plans. In the document, the Commission noted the CSRIC's recommendations and proposed converting the paper-based filing process for State EAS Plans into a secure online process that would interface with the ETRS.

9. *Online Filing.* The Commission revises its Part 11 EAS rules to require SECCs to file State EAS Plans electronically via an online filing system. This will provide a baseline level of uniformity across State EAS Plans, in terms of both format and terminology, while affording sufficient flexibility to accommodate filers' unique needs. This online State EAS filing platform, combined with the existing ETRS, will form the Alert Reporting System. The Commission believes that the ARS will ensure more efficient and effective delivery of Presidential as well as state, local and weather-related alerts as it will provide the Commission, FEMA, and other authorized entities with the means to more easily review and identify gaps in the EAS architectures, detect problems, and take measures to address these shortcomings.

10. The Commission agrees with the many commenters that note the benefits of the online filing system. For example, broadcast engineer Sean Donelan (Donelan) states that a well-implemented electronic filing system for EAS data will reduce the burden on state and local EAS committee volunteers. Use of an online filing system will also benefit EAS Participants, SECCs, and other EAS stakeholders by facilitating the Commission's swift and efficient review of State EAS Plans. As the Washington State SECC notes, a standardized filing system ''is long overdue'' and will aid the Commission's effort to review State EAS Plans. The Commission believes, as does Wisconsin SECC Broadcast Chair Gary Timm, commenting in his individual capacity (Timm), that the time required for SECCs to fill out a monitoring matrix would be minimal, and that other FCC databases could help keep the information updated. The online filing system will be an efficient tool for reviewing alerting architecture, as it will provide an end-to-end picture of the EAS distribution architecture for each state. Further, cross-referencing data from electronically filed State EAS Plans with data collected from the ETRS will make it easier to identify problems such as single points of failure. Finally, moving to an online system will reduce burdens on SECCs by pre-populating data fields in State EAS Plans with information from other FCC databases, enabling SECCs to readily update and revise their plans.

11. The Commission believes that the efficient and effective administration of the EAS, *i.e.,* its ability to deliver a

Presidential Alert nationwide, requires some level of standardization of State EAS Plans. State EAS Plans currently lack consistent structure and content. An online filing system using uniform and consistent terminology will facilitate the input, analysis, and related uses of the Plan information. During the first nationwide EAS test, a lack of uniformity among State EAS Plans ''made it very difficult for the Commission and FEMA to create a national propagation map.'' Similarly, the Commission agrees with CSRIC IV that the lack of uniform format in State EAS Plans ''makes it difficult for the FCC to determine if a proper distribution network exists for . . . distribution [of the Presidential Alert] in each state.'' Further, an online State EAS Plan filing system with consistent terminology and format will allow SECCs to ''report changes to state plans and EAS EAN Event Code distribution in the least demanding and most efficient manner possible that still provides the Commission with current and accurate information.''

12. *Template.* The Commission requires State EAS Plan data to be entered into a pre-configured online template. As the Commission discusses below, it is designed to be minimally burdensome, secure, and to offer clear guidance to SECCs. The template will standardize monitoring and other common elements of EAS State Plans, while offering sufficient flexibility to avoid SECCs' concerns that a ''one size fits all'' template for State EAS Plans would be unworkable. It will address all elements of State EAS Plans, including a monitoring assignment matrix similar to the one used by the Washington State SECC and supported by commenters, so that SECCs may input monitoring data into the ARS in a structured and consistent manner. Where feasible, the Commission will ensure that this matrix and other parts of the template will pre-populate elements of State EAS Plans by cross-referencing data already collected by the Commission, as recommended by CSRIC IV. The Commission directs PSHSB to develop and implement the template in Appendix D of the *Report and Order* to include these functionalities and to minimize unnecessary and redundant filing burdens on SECCs.

13. The Commission traditionally has provided SECCs with templates describing the kinds of information to be included in State EAS Plans, and the template the Commission adopts today is consistent with that practice. To be both effective and minimally burdensome, the State EAS Plan template must address all state plan elements. The Commission thus disagrees with suggestions that the online database and template apply only to the monitoring assignment matrix, or to what some commenters characterize as the ''federal'' aspects of State EAS Plans. State EAS Plans are not limited to monitoring assignment data, but rather include other elements which, taken together, form the EAS activation guidelines that EAS stakeholders follow. Similarly, the use and testing of the EAS at the state and local level provide insight into its functionality and effectiveness at the federal level.

14. Finally, the Commission disagrees with commenters who suggest that a State EAS Plan template is unworkable because there is no ''one size fits all'' framework for State EAS Plans. The template will afford SECCs flexibility to provide information they deem relevant to design and maintain their states' EAS distribution architectures and relay networks. It will be configured in a manner that accommodates variations in state alerting architectures, including areas where alerts are transmitted across state borders.

15. *Access.* The Commission agrees with commenters that State EAS Plan information concerning the placement of broadcast towers and other vital alert distribution architecture infrastructure is sensitive, particularly when aggregated with similar information from other states. Accordingly, the Commission adopts safeguards to ensure only authorized entities access this data. The Commission requires SECCs to provide an SECC ID, an individual user ID, and a password to input State EAS Plan data into the ARS. Commenters generally support limiting access to State EAS Plans filed in this manner. NSBA observes that the security risks of aggregating State EAS Plans online justify the use of password or log-in protection. Further, the Alaska Broadcasters Association, Alaska State Emergency Communications Committee, and the State of Alaska Department of Military and Veterans Affairs, the Division of Homeland Security and Emergency Management (Alaska Commenters) assert that online data that includes specific station and equipment information (*e.g.,* make, model, manufacturer, and firmware versions of the encoder, decoder, and translator equipment) should be considered sensitive and protected from disclosure as necessary. To address these concerns, the Commission adopts CSRIC IV's recommendation to follow the Disaster Information Reporting System (DIRS) two-layer access model. This model will require a user to input both an SECC ID and an individual user ID before accessing the database. The Commission agrees with the Alaska Commenters that, similar to DIRS and ETRS, the Commission should handle user and account management for this system, and the Commission directs PSHSB to determine the details of designing and setting up ARS account management.

16. Several commenters provide useful suggestions about access to State EAS Plan data that the Commission adopts as elements of ARS access. The Commission agrees with Nevada SECC Chairwoman Adrienne Abbott, commenting in her individual capacity (Abbott), that only individuals with significant roles in SECCs should have access to this data, and, further, that such access should be limited to data about an SECC's individual state. The Commission disagrees with Monroe Electronics, however, that EAS equipment manufacturers and planning consultants should have access to State EAS Plan data to confirm proper configuration of system hardware and software. As noted above, the ARS will contain sensitive data and, for this reason, the Commission believes it serves the public interest to limit access to the ARS. EAS equipment manufacturers and other third-party vendors may request a particular client's data from that client.

17. *Confidentiality.* Finally, the Commission affords confidentiality protection to State EAS Plan data. Most commenters agree that some of the information in State EAS Plans, such as the call signs and locations of key EAS sources, is sensitive or could become sensitive if aggregated in a single location. The Commission notes that details regarding equipment configurations, EAS equipment vendor market share, and relationships between EAS Participants themselves could be commercially sensitive. Aggregated information in State EAS Plans, such as configurations and vulnerabilities as demonstrated by tests, could also implicate national security. Further, nothing in the record indicates a need for public access to State EAS Plan information. Accordingly, the Commission concludes that State EAS Plan data and any aggregation of such data will have the same level of confidentiality as data filed in the ETRS, *i.e.,* the Commission will share individual and aggregated data on a confidential basis with other federal agencies and state governmental emergency management agencies that have confidentiality protection at least equal to that provided by the Freedom of Information Act (FOIA). The Commission notes that some SECCs may

be subject to state-based requirements that require disclosure of some or all of the same data that it will file in the ARS. Although the rules the Commission adopts today will prevent unauthorized State EAS Plan data disclosure filed by an SECC via ARS, the rules will not prevent or preclude SECCs from independently filing with its state the same data that it files with the ARS.

18. *EAS Designations.* The Commission's part 11 rules provide designations for ''key EAS sources.'' In the document, the Commission observed that SECCs have inconsistently used these designations. This inconsistency inhibits the Commission's ability to determine the quality of the state and national level broadcast-based EAS, and may inhibit delivery of a Presidential Alert. Accordingly, the Commission proposed refining its EAS designations in a way that would accommodate variations in but also promote uniformity among State EAS Plans. The Commission also sought comment on whether additional designations may be necessary.

19. The Commission amends section 11.18 to define all its current EAS designations. Although SECCs' use of EAS designations may vary, commenters support retaining the current designations to support the SECCs' abilities to assign roles and responsibilities. Accordingly, the Commission keeps these designations as tools to help SECCs describe their states' EAS alert distribution hierarchies in their State EAS Plans ''using common language.'' These universal designations also will allow the Commission to create an EAS Mapbook as contemplated by the EAS rules. The Mapbook will provide an accurate and dynamic nationwide propagation map for the Presidential Alert, as well as state, county, and local propagation maps. The Commission agrees with Abbott that it would be difficult to implement standardized terminology if its definitions did not provide sufficient flexibility to accommodate states' varying approaches to establishing EAS monitoring assignments. However, the EAS designation definitions the Commission adopts today are designed to provide a level of uniformity that will allow SECCs to establish EAS monitoring assignments that accommodate their unique situations. Accordingly, the Commission will define the EAS designations as follows.

20. *Primary Entry Point (PEP):* A private or commercial radio broadcast station that cooperatively participates with FEMA to provide EAS alerts to the public. PEPs are the primary source of initial broadcast for a Presidential Alert. A PEP is equipped with back-up communications equipment and power generators designed to enable it to continue broadcasting information to the public during and after disasters of national significance. The PEP System is a nationwide network of such broadcast stations used to distribute EAS alerts formatted in the EAS Protocol. FEMA is responsible for designating broadcast stations as PEPs.

21. *National Primary (NP):* An entity tasked with the primary responsibility of receiving the Presidential Alert from a PEP and delivering it to an individual state or portion of a state. In states without a PEP, the NP is responsible for receiving the Presidential Alert from an out-of-state PEP and transmitting it to the public and other EAS Participants in the state. Multiple entities may be charged with primary responsibility for delivering the Presidential Alert.

22. PEP and NP are the only designations that are solely relevant to the transmission of the Presidential Alert.

23. *State Primary (SP):* An entity tasked with initiating the delivery of EAS alerts other than the Presidential Alert.

24. SPs may, for example, be designated by SECCs to initially transmit AMBER alerts or alerts related to incidents of severe weather to the public and to other EAS Participants that voluntarily monitor for and retransmit such alerts.

25. *Local Primary (LP):* An entity that serves as a monitoring assignment for other EAS Participants within the state. LP sources may be assigned numbers (*e.g.,* LP–1, LP–2) and are relied on as monitoring sources by other EAS Participants in the local area. An LP may monitor any other station, including another LP, so long as doing so avoids creating a single point of failure in the alert distribution hierarchy.

26. *Participating National (PN):* An EAS Participant that transmits national, state, or local area EAS messages, and is not otherwise designated within the State EAS Plan.

27. *State Relay (SR):* An entity not otherwise designated that is charged with retransmitting EAS alerts for the purpose of being monitored by an LP or PN.

28. Commenters assert that SR properly describes the relay function and is used extensively in some State EAS Plans. While the Commission anticipates that the EAS alert distribution hierarchy described above will be sufficient to define the roles and responsibilities for all EAS Participants in many states, in some states, SRs may be necessary to ensure that EAS alerts are available to everyone in the state. In these instances, especially when SRs are used as alternative monitoring assignments, the Commission recognizes that it may be appropriate to use special designations for entities responsible for relaying alerts from a PEP, NP, or SP to an LP or PN.

29. *State Relay Network (SRN):* A network composed of State Relay (SR) sources, leased common carrier communications facilities or any other available communication facilities. The network distributes State EAS messages originated by the Governor or designated official. In addition to EAS monitoring, satellites, microwave, FM subcarrier or any other communications technology may be used to distribute State emergency messages.

30. The Commission understands that in some states, such as Washington, the SRN serves as an alternative, redundant system for ensuring the successful delivery of EAS alerts. The Commission also understands that some State EAS Plans, such as Nevada's, do not rely on SRNs because ''[s]mall and rural broadcasters cannot afford the monthly cost of these services.'' To the extent that SRNs enhance system reliability and resiliency, the Commission finds them to be desirable, and encourage SECCs to specify in their state plans the extent to which they rely on SRNs as a secondary alert distribution mechanism. The Commission does not require any state to utilize a SRN, because it recognizes the maintenance burdens that SRNs may pose for small entities.

31. The Commission agrees with commenters that additional EAS designations are unnecessary and therefore declinesto adopt the additional designations or sub-designations proposed in the document based on the entities responsible for particular types of alerts (*e.g.,* State AMBER Alert Primary) or based on the type of transmission facility used (*e.g.,* State Satellite Primary). The Commission will continue to monitor whether establishing additional roles and responsibilities within State EAS Plans may be necessary in the future to improve emergency preparedness.

32. *State EAS Plan Contents.* EAS Participants must conduct EAS operations as specified in State EAS Plans to ensure effective delivery of the Presidential Alert, yet EAS Participants lack consistent knowledge of their roles under State EAS Plans, and State EAS Plans lack the uniformity essential for dependable dissemination of a Presidential Alert. The EAS Deployment Report and Order communicated expectations for the structure and

administration of State EAS Plans and SECCs, but current State EAS Plan rules do not consistently address SECCs' administration and governance practices. Some states' SECCs and State EAS Plans have not met the Commission's expectations for several reasons, including the failure of some states to file or update State EAS Plans. Moreover, since the adoption of State EAS Plan rules in 1994, the alerting landscape has changed dramatically. Local alerts now originate from a wider array of sources and continue to increase in frequency. Many EAS Participants use alternative distribution systems such as satellite-based systems to supplement or replace the traditional ''daisy chain'' alert distribution architecture.

33. In the EAS Nationwide Test Report, PSHSB observed a lack of clarity in State EAS Plans that precluded end-to-end analysis and review of the EAS system. First, it noted that the Commission's rules do not require EAS Participants to provide monitoring assignment data below the LP level. Second, it observed that many State EAS Plans did not identify the alternative monitoring sources that EAS Participants relied upon to receive the EAN during the first nationwide EAS test. Additionally, PSHSB observed that many EAS Participants used the satellite-based National Public Radio (NPR) News Advisory Channel (Squawk Channel) to receive the EAN, as opposed to their ''daisy chain'' monitoring assignments. Based on these findings, PSHSB recommended review of the State EAS Plan rules. CSRIC IV recommended that ''SECCs must be free to design and maintain their respective state's own robust and redundant EAS relay networks in the best and most practical ways possible.''

34. To address these concerns, in the document, the Commission proposed that each State EAS Plan include: (1) A list of header codes and messages to be transmitted by key EAS sources; (2) a description of all of the state's procedures for transmitting emergency information to the public, including by EAS, WEA, social media, highway signs, and other alerting procedures; (3) the extent to which the state's dissemination strategy for state and local alerts differs from its strategy for disseminating the Presidential Alert; (4) a list of all entities authorized to activate EAS for state and local emergencies; (5) monitoring assignments for key alerting sources; (6) EAS testing procedures; (7) the extent to which alert originators coordinate alerts with ''many-to-one'' feedback mechanisms, such as 911; (8) procedures for authenticating state EAS messages formatted in CAP and signed with digital signatures; and (9) a description of the SECC governance structure used by the state, including the duties, membership selection process, and administrative structure of the SECC.

35. The Commission amends the Commission's rules to specify and standardize the organizational and operational aspects of State EAS Plans to provide State EAS Plans with the level of order and consistency necessary for efficient and reliable distribution of emergency information to the public.

36. *Uniform Designations.* The Commission requires that SECCs input State EAS Plan monitoring assignment data into the ARS using the uniform designations for key EAS sources. As explained in the Nationwide EAS Test Report, and as supported by the record, the use of consistent terminology in State EAS Plans will assist the Commission in reviewing plans; understanding EAS architecture on a nationwide, statewide, and local basis; and determining how the states' distribution systems can be aggregated into a single, comprehensive distribution mechanism for the Presidential Alert.

37. *List of Entities Authorized to Activate EAS.* The Commission allows, but does not require, that State EAS Plans include a list of all entities authorized to activate the EAS for state and local emergency messages (*e.g.,* PSAPs) whose transmissions might be interrupted by a Presidential Alert. Commission rules already require State EAS Plans to have a list of authorized entities participating in the state or local EAS. Thus, State EAS Plans already may include, as a component of that list, all entities authorized to activate the EAS for state and local emergency messages. The Commission will prepopulate the online State EAS Plan template with FEMA-approved alert originators, but SECCs may add any state-based alert originators not listed by FEMA as authorized to initiate an IPAWS alert.

38. *A Description of SECC Governance Structure.* To ensure the efficient and effective delivery of a Presidential Alert, the Commission requires SECCs to specify in the State EAS Plans their governance structure, including the duties, membership selection process, and administrative structure of the SECC. Most commenters support the Commission providing additional guidance to SECCs, but few commenters provide suggestions on SECC governance, and very few address whether basic data regarding SECC governance should be included in State EAS Plans. Because State EAS Plans detail the distribution architecture for delivery of a Presidential Alert, SECCs should have a governance and oversight structure to support this function. The Commission requires this baseline information about SECCs to verify that State EAS Plans provide the framework for effective transmission of the Presidential Alert. The Commission agrees with commenters that the Commission should continue to provide the guidance it historically has supplied to SECCs. Obtaining initial information on an SECC's structure and functions is an essential part of that process. Accordingly, SECCs must, at a minimum, specify their contact points, and whether they represent all alert originators, and their decision-making structures. This baseline information will help us contact relevant staff, identify SECCs that are less active or have fewer resources, and formulate strategies for addressing all SECCs' needs. The Commission does not require, however, that SECCs adopt a particular governance structure. For these reasons, the Commission disagrees with commenters that oppose these requirements as unnecessary or beyond the scope of many SECCs.

39. *LECCs and Local Area EAS Plans.* The Commission maintains the existing language of section 11.21(b), which provides for the development of a Local Area Plan containing procedures for local emergencies. CSRIC IV observed that the EAS depends on local distribution and recommended developing policies to ''encourage local communications distribution systems to participate in the emergency warning process.'' Timm comments that LECCs have ''local expertise to best manage EAS alerting in a given area, and Local Area EAS Plans are still viable for addressing EAS procedures at a local level of detail beyond that possible to devote room to in the full State EAS Plan.'' Abbott asserts that LECCs and local plans are a necessary component of EAS Plans in large states where no one single broadcast station covers an entire state and no end-to-end ''daisy chains'' connect operational areas in the state. The Commission concludes that Local Area Plans are still useful in some states and that SECCs should have the option of including them in their State EAS Plans.

40. The EAS's primary purpose is transmitting a message from the President to the public during a national emergency. To do so, EAS information must be properly coordinated and understood by relevant stakeholders. Accordingly, the Commission requires State EAS Plans to include transmission

procedures for an EAS alert and accurate, up-to-date monitoring assignments for each key EAS source to reflect how they receive alerts.

41. *Emergency Alerting Procedures.* The Commission concludes that State EAS Plans should contain an accurate and comprehensive listing of procedures used for transmitting information to the public via the EAS. This listing should include the monitoring obligations already required under the rules to transmit the Presidential alert. Non-Presidential use of the ''daisy chain'' distribution structure facilitates equipment readiness and maintains user proficiency in the system. Accordingly, the Commission requires that SECCs disclose in their State EAS Plan the extent to which the state's dissemination strategy for state and local alerts differs (if at all) from its strategy for disseminating the Presidential Alert. Consistent with CSRIC IV's recommendations, this information will help the Commission and SECCs obtain a baseline of information upon which to create a plan for more effective use and development of the EAS in each state. The Commission provides flexibility to SECCs regarding how this information is provided in State EAS Plans, as well as the frequency with which it is updated.

42. *Satellite-based Sources of EAS Messages.* The Commission requires that State EAS Plans specify satellite-based communications resources that are used as alternate monitoring assignments and present a reliable source of EANs and other EAS messages. Many EAS Participants currently use satellite-based communications technologies as monitoring sources because of incomplete PEP coverage, broadcast monitoring source difficulties, or other reasons. Most commenters support requiring the inclusion of this information in State EAS Plans and note that satellite-based resources may be fast, secure, and reliable.

43. Some commenters recommend that the Commission remain technologically neutral in light of the availability of alternative dissemination technologies for EAS alerts. The Commission's satellite-based sources requirement does not mandate any particular technology, but rather requires that State EAS Plans reflect the monitoring sources used. Thus, its rules maintain technological neutrality while ensuring that State EAS Plans accurately identify each state's entire EAS distribution system. As Abbott suggests, states will determine independently whether they will use satellite-based resources. The Commission notes that many state plans include satellite monitoring information. Requiring its inclusion in all State EAS Plans benefits the industry by bringing consistency to the process. To the extent that some State EAS Plans will supply it for the first time, the Commission expects the incremental cost to be minimal.

44. *Monitoring Assignments.* The Commission requires State EAS Plans to include ''[m]onitoring assignments to receive the Presidential Alert, and the primary and back-up paths for the dissemination of the Presidential Alert to all key EAS sources organized by operational areas within the state.'' The Commission finds that State EAS Plans should continue to divide their respective states into geographically based operational areas, specifying primary and backup monitoring assignments in each operational area. CSRIC IV noted a lack of uniformity among State EAS Plan definitions of ''operational areas'' and recommended that, where possible, such service areas should be uniformly identified. Most commenters, however, oppose a standardized definition of ''operational areas.'' These commenters note that the definition of ''operational areas'' must be flexible to accommodate the different reasons for their existence, and that such areas are best defined by the local or state entities most familiar with them. To facilitate this flexibility, the Commission will include a drop-down menu in ARS that contains the most common ways SECCs have described their operational areas in previously-approved State EAS Plans as well as an opportunity for SECCs to describe operational areas that do not comport with the drop-down menu choices.

45. The Commission also removes the current restriction that State EAS Plans include monitoring assignments for Presidential Alerts formatted only in the EAS Protocol. Several commenters support removing this restriction. The Commission finds that doing so will permit states to provide additional information in their plans. Technologies are evolving, and a Presidential Alert may not necessarily be issued using the EAS Protocol; for example, a new generation of Presidential Alert may be introduced using the CAP standard only. The Commission believes that removing this restriction will ensure that state plans remain flexible and responsive to both changes in technology and changes FEMA may make in the future to the format of Presidential Alerts. The Commission disagrees with Timm, who asserts that the Commission should not remove the restriction yet because doing so could ''lead to imperiling'' the EAS Protocol distribution system and diminish the redundancy of having EAS Participants monitor multiple sources of the Presidential Alert. The Commission continues to require State EAS Plans to contain the EAS Header Code and other EAS Protocol distribution information required under the part 11 rules. The Commission also concludes that it also should allow State EAS Plans to include additional non-EAS Protocol (*e.g.,* CAP) distribution information.

46. *Organization of section 11.21.* To address all State EAS Plan monitoring requirements in the same section of part 11, the Commission merges sections 11.52 (''EAS code and Attention Signal Monitoring requirements'') and 11.55 (''EAS operation during a State or Local Area emergency'') into section 11.21 by: (1) Amending section 11.21 to state that EAS Participant monitoring assignments and EAS operations must be implemented in a manner consistent with guidelines established in the applicable State EAS Plan submitted to the Commission, and (2) removing that language from sections 11.52 and 11.55. All three of these sections address State EAS Plan content. The Commission agrees with Abbott that these changes will help SECCs apply the State EAS Plan rules. The Commission also agrees, however, with commenters who assert that removing all state plan terminology from sections 11.52 and 11.55 could make the rules unclear; therefore, the Commission does not adopt that proposal.

47. The Commission finds that this change is supported by CSRIC IV's recommendation that the Commission amend section 11.21 to provide that ''[s]tates that want to use the EAS shall submit a State EAS Plan.'' The Commission also agrees with several commenters who suggest that it would be helpful to specify in section 11.21 that SECCs develop and maintain state plans, and the Commission adds this language to the rule. Finally, the Commission agrees with Timm that the language in section 11.21(c) should refer to the state monitoring assignment matrix rather than the state ''data table'' and revise section 11.21(c) accordingly.

48. *Testing/Outreach Elements.* The Commission allows State EAS Plans to include procedures for live code tests and Required Weekly Tests (RWTs). Commenters generally agree that State EAS Plans should include information on EAS testing. Some commenters assert that requiring this information would be impractical or overly burdensome, but other commenters note that this information would help organize test scheduling and prevent confusion. The Commission believes that including information on state testing programs

can help ensure that the EAS functions effectively and efficiently. The Commission also notes that State EAS Plans already must include information on Required Monthly Tests (RMTs) and special tests. To the extent it is useful to include and memorialize all test procedures, including procedures for live code tests or RWTs, in a consolidated manner, SECCs may use State EAS Plans and ARS as a vehicle for doing so. The Commission notes that SECCs and EAS Participants will benefit from SECCs voluntarily providing this information in the ARS, as EAS Participants will be able to readily review plan information relevant to them.

49. *Other Proposed Contents.* The Commission declines to adopt the proposals in the document that State EAS Plans include a description of the procedures for transmitting emergency information to the public via WEA, social media, highway signs, and other alerting procedures, as well as a description of the extent to which alert originators coordinate alerts with ''many-to-one'' community feedback mechanisms, such as 911. Although several commenters support the inclusion of some of these capabilities in alerts, commenters generally oppose the incorporation of these elements into State EAS Plans. The Commission agrees with the majority of commenters that this information is unnecessary at this time to ensure the effective delivery of the EAN, and that its inclusion would be unduly burdensome. The Commission also shares commenters' concern that these requirements may cause confusion or conflict with community warning plans, and that they may require the provision of information outside of the SECCs' purview.

50. *The National Advisory Committee and Additional Guidance for SECCs.* CSRIC IV recommended that the Commission reestablish the National Advisory Committee (NAC). The NAC was the federal advisory committee responsible for assisting the Commission with administrating the EAS, promoting stakeholder and Commission interaction with SECCs, and providing information for the development and maintenance of State and Local EAS Plans. The document sought comment on CSRIC IV's recommendation to reinstate the NAC as well as whether there is a need for a consistent, uniform governance structure for SECCs nationwide to ensure effective functioning of the EAS. Noting that CSRIC IV discouraged a ''one size fits all'' approach to SECC governance, the Commission asked whether it could issue guidance or work with SECCs to clarify the roles and responsibilities of SECCs in a manner that would be useful in each state. The Commission also sought comment on whether information on SECC governance in State EAS Plans could help develop best practices or other guidance for SECCs.

51. Based on the record, the Commission believes it would serve the public interest to provide SECCs with further guidance on their roles and responsibilities. The record demonstrates support for reinstating the NAC, and commenters generally support the Commission adopting rules or providing guidance or best practices on SECC governance. The Commission notes, however, that under the IPAWS Modernization Act of 2015, FEMA recently established the IPAWS Subcommittee to its National Advisory Council, which will consider changes to improve the IPAWS and develop technologies that may be beneficial to the public alert and warning system. NSBA observes that ''it would not be unreasonable'' for the IPAWS Subcommittee to address issues raised in the document. Thus, rather than establishing a separate advisory committee, the Commission concludes that the IPAWS Subcommittee is best positioned to efficiently and effectively address issues related to SECC governance and best practices. Accordingly, the Commission will coordinate with FEMA to ensure that SECC administration and governance are addressed within the scope of the IPAWS Subcommittee, which transmits its recommendations to FEMA's National Advisory Council for review. The Commission believes that working through these existing mechanisms will be the most efficient way to generate recommendations that the Commission may evaluate in formulating its own guidance to improve communication among the Commission, SECCs, FEMA, NWS, and other EAS stakeholders.

52. Although a few commenters suggest amending part 11 to regulate SECCs, the Commission declines to adopt any rules regulating SECCs. Rather, by way of guidance, the Commission provides the SECCs with an online filing template for State EAS Plans and specify the required contents of those plans.

53. *Compliance Timeframes.* To conform to section 18.17 of the rules of the Administrative Committee of the **Federal Register**, 1 CFR 18.17, the above Dates field and this summary, at paragraphs 54–55 and 72–73 below, describe the compliance timeframes for the new and revised rules. In the Notice of Proposed Rulemaking, the Commission proposed requiring compliance with the amended rules on information collection requirements (*i.e.,* the State EAS Plan rules) within six months from the release of a Public Notice announcing Office of Management and Budget (OMB) approval of related information collection requirements or within 60 days of a Public Notice announcing the availability of the Commission's relevant database to receive such information, whichever is later. The Commission also noted that its proposed EAS designation rules did not constitute a collection and required no action by EAS Participants and accordingly proposed that those rules would become effective 30 days from the date of their publication in the **Federal Register**.

54. *State EAS Plans.* The Commission requires compliance with its rules regarding State EAS Plan content and electronic submission within one year of publication in the **Federal Register** of a Public Notice announcing: (i) OMB approval of ARS information collection requirements or (ii) the availability of the ARS to receive such information, whichever is later. The Commission acknowledges commenters' concerns that the proposed 6-month deadline imposed a significant burden on SECCs' and LECCs' limited resources. Accordingly, the Commission extends its proposed 6-month compliance timeframe to a one-year compliance timeframe. The Commission believes the one-year compliance timeframe that is supported by the majority of commenters will afford SECCs sufficient time to implement its State EAS Plan requirements effectively and conduct any necessary outreach, training, and planning. The Commission further requires that State EAS Plans will continue to be updated on a yearly basis, but note that SECCs may satisfy this requirement by simply indicating on the form each year that the plan is up-to-date.

55. *EAS Designations.* The Commission agrees with Timm that the new designations should become effective at the same time as the State EAS Plan rule changes because designation changes likely would need to be reflected in most state plans. SECCs may need to engage with key EAS sources in their states to apply its designations. The Commission concludes that aligning the implementation timeframes of the state plan and designation changes will promote efficiency and avoid burdening SECCs with the need to draft multiple

versions of their State EAS Plans to comply with the new requirements.

56. *Legal Authority.* The Communications Act gives the President authority to broadcast alerts during times of national emergency and prohibits broadcasters from issuing false alerts. Congress has also directed that cable systems afford their viewers the same opportunities to receive emergency alerts ''as is afforded by'' broadcasters ''pursuant to Commission regulations.'' The Act further requires the Commission to ''investigate and study'' how to ''obtain[] maximum effectiveness from the use of radio and wire communications in connection with safety of life and property.'' The Act empowers us to ''make such rules and regulations'' as necessary to carry out all of these statutory requirements. Together, these provisions have allowed the Commission to oversee the EAS. Although the Commission only requires use of EAS for Presidential Alerts, state and local authorities may use EAS to disseminate information to the public regarding more localized emergencies.

57. In the document, the Commission sought comment on its sources of legal authority over the EAS, including those provisions that the Commission highlights above, and noted that its proposals are ''primarily intended to prepare the nation's alerting infrastructure for successful transmission of a Presidential Alert.'' To enable the President to reliably execute this authority in the public interest, the Commission has long considered it necessary to ensure that the national alerting architecture is ready to transmit a Presidential Alert in an appropriate situation. The rules the Commission adopts here provide more consistent and reliable access to state plans so that the Commission and EAS participants will be better prepared to ensure the successful transmission of a Presidential Alert. No commenters opposed the Commission's authority to adopt any of the proposals contained in the document.

58. The Commission notes that the overall goal of the EAS system is to serve as an effective integral part of a ''comprehensive system to alert and warn the American people.'' Today's actions contribute to that goal by ''adopt[ing] rules to ensure that communications systems have the capacity to transmit alerts and warnings to the public as part of the public alert and warning system.''

59. *Cost-Benefit Analysis.* In this section, the Commission finds that its rules generally reduce recurring burdens on SECCs. The Commission estimates that they impose a one-time collective transitional cost on all SECCs totaling approximately $236,000. The Commission shows that its rules present sufficient benefits to justify these costs.

60. *Costs.* The cost estimates the Commission discusses below are associated with the decisions adopted in this *Report and Order,* as opposed to the more expansive proposals in the document. The Commission estimates the reasonable one-time cost burden these rules could present to EAS Participants is approximately $236,000. Specifically, SECCs collectively will incur one-time approximate costs of a $235,000 recordkeeping cost for producing State EAS Plans consistent with its updated State EAS Plan requirements and EAS designations and a $1,000 reporting cost for electronically filing those plans. The Commission notes that this is a significantly smaller estimated total burden than that described in the document, which estimated a one-time $5.3 million and an annual cost of $596,560. The Commission also notes that the Commission sought comment on the specific costs of compliance with the proposed rules, but received no dollar figure estimates in response. Accordingly, the following estimate leverages publicly available data on the financial burdens associated with its requirements.

61. The Commission concludes that producing State EAS Plans consistent with its rules will result in approximately $235,000 as a one-time recordkeeping cost. In the document, the Commission estimated that implementing these changes would result in a one-time cost of approximately $25,000 and that it would take each SECC approximately 20 hours to comply with the new State EAS Plan requirements. Commenters observe that this cost assessment, as well as the Commission's assessment of the total hourly burden required to update State EAS Plans, was too low. In response to these concerns, the Commission is not requiring SECCs to include certain proposed elements in State EAS Plans, which the Commission concludes will reduce the amount of time required to revise their plans. Notwithstanding this revision, the Commission uses a quantification of commenters' assessment of the time that it would take SECCs to write their plans from scratch (100 hours) as a reasonable ceiling for the time needed to update those plans consistent with its rules. Based on submissions of State EAS Plans to date, the Commission expects that 54 entities will file such plans. The record shows that the individuals most likely to update those plans are broadcast engineers. Crowdsourced employee compensation data indicates that the median hourly compensation for a broadcast engineer is approximately $29. According to the Bureau of Labor Statistics, employee overhead benefits (including paid leave, supplementary pay, insurance, retirement and savings, and legally required benefits) add 50 percent to an employer's cost of labor. Thus, the Commission quantifies the value of an hour spent updating a State EAS Plan as approximately $43.50. The Commission concludes that the reasonable estimated cost of updating a single State EAS Plan consistent with this *Report and Order* would be approximately $4,350 and the estimated total cost of compliance with its State EAS Plan rules would be approximately $235,000.

62. Additionally, the Commission anticipates that SECC representatives also will incur a one-time estimated $1,000 reporting cost to file their revised State EAS Plans in the ARS. The Commission concludes that the time burden of filing State EAS Plans in the ARS will be one hour, the same burden that OMB approved for filing data in ETRS. Both filing systems present filers with the same user interface, and while State EAS Plans may include more data points than ETRS filings, entering state plan data in the ARS will be simpler because SECCs already have the relevant information on-hand from the process of creating a State EAS Plan. The Commission values the cost of an SECC representative's time spent on this task as approximately $19, the median hourly salary of a clerical employee plus benefits. Thus, filing state plan data in the ARS will cost approximately $1,000.

63. Therefore, based on the foregoing analysis, the Commission finds it reasonable to conclude that the benefits of the rules the Commission adopts today will exceed the costs of their implementation. The Commission's rule changes will improve alerting organization, support greater testing and awareness of the EAS, and promote the security of the EAS. The Commission believes these benefits easily outweigh the one-time $236,000 total compliance cost. The Commission also find that these rules likely will continue to accrue value to the public while reducing recurring costs.

64. *Benefits.* The rules the Commission adopts today will improve the nation's alert and warning capability by modernizing alerting recordkeeping and reducing recurring filing burdens on SECCs. For over two decades, the EAS has proven to be an effective method of alerting the public and saving lives and property. It continues to stand

ready to serve its primary purpose of allowing the President to contact the public across the nation quickly and reliably, while at the same time providing the vital service of alerting the public about weather and other emergencies. A majority of the public continues to rely on the EAS to receive emergency information.

65. However, there remain weaknesses in conveying this critical information to the public via the EAS. Recent nationwide testing of the EAS has shown ''shortfalls in some state EAS plans,'' including confusion and difficulties in understanding and implementing monitoring assignments. The current paper-based State EAS Plan filing system, EAS designations, and State EAS Plan contents collectively make it difficult for the Commission and other EAS stakeholders to detect problems or map the propagation of EAS alerts. This inability to detect and resolve problems, in turn, makes it more likely that some members of the public may not receive emergency alerts. The Commission's new requirements address this difficulty by creating a uniform online filing system that will utilize specific State EAS Plan contents and uniform EAS designations. These improvements will allow the Commission, FEMA, and localities to more easily review and identify gaps in the EAS architectures, detect problems, and take measures to address these shortcomings. In doing so, and by helping to facilitate measures to improve the reach of EAS messages, the Commission improves the likelihood that a greater segment of the public will receive emergency alerts on a timely basis and take emergency preparedness measures, thereby providing benefits that include potentially reducing the incidence of injuries and preserving property.

66. The improvements to the EAS that the Commission adopts today will contribute to its ability to prevent injuries. The Commission notes that in 2016, there were 1,276 injuries resulting from weather events in the United States. If the improvements to the EAS the Commission adopts today prevent just 15 injuries, they will produce a public value of at least $400,000. This analysis illustrates that injury prevention alone, which will continue in years to come, is likely to produce benefits that outweigh those one-time costs.

67. Additionally, the Commission anticipates that, after the initial one-time cost of compliance with its rules, EAS Participants, SECCs, and state emergency alerting authorities will realize long-term cost savings. In the Second Report and Order, the Commission required ''state and local entities to annually confirm their plans.'' Prior to the current *Report and Order,* when an SECC updated its plan, it would refile its entire plan. The ARS will reduce this filing burden by allowing filers to instantaneously update elements of their plans, by saving previously entered data, and by obviating the need to re-file an entire plan every time a change is made. Converting the State EAS Plan filing system to an online filing system will streamline the state plan approval process and reduce the recurring costs of revising, updating, and resubmitting state plans (*e.g.,* printing and mailing costs).

III. Procedural Matters

68. Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the significant economic impact on small entities of the policies and rules adopted in this document. The FRFA is set forth in Appendix B of the *Report and Order*.

69. *Paperwork Reduction Analysis.* The *Report and Order* contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. The Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In addition, the Commission has described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B of the *Report and Order*.

70. *Congressional Review Act.* The Commission will send a copy of this Report & Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

71. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 613, as well as the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. 111–260 and Pub. L. 111–265, that the *Report and Order* in PS Docket No. 15–94 *is hereby adopted.*

72. *It is further ordered* that the Commission's rules *are hereby amended* as set forth in Appendix A of the *Report and Order*.

73. *It is further ordered* that the rules adopted herein *will become effective* on the dates set forth in paragraphs 54–55 above.

74. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

This part contains rules and regulations providing for an Emergency Alert System (EAS). The EAS provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency. The rules in this part describe the required technical standards and operational procedures of the EAS for analog AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireline video systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities. The EAS may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area. [72 FR 62132, Nov. 2, 2007]

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

Authority: . 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

§ 11.2 [Amended]

■ 2. Amend § 11.2 by removing paragraphs (b), (c), (f), (g) and (h), and redesignating paragraphs (d), (e), and (i) as paragraphs (b), (c), and (d) respectively.

■ 3. Revise § 11.18 to read as follows:

§ 11.18 EAS Designations.

(a) A Primary Entry Point (PEP) is a private or commercial radio broadcast station that cooperatively participates with FEMA to provide EAS alerts to the public. PEPs are the primary source of initial broadcast for a Presidential Alert. A PEP is equipped with back-up communications equipment and power generators designed to enable it to continue broadcasting information to the public during and after disasters of national significance. The Primary Entry Point System is a nationwide network of such broadcast stations used to distribute EAS alerts formatted in the EAS Protocol. FEMA is responsible for designating broadcast stations as PEPs.

(b) A National Primary (NP) is an entity tasked with the primary responsibility of receiving the Presidential Alert from a PEP and delivering it to an individual state or portion of a state. In states without a PEP, the NP is responsible for receiving the Presidential Alert from an out-of-state PEP and transmitting it to the public and other EAS Participants in the state. Multiple entities may be charged with primary responsibility for delivering the Presidential Alert.

(c) A State Primary (SP) is an entity tasked with initiating the delivery of EAS alerts other than the Presidential Alert.

(d) A State Relay (SR) is an entity not otherwise designated that is charged with retransmitting EAS alerts for the purpose of being monitored by a Local Primary or Participating National.

(e) State Relay Network (SRN) is a network composed of State Relay (SR) sources, leased common carrier communications facilities or any other available communication facilities. The network distributes State EAS messages originated by the Governor or designated official. In addition to EAS monitoring, satellites, microwave, FM subcarrier or any other communications technology may be used to distribute State emergency messages.

(f) A Local Primary (LP) is an entity that serves as a monitoring assignment for other EAS Participants within the state. LP sources may be assigned numbers (*e.g.,* LP–1, 2, 3) are relied on as monitoring sources by other EAS Participants in the Local Area. An LP may monitor any other station, including another LP, so long as doing so avoids creating a single point of failure in the alert distribution hierarchy.

(g) A Participating National (PN) is an EAS Participant that transmits national, state, or Local Area EAS messages, and is not otherwise designated within the State EAS Plan.

§ 11.20 [Removed]

■ 4. Remove § 11.20.

■ 5. Amend § 11.21 by revising paragraphs (a) and (c) to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

* * * * *

(a) State EAS Plans contain guidelines that must be followed by EAS Participants' personnel, emergency officials, and National Weather Service (NWS) personnel to activate the EAS. The Plans include information on actions taken by EAS Participants, in coordination with state and local governments, to ensure timely access to EAS alert content by non-English speaking populations. State EAS Plans must be updated on an annual basis. The plans must be reviewed and approved by the Chief, Public Safety and Homeland Security Bureau, prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation. State EAS Plans must include the following elements:

(1) A list of the EAS header codes and messages that will be transmitted by key EAS sources (NP, LP, SP, and SR);

(2) Procedures for state emergency management officials, the National Weather Service, and EAS Participant personnel to transmit emergency information to the public during an emergency via the EAS, including the extent to which the state's dissemination strategy for state and local emergency alerts differs from its Presidential Alerting strategy;

(3) Procedures for state and local activations of the EAS, including a list of all authorized entities participating in the State or Local Area EAS;

(4) A monitoring assignment matrix, in computer readable form, clearly showing monitoring assignments and the specific primary and backup path for emergency action notification (EAN)/Presidential Alert messages from the PEP to all key EAS sources (using the uniform designations specified in § 11.18) and to each station in the plan, organized by operational areas within the state. If a state's emergency alert system is capable of initiating EAS messages formatted in the Common Alerting Protocol (CAP), its EAS State Plan must include specific and detailed information describing how such messages will be aggregated and distributed to EAS Participants within the state, including the monitoring requirements associated with distributing such messages;

(5) State procedures for conducting special EAS tests and Required Monthly Tests (RMTs);

(6) A list of satellite-based communications resources that are used as alternate monitoring assignments and present a reliable source of EAS messages; and

(7) The SECC governance structure utilized by the state in order to organize state and local resources to ensure the efficient and effective delivery of a Presidential Alert, including the duties of the SECC, the membership selection process utilized by the SECC, and the administrative structure of the SECC.

* * * * *

(c) The FCC Mapbook is based on the consolidation of the monitoring assignment matrices required in each State EAS Plan with the identifying data contained in the ETRS. The Mapbook organizes all EAS Participants according to their State, EAS Local Area, and EAS designation. EAS Participant monitoring assignments and EAS operations must be implemented in a manner consistent with guidelines established in a State EAS Plan submitted to the Commission in order for the Mapbook to accurately reflect actual alert distribution.

* * * * *

§ 11.52 [Amended]

■ 6. Amend § 11.52 by removing paragraph (d)(3), and redesignating paragraphs (d)(4) and (5) as paragraphs (d)(3) and (4), respectively.

■ 7. Amend § 11.55 by revising paragraphs (b), (c) introductory text, and (c)(1) through (3) to read as follows:

§ 11.55 EAS operation during a State or Local Area emergency.

* * * * *

(b) EAS operations must be conducted as specified in State and Local Area EAS Plans.

(c) Immediately upon receipt of a State or Local Area EAS message that has been formatted in the EAS Protocol or the Common Alerting Protocol, EAS Participants participating in the State or Local Area EAS must do the following:

(1) State Relays (SR) monitor or deliver EAS alerts as required by the State EAS Plan.

(2) Local Primary (LP) entities monitor SPs, SRs, or other sources as set forth in the State EAS Plan.

(3) Participating National (PN) sources monitor LPs or other sources as set forth in the State EAS Plan.

* * * * *

[FR Doc. 2018–15818 Filed 8–1–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[WT Docket Nos. 12–40, 16–138; RM–11510, RM–11660; FCC 18–92]

Cellular Service, Including Changes in Licensing of Unserved Area

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts revised rules governing the 800 MHz Cellular Radiotelephone (Cellular) Service and other commercial mobile radio services (CMRS) governed by Part 22 of the Commission's rules. These steps to remove unnecessary regulatory burdens for Cellular Service and other Part 22 licensees will free up more resources for investment in new technologies and greater spectrum efficiency to meet increasing consumer demand for advanced wireless services. Specifically, the Commission modernizes its rules by eliminating several Part 22 recordkeeping and reporting obligations that were adopted more than two decades ago—obligations for which there is no longer a benefit to outweigh the compliance costs and burdens imposed on licensees. It also eliminates certain Cellular Service-specific rules that are no longer necessary. These reforms will provide Cellular Service and other Part 22 licensees with enhanced flexibility and advance the goal of ensuring more consistency in licensing across commercial wireless services, while taking into account unique features of each service. With this document, the Commission terminates the Cellular Reform proceeding in WT Docket No. 12–40, including RM Nos. 11510 and 11660.

DATES: Effective September 4, 2018, except for the amendment to 47 CFR 22.303, which contains modified information collection requirements that have not yet been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission will publish a document in the **Federal Register** announcing the effective date of that amendment.

FOR FURTHER INFORMATION CONTACT: Nina Shafran, (202) 418–2781, in the Mobility Division, Wireless Telecommunications Bureau. She may also be contacted at (202) 418–7233 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order* in the Cellular Reform proceeding (*Cellular Third R&O*), WT Docket No. 12–40, RM Nos. 11510 and 11660, FCC 18–92 adopted July 12, 2018 and released July 13, 2018. The full text of the *Cellular Third R&O,* including all Appendices, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A157, Washington, DC 20554, or by downloading the text from the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-18-92A1.pdf.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

I. Background

1. In a *Second Report and Order* released March 24, 2017, in the Cellular Reform proceeding (*Second R&O*), the Commission modernized numerous Cellular technical rules, including outdated radiated power and related rules, to permit power measurement using power spectral density. These changes facilitate the use of Cellular spectrum to provide advanced mobile broadband services, such as 4G long term evolution (LTE), while protecting public safety communications from increased potential for unacceptable interference. The *Second R&O* also revised rules to further eliminate unnecessary filings and other regulatory burdens for Cellular licensees. The Commission's reforms resulted in Cellular Service rules more akin to the flexible licensing schemes found in other similar mobile services, such as the Broadband Personal Communications Service (PCS), the commercial service in the 700 MHz band, the 600 MHz Service, and the Advanced Wireless Services (AWS), to help ensure that carriers are treated similarly regardless of technology choice.

2. To build on the adopted reforms and to respond to certain submissions by commenters in the Commission's 2016 Biennial Review of Telecommunications Regulations proceeding (WT Biennial Review proceeding), the Commission also released a companion *Second Further Notice of Proposed Rulemaking (Second Further Notice*) in the Cellular Reform proceeding on March 24, 2017. In the *Second Further Notice,* the Commission proposed and sought comment on additional reforms of its Part 22 rules governing the Cellular Service and other Part 22 Public Mobile Services (PMS). The Commission also invited comment on whether other measures could be taken to allow Part 22 licensees to benefit from the same level of flexibility available to other commercial wireless licensees. In that context, the Commission raised the possibility of relocating—to Part 27 of the Commission's rules—certain Part 22 rules, as well as the Part 24 PCS rules and other rules governing geographically licensed wireless services.

3. In response to the *Second Further Notice,* interested parties submitted comments, reply comments, and *ex parte* letters. The specific reforms adopted by the Commission in the *Third R&O* are described below.

II. Elimination of Unnecessary Rules

A. Deletion of 47 CFR 22.301 and 22.303 Concerning Station Inspection, Retention of Station Authorizations

4. Commission Rules 22.301 and 22.303 collectively require that hard copies of license authorizations and other records be maintained by all Part 22 licensees for each station and that such records and the station itself be made available for inspection upon request. The Commission finds that both rules have outlived the usefulness they may have had in the past and now impose administrative burdens without any corresponding public benefit.[1] Because the Commission no longer routinely mails printed authorizations, licensees cannot comply with the hard-copy requirement unless they themselves print, or request that the Commission's Wireless Telecommunications Bureau print and mail, an authorization every time an application is granted. Such a requirement does not serve the public

[1] The Commission retains in any event its general station inspection authority under the Communications Act of 1934, as amended. *See* 47 U.S.C. 303(n).

interest. The Commission's Universal Licensing System (ULS) is available electronically at all times: licensees have access in ULS to their official authorizations, while members of the public have access in ULS to reference copies reflecting the most up-to-date information concerning all authorizations. The movement away from site-specific filings renders on-site comparison of paper records and operating parameters unnecessary and largely infeasible. Moreover, the Commission has not imposed the recordkeeping and station inspection requirements of Rules 22.301 and 22.303 on licensees in competing wireless services governed by Parts 24 and 27 of its rules. For these reasons, the Commission deletes 47 CFR 22.301 and 22.303.

B. Deletion of 47 CFR 22.325 Concerning Control Points

5. Commission Rule 22.325 requires that ''[e]ach station in the Public Mobile Services [ ] have at least one control point and a person on duty who is responsible for station operation.'' The Commission finds that this rule no longer serves the public interest; it is technologically obsolete, as licensees today routinely monitor their network operations by automatic and remote mechanisms. As with Rules 22.301 and 22.303, discussed above, there is no similar provision governing competing CMRS in the Commission's Part 24 or Part 27 rules. Part 22 licensees should have the same flexibility as Part 24 and Part 27 commercial wireless licensees to determine how to manage their networks to ensure compliance with the Commission's rules, including how best to avoid interference. Accordingly, the Commission deletes 47 CFR 22.325.

C. Deletion of 47 CFR 22.321 Concerning Equal Employment Opportunity Programs and Reports

6. Commission Rule 22.321 sets forth licensee obligations for equal employment opportunity (EEO) programs and policies to assure nondiscriminatory practices in recruitment, placement, promotion, and other areas of employment practices. Paragraph (c) of the rule requires all Part 22 licensees (*i.e.,* PMS licensees), regardless of their size, to submit an annual report to the Commission indicating whether any EEO complaints have been filed at the federal, state, or local level against the licensee. Commission Rule 90.168, titled Equal Employment Opportunities, contains the same provisions as Rule 22.321. This includes paragraph 90.168(c) which, like 22.321(c), requires that a complaints report be filed annually regardless of the licensee's size. Rule 90.168 states that it applies to all CMRS (which includes the Part 22 PMS), and thus it entirely subsumes Rule 22.321. Given that all CMRS licensees are subject to 47 CFR 90.168, including 90.168(c), 47 CFR 22.321 is duplicative and, accordingly, the Commission deletes 47 CFR 22.321 in its entirety. As to the Part 90 reporting requirement, the Commission did not propose to remove that requirement, nor did any commenters suggest doing so. Part 90 rules are therefore beyond the scope of this proceeding and the Commission declines at this time to eliminate the complaints reporting requirement in 47 CFR 90.168.

D. Deletion of 47 CFR 22.927 Concerning Responsibility for Mobile Stations, and 47 CFR 22.3 Concerning Authorization Required

7. Under 47 CFR 22.927, Cellular licensees are ''responsible for exercising effective operational control over mobile stations receiving service through their Cellular systems,'' including mobile stations operated by subscribers to a different Cellular licensee. Pursuant to 47 CFR 1.903(c), the ''[a]uthority for subscribers to operate mobile or fixed stations in the Wireless Radio Services [WRS],'' which includes the Cellular Service, ''is included in the authorization held by the licensee providing service to them.'' Thus, when a WRS licensee, as the host carrier, provides service to a subscriber of another carrier (*i.e.,* a subscriber that is outside its own provider's service area), the subscriber's use of his or her mobile phone to access the spectrum falls under that host carrier's authorization. Rule 1.903(c) thus captures the purpose underlying Rule 22.927, albeit with less detail. While the detailed provision in Rule 22.927 regarding the host carrier's responsibility under its authorization may have been warranted when the Cellular Service was in its nascency, the Commission finds that this additional rule is unnecessary these many decades later. Moreover, the rule creates asymmetry, as the rules for commercial wireless services established much later than the Cellular Service—such as PCS and AWS—do not have a counterpart to 47 CFR 22.927. Consistent with a key goal in this proceeding to eliminate unnecessary asymmetric regulations, the Commission deletes 47 CFR 22.927.

8. The Commission concludes that a related legacy rule that applies to all Part 22 licensees, 47 CFR 22.3, is also no longer necessary. This rule specifies that PMS stations must be used and operated only in accordance with applicable Commission rules and only with a valid authorization granted by the Commission. It further specifies that authority for subscribers to operate mobile or fixed PMS stations is included in the authorization of the licensee providing service to them. The same provisions are included in the later-adopted 47 CFR 1.903, which applies more broadly to numerous wireless services in addition to the PMS. Accordingly, the Commission deletes 47 CFR 22.3 as duplicative.

III. Possible Relocation of Rules to Part 27

9. The Commission sought comment in the *Second Further Notice* on whether to migrate the Part 22 Cellular and Part 24 PCS rules to Part 27, and on possible reorganization of the Part 27 rules, either in this proceeding or by initiating a separate rulemaking. In addition, the Commission noted that there are other geographically-licensed, auctioned services that are not included in Part 27, including Public Coast (Part 80), Specialized Mobile Radio (SMR), Location and Monitoring, and 220 MHz (Part 90), and 218–219 MHz (Part 95), and that of these, only SMR is used today by wireless carriers to provide services directly to consumers nationwide. The Commission sought comment on whether it should move the Part 22 Cellular and Part 24 PCS rules to Part 27 in conjunction with moving those other service rule parts to Part 27 as well.

10. Only two commenters addressed the issue, and one of them opposes the idea, highlighting the fact that disparate types of operations found in certain rule parts would make it challenging to consolidate Part 22 Cellular, Part 24 PCS, and other wireless mobile service rules into a single set of regulations. Such an exercise would entail painstaking review of numerous rules to determine those that can be consolidated and those that must be retained for individual services. In the absence of strong support on the record for this endeavor, which would require a significant investment of staff resources to complete, the Commission declines to pursue the issue at this time.

IV. Other Regulations Raised by Commenters

11. In response to the Commission's query in the *Second Further Notice* as to whether any other Part 22 rules are ripe for removal in light of changed technology, electronic licensing/recordkeeping, or other modernizations that have occurred over the past two decades, a few commenters requested deletion of three Part 22 rules. These

rules and the Commission's decisions not to delete them at this time are explained below.

12. *47 CFR 22.921—911 Call Processing Procedures.* One commenter argued that Rule 22.921, pursuant to which certain Cellular Service mobile telephones that are capable of operating in the analog mode must incorporate a special procedure for processing 911 calls, is now obsolete because, among other reasons, it is unaware of any carrier that still offers analog devices or operates an analog Cellular system. Commission data show that, on the contrary, some carriers are still using analog technology in the Cellular Service band—and Rule 22.921 ensures that 911 calls get through in those circumstances. Accordingly, the Commission concludes that deletion of 47 CFR 22.921 would not serve the public interest and declines to take such action in this proceeding

13. *47 CFR 22.925—Prohibition on Airborne Operation of Cellular Telephones.* Two commenters raised issues regarding the use of Cellular Service spectrum for communications to, from, and onboard aircraft and argued that Rule 22.925, which prohibits the operation of Cellular Service telephones aboard ''airplanes, balloons or any other type of aircraft . . . while such aircraft are airborne . . .,'' should be eliminated, or at least modified. The issues raised by the two commenters are being dealt with in a separate Commission proceeding that remains open (WT Docket No. 13–301), and the Commission therefore declines to consider the issues in this Cellular Reform proceeding.

14. *47 CFR 22.143(a)—Commencement of Construction Prior to Grant of Application.* Rule 22.143 permits applicants to begin construction of PMS facilities prior to grant of their applications; paragraph (a) of the Rule specifies that such construction may begin ''35 days after the date of the Public Notice listing the application for that facility as acceptable for filing.'' One commenter argues that paragraph (a) of the Rule should be deleted, asserting that comparable provisions do not exist for other wireless services, and that other portions of the Rule put applicants on notice that they assume the risk of constructing prior to grant. The Commission disagrees that the provision should be deleted, noting that the same Public-Notice-plus-35-day period is specified in 47 CFR 90.169 of Commission rules for several other commercial wireless radio services.[2] In addition, pre-grant construction under Rule 22.143 is subject to several conditions, including, among others, that no petitions to deny or mutually exclusive (competing) applications have been filed. When the Commission reduced the waiting period from the original 60-day and 90-day post-Public Notice periods to the existing Public-Notice-plus-35-days provision, it agreed that applicants should know within that timeframe whether any petition to deny or competing application had been filed, and retained these conditions to disallow construction when it cannot be reasonably certain of being able to grant the application. The Commission has also recognized that construction of PMS facilities entails not only the financial risk to the applicant, but also environmental and other consequences affecting the public, and it would not be in the public interest to allow construction until the Commission is reasonably certain that the facilities can be authorized. In a similar vein, it is in the public interest to minimize the Commission's risk of having to expend taxpayer resources to issue notification to the applicant, pursuant to 47 CFR 22.143(b), to stop construction. For all these reasons, the Commission declines to delete 47 CFR 22.143(a) at this time.

V. Procedural Matters

15. *Paperwork Reduction Act Analysis.* One rule amendment adopted in the *Third R&O*—specifically, 47 CFR 22.303, contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. That rule amendment will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission has assessed the effects on small business concerns of the rule changes it is adopting by this *Third R&O* and finds that businesses with fewer than 25 people will benefit from being subject to fewer recordkeeping, reporting, and compliance burdens.

16. *Congressional Review Act.* The Commission will send a copy of this *Third R&O* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

17. *Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA), set forth in Appendix B of the *Third R&O,* concerning the possible impact of the rule changes.

18. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

VI. Ordering Clauses

19. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 4(j), 7, 301, 303, 307, 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 157, 301, 303, 307, 308, 309, and 332, that this *third report and order* in WT Docket No. 12–40 *is adopted.*

20. *It is further ordered* that the *third report and order shall be effective* September 4, 2018.

21. *It is further ordered* that Part 22 of the Commission's rules, 47 CFR part 22, *is amended* as specified in Appendix A of the *third report and order,* effective September 4, 2018 except as otherwise provided herein.

22. *It is further ordered* that the amendment adopted in the *third report and order,* and specified in Appendix A of the *third report and order,* to 47 CFR 22.303, which contains new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, *will become effective* after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date.

23. *It is further ordered* that this Cellular Reform proceeding in WT Docket No. 12–40, including RM Nos. 11510 and 11660, *is hereby terminated.*

[2] The Commission also notes that, for applicants for licenses awarded by competitive bidding, which includes commercial wireless services such as PCS and AWS, the Commission has also established a waiting period, tailored to our competitive bidding process: Pre-grant construction is permitted only upon release of the Public Notice listing the post-auction long-form application for that facility as acceptable for filing (by which time, mutual exclusivity has been eliminated and the Commission is reasonably certain that the application can be granted). *See* 47 CFR 1.2113.

24. *It is further ordered,* pursuant to Section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), that the Commission *shall send* a copy of the *third report and order* to Congress and to the Government Accountability Office.

25. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *third report and order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 22 as follows:

PART 22—PUBLIC MOBILE SERVICES

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

§ 22.3 [Removed and Reserved]

■ 2. Section 22.3 is removed and reserved.

§ 22.301 [Removed and Reserved]

■ 3. Section 22.301 is removed and reserved.

§ 22.303 [Removed and Reserved]

■ 4. Section 22.303 is removed and reserved.

§ 22.321 [Removed and Reserved]

■ 5. Section 22.321 is removed and reserved.

§ 22.325 [Removed and Reserved]

■ 6. Section 22.325 is removed and reserved.

§ 22.927 [Removed and Reserved]

■ 7. Section 22.927 is removed and reserved.

[FR Doc. 2018–16512 Filed 8–1–18; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 83, No. 149

Thursday, August 2, 2018

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0052; Product Identifier 2016–SW–081–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Inc. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2015–04–04 for Bell Helicopter Textron Inc. (Bell) Model 412 and 412EP helicopters. AD 2015–04–04 requires revising the Rotorcraft Flight Manual (RFM) and installing a placard to limit flights to visual flight rules (VFR) and prohibiting night operations because of failing inverters. This proposed AD would require replacing the inverters with a new inverter. The actions in this proposed AD are intended to correct an unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 1, 2018.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0052; 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 proposed AD, the economic evaluation, any comments received and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Tim Beauregard, Aviation Safety Engineer, DSCO Branch, AIR–7J0, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–4357; email *timothy.beauregard@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We issued AD 2015–04–04, Amendment 39–18106 (80 FR 9594, February 24, 2015), for Bell Model 412 and 412EP helicopters with an inverter part number (P/N) 412–375–079–101 or 412–375–079–103 with a serial number 29145 or higher. AD 2015–04–04 was prompted by numerous failures of inverters. The failure of one inverter can result in smoke in the cockpit, making landing at night and during instrument meteorological conditions difficult. If two inverters fail, then the pilot will lose primary flight and navigation displays, autopilot, and alternate current powered engine and transmission indicators.

To address this condition, Bell issued Alert Service Bulletin (ASB) 412–13–156, dated April 25, 2013, which specifies inspecting inverter part number (P/N) 412–375–079–101 and either repairing it or replacing it with inverter P/N 412–375–079–103 to prevent failure. Because the specific cause of the inverter failures had not been verified, and since inverter failures continued after Bell issued the ASB, we determined the actions specified in the ASB did not correct the unsafe condition. Therefore, AD 2015–04–04 requires revising the RFM and installing a placard in full view of the pilot to limit flights to VFR only and prohibit night operations.

Actions Since AD 2015–04–04 Was Issued

Since we issued AD 2015–04–04, Bell determined the root causes of the failures were an external connector that caused a short circuit inside inverter P/N 412–375–079–101 and components chafing because of variations in the assembly process and packaging tolerances for inverter P/N 412–375–079–103. Bell introduced an improved inverter, P/N 412–375–079–105, and retrofit kits to replace inverter P/N 412–375–079–101 or 412–375–079–103 on helicopters with serial numbers 33001 or higher. These replacements and repairs correct the unsafe condition by providing 250 voltage amperes (VA) of total power instead of 500 VA, thereby reducing the input power to the inverter.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Related Service Information

We reviewed Bell Alert Service Bulletin (ASB) 412–15–164, dated March 13, 2015 (ASB 412–15–164), which specifies an alternate means of compliance (AMOC) approved by the FAA for AD 2015–04–04 (80 FR 9594, February 24, 2015). Instead of the flight limitations mandated by AD 2015–04–04, ASB 412–15–164 limits allow operation under instrument flight rules (IFR) and night operations with two pilots.

We also reviewed Bell ASB 412–16–171, dated March 22, 2016 (ASB 412–16–171), which specifies replacing certain serial-numbered inverters P/N 412–375–079–101 and 412–375–079–103 with inverter P/N 412–375–079–105 as a direct replacement or with a retrofit kit. Bell specifies that completing the actions specified by the ASB constitute terminating action for Bell ASB 412–15–164.

Lastly, we reviewed Bell Service Instruction for Inverter Retrofit Kit BHT–412–SI–93, dated February 15, 2016, which provides instructions for installing retrofit kit P/N 412–704–058–103.

Proposed AD Requirements

The proposed AD would require, within 25 hours time-in-service (TIS), replacing the inverter with inverter P/N 412–375–079–105 and, for some helicopters, installing retrofit kit P/N 412–704–058–103.

After accomplishing the previous actions, the proposed AD would allow removing the placard and Rotorcraft Flight Manual limitations that prohibit night operations and restrict flights to visual flight rules.

After the effective date of this AD, this proposed AD would prohibit installing an inverter P/N 412–375–079–101 or 412–375–079–103 on any helicopter.

Differences Between This Proposed AD and the Service Information

Bell ASB 412–16–171 requires compliance no later than January 1, 2017, while this proposed AD would require compliance within 25 hours TIS. Bell ASB 412–16–171 makes an electrical load analysis a determining factor for corrective actions. This proposed AD would make no such requirement. Bell ASB 412–16–171 provides instructions for helicopters with serial numbers 36649, 36658, 36659, 36673, 36681 through 36684, 36686, 36688, 36690, 36692, 36694, and 36696 through 36704, and this proposed AD would not. Bell has notified us of errors in the S/Ns listed for Part B of ASB 412–16–171. Accordingly, this proposed AD would only be applicable to those serial-numbered helicopters subject to the unsafe condition.

Costs of Compliance

We estimate that this proposed AD would affect 73 helicopters of U.S. Registry and that labor costs average $85 per work-hour. Based on these estimates, we expect that installing a new inverter or retrofit kit would require about 3 work-hours and a parts cost of $15,749, for a total cost of $16,004 per helicopter and $1,168,292 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.

We are 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

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. 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.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed 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 removing Airworthiness Directive (AD) 2015–04–04, Amendment 39–18106 (80 FR 9594, February 24, 2015), and adding the following new AD:

Bell Helicopter Textron Inc.: Docket No. FAA–2017–0052; Product Identifier 2016–SW–081–AD.

(a) Applicability

This AD applies to Model 412 and 412EP helicopters with a serial number (S/N) 33001 through 33213, 34001 through 34036, 36001 through 36648, 36650 through 36657, 36660 through 36672, 36674 through 36680, 36685, 36687, 36689, 36691, 36693, 36695, and 37002 through 37012, certificated in any category, with a static inverter (inverter) part number (P/N) 412–375–079–101 or 412–375–079–103 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as the failure of an inverter under instrument meteorological conditions or night flight. This condition could result in smoke in the cockpit, increased pilot workload due to the loss of primary flight and navigation displays, alternating current powered engine and transmission indicators, and autopilot, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD replaces AD 2015–04–04, Amendment 39–18106 (80 FR 9594, February 24, 2015).

(d) Comments Due Date

We must receive comments by October 1, 2018.

(e) Compliance

You are responsible for performing each action required by this AD within the

specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 25 hours time-in-service:

(i) For helicopters with a S/N 33001 through 33213, 34001 through 34036, and 36001 through 36086, replace the inverter with inverter P/N 412–375–079–105.

(ii) For helicopters with a S/N 36087 through 36648, 36650 through 36657, 36660 through 36672, 36674 through 36680, 36685, 36687, 36689, 36691, 36693, 36695, and 37002 through 37012, install retrofit kit P/N 412–704–058–103 and replace the inverter with inverter P/N 412–375–079–105.

(2) After accomplishing the actions required by paragraph (f)(1) of this AD, you may remove the placard and Rotorcraft Flight Manual limitations, required by AD 2015–04–04, prohibiting night operations and restricting flights to visual flight rules.

(3) After the effective date of this AD, do not install an inverter P/N 412–375–079–101 or 412–375–079–103 on any helicopter.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO, FAA, may approve AMOCs for this AD. Send your proposal to: Tim Beauregard, Aviation Safety Engineer, DSCO Branch, AIR–7J0, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone 817–222–5190; email *9–ASW–190–COS@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

Bell Alert Service Bulletin 412–15–164, dated March 13, 2015, and Bell Alert Service Bulletin 412–16–171, dated March 22, 2016, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 2422, AC Inverter.

Issued in Fort Worth, Texas, on June 19, 2018.

Scott A. Horn,

Deputy Director for Regulatory Operations, Compliance and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–16495 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0637; Product Identifier 2018–NM–091–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This proposed AD was prompted by leakage of shrouded pipe T-boxes in the potable water system. This proposed AD would require replacement of the affected potable water T-boxes and clamps with new parts. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 17, 2018.

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 *http://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 service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0637; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0637; Product Identifier 2018–NM–091–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2018–0111R1, dated May 30, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes. The MCAI states:

> During a pressure test on the A350 Final Assembly Line (FAL), leakage was observed on the potable water system shrouded pipes, due to a crack failure on the T-Boxes. Leakage of a primary pipe may cause water ingress into the avionics bay. Additionally, during another pressure proof test on the A350 FAL, loss of torque was detected on the clamps used to attach the shrouded pipes on the T-Boxes.
>
> This condition, if not corrected, could lead to loss of systems/equipment located inside the avionics bay, possibly resulting in an unsafe condition.
>
> Prompted by these findings, Airbus developed improved potable water T-Boxes

and clamps, which are embodied in production through Airbus mod 111435 or mod 111440, and introduced in service through the SB [Service Bulletin].

For the reasons described above, this [EASA] AD requires replacement of the affected potable water shrouded pipe T-Boxes and clamps with new parts.

This [EASA] AD was revised to exclude post-mod 111440 aeroplanes from the Applicability.

This condition, if not corrected, could lead to the loss of systems/equipment located inside the avionics bay and possible loss of control of the airplane. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0637.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Service Bulletin A350–38–P004, dated April 11, 2018. This service information describes procedures for replacing the affected potable water T-boxes and clamps with new parts. 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.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Explanation of Change to Applicability

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected model.

Costs of Compliance

We estimate that this proposed AD affects 7 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 16 work-hours × $85 per hour = $1,360	Up to $2,050	Up to $3,410	Up to $23,870.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our 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.

We are 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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. 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 Proposed 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 (AD):

Airbus SAS: Docket No. FAA–2018–0637; Product Identifier 2018–NM–091–AD.

(a) Comments Due Date

We must receive comments by September 17, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, except those on which Airbus SAS modification (mod) 111435 or mod 111440 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/waste.

(e) Reason

This AD was prompted by leakage of shrouded pipe T-boxes in the potable water system. We are issuing this AD to address the possible leakage of water into the avionics bay. This condition, if not corrected, could lead to the loss of systems/equipment located inside the avionics bay and possible loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Within 36 months after the effective date of this AD: Replace the affected potable water T-boxes and clamps with new parts in accordance with the Accomplishment Instructions of Airbus Service Bulletin A350–38–P004, dated April 11, 2018.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (i)(2) of this AD. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0111R1, dated May 30, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0637.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *continued-airworthiness.a350@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on July 23, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–16488 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0638; Product Identifier 2018–NM–016–AD]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.; Canadair Limited) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–11–03, which applies to certain Viking Air Limited Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes. AD 2013–11–03 requires repetitive detailed inspections for cracking of the left-hand (LH) and right-hand (RH) wing lower skin, and repair if necessary. AD 2013–11–03 was prompted by reports of a fractured wing lower rear spar cap and reinforcing strap. Since we issued AD 2013–11–03, further analysis has indicated the need for repetitive eddy current and borescope inspections. This proposed AD would require repetitive borescope inspections of the LH and RH wing lower skin and repetitive eddy current inspections of the LH and RH wing front and rear lower spar caps. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 17, 2018.

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 *http://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 service information identified in this NPRM, contact Viking Air Limited, 1959 de Havilland Way, Sidney, British Columbia V8L 5V5, Canada; telephone +1–250–656–7227; fax +1–250–656–0673; email *acs-technical.publications@vikingair.com;* internet *http://www.vikingair.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0638; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0638; Product Identifier 2018–NM–016–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued AD 2013–11–03, Amendment 39–17463 (78 FR 32353, May 30, 2013) (''AD 2013–11–03''), for certain Viking Air Limited Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes. AD 2013–11–03 requires repetitive detailed inspections for cracking of the LH and RH wing lower skin, and repair if necessary. AD 2013–11–03 resulted from reports of a fractured wing lower rear spar cap and reinforcing strap. We issued AD 2013–11–03 to detect and correct cracked wing structure, which could result in failure of the wing.

Actions Since AD 2013–11–03 Was Issued

Since we issued AD 2013–11–03, an operator reported damage to the wing lower skin and rear spar of an airplane. This damage was noticed 95 flight hours after an ultrasonic inspection. Further analysis by the airplane manufacturer and the FAA has determined that the ultrasonic inspection might not have been adequate to detect a crack in the spar cap, and there is a need for repetitive eddy current and borescope inspections.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive, CF–2013–11R1, dated October 30, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Viking Air Limited Model CL–215–1A10 and CL–215–6B11 (CL–215T Variant) airplanes. The MCAI states:

> While performing modifications on a CL–215–1A10 aeroplane, an operator discovered that the wing lower rear spar cap and reinforcing strap were fractured at Wing Stations (WS) 49.5 and 50 respectively and the rear spar web and wing lower skin were also cracked. It is suspected that a crack initiated at the wing lower spar cap, leading to its failure, the subsequent failure of the reinforcing strap and cracking of the spar web and wing lower skin. The damage was outside of the area addressed by the repetitive ultrasonic inspections required by [Canadian] AD CF–1992–26R2 [which corresponds to FAA AD 2012–11–04, Amendment 39–17067 (77 FR 32892, June 4, 2012)] and was found 95 hours air time after the last ultrasonic inspection.
>
> Failure and cracking of the above-noted wing structure, if not detected, could result in failure of the wing.
>
> In order to mitigate the unsafe condition, [Canadian] AD CF–2013–11 [which corresponds to FAA AD 2013–11–03] was released. However, further analysis has indicated the need for repetitive eddy current and borescope inspections. Therefore, Revision 1 of this [Canadian] AD mandates a repetitive detailed inspection of the wing lower skin using a borescope, changes the one-time eddy current inspection of the lower front and rear spar caps to a repetitive inspection and eliminates the one-time detailed inspection with fuel bladders removed.
>
> The requirements of [Canadian] AD CF–1992–26R2 remain applicable.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0638.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016. This service information describes procedures for detecting cracks using repetitive borescope inspections of the LH and RH wing lower skin and repetitive eddy current inspections of the LH and RH wing front and rear lower spar caps. 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.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Borescope and eddy current inspections.	8 work-hours × $85 per hour = $680 per inspection cycle.	$0	$680 per inspection cycle	$2,720 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

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.

We are 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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by

FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
3. Will not affect intrastate aviation in Alaska, and
4. 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 Proposed 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 removing Airworthiness Directive (AD) 2013–11–03, Amendment 39–17463 (78 FR 32353, May 30, 2013), and adding the following new AD:

Viking Air Limited (Type Certificate Previously Held by Bombardier, Inc.; Canadair Limited): Docket No. FAA–2018–0638; Product Identifier 2018–NM–016–AD.

(a) Comments Due Date

We must receive comments by September 17, 2018.

(b) Affected ADs

This AD replaces AD 2013–11–03, Amendment 39–17463 (78 FR 32353, May 30, 2013) (''AD 2013–11–03'').

(c) Applicability

This AD applies to the Viking Air Limited (Type Certificate previously held by Bombardier, Inc.; Canadair Limited) airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model CL–215–1A10 airplanes, serial numbers (S/Ns) 1001 through 1125 inclusive.

(2) Model CL–215–6B11 (CL–215T Variant) airplanes, S/Ns 1056 through 1125 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of cracking of the wing lower skin and rear spar. We are issuing this AD to address cracked wing structure, which could result in failure of the wing.

(f) Compliance

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

(g) Repetitive Borescope Inspection

Within 50 flight hours after the effective date of this AD: Using a borescope, do a detailed inspection for cracking of the left-hand (LH) and right-hand (RH) wing lower skin between wing station (WS) 45.00 and 51.00, in accordance with Part A of Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016. Repeat the inspection thereafter at intervals not to exceed 50 flight hours until the initial eddy current inspection required by paragraph (h) of this AD has been accomplished. After accomplishment of the initial eddy current inspection required by paragraph (h) of this AD, the borescope inspection interval required by this paragraph may be extended to 300 flight hours.

(h) Repetitive Eddy Current Inspections

Within 300 flight hours after the effective date of this AD: Do an eddy current inspection for cracking of the LH and RH wing front and rear lower spar caps, in accordance with Parts C–1 and C–2 of Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016. Repeat the inspection thereafter at intervals not to exceed 300 flight hours.

(i) Corrective Actions

If any crack, as defined in Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016, is found during any inspection required by paragraph (g) or paragraph (h) of this AD: Before further flight, repair using a method approved by the FAA; or Transport Canada Civil Aviation (TCCA); or Viking Air Limited's TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Credit for Previous Actions

This paragraph provides credit for the initial inspections required by paragraphs (g) and (h) of this AD if those actions were performed before the effective date of this AD using Bombardier Alert Service Bulletin 215–A558, Revision 1, dated January 10, 2014; or Bombardier Alert Service Bulletin 215–A558, Revision 2, dated January 17, 2014.

(k) No Reporting Requirement

Although Bombardier Alert Service Bulletin 215–A558, Revision 3, dated June 3, 2016, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(l) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Viking Air Limited's TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–11R1, dated October 30, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0638.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531.

(3) For service information identified in this AD, contact Viking Air Limited, 1959 de Havilland Way, Sidney, British Columbia V8L 5V5, Canada; telephone +1–250–656–7227; fax +1–250–656–0673; email *acs-technical.publications@vikingair.com;* internet *http://www.vikingair.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on July 23, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–16490 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0690; Product Identifier 2018–CE–022–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Models G–IV and GIV–X airplanes. This proposed AD was prompted by a revision to the airworthiness limitations section (ALS) of the aircraft maintenance manual (AMM) based on fatigue and damage tolerance testing and updated analysis. This proposed AD would require revising the maintenance or inspection program to incorporate updated inspection requirements and life limits that address fatigue cracking of principal structural elements (PSEs). We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 17, 2018.

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 *http://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 service information identified in this NPRM, contact Gulfstream Aerospace Corporation, Technical Publications Dept., 500 Gulfstream Road, Savannah, GA 31402–2206; telephone: 800–810–4853; fax: 912–965–3520; email: *pubs@gulfstream.com;* internet: *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0690; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ronald ''Ron'' Wissing, Airframe Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: 404–474–5552; fax: 404–474–5606; email: *ronald.wissing@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0690; Product Identifier 2018–CE–022–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

We received a revision to the ALS of the maintenance manual for Gulfstream Aerospace Corporation Models G–IV and GIV–X airplanes based on fatigue and damage tolerance testing and updated analysis that indicates current inspection programs may not be identifying cracks before reaching critical size. The revised ALS updates inspection requirements and life limits that address fatigue cracking of PSEs. We determined that these actions are necessary to address the identified unsafe condition. This condition, if not corrected, could result in fatigue cracking of PSEs, which could result in reduced structural integrity of the PSEs and critical components with consequent loss of control of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Gulfstream Document No. GIV–GER–0008, Summary of Changes to the GIV Series and GIV–X Series Airworthiness Limitations, Revision B, dated March 12, 2018. The service information describes more restrictive inspection intervals or altered NDT inspection requirements and updated life limits that address fatigue cracking of the PSEs. 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.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require revising the AMM, Chapter 5 ''Life Limits'' and ''Airworthiness Limitations'' sections, to incorporate new inspections and life limits based on fatigue and damage tolerance (FTD) testing and updated analysis.

Costs of Compliance

We estimate that this proposed AD affects 711 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise ALS and AMM	20 work-hour × $85 per hour = $1,700.	Not applicable	$1,700	$1,208,700

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.

We are 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.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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 Proposed 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 (AD):

Gulfstream Aerospace Corporation: Docket No. FAA–2018–0690; Product Identifier 2018–CE–022–AD.

(a) Comments Due Date

We must receive comments by September 17, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model G–IV airplanes, certificated in any category, serial numbers 1000 through 1535; and Model GIV–X airplanes, certificated in any category, serial numbers 4001 through 4363.

Note 1 to paragraph (c) of this AD: Model G–IV airplanes are also referred to by the marketing designations G300 and G400. Model GIV–X airplanes are also referred to by the marketing designations G350 and G450.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 27, Flight Controls; 32, Landing Gear; 52, Doors; 53, Fuselage; 55, Stabilizers; 57, Wings; 71, Power Plant-General; and 78, Engine Exhaust.

(e) Unsafe Condition

This AD was prompted by a revision to the airworthiness limitations section (ALS) of the Model G–IV and Model GIV–X maintenance manuals based on fatigue and damage tolerance testing and updated analysis. We are issuing this AD to detect and correct fatigue cracking of principal structural elements (PSEs). This unsafe condition, if unaddressed, could result in reduced structural integrity of a PSE or critical component and lead to loss of control of the airplane.

(f) Compliance

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

(g) Airplane Maintenance Manual Revisions

Within 12 months after the effective date of this AD, revise the ALS of your maintenance or inspection program (*e.g.,* maintenance manual) to incorporate the airworthiness limitations specified in Gulfstream Document No. GIV–GER–0008, Summary of Changes to the GIV Series and GIV–X Series Airworthiness Limitations, Revision B, dated March 12, 2018, as applicable to your model and serial number airplane.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program (*e.g.,* maintenance manual) has been revised as required by paragraph (g) of this AD, no alternative inspections or intervals may be used unless approved as an alternative method of compliance in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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)(1) of this AD.

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

(j) Related Information

(1) For more information about this AD, contact Ronald ''Ron'' Wissing, Airframe Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia

30337; phone: 404–474–5552; fax: 404–474–5606; email: *ronald.wissing@faa.gov.*

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Savannah, Georgia 31402–2206; telephone: (800) 810–4853; fax 912–965–3520; email: *pubs@gulfstream.com;* internet: *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on July 25, 2018.

Pat Mullen,

Aircraft Certification Service, Acting Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2018–16491 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0349; Airspace Docket No. 17–AAL–5]

RIN–2120–AA66

Proposed Modification of Class E Airspace for the Following Alaska Towns; St. Michael, AK; Shaktoolik, AK; and Tatitlek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 1,200 feet above the surface at St. Michael Airport, AK; Shaktoolik Airport, AK; and Tatitlek Airport, AK. This proposal would add exclusionary language to the legal descriptions of these airports to exclude Class E airspace extending beyond 12 miles from the shoreline, and would ensure the safety and management of aircraft within the National Airspace System.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0349; Airspace Docket No. 17–AAL–5, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S. 216th St., Des Moines, WA, 98198–6547; telephone (206) 231–2245.

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 Class E airspace extending upward from 1,200 feet above the surface at St. Michael Airport, AK; Shaktoolik Airport, AK; and Tatitlek Airport, AK to support IFR operations in standard instrument approach and departure procedures at these airports.

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. Persons 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–2017–0349/Airspace Docket No. 17–AAL–5''. 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 *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 1,200 feet above the surface at St. Michael Airport, AK; Shaktoolik Airport, AK; and Tatitlek Airport, AK. This action would add language to the legal descriptions of these airports that reads ''excluding that airspace that extends beyond 12 miles from the shoreline''.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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, and 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 would 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 1,200 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Shaktoolik, AK [Amended]

Shaktoolik Airport, AK
(Lat. 64°22′16″ N, long. 161°13′26″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Shaktoolik Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of Shaktoolik Airport, AK, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 St. Michael, AK [Amended]

St. Michael Airport, AK
(Lat. 63°29′24″ N, long. 162°06′37″ W)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of St. Michael Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the St. Michael Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 Tatitlek, AK [Amended]

Tatitlek Airport, AK
(Lat. 60°52′21″ N, long. 146°41′28″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tatitlek Airport, and within 2 miles southwest and 3.4 miles northeast of the 149° radial from Tatitlek Airport extending from the 6.4-mile radius to 11.8 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 60-mile radius of the Tatitlek Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

Issued in Seattle, Washington, on July 25, 2018.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–16489 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0345; Airspace Docket No. 17–AAL–1]

RIN–2120–AA66

Proposed Modification of Class E Airspace for the Following Alaska Towns; Barrow, AK; Chevak, AK; Clarks Point, AK; Elim, AK; and Golovin, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 1,200 feet above the surface in Alaska at Wiley Post/Will Rogers Memorial Airport, Barrow; Chevak Airport; Clarks Point Airport; Elim Airport; and Golovin Airport. This proposal would add exclusionary language to the legal descriptions of these airports to exclude Class E airspace extending beyond 12 miles from the shoreline, and would ensure the safety and management of aircraft within the National Airspace System. Also, an editorial change would be made in the associated airspace designation for Chevak Airport.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0345; Airspace Docket No. 17–AAL–1, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://*

www.archives.gov/federal-register/cfr/ibr-locations.html.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547; telephone (206) 231–2245.

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 Class E airspace extending upward from 1,200 feet above the surface at Wiley Post/Will Rogers Memorial Airport, Barrow; Chevak Airport, Clarks Point Airport, Elim Airport, and Golovin Airport, AK, to support IFR operations in standard instrument approach and departure procedures at these airports.

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. Persons 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–2017–0345; Airspace Docket No. 17–AAL–1.'' 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 *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th St., Des Moines, WA 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 1,200 feet above the surface at Wiley Post/Will Rogers Memorial Airport, Barrow, AK; Chevak Airport, Clarks Point Airport, Elim Airport, and Golovin Airport, AK. This action would add language to the legal descriptions of these airports that reads ''excluding that airspace that extends beyond 12 miles from the shoreline''.

An editorial change also would be made to the Chevak airspace designation removing the city from the airport name to comply with a change to FAA Order 7400.2L, Procedures for Handling Airspace Matters.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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, and 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 would 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 7400.11B, Airspace Designations and Reporting

Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Barrow, AK [Amended]

Wiley Post/Will Rogers Memorial Airport, AK
(Lat. 71°17′06″ N, long. 156°46′07″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Wiley Post/Will Rogers Memorial Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Wiley Post/Will Rogers Memorial Airport, excluding that airspace extending beyond 12 miles of the shoreline.

AAL AK E5 Chevak, AK [Amended]

Chevak Airport, AK
(Lat. 61°32′27″ N, long. 165°36′03″ W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Chevak Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of Chevak Airport, excluding that airspace extending beyond 12 miles of the shoreline.

AAL AK E5 Clarks Point, AK [Amended]

Clarks Point Airport, AK
(Lat. 58°50′01″ N, long. 158°31′46″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Clarks Point Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Clarks Point Airport, excluding that airspace extending beyond 12 miles of the shoreline.

AAL AK E5 Elim, AK [Amended]

Elim Airport, AK
(Lat. 64°36′54″ N, long. 162°16′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Elim Airport, and within 3.7 miles either side of the 015° bearing from the Elim Airport, extending from the 6.8-mile radius, to 12.6 miles north of Elim Airport; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Elim Airport, excluding that airspace extending beyond 12 miles of the shoreline.

AAL AK E5 Golovin, AK [Amended]

Golovin Airport, AK
(Lat. 64°33′02″ N, long. 163°00′26″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Golovin Airport, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of lat. 64°43′47″ N, long. 163°15′17″ W and a 30-mile radius of lat. 64°17′57″ N, long. 163°01′41″ W, excluding that airspace extending beyond 12 miles of the shoreline.

Issued in Seattle, Washington, on July 25, 2018.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–16482 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0348; Airspace Docket No. 17–AAL–4]

RIN–2120–AA66

Proposed Modification of Class E Airspace for the Following Alaska Towns; Nuiqsut, AK; Perryville, AK; Pilot Point, AK; and Point Lay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 1,200 feet above the surface in Alaska at Nuiqsut Airport; Oooguruk Island Heliport Nuiqsut; Pioneer Heliport, Nuiqsut; Perryville Airport; Pilot Point Airport; and Point Lay Airport. This proposal would add exclusionary language to the legal descriptions of these airports to exclude Class E airspace extending beyond 12 miles from the shoreline, and would ensure the safety and management of aircraft within the National Airspace System. Also, this action would remove the heliport name from the airspace designation of Oooguruk Island Heliport and Pioneer Heliport.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0348; Airspace Docket No. 17–AAL–4, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call 202–741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S. 216th St., Des Moines, WA, 98198–6547; telephone (206) 231–2245.

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 Class E airspace extending upward from 1,200 feet above the surface at Nuiqsut Airport, Oooguruk Island Heliport, Pioneer Heliport, Perryville Airport, Pilot Point Airport, Point Hope Airport, Point Lay Airport, and Port Heiden Airport, AK, to support IFR operations in standard instrument approach and departure procedures at these airports.

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. Persons 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–2017–0348; Airspace Docket No. 17–AAL–4''. 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 *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S. 216th St., Des Moines, WA, 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 1,200 feet above the surface at Nuiqsut Airport, Nuiqsut, AK; Oooguruk Island Heliport, Nuiqsut, AK; Pioneer Heliport, Nuiqsut, AK; Perryville Airport, Perryville, AK; Pilot Point Airport, Pilot Point, AK; and Point Lay Airport, Point Lay, AK. This action would add language to the legal descriptions of these airports that reads ''excluding that airspace that extends beyond 12 miles from the shoreline.''

Also, this action would remove the airport name from the airspace designation for Oooguruk Island Heliport and Pioneer Heliport, to conform with recent change to FAA Order 7400.2L, Procedures for Handling Airspace Matters.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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, and 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 would 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 1,200 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Nuiqsut AK [Amended]

Nuiqsut Airport, AK
(Lat. 70°12′35″ N, long. 151°00′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Nuiqsut Airport, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of Nuiqsut Airport, excluding that airspace which overlies Control 1485L, and excluding that airspace that extends beyond 12 miles of the shoreline.

AAL AK E5 Nuiqsut, AK [Amended]

Oooguruk Island Heliport, AK
(Lat. 70°29′44″ N, long. 150°15′12″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Oooguruk Island Heliport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of Oooguruk Island Heliport, excluding that airspace that extends beyond 12 miles of the shoreline.

AAL AK E5 Nuiqsut, AK [Amended]

Pioneer Heliport, AK
(Lat. 70°24′51″ N, long. 150°01′07″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Pioneer Heliport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of Pioneer Heliport, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 Perryville, AK [Amended]

Perryville Airport, AK
(Lat. 55°54′24″ N, long. 159°09′39″ W)

That airspace extending upward from 700 feet above the surface within a 14.7-mile radius of Perryville Airport; and that airspace east of long. 160°00′00″ W extending upward from 1,200 feet above the surface within an 81.2-mile radius of Perryville Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 Pilot Point, AK [Amended]

Pilot Point Airport, AK
(Lat. 57°34′49″ N, long. 157°34′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Pilot Point Airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 57°51′00″ N, long. 158°03′00″ W, to lat. 57°51′00″ N, long. 157°05′00″ W, to lat. 57°24′45″ N, long. 157°05′00″ W, to lat. 57°24′45″ N, long. 158°03′00″ W, to the point of beginning, excluding that airspace that extends beyond 12 miles of the shoreline.

* * * * *

AAL AK E5 Point Lay, AK [Amended]

Point Lay Airport, AK
(Lat. 69°43′58″ N, long. 163°00′19″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Point Lay Airport; and that airspace extending upward from 1,200 feet above the surface within a 46-mile radius of the Point Lay Airport, excluding that airspace that extends beyond 12 miles from the shoreline.

* * * * *

Issued in Seattle, Washington, on July 25, 2018.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–16480 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0350; Airspace Docket No. 17–AAL–6]

RIN–2120–AA66

Proposed Modification of Class E Airspace for the Following Alaska Towns; Toksook Bay, AK; Unalakleet, AK; Wainwright, AK; and Yakutat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 1,200 feet above the surface at Toksook Bay Airport, Toksook Bay, AK; Unalakleet Airport, Unalakleet, AK; Wainwright Airport, Wainwright, AK; and Yakutat Airport, Yakutat, AK. This proposal would add exclusionary language to the legal descriptions of these airports for Class E airspace extending beyond 12 miles from the shoreline, and would ensure the safety and management of aircraft within the National Airspace System.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2017–0350; Airspace Docket No. 17–AAL–6, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.*

FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://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. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547; telephone (206) 231–2245.

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 Class E airspace extending upward from 1,200 feet above the surface at Toksook Bay Airport, AK; Unalakleet Airport, AK; Wainwright Airport, AK; and Yakutat Airport, AK, to support IFR operations in standard instrument approach and departure procedures at these airports and to limit Class E airspace to within 12 miles of the shoreline.

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. Persons 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–2017–0350, Airspace Docket No. 17–AAL–6''. 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 *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, Western Service Center, 2200 S 216th St., Des Moines, WA 98198–6547.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B 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 Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace extending upward from 1,200 feet above the surface at Toksook Bay Airport, Toksook, AK; Unalakleet Airport, Unalakleet, AK; Wainwright Airport, Wainwright, AK; and Yakutat Airport, Yakutat, AK. This action would add language to the legal descriptions of these airports that reads '' excluding that airspace extending beyond 12 miles of the shoreline'', and would support IFR operations in standard instrument approach and departure procedures at these airports.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

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, and 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 would 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 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Toksook Bay, AK [Amended]

Toksook Bay Airport, AK
(Lat. 60°32′29″ N, long. 165°05′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Toksook Bay Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Toksook Bay Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

AAL AK E5 Unalakleet, AK [Amended]

Unalakleet Airport, AK
(Lat. 63°53′19″ N, long. 160°47′57″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Unalakleet Airport beginning at the 360° bearing of the airport clockwise to the 260° bearing of the airport, and within a 13.5-mile radius of the airport beginning at the 260° bearing of the airport clockwise to the 360° bearing of the airport, and within 6 miles each side of the Unalakleet Airport 185° bearing of the airport extending from the 7-mile radius to 10 miles south of the airport; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of Unalakleet Airport, excluding that airspace that extends beyond 12 miles of the shoreline.

AAL AK E5 Wainwright, AK [Amended]

Wainwright Airport, AK
(Lat. 70°38′17″ N, long. 159°59′41″ W)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Wainwright Airport; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Wainwright Airport, AK, excluding that portion extending outside the Anchorage Arctic CTA/FIR (PAZA) boundary, and excluding that airspace that extends beyond 12 miles of the shoreline.

AAL AK E5 Wales, AK [Amended]

Wales Airport, AK
(Lat. 65°37′21″ N, long. 168°05′42″ W)

That airspace extending upward from 700 feet above the surface within a 6.35-mile radius of Wales Airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 65°24′00″ N, long.168°30′00″ W, to lat. 65°53′00″ N, long. 168°30′00″ W, to lat. 66°00′00″ N, long. 167°50′00″ W, to lat. 65°24′00″ N, 167°50′00″ W, to point of beginning, excluding that airspace within the Tin City Class E airspace area, and excluding that airspace that extends beyond 12 miles of the shoreline.

AAL AK E5 Yakutat, AK [Amended]

Yakutat Airport, AK
(Lat. 59°30′12″ N, long. 139°39′37″ W)
Yakutat VOR/DME
(Lat. 59°30′39″ N, long. 139°38′53″ W)

That airspace extending upward from 700 feet above the surface within the area bounded by lat. 59°47′42″ N, 139°58′48″ W, to lat. 59°37′33″ N, long. 139°40′54″ W, then along the 7 mile radius of the Yakutat VOR/DME clockwise to lat. 59°28′54″ N, long. 139°25′36″ W, to lat. 59°20′16″ N, long. 139°10′20″ W, to lat. 59°02′49″ N, long. 139°47′45″ W, to lat. 59°30′15″ N, long. 140°36′43″ W, to the point of beginning, excluding that area beyond 12 miles from the shoreline within Gulf of Alaska Low Control Area; and that airspace extending upward from 1,200 feet above the surface within a 75-mile radius of the Yakutat VOR/DME, excluding that area extending over Canada, and that airspace that extends beyond 12 miles of the shoreline within Control 1487L.

Issued in Seattle, Washington, on July 25, 2018.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2018–16503 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0563]

RIN 1625–AA11

Regulated Navigation Area; Straits of Mackinac, Mackinaw City, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area (RNA) for certain waters of the Straits of Mackinac. This action is necessary to provide for the safety of life and protection of property on these navigable waters near Mackinaw City, MI. This proposed rulemaking would prohibit persons and vessels from anchoring or loitering within the RNA unless authorized by the Captain of the Port of Sault Sainte Marie, Michigan or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before September 4, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0563 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Jason Radcliffe, Ninth District Waterways Management, U.S. Coast Guard; telephone 216–902–6060, email *Jason.A.Radcliffe2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
RNA Regulated Navigation Area
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The northwest part of Lake Huron forms the approach to, and the east part of the, Straits of Mackinac. At the extreme northwest end, the lake narrows abruptly to a width of 4 miles. Spanning this divide is the Mackinac Bridge. Two main shipping lanes lead north and south of Bois Blanc Island and pass under the bridge. Numerous shoals and several islands obstruct the Straits Area. Located approximately a mile west of the Mackinac Bridge are submerged electrical cables and the Enbridge Line 5 Pipeline. Posted on NOAAs navigation charts are cautionary notes advising mariners of the cable and pipeline area. There is no prohibition nor is there an enforcement mechanism to discourage anchoring in this area. The Captain of the Port (COTP) of Sault Sainte Marie has determined that the high volume of vessel transits and the potential for damage to submerged infrastructure warrants the creation of a regulatory measure to specifically outline an area of regulated navigation that prohibits certain vessels from anchoring or loitering.

The purpose of this rulemaking is to better enhance the safety of vessels and protection of sub-surface cables and pipelines within the navigable waters of the Straits of Mackinac. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

On the behalf of COTP Sector Sault Sainte Marie, the Ninth Coast Guard District proposes the creation of a Regulated Navigation Area that mandates transiting vessels to make a direct passage with no anchoring or loitering, unless expressly granted permission from the COTP or designated representative. Vessels that would be required to comply with this RNA include vessels of 40 meters or more in length, towing vessels of 20 meters or more in length while engaged in towing another vessel, vessels certificated to carry 50 or more passengers for hire, when engaged in trade, or any dredge or floating plant.

Within the RNA, the District Commander or COTP may establish temporary traffic rules that include but are not limited to channel obstructions, winter navigation, unusual weather conditions, or unusual water levels. This proposed rule will ensure transiting mariners are fully aware of existing and emergent hazards to navigation on or below the navigable waterways and provide the Coast Guard with greater situational awareness and oversight. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the fact that no part of this proposed rulemaking and its stipulations will require any additional equipment purchases or create an undue burden to marine operations. This proposed rule will increase communication and situational awareness of the specified area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the Regulated Navigation Area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. The majority of this proposed rule applies to vessels typically larger than those operated by small entities. The size and operational applicability of this proposed rule is found at the end of this document.

If you think that your business, organization, or governmental

jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves creating a permanent Regulated Navigation Area detailing how mariners shall transit through the Straits of Mackinac. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.944 above the heading ''Eleventh Coast Guard District'' to read as follows:

§ 165.944 Regulated Navigation Area; Straits of Mackinac.

(a) *Location.* All navigable waters of the Straits of Mackinac bounded by longitude 084°20′ W and 085°10′ W, including Grays Reef Passage, the South Channel between Bois Blanc Island and Cheboygan, MI, and the waters between Mackinac Island and St. Ignace, MI.

(b) *Applicability.* Unless otherwise stated, the provisions of this RNA apply to the following vessels:

(1) Vessels of 40 meters (approx. 131 feet) or more in length, while navigating;

(2) Towing vessels of 20 meters (approx. 65 feet) or more in length, while engaged in towing another vessel astern, alongside or by pushing ahead; or

(3) Vessels certificated to carry 50 or more passengers for hire, when engaged in trade; or

(4) Each dredge or floating plant.

(c) *Regulations.* The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within this RNA.

(1) Nothing in this regulation relieves any vessel, owner, operator, charterer, master, or person directing the movement of a vessel, from the consequences of any neglect to comply with this part or any other applicable law or regulation. (*i.e.,* the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) or the Inland Navigation Rules) or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(2) Vessels transiting in the RNA must comply with all directions given to them by the COTP, or a designated representative. The ''designated representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who designated by the COTP to act on their behalf. The designated representative may be on a Coast Guard vessel; or other designated craft; or on shore and communicating via VHF–16 or telephone 906–635–3319.

(3) Vessels transiting through the RNA must make a direct passage. No vessel may anchor or loiter within the RNA at any time without the expressed permission of the COTP or a designated representative.

(4) Vessels desiring to anchor within the confines of the RNA must contact the COTP or a designated representative one (1) hour in advance of anchoring via VHF–16 or telephone 906–635–3319. The person directing the movement of the vessel desiring to anchor will provide the time and purpose for anchoring, plus the anchoring location. Vessels getting underway from anchor will notify the COTP or a designated representative no less than 15 minutes prior to sailing via VHF–16 or telephone 906–635–3319.

(5) The owner, operator, charterer, master or person directing the movement of a vessel desiring to loiter within the prescribed RNA for the purposes of work, dredging, or survey must receive permission from the COTP or a designated representative a minimum of 72 hours in advance of the desired activity.

(6) In the RNA, the District Commander or COTP may establish temporary traffic rules for reasons that include but are not limited to channel obstructions, winter navigation, unusual weather conditions, or unusual water levels.

(7) There may be times that the Ninth District Commander or the COTP finds it necessary to close the RNA to vessel traffic. During times of limited closure, persons and vessels may request permission to enter the RNA by contacting the COTP or a designated representative via VHF–16 or telephone 906–635–3319.

(d) *Definitions.* As used in this RNA:

(1) *Captain of the Port* means the United States Coast Guard Captain of the Port (COTP) of Sault Sainte Marie, Michigan.

(2) *Straits of Mackinac* means the navigable waters of the Great Lakes connecting Lake Huron to Lake Michigan passing between the upper and lower peninsulas of Michigan.

(e) *Notification.* The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public of the time and duration of any closure of the RNA. Reports of violations of this RNA should go to COTP Sault Sainte Marie at 906–635–3319 or on VHF-Channel 16.

(f) *Waiver.* For any vessel, the COTP or a designated representative may waive any of the requirements of this section, upon finding that circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or environmental safety.

Dated: July 27, 2018.

J.M. Nunan,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2018–16549 Filed 8–1–18; 8:45 am]

BILLING CODE 9110–04–P

Notices

Federal Register

Vol. 83, No. 149

Thursday, August 2, 2018

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

Forest Service

Notice of New Fee Sites

AGENCY: Helena—Lewis & Clark National Forest, USDA Forest Service.

ACTION: Notice of new fee sites.

SUMMARY: The Helena—Lewis & Clark National Forest is proposing to implement new fees at the following sites: Three rental cabins, one campground, and one group campground. The Forest is proposing to charge at the following sites:

- Indian Meadows Cabin; Lincoln Ranger District: Proposed fee of $65 per night.
- Mergenthaler Cabin; Helena Ranger District: Proposed fee of $60 per night.
- Nevada Creek Cabin; Lincoln Ranger District: Proposed fee of $45 per night.
- Quigley Group Campground; Helena Ranger District: Proposed fee of $50 per night.
- Hay Canyon Campground; Musselshell Ranger District: Proposed Fee of $10 per night

These fees are only proposed and will be determined upon further analysis and public comment.

DATES: Send any comments about these fee proposals by September 4, 2018 so comments can be compiled, analyzed, and shared with the Western Montana (or North-Central for Hay Canyon Campground) Bureau of Land Management (BLM) Recreation Resource Advisory Committees. The proposed effective date of implementation of proposed new fees will be no earlier than six months after publication of this notice.

ADDRESSES: William Avey, Forest Supervisor, Helena—Lewis & Clark National Forest, 2880 Skyway Drive, Helena, MT 59602 or Email to *wavey@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Rory Glueckert, Forest Recreation Program Manager, Helena—Lewis & Clark National Forest at 406–495–3761 or *rglueckert@fs.fed.us*; Information about proposed fee changes can also be found on the Helena—Lewis & Clark National Forest website at *http://www.fs.usda.gov/main/helena.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, P.L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

Once public involvement is complete, these new fees will be reviewed by the BLM Western or North Central Montana Recreation Resource Advisory Committees (depending on site location) prior to a final decision and implementation.

Reasonable fees, paid by users of these sites and services, will help ensure that the Forest can continue maintaining and improving the sites for future generations. A market analysis of surrounding recreation sites with similar amenities indicates that the proposed fees are comparable and reasonable.

Advance reservations for the Indian Meadows, Mergenthaler, and Nevada Creek Cabins and the Quigley Group Campground will be available through *www.recreation.gov* or by calling 1–877–444–6777. The reservation service charges a $10 fee for reservations.

Dated: January 10, 2018.

Chris French,

Associate Deputy Chief, National Forest System.

Editorial note: This document was received for publication by the Office of the Federal Register on July 30, 2018.

[FR Doc. 2018–16560 Filed 8–1–18; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of monthly planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Massachusetts Advisory Committee to the Commission will convene on Thursday, August 15, 2017 at 1:00 p.m. (EDT) at McCarter & English, LLP, 265 Franklin Street, Boston, MA 02110. The purpose of the meeting is to hear testimony on human trafficking to consider it as a civil rights topic of study.

DATES: Thursday, August 15, 2018 (EDT) at 1:00 p.m. (EDT).

ADDRESSES: McCarter & English, LLP, 265 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or by phone at 303–866–1040.

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting. Time will be set aside at the end of the meeting so that members of the public may address the Committee after the planning meeting. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Monday, September 17, 2018. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533. Records and documents discussed during the meeting will be available for public viewing as they become available at *https://facadatabase.gov/committee/meetings.aspx?cid=254* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Thursday, August 15, 2018 at 1:00 p.m. (EDT)

I. Roll Call
II. Hear testimony of human trafficking
III. Discussion on topic of study
IV. Other Business
V. Open Comment
VI. Adjournment

Dated: July 27, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–16507 Filed 8–1–18; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating a changed circumstances review and preliminarily determining that Coastal Aqua Private Limited (CAPL) is the successor-in-interest to Coastal Aqua in the context of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India.

DATES: Applicable August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–3860.

SUPPLEMENTARY INFORMATION:.

Background

On February 1, 2005, Commerce published in the **Federal Register** an antidumping duty order on shrimp from India.[1] On June 13, 2018, CAPL requested that, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b), Commerce conduct an expedited changed circumstances review of the *Order* to confirm that CAPL is the successor-in-interest to Coastal Aqua and, accordingly, to assign it the cash deposit rate of Coastal Aqua.[2] In its submission, CAPL explained that Coastal Aqua undertook a business reorganization and transferred its shrimp business to CAPL.[3] The domestic industry did not file any comments on this request.

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[4] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Initiation and Preliminary Results

Pursuant to section 751(b)(1) of the Act, Commerce will conduct a changed circumstances review upon receipt of information concerning, or a request from, an interested party for a review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the ''Background'' section, we received information indicating that Coastal Aqua transferred its shrimp business to CAPL. This constitutes changed circumstances warranting a review of the order.[5] Therefore, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(d) and (e), we are initiating a changed circumstances review based upon the information contained in CAPL's submission.

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a changed circumstances review and the notice of preliminary results if Commerce concludes that expedited action is warranted.[6] In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.[7]

In this changed circumstances review, pursuant to section 751(b) of the Act, Commerce conducted a successor-in-interest analysis. In making a successor-in-interest determination, Commerce examines several factors, including, but not limited to, changes in the following: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[8] While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[9] Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, Commerce may assign the new company the cash deposit rate of its predecessor.[10]

In accordance with 19 CFR 351.216, we preliminarily determine that CAPL is the successor-in-interest to Coastal Aqua. Record evidence, as submitted by CAPL, indicates that CAPL operates as essentially the same business entity as Coastal Aqua with respect to the subject merchandise.[11] For the complete successor-in-interest analysis, including discussion of business proprietary

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (February 1, 2005) (*Order*).

[2] *See* CAPL's Letter re: Certain Frozen Warmwater Shrimp form India: Request to Initiate a Successor-in-Interest Changed Circumstances Review for Coastal Aqua Private Limited, dated June 13, 2018 (CAPL CCR Request).

[3] *Id.* at 1.

[4] For a complete description of the Scope of the Order, *see 12th AR,* and accompanying Issues and Decision Memorandum at ''Scope of the Order.''

[5] *See* 19 CFR 351.216(d).

[6] *See* 19 CFR 351.221(c)(3)(ii). *See also Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy Preliminary Results*) (unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review,* 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

[7] *See, e.g., Pasta from Italy Preliminary Results,* 80 FR at 33480–41 (unchanged in *Pasta from Italy Final Results,* 80 FR at 48807).

[8] *See, e.g., Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 81 FR 75376 (October 31, 2016) (*Shrimp from India Preliminary Results*) (unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 81 FR 90774 (December 15, 2016) (*Shrimp from India Final Results*))

[9] *See, e.g., Shrimp from India Preliminary Results,* 81 FR at 75377 (unchanged in *Shrimp from India Final Results,* 81 FR at 90774).

[10] *Id.; see also Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan,* 67 FR 58, 59 (January 2, 2002); *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688, 34689 (June 18, 2010); and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review,* 63 FR 14679 (March 26, 1998), unchanged in *Circular Welded Non-Alloy Steel Pipe from Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998), in which Commerce found that a company which only changed its name and did not change its operations is a successor-in-interest to the company before it changed its name.

[11] *See* CAPL CCR Request.

information, refer to the accompanying successor-in-interest memorandum.[12]

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] All comments are to be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building, and must also be served on interested parties. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day it is due.[14]

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: July 26, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive duties and functions of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–16563 Filed 8–1–18; 8:45 am]

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[12] *See* Memorandum, ''Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Changed Circumstances Review,'' dated concurrently with this notice.

[13] *See* 19 CFR 351.309(c)(2).

[14] *See* 19 CFR 351.303(b).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878; C–580–879; A–583–856]

Certain Corrosion-Resistant Steel Products From the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from ArcelorMittal USA LLC, Nucor Corporation, United States Steel Corporation, Steel Dynamics, Inc. and California Steel Industries (collectively, the domestic producers), the Department of Commerce (Commerce) is initiating a country-wide anti-circumvention inquiries to determine whether imports of certain corrosion-resistant steel products (CORE), which are completed in the Socialist Republic of Vietnam (Vietnam) from hot-rolled steel (HRS) and/or cold-rolled steel (CRS) products (*i.e.,* substrate) produced in Taiwan and the Republic of Korea (Korea), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CORE from Korea and the AD order on CORE from Taiwan.

DATES: Applicable August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang (Korea) and Shanah Lee (Taiwan), AD/CVD Operations, Office VII and III, respectively, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5484 and (202) 482–6386, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2015, the domestic producers filed petitions seeking the imposition of antidumping and countervailing duties on imports of CORE from Korea and Taiwan.[1] In response to these petitions, Commerce initiated AD and CVD investigations on June 23, 2015.[2] Following Commerce's final affirmative determinations of dumping and countervailable subsidies,[3] and the U.S. International Trade Commission (ITC)'s finding of material injury,[4] Commerce issued AD and CVD orders on imports of CORE from Korea and an AD order on imports of CORE from Taiwan (collectively, *Orders*).[5]

On June 12, 2018, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(h), the domestic producers submitted a request for Commerce to initiate anti-circumvention inquiries to determine whether entities in Vietnam are circumventing the *Order*s by exporting, to the United States, CORE which is completed or assembled in Vietnam using HRS and/or CRS sourced from Korea and Taiwan.[6] Further, pursuant to 19 CFR 351.225(f), the domestic producers request that Commerce initiate anti-circumvention inquiries and issue in conjunction with initiation of the inquiries a preliminary determination of circumvention of the *Orders* to suspend liquidation of imports of CORE from Vietnam.[7]

Scope of the *Orders*

The products covered by these orders are certain flat-rolled steel products, either clad, plated, or coated with

[1] *See* the domestic producers' letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Corrosion-Resistant Steel Products from the People's Republic of China, the Republic of Korea, India, Italy, and Taiwan,'' dated June 3, 2015 (collectively, petitions).

[2] See Certain Corrosion-Resistant Steel Products from Italy, India, the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations, 80 FR 37228 (June 30, 2015).

[3] See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 35303 (June 2, 2016); see also Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order, 81 FR 48387 (July 25, 2016); 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); Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Final Negative Countervailing Duty Determination, 81 FR 35299 (June 2, 2016).

[4] *See Certain Corrosion-Resistant Steel Products from China, India, Italy, Korea, and Taiwan; Determinations,* 81 FR 47177 (July 20, 2016).

[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); Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order,* 81 FR 48387 (July 25, 2016) (*Orders*).

[6] *See* the domestic producers' letters, ''Certain Corrosion-Resistant Steel Products from Taiwan: Request for Circumvention Ruling,'' dated June 12, 2018 (Anti-Circumvention Ruling Request—Taiwan); ''Certain Corrosion-Resistant Steel Products from the Republic of Korea: Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930,'' dated June 12, 2018 (Anti-Circumvention Ruling Request—Korea).

[7] *See* Anti-Circumvention Ruling Request—Taiwan at 22; Anti-Circumvention Ruling Request—Korea at 25.

corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these orders:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin free steel''), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to these orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to these orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of these orders is dispositive.

Merchandise Subject to the Anti-Circumvention Inquiries

These anti-circumvention inquiries cover imports of CORE exported from Vietnam manufactured from HRS and/or CRS inputs produced in Korea and Taiwan.

The domestic producers request that Commerce treat CORE imports from Vietnam as subject merchandise under the scope of the *Orders* and impose cash deposit requirements for estimated AD and CVD duties on all imports of CORE from Vietnam.[8]

Initiation of Anti-Circumvention Inquiries

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting an anti-circumvention inquiry, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the

[8] *See* Anti-Circumvention Ruling Request—Korea at 3; Anti-Circumvention Ruling Request—Taiwan at 22.

subject of an antidumping or countervailing duty order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, domestic producers provided evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The domestic producers claim that CORE exported to the United States is the same class or kind as that covered by the *Orders* in these inquiries.[9] The domestic producers provided evidence to show that the merchandise from Vietnam enters the United States under the same tariff classification as subject merchandise.[10]

B. Completion of Merchandise in a Foreign Country

The domestic producers presented evidence demonstrating how CORE in Vietnam is produced from HRS or CRS produced and imported from Taiwan and Korea.[11] Further, the domestic producers provided evidence that Vietnam had no capacity to produce hot-rolled steel until very recently, May 2017.[12] The domestic producers claim that this mill is ''still in the ramp-up phase,'' and thus, ''most CORE that is produced in Vietnam must still be made from imported substrate.'' [13]

Regarding Taiwan, the domestic producers note that China Sumikin Vietnam (CSVC), one of Vietnam's principle manufacturers and exporters of CORE, stated in a response to Commerce in the previously completed anti-circumvention inquiry with regard to Chinese substrate finished in Vietnam that it ''produces its CORE only with hot-rolled steel from Japan and Taiwan.'' [14] The domestic producers assert that Commerce's recent affirmative decision in *CORE China Circumvention Final* that Chinese HRS and CRS are used to produce CORE in Vietnam provides more incentive for Vietnamese CORE producers to shift to Taiwanese-produced inputs.[15]

As discussed above, the domestic producers assert that because Vietnam has little capacity to produce HRS domestically, Vietnamese CORE producers rely heavily on HRS imports. In support of this assertion, the domestic producers presented evidence showing increasing and substantial imports of Korean and Taiwanese HRS into Vietnam between 2015 and 2017.[16] Specifically, the domestic producers contend that the surge in imports of HRS from Taiwan is evidence that, as Commerce began its anti-circumvention investigation of Vietnamese CORE produced from Chinese substrate, Taiwanese steel producers stepped in to fill that gap.[17]

As to the imports of HRS and CRS to Vietnam from Korea, the domestic producers provided information showing those shipments increased from 879,537 tons in 2014 to nearly 1.1 million tons in 2015, continued to grow in 2016, and remained substantial in 2017.[18] Additionally, the domestic producers also provided information demonstrating that imports into the United States of CORE from Korea and Taiwan significantly decreased after the imposition of the *Orders.* Simultaneously, the domestic producers provided information demonstrating that imports into the United States of CORE from Vietnam increased more than ten-fold between 2015 and 2016.[19]

C. Minor or Insignificant Process

The domestic producers maintain that the process for completing CORE from HRS and CRS is minor or insignificant. Under section 781(b)(2) of the Act, Commerce considers five factors to determine whether the process of assembly or completion in the foreign country is minor or insignificant: (A) The level of investment in the foreign country in which the merchandise is completed or assembled; (B) the level of research and development in the foreign country in which the merchandise is completed or assembled; (C) the nature of the production process in the foreign country in which the merchandise is completed or assembled; (D) the extent of production facilities in the foreign country in which the merchandise is completed or assembled, and (E) whether the value of the processing performed in the foreign country in which the merchandise is completed or assembled represents a small proportion of the value of the merchandise imported into the United States.

(1) Level of Investment

The domestic producers contend that the level of investment necessary to complete CORE in Vietnam is less than the level of investment required to construct a factory that can produce HRS and CRS in Korea and Taiwan.[20] In support of their contention, the domestic producers compared the investment necessary to install a cold-rolling and coating facility with the investment necessary to produce HRS using a fully-integrated production process for melting iron and casting steel.[21] The domestic producers rely on Commerce's level of investment findings in *CORE China Circumvention Final,* which found that Vietnamese CORE that uses Chinese substrate circumvents the Chinese CORE order.[22] In that proceeding, Commerce pointed to record evidence showing the cost to build an integrated steel mill in China to produce HRS was in the range of 250 million to 10 billion U.S. dollars (USD)

[9] *See* Anti-Circumvention Ruling Request—Taiwan at 8; Anti-Circumvention Ruling Request—Korea at 8. *See also* sections 781(b)(1)(A)(i) and (iii) of the Act.

[10] *See* Anti-Circumvention Ruling Request—Taiwan at Exhibit 4; Anti-Circumvention Ruling Request—Korea at Exhibit 1.

[11] *See* Anti-Circumvention Ruling Request—Taiwan at 4–5, 8–9; Anti-Circumvention Ruling Request—Korea at 9–10.

[12] *See* Anti-Circumvention Ruling Request—Taiwan at 9–10, Exhibits 5–7; Anti-Circumvention Ruling Request—Korea at 9, Exhibit 3.

[13] *See* Anti-Circumvention Ruling Request—Taiwan at 9–10, Exhibits 6–8; Anti-Circumvention Ruling Request—Korea at 9, Exhibit 3.

[14] *See* Anti-Circumvention Ruling Request—Taiwan at 8, citing CSVC's letter, ''Certain Corrosion-Resistant Steel Products from China—Response to Petitioners' Circumvention Allegations,'' dated October 20, 2016.

[15] *See Anti-Circumvention Ruling Request—Taiwan at 8 (citing Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders,* 83 FR 23895 (May 23, 2018) (*CORE China Circumvention Final*) and accompanying Issues and Decision Memorandum (CORE China Circumvention IDM).

[16] . *See* Anti-Circumvention Ruling Request—Taiwan at 10–11, Exhibit 9; Anti-Circumvention Ruling Request—Korea at 8–10, Exhibits 2, 4.

[17] *See* Anti-Circumvention Ruling Request—Taiwan at 10.

[18] *See* Anti-Circumvention Ruling Request—Korea at 8–9; Exhibit 2.

[19] *See* Anti-Circumvention Ruling Request—Taiwan at 9–11, Exhibit 1; Anti-Circumvention Ruling Request—Korea at 24, Exhibit 2.

[20] *See* Anti-Circumvention Ruling Request—Taiwan at 11; Anti-Circumvention Ruling Request—Korea at 11–14.

[21] *See* Anti-Circumvention Ruling Request—Taiwan at 11–12, Exhibits 9–18; Anti-Circumvention Ruling Request—Korea at 11–14, Exhibits 9–11.

[22] *See* Anti-Circumvention Ruling Request—Taiwan at 11–12, Exhibits 9–18; Anti-Circumvention Ruling Request—Korea at 11–14, Exhibits 9–11.

and that the cost to build a cold-rolling mill in Vietnam to produce CRS from HRS substrate was as low as 28 million USD.[23] Regarding Taiwan, the domestic producers also rely on Commerce's findings in *CORE China Circumvention Final* to explain that the cost of building a basic steel mill in Taiwan is as great as China, or much larger given Taiwan's higher level of development and GDP.[24] Specifically, the domestic producers explain that the property, plant, and equipment of China Steel Corporation (CSC), a Taiwanese steel manufacturer that owns 56 percent of Vietnamese CORE producer, CSVC, was valued at $14 billion USD at the end of 2014.[25] Conversely, the domestic producers provide evidence to demonstrate that a smaller level of investment, ranging from $70 million to $1.15 billion USD, is needed to build a coating mill in Vietnam.[26] Relying on the cost of building an integrated steel mill in Korea—for example, Hyundai Steel invested 5 billion USD in 2010 for its integrated steel mill—the domestic producers claim that the level of investment required in Vietnam to complete the production of CORE by rolling and coating is far less than the investment required to establish an integrated mill to produce the hot-rolled steel substrate.[27]

Finally, the domestic producers provide evidence that the cost of building a coated steel sheet factory in Vietnam was a fraction of the amount of investment needed to build a basic steel mill.[28] The domestic producers therefore conclude that in comparison to the level of investment necessary to build an integrated steel mill in Korea and Taiwan, the level of investment to build a cold-rolling mill in Vietnam is insignificant.[29]

(2) Level of Research and Development

The domestic producers assert that the level of research and development (R&D) needed to produce steel substrate, such as HRS, is greater than the R&D specifically needed to produce CORE from the substrate.[30] The domestic producers cite to Commerce's findings in *CORE China Circumvention Prelim,* where Commerce found that the evidence provided by Vietnamese CORE producers ''did not support their claims that their R&D programs and level of expenditures are significant.'' [31] The domestic producers contend that, rather than developing its own technology, the Vietnamese steel industry uses technology developed abroad.[32] As an example of Vietnamese producers using technology developed abroad, the domestic producers provided evidence that Vietnamese producer Ton Dong A Corp installed European and Japanese equipment in its new CORE facility.[33] Furthermore, the domestic producers explain that CSVC, the sole mill in Vietnam with galvanneal (the process of galvanizing followed by annealing) capability needed for auto and appliance use, is a joint venture between Taiwanese and Japanese parent companies.[34] The domestic producers provide various evidence to support the contention that steel mills in Vietnam relied on foreign technology and cheap domestic labor.[35] Moreover, the domestic producers contend that, because there is greater focus in producing products for building construction in Vietnam, there is little incentive for Vietnamese CORE producers to invest in R&D for more advanced products.[36] In contrast, the domestic producers point to global R&D efforts on behalf of CSC, the largest steel company in Taiwan, including employing highly-skilled researchers and collaborating with Taiwan's leading universities.[37] Similarly, the domestic producers compare the R&D expenditures of POSCO Korea, the largest steel producer in Korea, and suggest that the level of R&D in Vietnam for CORE production is minimal to non-existent.[38]

(3) Nature of Production Process

According to the domestic producers, the completion process undertaken by Vietnamese producers of CORE is less complex and significant than manufacturing the steel substrate in Taiwan and Korea.[39] Citing Commerce's finding in *CORE China Circumvention Final,* the domestic producers contend that while the process of galvanizing steel is not trivial, it is insignificant compared to the greater steel-making processes that include smelting iron, making, casting, and hot-rolling steel.[40] The galvanizing process is the end of the production line, and it adds a small part of the total value, requires little capital and a small proportion of input by weight and volume.[41] Thus, the domestic producers explain that even relatively sophisticated galvanizing operations will involve less intensive processing than processing steel substrate.[42]

(4) Extent of Production Facilities in Vietnam

Moreover, the domestic producers contend that more capital is required to build an integrated steel mill that includes blast furnace, casting, and hot rolling, as compared to building a cold-rolling and coating facility.[43] A larger amount of capital also represent larger production facilities, more equipment and workers. As an example, the domestic producers explain that CSVC employs 800 employees in Vietnam whereas its Taiwanese parent, CSC, has 7949 employees.[44]

(5) Value of Processing in Vietnam

The domestic producers point to Commerce's finding in *CORE China Circumvention Prelim* to contend that ''the value of the materials, labor, energy, overhead, and other items consumed in the production of CORE

[23] *See* Anti-Circumvention Ruling Request—Taiwan at 12–13, citing *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 82 FR 58170 (December 11, 2017) (*CORE China Circumvention Prelim*) and accompanying Preliminary Decision Memorandum (CORE China Circumvention PDM) at 17; *see also* CORE China Circumvention IDM at 32.

[24] *See* Anti-Circumvention Ruling Request—Taiwan at 13, Exhibits 10, 12, and 13.

[25] *Id.*

[26] *See* Anti-Circumvention Ruling Request—Taiwan at 14, Exhibits 14, 15; Anti-Circumvention Ruling Request—Korea at 11–14, Exhibits 9–11.

[27] *See* Anti-Circumvention Ruling Request—Korea at 13–14, Exhibits 8–11.

[28] *See* Anti-Circumvention Ruling Request—Taiwan at 14 Exhibit 16.

[29] *See* Anti-Circumvention Ruling Request—Korea at 14, Exhibits 9–11.

[30] *See* Anti-Circumvention Ruling Request—Taiwan at 14.

[31] *Id.* at 15, citing CORE China Anticircumvention PDM at 19.

[32] *See* Anti-Circumvention Ruling Request—Taiwan at 15–16, Exhibits 5, 8, 14; Anti-Circumvention Ruling Request—Korea at 14–16 and Exhibits 10, 12–15.

[33] *See* Anti-Circumvention Ruling Request—Taiwan at 15, Exhibit 14; Anti-Circumvention Ruling Request—Korea at 14–16, Exhibits 10, 12–15. The domestic producers cited several other examples, including CSVC, Hoa Phat Group (HPG) and Thai Nguyen Iron and Steel Corporation (TISCO).

[34] *See* Anti-Circumvention Ruling Request—Taiwan at 15, Exhibit 14; Anti-Circumvention Ruling Request—Korea at 14–16, Exhibits 10, 12–15.

[35] *See* Anti-Circumvention Ruling Request—Taiwan at Exhibit 4; Anti-Circumvention Ruling Request—Korea at 15 and Exhibit 13.

[36] *See* Anti-Circumvention Ruling Request—Taiwan at Exhibit 5.

[37] *Id.* at 16, Exhibits 15,16.

[38] *See* Anti-Circumvention Ruling Request—Korea at 15–16, Exhibit 15.

[39] *See* Anti-Circumvention Ruling Request—Taiwan at 16–18; Anti-Circumvention Ruling Request—Korea at 16–21.

[40] *See* Anti-Circumvention Ruling Request—Taiwan at 17; *see also* CORE China Circumvention IDM at 20–21.

[41] *See* Anti-Circumvention Ruling Request—Taiwan at 17.

[42] *Id.*

[43] *See* Anti-Circumvention Ruling Request—Taiwan at 17–18 (Taiwan); Anti-Circumvention Ruling Request—Korea at 17–20.

[44] *See* Anti-Circumvention Ruling Request—Taiwan at 18 and Exhibit 21.

represents an insignificant value when compared to the value of the merchandise sold to the United States.'' [45] Moreover, the domestic producers maintain that Commerce's quantitative and qualitative finding that the finishing process in Vietnam adds only a small part of the total value of the CORE exported to the United States applies to Korean and Taiwanese substrate.[46] As the Korean and Taiwanese steel industries have more sophisticated and advanced technology than those in either China and Vietnam, the domestic producers assert that the percentage of value added in Vietnam to Taiwanese and Korean substrate is likely to be lower than it was in *CORE China Circumvention Final*.[47] Based on these assertions, the domestic producers contend that every statutory factor that Commerce has considered in making its affirmative finding in *CORE China Circumvention Final* similarly applies to both Korea and Taiwan.[48]

Additionally, the domestic producers cite the recent ITC investigation of CORE from China, India, Italy, Korea and Taiwan, stating that the information contained therein demonstrates that the cost of Taiwanese and Korean HRS inputs accounts for 69 to 79 percent of the price of CORE.[49] Additionally, the domestic producers explain that the price of Taiwanese and Korean CRS inputs accounts for 84 to 90 percent of the price of CORE.[50]

D. Additional Factors To Consider in Determining Whether Action Is Necessary

Section 781(b)(3) of the Act directs Commerce to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of the order, such as: ''(A) The pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise . . . is affiliated with the person who uses the merchandise . . . to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise . . . have increased after the initiation of the investigation which resulted in the issuance of such order or finding.''

Regarding patterns of trade, the domestic producers contend that exports of CORE from Vietnam to the United States skyrocketed as exports from Korea and Taiwan declined in the period after the filing of the petition in the underlying investigations, as compared to the period before it.[51] The domestic producers further explain that while recently exports of CORE from Vietnam to the United States have declined slightly, this decline is largely due to Commerce's investigation of circumvention of the AD and CVD orders on CORE the China.[52] The domestic producers also point to the fact that exports of HRS from Korea and Taiwan to Vietnam also increased after the underlying investigations commenced.[53] Finally, regarding affiliation, the domestic producers point out that major Vietnamese CORE producer CVSC is majority-owned by Taiwan's largest steel manufacturer, CSC.[54] Similarly, the domestic producers assert that Korea's largest steel manufacturer POSCO has 13 Vietnamese affiliates and offices, including POSCO VIETNAM, and has the capacity to produce 700,000 tons of cold-rolled steel.[55]

Analysis of the Allegations

Based on our analysis of the domestic producer's anti-circumvention allegations and the information provided therein, Commerce determines that anti-circumvention inquiries of the AD and CVD orders on CORE from Korea and Taiwan are warranted.

With regard to whether the merchandise from Vietnam is of the same class or kind as the merchandise produced in Korea and Taiwan, the domestic producers presented information to Commerce indicating that, pursuant to section 781(b)(1)(A) of the Act, the merchandise being produced in and/or exported from Vietnam is of the same class or kind as CORE produced in Korea and Taiwan, which is subject to the *Orders*.[56] Consequently, Commerce finds that the domestic producers provided sufficient information in their requests regarding the class or kind of merchandise to support the initiation of these anti-circumvention inquiries.

With regard to completion or assembly of merchandise in a foreign country, pursuant to section 781(b)(1)(B) of the Act, the domestic producers also presented information to Commerce indicating that the CORE exported from Vietnam to the United States is produced in Vietnam using HRS and CRS from Korea and Taiwan.[57] We find that the information presented by the domestic producers regarding this criterion supports its request to initiate these anti-circumvention inquiries.

Commerce finds that the domestic producers sufficiently addressed the factors described in sections 781(b)(1)(C) and 781(b)(2) of the Act regarding whether the process of assembly or completion of CORE in Vietnam is minor or insignificant. In particular, information in the domestic producers' submission indicates that: (1) The level of investment in coating facilities is minimal when compared with the level of investment for basic steel making facilities; [58] (2) there is little or no research and development taking place in Vietnam; [59] (3) the CORE production processes involve the simple processing of HRS or CRS from a country subject to the *Orders,* (4) the CORE production facilities in Vietnam are more limited compared to HRS facilities in Korea and Taiwan; [60] and (5) the value of the processing performed in Vietnam is a small proportion of the value of the CORE imported into the United States.[61]

With respect to the value of the merchandise produced in Korea and Taiwan, pursuant to section 781(b)(1)(D) of the Act, the domestic producers

[45] *Id.* at 18, citing CORE China Circumvention PDM at 21.

[46] *See* Anti-Circumvention Ruling Request—Taiwan at 19, citing CORE China Circumvention PDM at 22 and CORE China Circumvention IDM at 23; Anti-Circumvention Ruling Request—Korea at 21–22, citing CORE China Circumvention IDM at 9 and CORE China Circumvention PDM at 21.

[47] *See* Anti-Circumvention Ruling Request—Taiwan at 20 and Exhibit 8; Anti-Circumvention Ruling Request—Korea at 22–24, Exhibits 14, 17.

[48] *See* Anti-Circumvention Ruling Request—Taiwan at 21; Anti-Circumvention Ruling Request—Korea at 24.

[49] *See* Anti-Circumvention Ruling Request—Taiwan at 20, Exhibit 1; Anti-Circumvention Ruling Request—Korea at 23–24.

[50] *See* Anti-Circumvention Ruling Request—Taiwan at 20, Exhibit 1; Anti-Circumvention Ruling Request—Korea at 23–24.

[51] *See* Anti-Circumvention Ruling Request—Taiwan at 21; Anti-Circumvention Ruling Request—Korea at 24, Exhibit 2.

[52] *See* Anti-Circumvention Ruling Request—Taiwan at 21; Anti-Circumvention Ruling Request—Korea at 24, Exhibit 2.

[53] *See* Anti-Circumvention Ruling Request—Taiwan at 21; Anti-Circumvention Ruling Request—Korea at 24, Exhibit 2.

[54] *See* Anti-Circumvention Ruling Request—Taiwan at 21; Anti-Circumvention Ruling Request—Korea at 24, Exhibit 2.

[55] *See* Anti-Circumvention Ruling Request—Korea at 24–25.

[56] *See* Anti-Circumvention Ruling Request—Taiwan at 8–10, Exhibit 4; Anti-Circumvention Ruling Request—Korea at 8, Exhibit 1.

[57] *See* Anti-Circumvention Ruling Request—Taiwan at 20–21, Exhibits 1, 4, 9; Anti-Circumvention Ruling Request—Korea at 8–10, Exhibits 2–4.

[58] *See* Anti-Circumvention Ruling Request—Taiwan at 11–14; Anti-Circumvention Ruling Request—Korea at 10–11.

[59] *See* Anti-Circumvention Ruling Request—Taiwan at 14–16; Anti-Circumvention Ruling Request—Korea at 14–16.

[60] *See* Anti-Circumvention Ruling Request—Taiwan at 16–18; Anti-Circumvention Ruling Request—Korea at 16–21.

[61] *See* Anti-Circumvention Ruling Request—Taiwan at 18–21; Anti-Circumvention Ruling Request—Korea at 21–24.

relied on published sources, Commerce's prior conclusions in *CORE China Circumvention Final,* and information presented in the ''minor or insignificant process'' portion of their anti-circumvention allegations to indicate that the value of the substrate (HRS and CRS manufactured in Korea and Taiwan) is a significant portion of the total value of the CORE exported from Vietnam to the United States.[62] We find that this information adequately meets the requirements of this factor, as discussed above, for the purposes of initiating these anti-circumvention inquiries.

Finally, with respect to the additional factors listed under section 781(b)(3) of the Act, we find that the domestic producers presented evidence indicating that shipments of CORE from Vietnam to the United States increased since the imposition of the *Orders*[63] and that shipments of HRS from Korea and Taiwan to Vietnam also increased since the *Orders* took effect.[64] Furthermore, we find that the domestic producers have presented evidence that the largest Korean manufacturer of CRS (POSCO) is affiliated with a company in Vietnam that completes the merchandise.[65] We also find that the domestic producers provided sufficient evidence to demonstrate that a Taiwanese steel manufacturer, CSC, owns 56 percent of Vietnamese CORE producer, CSVC.[66] Accordingly, we are initiating formal anti-circumvention inquiries concerning the AD and CVD orders on CORE from Korea and the AD order on CORE from Taiwan, pursuant to section 781(b) of the Act.

As these inquiries are initiated on a country-wide basis (*i.e.,* not exclusive to the producers mentioned immediately above), Commerce intends to issue questionnaires to solicit information from the Vietnamese producers and exporters concerning their shipments of CORE to the United States and the origin of any imported HRS and CRS being processed into CORE. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

While we believe sufficient factual information has been submitted by the domestic producers supporting their request for inquiries, we do not find that the record supports the simultaneous issuance of a preliminary ruling. Such inquiries are by their nature typically complicated and can require information regarding production in both the country subject to the order and the third country completing the product. As noted above, Commerce intends to request additional information regarding the statutory criteria to determine whether shipments of CORE from Vietnam are circumventing the AD and CVD orders on CORE from Korea and the AD order on CORE from Taiwan. Thus, with further development of the record required before a preliminary ruling can be issued, Commerce does not find it appropriate to issue a preliminary ruling at this time.

Notification to Interested Parties

In accordance with 19 CFR 351.225(e), Commerce finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the application and the descriptions of the merchandise. Accordingly, Commerce will notify by mail all parties on Commerce's scope service list of the initiation of these anti-circumvention inquiries. In addition, in accordance with 19 CFR 351.225(f)(1)(i) and (ii), in this notice of initiation issued under 19 CFR 351.225(e), we have included a description of the product that is the subject of these anti-circumvention inquiries (*i.e.,* CORE that contains the characteristics as provided in the scope of the *Orders*) and an explanation of the reasons for Commerce's decision to initiate an anti-circumvention inquiry, as provided above.

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry. Commerce will establish a schedule for questionnaires and comments on the issues. In accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with 19 CFR 351.225(f).

Dated: July 27, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

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[62] *See* Anti-Circumvention Ruling Request—Taiwan at Exhibits 1, 4, and 9; Anti-Circumvention Ruling Request—Korea at Exhibits 14, 17.

[63] *See* Anti-Circumvention Ruling Request—Taiwan at 9–10, Exhibit 4; Anti-Circumvention Ruling Request—Korea at 24 and Exhibit 2.

[64] *See* Anti-Circumvention Ruling Request—Taiwan. at 10–11, Exhibit 9; Anti-Circumvention Ruling Request—Korea at 24, Exhibit 2.

[65] *See* Anti-Circumvention Ruling Request—Korea at 24–25, Exhibit 19.

[66] *See* Anti-Circumvention Ruling Request—Taiwan at 11, Exhibit 10.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–881, C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from ArcelorMittal USA LLC, Nucor Corporation, United States Steel Corporation, Steel Dynamics, Inc. and California Steel Industries (collectively, the domestic producers), the Department of Commerce (Commerce) is initiating a country-wide anti-circumvention inquiries to determine whether imports of certain cold-rolled steel flat products (CRS), which are completed in the Socialist Republic of Vietnam (Vietnam) from hot-rolled steel (HRS) produced in the Republic of Korea (Korea), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on CRS from Korea.

DATES: Applicable August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1121 or (202) 482–2924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2015, AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics, Inc., and the United States Steel Corporation (the domestic producers) filed petitions seeking the imposition of antidumping and countervailing duties on imports of CRS from Brazil, the

People's Republic of China, India, Japan, Korea, the Netherlands, Russia, and the United Kingdom.[1] In response to these petitions, Commerce initiated AD and CVD investigations on August 24, 2015.[2] Following Commerce's final affirmative determinations of dumping and countervailable subsidies,[3] and the U.S. International Trade Commission (ITC)'s finding of material injury,[4] Commerce issued AD and CVD orders on imports of CRS from Korea (collectively, *Orders*).[5]

On June 12, 2018, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(h), the domestic producers submitted a request for Commerce to initiate anti-circumvention inquiries to determine whether entities in Vietnam are circumventing the *Orders* by exporting, to the United States, CRS which is completed or assembled in Vietnam using HRS sourced from Korea.[6] Further, pursuant to 19 CFR 351.225(f), the domestic producers request that Commerce initiate anti-circumvention inquiries and issue in conjunction with initiation of the inquiries a preliminary determination of circumvention of the *Orders* to suspend liquidation of imports of CRS from Vietnam.[7]

Scope of the *Orders*

The products covered by the orders are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement (''width'') of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of the orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). If steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the cold-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of the orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of the orders:

- Ball bearing steels;[8]

[1] *See* Petitioners' Letter, ''Certain Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom,'' dated July 28, 2015.

[2] *See Certain Cold-Rolled Steel Flat Products from Brazil, India, the People's Republic of China, the Republic of Korea, and the Russian Federation: Initiation of Countervailing Duty Investigations,* 80 FR 51206 (August 24, 2015); and *Certain Cold-Rolled Steel Flat Products from Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 51198 (August 24, 2015).

[3] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 81 FR 49953 (July 29, 2016); and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination,* 81 FR 49943 (July 29, 2016).

[4] *See Cold-Rolled Steel Flat Products from Brazil, India, Korea, Russia, and the United Kingdom; Determinations,* 81 FR 63806 (September 16, 2016).

[5] *See Certain Cold-Rolled Steel Flat Products from Brazil, India, the Republic of Korea, and the United Kingdom: Amended Final Affirmative Antidumping Determinations for Brazil and the United Kingdom and Antidumping Duty Orders,* 81 FR 64432 (September 20, 2016) (*AD Order*); *see also Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India),* 81 FR 64436 (September 20, 2016) (*CVD Order*) (collectively *Orders*).

[6] *See* the Domestic Producers' Letter, ''Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Request for Circumvention Ruling Pursuant to Section 781(b) of the Tariff Act of 1930,'' dated June 12, 2018 (Anti-Circumvention Ruling Request).

[7] *Id.,* at 25.

[8] Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) Not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and

Continued

- Tool steels; [9]
- Silico-manganese steel; [10]
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel From Germany, Japan, and Poland*.[11]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[12]

The products subject to the orders are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to the orders may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and U.S. Customs purposes only. The written description of the scope of the orders is dispositive.

Merchandise Subject to the Anti-Circumvention Inquiries

These anti-circumvention inquiries cover imports of CRS exported from Vietnam manufactured from HRS produced in Korea.

Initiation of Anti-Circumvention Inquiries

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting an anti-circumvention inquiry, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping or countervailing duty order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding. As discussed below, the domestic producers provided evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The domestic producers claim that CRS exported to the United States is the same class or kind as that covered by the *Orders* in these inquiries.[13] The domestic producers provided evidence to show that the merchandise from Vietnam enters the United States under the same tariff classification as subject merchandise.[14]

B. Completion of Merchandise in a Foreign Country

The domestic producers note that section 781(b)(l)(B)(ii) of the Act requires that Commerce ''must determine whether, prior to importation into the United States, the merchandise in the third country is completed from merchandise produced in the country subject to the antidumping or countervailing duty order.'' [15] The domestic producers presented evidence showing substantial imports of Korean HRS into Vietnam following Commerce's August 2015 initiation of AD and CVD investigations concerning CRS from Korea.[16] Additionally, the domestic producers provide evidence that, from 2015 through 2017, little to no capacity existed in Vietnam to produce HRS, and that HRS production in Vietnam did not begin until 2017.[17] Nevertheless, the domestic producers maintain that despite Vietnamese imports of HRS being significant even before the initiation of AD and CVD investigations on CRS from Korea in mid-2015, imports increased by 26 percent between 2014 and 2016, before

(ix) none, or not more than 0.09 percent of molybdenum.

[9] Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) More than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

[10] Silico-manganese steel is defined as steels containing by weight: (i) Not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

[11] *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances,* 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as ''a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.''

[12] *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders,* 79 FR 71741, 71741–42 (December 3, 2014). The orders define NOES as ''cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.,* the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B_{800} value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.''

[13] *See* Anti-Circumvention Ruling Request at 7. *See also* sections 781(b)(1)(A)(i) and (iii) of the Act.

[14] *See* Anti-Circumvention Ruling Request at Exhibit 1.

[15] *Id.* at 7. *See also* section 781(b)(1)(B)(ii) of the Act.

[16] *Id.* at 7–8 and Exhibit 3

[17] *Id.* at 8, Exhibit 4, and Exhibit 5.

dropping only slightly in 2017.[18] The domestic producers also provide information reflecting the fact that imports into the United States of CRS from Korea significantly decreased after the imposition of the *Orders,* and that imports into the United States of CRS from Vietnam, as well as imports into Vietnam of Korean HRS, also increased significantly.[19]

C. Minor or Insignificant Process

The domestic producers maintain that the process for completing CRS from HRS is minor or insignificant. Under section 781(b)(2) of the Act, Commerce considers five factors to determine whether the process of assembly or completion in the foreign country in which the merchandise is completed or assembled is minor or insignificant: (A) The level of investment in the foreign country in which the merchandise is completed or assembled; (B) the level of research and development in the foreign country in which the merchandise is completed or assemble; (C) the nature of the production process in the foreign country in which the merchandise is completed or assembled; (D) the extent of production facilities in the foreign country in which the merchandise is completed or assembled, and (E) whether the value of the processing performed in the foreign country in which the merchandise is completed or assembled represents a small proportion of the value of the merchandise imported into the United States.

(1) Level of Investment

The domestic producers contend that the level of investment necessary to construct a factory that can produce CRS from HRS in Vietnam is insignificant. In support of its contention, the domestic producers compare the investment necessary to install a cold-rolling facility with the investment necessary to produce HRS using a fully-integrated production process.[20] The domestic producers cite Commerce's findings in the earlier anti-circumvention ruling regarding Vietnamese CRS using Chinese HRS inputs (*i.e.,* substrate).[21] There, Commerce pointed to record evidence showing the cost to build an integrated steel mill in China to produce HRS was in the range of 250 million to 10 billion U.S. dollars (USD) and that the cost to build a cold-rolling mill in Vietnam to produce CRS from HRS substrate was as low as 28 million USD.[22] The domestic producers also provide evidence that the cost to build one integrated steel mill in Korea was 5 billion USD, and that the cost of building an integrated steel mill in Vietnam to one Vietnamese firm, Formosa Ha Tinh, was 10.6 billion USD.[23] Finally, the domestic producers provided evidence that the cost of building a coated steel sheet factory, including a cold-rolling mill, was only 70 million USD.[24] The domestic producers, therefore, conclude that in comparison to the investment necessary for an integrated steel mill in Korea, the cost of a cold-rolling mill in Vietnam is insignificant.[25]

(2) Level of Research and Development

The domestic producers assert that the level of research and development (R&D) in Vietnam is either minimal or non-existent.[26] The domestic producers cite to Commerce's findings in *CRS China Circumvention Final,* where Commerce found that no R&D investments had been made by mandatory respondents POSCO Vietnam and VNSteel Phu My Flat Steel Limited.[27] The domestic producers contend that rather than developing its own technology, CRS producers in Vietnam are using technology developed abroad.[28] As an example of Vietnamese producers using technology developed abroad, the domestic producers provided evidence that Dong A, a Vietnamese steel company, uses European and Japanese equipment in its coated sheet facility (which includes a pickling and cold-rolling mill).[29] In contrast, the domestic producers point to POSCO's R&D activities in Korea, which included employing an R&D laboratory staff of 934 personnel as of December 31, 2017, as well as total R&D expenses of hundreds of billions of Korean Won from 2015 through 2017.[30]

(3) Nature of Production Process

According to the domestic producers, the production process undertaken by Vietnamese producers of CRS is less complex than steelmaking, and it is minimal in nature.[31] Citing the ITC report in the underlying investigation of CRS from Korea, the domestic producers describe the process to produce HRS as consisting of three distinct stages (melting and refining steel, casting molten steel into semi-finished forms, and hot-rolling the semi-finished forms into HRS).[32] In contrast, the domestic producers provide information indicating that the production of CRS from HRS involves less processing (cleaning and pickling, rolling, annealing, and tempering).[33] Further, the domestic producers cite Commerce's findings in *CRS China Circumvention Final,* where Commerce found the production process to produce CRS from HRS inputs in Vietnam to be comparatively minor.[34]

(4) Extent of Production Facilities in Vietnam

The domestic producers provide information indicating that production facilities in Vietnam are more limited compared to facilities in Korea.[35] They maintain that Vietnam had little to no HRS capacity during the relevant period. The domestic producers also point to *CRS China Circumvention Final,* where Commerce found that ''the vast majority of production activities necessary to produce CRS occur at the molten steel, semi-finished steel, and hot-rolling stages.'' [36] The domestic producers conclude that the extent of production facilities in Vietnam required to convert Korean HRS to CRS are no greater than those facilities

[18] *Id.* at 8 and Exhibit 3.

[19] *Id.* at 5–6, 8–9, and Exhibit 1.

[20] *Id.* at 10–11.

[21] *Id.*

[22] *Id.* (citing *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Affirmative Preliminary Determination of Anti Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 82 FR 58178 (December 11, 2017) (*CRS China Circumvention Preliminary*) and accompanying Preliminary Decision Memorandum at 16–17; and *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty and Countervailing Duty Orders,* 83 FR 23891 (May 23, 2018) (*CRS China Circumvention Final*), and the accompanying Issues and Decision Memorandum at 32).

[23] *See* Anti-Circumvention Ruling Request at 11–12.

[24] *Id.* at 12.

[25] *Id.*

[26] *Id.* at 12–14.

[27] *Id.* at 12–13 (citing *CRS China Circumvention Final* and the accompanying Issues and Decision Memorandum at 37–38).

[28] *Id.* at 13.

[29] *Id.*

[30] *Id.* at 13–14.

[31] *Id.* at 14–18.

[32] *Id.* at 15–18 (citing *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and The United Kingdom,* Inv. Nos. 701–TA–545–547 and 73l–TA–1291–1297, USITC Publication 4570 (Oct. 2015) (Preliminary) at I–18 to I–22).

[33] *See id.* at 17 (citing *Cold-Rolled Steel Flat Products from Brazil, China, India, Japan, Korea, Netherlands, Russia and the United Kingdom,* Inv. Nos. 701–TA–540–544 and 731–TA–1283–1290, USITC Publication 4564 (Sept. 2015) (Preliminary) at 1–21).

[34] *See id.* at 14–15 (citing *CRS China Circumvention Final* and the accompanying Issues and Decision Memorandum at 39).

[35] *Id.* at 18–19 (citing *CRS China Circumvention Final* and the accompanying Issues and Decision Memorandum at 39).

[36] *Id.* at 18–19 (citing *CRS China Circumvention Final* and the accompanying Issues and Decision Memorandum at 39).

required to convert Chinese HRS to CRS.[37]

(5) Value of Processing in Vietnam

The domestic producers assert that producing HRS in Korea accounts for a large percentage of the total value of CRS that is produced in Vietnam using HRS from Korea. As support, the domestic producers again point to *CRS China Circumvention Final,* where Commerce found that CRS producers did not incur significant additional costs in the production of CRS, beyond the cost of HRS substrate inputs, that the value of further processing in Vietnam comprised only a small proportion of the total export value, and that the value of HRS produced in China constituted a significant portion of the value of the CRS exported to the United States.[38] Additionally, the domestic producers cite the recent ITC investigation of CRS from China and Japan, stating that the information contained therein demonstrates that the cost of Korean HRS inputs account for ''roughly 81 to 89 percent'' of the value of CRS.[39] Finally, citing a 2017 *Financial Times* article, the domestic producers further argue that the cost of producing HRS in Korea is higher than the cost of producing HRS in China.[40]

D. Additional Factors To Consider in Determining Whether Action Is Necessary

Section 781(b)(3) of the Act directs Commerce to consider additional factors in determining whether to include merchandise assembled or completed in a foreign country within the scope of the order, such as: ''(A) the pattern of trade, including sourcing patterns, (B) whether the manufacturer or exporter of the merchandise . . . is affiliated with the person who uses the merchandise . . . to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (C) whether imports into the foreign country of the merchandise . . . have increased after the initiation of the investigation which resulted in the issuance of such order or finding.''

Regarding patterns of trade, the domestic producers contend that exports of CRS from Vietnam to the United States skyrocketed as exports from Korea declined in the period after the initiation of the underlying investigation, as compared to the period before it.[41] The domestic producers further explain that while recent exports of CRS from Vietnam to the United States have declined slightly, this decline is largely due to Commerce's investigation of circumvention of the AD and CVD orders on CRS from the China.[42] The domestic producers also point to the fact that exports of HRS from Korea to Vietnam also increased after the original investigations commenced.[43] Finally, regarding affiliation, the domestic producers point out that major Vietnamese CRS producer POSCO Vietnam is wholly owned by Korea's largest steel manufacturer, POSCO.[44]

Analysis of the Allegations

Based on our analysis of the domestic producer's anti-circumvention allegations and the information provided therein, Commerce determines that anti-circumvention inquiries of the AD and CVD orders on CRS from Korea are warranted.

With regard to whether the merchandise from Vietnam is of the same class or kind as the merchandise produced in Korea, the domestic producers presented information to Commerce indicating that, pursuant to section 781(b)(1)(A) of the Act, the merchandise being produced in and/or exported from Vietnam is of the same class or kind as CRS produced in Korea, which is subject to the *Orders.*[45] Consequently, Commerce finds that the domestic producers provided sufficient information in their requests regarding the class or kind of merchandise to support the initiation of these anti-circumvention inquiries.

With regard to completion or assembly of merchandise in a foreign country, pursuant to section 781(b)(1)(B) of the Act, the domestic producers also presented information to Commerce indicating that the CRS exported from Vietnam to the United States is produced in Vietnam using HRS from Korea.[46] We find that the information presented by the domestic producers regarding this criterion supports its request to initiate these anti-circumvention inquiries.

Commerce finds that the domestic producers sufficiently addressed the factors described in sections 781(b)(1)(C) and 781(b)(2) of the Act regarding whether the process of assembly or completion of CRS in Vietnam is minor or insignificant. In particular, information in the domestic producers' submission indicates that: (1) The level of investment in cold-rolling facilities is minimal when compared with the level of investment for basic steel making facilities;[47] (2) there is little or no research and development taking place in Vietnam;[48] (3) the CRS production processes involve the simple processing of HRS from a country subject to the *Orders*;[49] (4) the CRS production facilities in Vietnam are more limited compared to facilities in Korea;[50] and (5) the value of the processing performed in Vietnam is a small proportion of the value of the CRS imported into the United States.[51]

With respect to the value of the merchandise produced in Korea, pursuant to section 781(b)(1)(D) of the Act, the domestic producers relied on published sources, Commerce's prior conclusions in *CRS China Circumvention Final,* and information presented in the ''minor or insignificant process'' portion of its anti-circumvention allegation to indicate that the value of the key material, HRS, produced in Korea is significant relative to the total value of the CRS exported to the United States.[52] We find that this information adequately meets the requirements of this factor, as discussed above, for the purposes of initiating these anti-circumvention inquiries.

Finally, with respect to the additional factors listed under section 781(b)(3) of the Act, we find that the domestic producers presented evidence indicating that shipments of CRS from Vietnam to the United States increased since the imposition of the *Orders*[53] and that shipments of HRS from Korea to Vietnam also increased since the *Orders* took effect.[54] Furthermore, we find that the domestic producers have presented evidence that the largest Korean manufacturer of CRS (POSCO) is affiliated with a company in Vietnam that completes the merchandise.[55] Accordingly, we are initiating formal anti-circumvention inquiries concerning the AD and CVD orders on CRS from Korea, pursuant to section 781(b) of the Act.

As these inquiries are initiated on a country-wide basis (*i.e.,* not exclusive to

[37] *Id.* at 19.

[38] *Id.* at 19–20 (citing *CRS China Circumvention Final* and the accompanying Issues and Decision Memorandum at 10, 21, and 21).

[39] *Id.* at 21 (citing *Cold-Rolled Steel Flat Products from China and Japan,* Inv. Nos. 701–TA–541 and 731–TA–1284 and 1286, USITC Publication 4619 (July 2016) (Final) at VII–30 (Table VII–41)).

[40] *Id.* at 20–21 and exhibit 13.

[41] *Id.* at 22.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.* at 7 and Attachment 1.

[46] *Id.* at 5–9, Exhibit 3, Exhibit 4, and Exhibit 5.

[47] *Id.* at 10–12.

[48] *Id.* at 12–13.

[49] *Id.* at 14–18.

[50] *Id.* at 18–19.

[51] *Id.* at 19–21.

[52] *Id.* at 14–18.

[53] *Id.* at 5.

[54] *Id.* at 6.

[55] *Id.* at 6 and Exhibit 2.

the producers mentioned immediately above), Commerce intends to issue questionnaires to solicit information from the Vietnamese producers and exporters concerning their shipments of CRS to the United States and the origin of the imported HRS being processed into CRS. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

While we believe sufficient factual information has been submitted by the domestic producers supporting their request for inquiries, we do not find that the record supports the simultaneous issuance of a preliminary ruling. Such inquiries are by their nature typically complicated and can require information regarding production in both the country subject to the order and the third country completing the product. As noted above, Commerce intends to request additional information regarding the statutory criteria to determine whether shipments of CRS from Vietnam are circumventing the AD and CVD orders on CRS from Korea. Thus, with further development of the record required before a preliminary ruling can be issued, Commerce does not find it appropriate to issue a preliminary ruling at this time.

Notification to Interested Parties

In accordance with 19 CFR 351.225(e), Commerce finds that the issue of whether a product is included within the scope of an order cannot be determined based solely upon the application and the descriptions of the merchandise. Accordingly, Commerce will notify by mail all parties on Commerce's scope service list of the initiation of these anti-circumvention inquiries. In addition, in accordance with 19 CFR 351.225(f)(1)(i) and (ii), in this notice of initiation issued under 19 CFR 351.225(e), we have included a description of the product that is the subject of these anti-circumvention inquiries (*i.e.,* CRS that contains the characteristics as provided in the scope of the *Orders*) and an explanation of the reasons for Commerce's decision to initiate an anti-circumvention inquiry, as provided above.

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry. Commerce will establish a schedule for questionnaires and comments on the issues. In accordance with section 781(f) of the Act and 19 CFR 351.225(f)(5), Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with 19 CFR 351.225(f).

Dated: July 27, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–16566 Filed 8–1–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Documentation of fish harvest.

OMB Control Number: 0648–0365.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 414.

Average Hours per Response: 10 minutes.

Burden Hours: 69.

Needs and Uses: The seafood dealers who process red porgy, greater amberjack, gag grouper, black grouper, red grouper, scamp, red hind, rock hind, yellowmouth grouper, yellowfin grouper, graysby or coney during seasonal fishery closures for applicable species must maintain documentation, as specified in 50 CFR part 300 subpart K and 50 CFR 622.192(i), that such fish were harvested from areas other than state or Federal waters in the South Atlantic. The documentation includes information on the vessel that harvested the fish, and where and when the fish were offloaded. NMFS requires the information for the enforcement of fishery regulations.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: July 27, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–16500 Filed 8–1–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG353

Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

ACTION: Notice of public meeting and webinar/conference call.

SUMMARY: NMFS will hold a 2-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in September 2018. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

DATES: The AP meeting and webinar will be held from 8:30 a.m. to 6 p.m. on Wednesday, September 5, and from 8:30 a.m. to 3 p.m. on Thursday, September 6.

ADDRESSES: The meeting will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

The meeting on Wednesday, September 5, and Thursday, September 6, will also be accessible via conference call and webinar. Conference call and webinar access information are available at: *https://www.fisheries.noaa.gov/event/september-2018-hms-advisory-panel-meeting.* Once finalized, the meeting agenda, presentations/

supplemental materials, and the meeting transcripts will be posted to this same site.

Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show the presentations via webinar and allow public comment during identified times on the agenda.

FOR FURTHER INFORMATION CONTACT: Peter Cooper or Brad McHale at (301) 427–8503.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any FMP or FMP amendment for Atlantic HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks.

The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999); the HMS FMP (April 1999); Amendment 1 to the HMS FMP (December 2003); the Consolidated HMS FMP (October 2006); and Amendments 1, 2, 3, 4, 5a, 5b, 6, 7, 8, 9, 10, and 11 to the 2006 Consolidated HMS FMP (April and October 2008, February and September 2009, May and September 2010, April and September 2011, March and September 2012, January and September 2013, April and September 2014, March and September 2015, and March, September, and December 2016, and May and September 2017), among other things.

The intent of this meeting is to consider alternatives for the conservation and management of all Atlantic tunas, swordfish, billfish, and shark fisheries. We anticipate discussing:

- Short- and long-term management of Atlantic shortfin mako (emergency rule extension and Draft Amendment 11);
- Bluefin tuna management (Three-year review of Amendment 7 measures and next steps)
- Progress updates on a number of other actions such as Ecosystem-Based Fisheries Management; Amendment 12 (rulemaking to implement NMFS national policy directives); weak-hook and area based management; cross-regional vessel electronic reporting (*e.g.,* eVTR, SEFHIER, eTrips); and spatial management options.
- Shark management in general (Amendment 14 regarding quota management; catch-per–unit-effort for sharks; and shark stock assessments)

We also anticipate inviting other NMFS offices to provide updates, if available, on their activities relevant to HMS fisheries such as updates to the Marine Recreational Information Program. The State Department will be invited to provide updates on U.S./Bahama EEZ boundary negotiations. Finally, we intend to invite other NMFS offices and the United States Coast Guard to provide updates on their activities relevant to HMS fisheries.

Additional information on the meeting and a copy of the draft agenda will be posted prior to the meeting at: *https://www.fisheries.noaa.gov/event/september-2018-hms-advisory-panel-meeting.*

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Peter Cooper at (301) 427–8503 at least 7 days prior to the meeting.

Dated: July 30, 2018.

Margo B. Schulze-Haugen,

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

[FR Doc. 2018–16580 Filed 8–1–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Quota Cost Recovery Programs

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 1, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kurt Iverson (907) 586–7228 or *kurt.iverson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is an extension of a currently approved information collection.

The Magnuson-Stevens Fishery and Conservation Act both authorizes and requires the collection of cost recovery fees for Limited Access Privilege (LAP) programs and Western Alaska Community Development Quota (CDQ) programs. The cost recovery fees may not exceed three percent of the ex-vessel value, and must recover costs associated with the management, data collection, and enforcement of these programs that are directly incurred by government agencies tasked with overseeing these fisheries.

In addition, NMFS collects observer coverage fees to support the funding and deployment of observers on vessels and in plants in the partial observer coverage category. The observer coverage fee must be paid by permit holders in the partial observer coverage category, *i.e.,* small catcher/processors, catcher vessels, shoreside processors, and stationary floating processors named on a Federal Fisheries Permit, or a person named on a Registered Buyer permit.

Processors that receive and purchase landings of IFQ halibut or sablefish, rockfish, groundfish, and crab subject to observer and/or cost recovery fees must submit an Ex-vessel Value and Volume report under 50 CFR 679.5 or 50 CFR 680.5 that provides information on the pounds purchased and value paid. NMFS uses this information to establish the total ex-vessel value of the fishery, to calculate standard prices, and to establish annual fee percentages in each fishery.

In 2016, due to an associated rule, revisions to the payment collection methods were approved under OMB control number 0648–0727. The extension of the current collection, OMB control number 0648–0711, will incorporate these 2016 revisions, and 0648–0727 will be discontinued.

II. Method of Collection

Payment must be submitted online through eFISH at *https://alaskafisheries.noaa.gov/webapps/efish/login* for the following:

- Observer coverage fee; and
- cost recovery fees for the Western Alaska Community Development Quota

Groundfish and Halibut, American Fisheries Act Bering Sea Pollock, Aleutian Islands Pollock, Amendment 80, and Rockfish Programs.

Payment for the Individual Fishing Quota (IFQ) Program cost recovery fee is submitted online through eFISH, or by mail or courier if paying with a check. Payment for the Crab Rationalization (CR) Program cost recovery fee is submitted online through eFISH, or by mail or courier if paying with a check. After December 2019, NMFS will no longer accept paper checks for cost recovery program fees. All payments will have to be made online.

The IFQ Registered Buyer Ex-Vessel Volume and Value Report is submitted online through eFISH, or by mail or fax. The Rockfish Ex-Vessel, CR Registered Crab Receiver Ex-Vessel, Pacific Cod Ex-Vessel, and First Wholesale Volume and Value Reports must be submitted online through eFISH. Appeals may be submitted by mail or fax.

III. Data

OMB Control Number: 0648–0711.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 2,182.

Estimated Time per Response: 1 minute for cost recovery fee, observer coverage fee, and Value and Volume Report; 4 hours for Appeals for any person who receives an IAD for incomplete payment of a fee liability.

Estimated Total Annual Burden Hours: 43 hours.

Estimated Total Annual Cost to Public: $416 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 26, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–16502 Filed 8–1–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; "Post Registration (Trademark Processing)"

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the 1995 Paperwork Reduction Act. This notice includes adjustments to the collection showing an increase in the respondents and hourly burdens associated with recent approved fee adjustments.

Agency: United States Patent and Trademark Office, Commerce.

Title: Post Registration (Trademark Processing).

OMB Control Number: 0651–0055.

Form Number(s):

- PTO Form 1563
- PTO Form 1573
- PTO Form 1583
- PTO Form 1597
- PTO Form 1963
- TEAS Global Form

Type of Request: Regular.

Number of Respondents: 220,272 responses per year.

Average Hours Per Responses: The USPTO estimates that it will take between approximately 5 minutes (0.08 hours) and 1 hour to complete the information in this collection. This includes the time to gather the necessary information, create the documents, and submit the completed request to the USPTO.

Burden Hours: 71,575.70 hours per year.

Cost Burden: $63,862,183 per year.

Needs and Uses: The USPTO uses the information described in this collection to process post registration submissions, which include declarations of continued use (or excusable non-use) of a mark in commerce and renewal applications, with the purpose of maintaining the quality of the trademark register. The information in this collection is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. The information collected is a matter of public record, and thus is available at USPTO facilities and on the USPTO website. Additionally, the USPTO provides the information to other entities, including Patent and Trademark Resource Centers (PTRCs). The PTRCs maintain the information for use by the public.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@imb.eop.gov.* Once submitted, the request will be publicly available in electronic format through *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include "0651–0055 information request" in the subject line of the message.
- *Mail:* Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before September 4, 2018 to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Director, Records and Information Governance Division, Office of the Chief Technology Officer, United States Patent and Trademark Office.

[FR Doc. 2018–16508 Filed 8–1–18; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Grants to States for School Emergency Management Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2018 for Grants to States for School Emergency Management (GSEM) program, Catalog of Federal Domestic Assistance (CFDA) number 84.184Q.

DATES:

Applications Available: August 2, 2018.

Deadline for Transmittal of Applications: September 4, 2018.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Hamed Negron-Perez, U.S. Department of Education, 400 Maryland Avenue SW, Room 3C130, Washington, DC 20202–6450. Telephone: (202) 453–6725. Email: *Hamed.Negron-Perez@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GSEM program provides grants to State educational agencies (SEAs) to increase their capacity to assist local educational agencies (LEAs) by providing training and technical assistance in the development and implementation of high-quality school emergency operations plans (EOPs), as defined in this notice.

Background: Lessons learned from school emergencies highlight the importance of preparing school officials and first responders to implement EOPs. By having plans in place to keep students and staff safe, schools play a key role in taking preventive and protective measures to stop an emergency from occurring or reduce its impact.[1] High-quality school EOPs can make our schools safer by supporting efforts to prevent, protect against, mitigate, respond to, and recover from all threats and hazards, both natural and man-made. The GSEM program will help schools address violence and foster safer school environments by increasing the capacity of SEAs to assist LEAs in the development, implementation, and review of high-quality and comprehensive school EOPs.

It is critical for SEAs and LEAs to ensure that every school has an effective, high-quality school EOP in place and that students and staff are prepared to follow it. A 2016 report from the Government Accountability Office (GAO) notes that in a survey of 51 SEAs, over 60 percent required their LEAs to have EOPs and conduct emergency exercises; however, fewer than half of those States surveyed reported they also required their districts or State to review these district or school plans. Additionally, an estimated 59 percent of the surveyed LEAs reported having limited resources available to implement and sustain emergency management planning efforts, thus reinforcing the value of State and Federal support.[2]

Generally, SEAs share with their LEAs information about applicable laws and requirements related to school emergency management planning; they also may support LEAs in fulfilling these obligations. For example, SEAs may provide training, resources, and tools to support school safety and security, including emergency management planning. SEAs may also work with other State agencies or organizations to provide emergency management services to LEAs.

In order to develop and implement high-quality school EOPs, LEA staff must have access to training and technical assistance on developing, implementing, and refining their plans. SEAs can play a critical role in providing the necessary training and technical assistance to LEAs.

In 2014, the Department awarded GSEM grants to 26 SEAs, which allowed SEAs to increase their capacity to provide high-quality technical assistance to their LEAs, while increasing the number of high-quality school EOPs in each district. The Department will build on the prior success of this program by awarding new grants of up to five years to SEAs to further support their LEAs through training and technical assistance. While the new competition will give priority to SEAs that have not previously received GSEM grants, previous GSEM grantees are also eligible for awards.

Priorities: We are establishing these priorities for the FY 2018 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Projects that expand the capacity of SEAs to provide training and technical assistance to LEAs.

Projects to increase the long-term internal capacity of SEAs to provide training and technical assistance to LEAs for the development and implementation of high-quality school EOPs.

Competitive Preference Priority: For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(1) we award an additional 5 points to an application that meets this priority.

This priority is:

Applications from SEAs that have not previously received a grant under the GSEM program (5 points).

Projects proposed by applicants that have not previously received a grant under this program. A list of former recipients of this grant may be found at *https://www2.ed.gov/programs/schlemergmgt-sea/2014awards.html.*

Requirements: We are establishing these program requirements and application requirements for the FY 2018 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Program Requirements: Applicants that receive grants under this program must:

(1) Provide an established point of contact (*e.g.,* person or office) for school emergency management issues and submit that information to the Department no later than the project start date;

(2) Provide training and technical assistance to LEAs on best practices for developing and implementing school EOPs including, but not limited to, the process described in the ''Guide for Developing High-Quality School Emergency Operations Plans'';[3]

[1] ''Guide for Developing High-Quality School Emergency Operations Plans,'' June 2013. Available at: *https://rems.ed.gov/docs/REMS_K-12_Guide_508.pdf.*

[2] ''Improved Federal Coordination Could Better Assist K–12 Schools Prepare for Emergencies,'' GAO–16–144, March 2016. Available at: *www.gao.gov/assets/680/675737.pdf.*

[3] Available at: *https://rems.ed.gov/docs/REMS_K-12_Guide_508.pdf.* Plans must comply with the Americans with Disabilities Act (ADA), among other prohibitions on disability discrimination, across the spectrum of emergency management services, programs, and activities, including preparation, testing, notification and alerts, evacuation, transportation, sheltering, emergency medical care and services, transitioning back, recovery, and repairing and rebuilding. Plans should include students, staff, and parents with disabilities. Among other things, school emergency

(3) Provide training and technical assistance to LEAs on developing or enhancing memoranda of understanding with community partners (*e.g.,* local government, law enforcement, public safety or emergency management, public health, and mental health agencies); and

(4) Provide training and technical assistance to LEAs on the implementation of the National Incident Management System (NIMS). Information about current NIMS requirements for States may be accessed at: *www.fema.gov/national-incident-management-system.*

Application Requirements: Each application must contain a plan that includes the following:

(1) Information on:

(a) Training, technical assistance, and resources the applicant currently provides to LEAs on emergency management;

(b) The current number of LEAs served;

(c) The proposed number of LEAs, including rural LEAs that might not otherwise have full access to school emergency management training and resources, that would receive training and technical assistance to improve their school EOPs under the applicant's proposal.

(d) A description of how the SEA will evaluate the quality of training and technical assistance events administered to their LEAs, which should incorporate feedback from LEAs and other stakeholders (*e.g.* parents, students, teachers, first-responders, etc.)

(2) A long-term strategy for improving the applicant's:

(a) Capacity to provide training and technical assistance to LEAs, including rural LEAs that might not otherwise have full access to school emergency management training and resources; and capacity to address the unique needs of students, staff, and visitors with disabilities and other access and functional needs, including individuals with limited English proficiency;

(b) Existing training and technical assistance activities for their LEAs;

(c) Catalog of emergency management resources; and

(d) Alignment of emergency management training, technical assistance, and resources with emergency management planning at the Federal, State, and local levels.

(3) A description of a process for the coordination and sustainability of support that will be provided to LEAs so that they can continue to improve their schools' EOPs beyond the period of Federal financial assistance.

Definitions: We are establishing the definitions for ''high-quality school emergency operations plan (EOP),'' ''rural LEA,'' ''technical assistance,'' and ''training'' in this notice for the FY 2018 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). The remaining definitions are from 20 U.S.C. 7801(30), 7801(36), 7801(48), and 7801(49).

These definitions are:

High-Quality School Emergency Operations Plan (EOP) means a comprehensive emergency operations plan that encompasses the five mission areas—(1) prevention, (2) protection, (3) mitigation, (4) response, and (5) recovery—and that is (a) adequate, (b) feasible, (c) acceptable, (d) complete, and (e) compliant.[4]

For the purpose of this definition, the following terms are as defined below:

(1) *Prevention* means the capabilities necessary to avoid, deter, or stop an imminent crime or threatened or actual mass casualty incident. Prevention is also the action schools take to prevent a threatened or actual incident from occurring; and includes those capabilities necessary to avoid, prevent, or stop a threatened or actual act of terrorism, and it includes preventing imminent threats.

(2) *Protection* means the capabilities to secure schools against acts of violence and manmade or natural disasters. Protection focuses on ongoing actions that protect students, teachers, staff, visitors, networks, and property from a threat or hazard.

(3) *Mitigation* means the capabilities necessary to eliminate or reduce the loss of life and property damage by lessening the impact of an event or emergency. It also means reducing the likelihood that threats and hazards will happen.

(4) *Response* means the capabilities necessary to stabilize an emergency once it has already happened or is certain to happen in an unpreventable way; establish a safe and secure environment; save lives and property; and facilitate the transition to recovery.

(5) *Recovery* means the capabilities necessary to assist schools affected by an event or emergency in restoring the learning environment.

(a) *Adequate* means the plan identifies and addresses critical courses of action effectively; the plan can accomplish the assigned function; and the assumptions are valid and reasonable.

(b) *Feasible* means the school can accomplish the assigned function and critical tasks by using available resources within the time contemplated by the plan, and that the plan explains where or how the district and school will obtain the resources to support the execution of a course of action or to meet a requirement established in the plan.

(c) *Acceptable* means the plan meets the requirements driven by a threat or hazard, meets cost and time limitations, and is consistent with the law.

(d) *Complete* means the plan:

(i) Incorporates all courses of action to be accomplished for all selected threats and hazards and identified functions;

(ii) Integrates the needs of the whole school community;

(iii) Provides a complete picture of what should happen, when, and at whose direction;

(iv) Estimates time for achieving objectives, with safety remaining as the utmost priority;

(v) Identifies success criteria and a desired end state; and

(vi) Conforms with the planning principles outlined in the ''Guide for Developing High-Quality School Emergency Operations Plans.''

(e) *Compliant* means the plan complies with applicable State and local requirements because these provide a baseline that facilitates both planning and execution.

LEA means a local educational agency as defined by section 8101(30) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7801(30)).

Outlying areas means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands. (ESEA section 8101(36), 20 U.S.C. 7801(36)).

Rural LEA means an LEA with one of the following district locale codes as assigned by the National Center for Education Statistics' Common Core of Data: Code 33 (Remote Town); Code 41 (Fringe Rural); Code 42 (Distant Rural);

plans must address the provision of appropriate auxiliary aids and services to ensure effective communication with individuals with disabilities (*e.g.,* interpreters, captioning, and accessible information technology); ensure individuals with disabilities are not separated from service animals and assistive devices, and can receive disability-related assistance throughout emergencies (*e.g.,* assistance with activities of daily living and administration of medications); and comply with the law's architectural and other requirements. Information and technical assistance about the ADA is available at *www.ada.gov.*

[4] Derived from: (1) Presidential Policy Directive 8, available at *www.dhs.gov/presidential-policy-directive-8-national-preparedness;* and (2) ''Guide for Developing High-Quality Emergency Operations Plans,'' available at *https://rems.ed.gov/docs/REMS_K-12_Guide_508.pdf.*

and Code 43 (Remote Rural). LEA locale codes may be obtained by searching the Common Core of Data database at: *http://nces.ed.gov/ccd/districtsearch/.*

SEA means a State educational agency as defined by section 8101(49) of the ESEA (20 U.S.C. 7801(49)).

State means any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, and each of the outlying areas as defined in this notice. (ESEA section 8101(48), 20 U.S.C. 7801(48)).

Technical assistance means consultations, information, referrals, logistical support, and other assistance on specific issues, topics, or problems as requested by the LEAs and other stakeholders. The grantee disseminates materials collected, developed, adapted, and adopted for this assistance. Technical assistance may proceed, follow, or be combined with training activities.

Training means instruction directed toward imparting knowledge, skills, and attitudes supportive of change by engaging, informing, equipping, and motivating trainees toward the development and implementation of action plans responsive to the specific need or circumstances of the trainees. Training may consist of various formats (*e.g.,* workshops, seminars, or computer-assisted tutorials).

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, and definitions. Section 437(d)(1) of GEPA (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under title IV, part F, subpart 3 of the ESEA (20 U.S.C. 7281), and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, requirements, and definitions in this notice under section 437(d)(1) of GEPA. These priorities, requirements, and definitions will apply to the FY 2018 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: Title IV, part F, subpart 3 of the ESEA (20 U.S.C. 7281).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations in 34 CFR part 299.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $8,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $250,000 to $750,000 per year for up to 5 years.

Estimated Average Size of Awards: $500,000.

Maximum Award: We will not make an award exceeding $750,000 for a single budget period of 12 months.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs.

Note: Consistent with the definitions in this notice, eligible applicants include SEAs in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands. Eligible applicants may collaborate informally or contract with other agencies to provide services to LEAs, including agencies such as:

- A State school safety center;
- The State emergency management agency; and
- The State homeland security department.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Administrative Direction and Control:* Administrative direction and control over grant funds must remain with the grantee.

5. *Limitation on Applications:* The Department will accept only one application per SEA.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2018.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all selection criteria is 100 points. The points or weights assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will review each application and will evaluate and score each program narrative against the following selection criteria:

(a) *Significance.* (20 points)

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The likelihood that the proposed project will result in system change or improvement. (10 points)

(ii) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population. (10 points)

(b) *Quality of the Project Design.* (30 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (15 points)

(ii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (15 points)

(c) *Quality of Project Services.* (30 points)

The Secretary considers the quality of the services to be provided by the proposed project.

(i) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

In addition, the Secretary considers the following factors:

(ii) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (10 points)

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (10 points)

(iv) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (5 points)

(d) *Adequacy of Resources.* (20 points)

The Secretary considers adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the potential for continued support for the project after Federal funding ends, including as appropriate, the demonstrated commitment of appropriate entities to such support. (20 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 (GPRA) performance measures for the GSEM program:

(a) The number of training events provided by the GSEM program to assist LEAs in the development and implementation of high-quality school EOPs.

(b) The extent to which the GSEM program expands the capacity of the SEAs to provide training and technical assistance to LEAs for the development

and implementation of high-quality school EOPs.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 27, 2018.

Frank Brogan,

Assistant Secretary of Elementary and Secondary Education.

[FR Doc. 2018–16540 Filed 8–1–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Annual Updates to the Income Contingent Repayment (ICR) Plan Formula for 2018—William D. Ford Federal Direct Loan Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the annual updates to the ICR plan formula for 2018 to give notice to borrowers and the public regarding how monthly ICR payment amounts will be calculated for the 2018–2019 year under the William D. Ford Federal Direct Loan (Direct Loan) Program, Catalog of Federal Domestic Assistance number 84.063.

DATES: The adjustments to the income percentage factors for the ICR plan formula contained in this notice are applicable from July 1, 2018, to June 30, 2019, for any borrower who enters the ICR plan or has his or her monthly payment amount recalculated under the ICR plan during that period.

FOR FURTHER INFORMATION CONTACT: Ian Foss, U.S. Department of Education, 830 First Street NE, Room 113H2, Washington, DC 20202. Telephone: (202) 377–3681. Email: *ian.foss@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under the Direct Loan Program, borrowers may choose to repay their non-defaulted loans (Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans made to graduate or professional students, and Direct Consolidation Loans) under the ICR plan. The ICR plan bases the borrower's repayment amount on the borrower's income, family size, loan amount, and the interest rate applicable to each of the borrower's loans.

ICR is one of several income-driven repayment plans. Other income-driven repayment plans include the Income-Based Repayment (IBR) plan, the Pay As You Earn Repayment (PAYE) plan, and the Revised Pay As You Earn Repayment (REPAYE) plan. The IBR, PAYE, and REPAYE plans provide lower payment amounts than the ICR plan for most borrowers.

A Direct Loan borrower who repays his or her loans under the ICR plan pays the lesser of: (1) The amount that he or she would pay over 12 years with fixed payments multiplied by an income percentage factor; or (2) 20 percent of discretionary income.

Each year, to reflect changes in inflation, we adjust the income percentage factor used to calculate a borrower's ICR payment, as required by 34 CFR 685.209(b)(1)(ii)(A). We use the adjusted income percentage factors to calculate a borrower's monthly ICR payment amount when the borrower initially applies for the ICR plan or when the borrower submits his or her annual income documentation, as required under the ICR plan. This notice contains the adjusted income percentage factors for 2018, examples of how the monthly payment amount in ICR is calculated, and charts showing sample repayment amounts based on the adjusted ICR plan formula. This information is included in the following three attachments:

- *Attachment 1—Income Percentage Factors for 2018*
- *Attachment 2—Examples of the Calculations of Monthly Repayment Amounts*
- *Attachment 3—Charts Showing Sample Repayment Amounts for Single and Married Borrowers*

In Attachment 1, to reflect changes in inflation, we updated the income percentage factors that were published in the **Federal Register** on July 18, 2017 (82 FR 32803). Specifically, we have revised the table of income percentage factors by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change between the not-seasonally-adjusted Consumer Price Index for all urban consumers for December 2017 and December 2018.

The income percentage factors reflected in Attachment 1 may cause a borrower's payments to be lower than they were in prior years, even if the borrower's income is the same as in the prior year. The revised repayment amount more accurately reflects the impact of inflation on the borrower's current ability to repay.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have

Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: July 30, 2018.

James F. Manning,

Acting Chief Operating Officer, Federal Student Aid.

Attachment 1—Income Percentage Factors for 2018

INCOME PERCENTAGE FACTORS FOR 2018

Single		Married/head of household	
Income	% Factor	Income	% Factor
$11,860	55.00	$11,860	50.52
16,318	57.79	18,712	56.68
20,997	60.57	22,299	59.56
25,782	66.23	29,152	67.79
30,352	71.89	36,114	75.22
36,114	80.33	45,361	87.61
45,361	88.77	56,890	100.00
56,891	100.00	68,424	100.00
68,424	100.00	85,724	109.40
82,238	111.80	114,547	125.00
105,302	123.50	154,905	140.60
149,143	141.20	216,641	150.00
171,006	150.00	354,009	200.00
304,590	200.00		

Attachment 2—Examples of the Calculations of Monthly Repayment Amounts

General notes about the examples in this attachment:

- We have a calculator that borrowers can use to estimate what their payment amounts would be under the ICR plan. The calculator is called the ''Repayment Estimator'' and is available at *StudentAid.gov/repayment-estimator.* Based on information inputted into the calculator by the borrower (for example, income, family size, and tax filing status), this calculator provides a detailed, individualized assessment of a borrower's loans and repayment plan options, including the ICR plan.
- The interest rates used in the examples are for illustration only. The actual interest rates on an individual borrower's Direct Loans depend on the loan type and when the postsecondary institution first disbursed the Direct Loan to the borrower.
- The Poverty Guideline amounts used in the examples are from the 2018 U.S. Department of Health and Human Services (HHS) Poverty Guidelines for the 48 contiguous States and the District of Columbia. Different Poverty Guidelines apply to residents of Alaska and Hawaii. The Poverty Guidelines for 2018 were published in the **Federal Register** on January 18, 2018 (83 FR 2642).
- All of the examples use an income percentage factor corresponding to an adjusted gross income (AGI) in the table in Attachment 1. If an AGI is not listed in the income percentage factors table in Attachment 1, the applicable income percentage can be calculated by following the instructions under the ''Interpolation'' heading later in this attachment.
- Married borrowers may repay their Direct Loans jointly under the ICR plan. If a married couple elects this option, we add the outstanding balance on the Direct Loans of each borrower and we add together both borrowers' AGIs to determine a joint ICR payment amount. We then prorate the joint payment amount for each borrower based on the proportion of that borrower's debt to the total outstanding balance. We bill each borrower separately.
- For example, if a married couple, John and Sally, has a total outstanding Direct Loan debt of $60,000, of which $40,000 belongs to John and $20,000 to Sally, we would apportion 67 percent of the monthly ICR payment to John and the remaining 33 percent to Sally. To take advantage of a joint ICR payment, married couples need not file taxes jointly; they may file separately and subsequently provide the other spouse's tax information to the borrower's Federal loan servicer.

Calculating the monthly payment amount using a standard amortization and a 12-year repayment period.

The formula to amortize a loan with a standard schedule (in which each payment is the same over the course of the repayment period) is as follows:

$$M = P \times <(I \div 12) \div [1 - \{1 + (I \div 12)\}\wedge - N]>$$

In the formula—

- M is the monthly payment amount;
- P is the outstanding principal balance of the loan at the time the calculation is performed;
- I is the annual interest rate on the loan, expressed as a decimal (for example, for a loan with an interest rate of 6 percent, 0.06); and
- N is the total number of months in the repayment period (for example, for a loan with a 12-year repayment period, 144 months).

For example, assume that Billy has a $10,000 Direct Unsubsidized Loan with an interest rate of 6 percent.

Step 1: To solve for M, first simplify the numerator of the fraction by which we multiply P, the outstanding principal balance. To do this divide I, the interest rate, as a decimal, by 12. In this example, Billy's interest rate is 6 percent. As a decimal, 6 percent is 0.06.

- $0.06 \div 12 = 0.005$

Step 2: Next, simplify the denominator of the fraction by which we multiply P. To do this divide I, the interest rate, as a decimal, by 12. Then, add one. Next, raise the sum of the two figures to the negative power that corresponds to the length of the repayment period in months. In this example, because we are amortizing a loan to calculate the monthly payment amount under the ICR plan, the applicable figure is 12 years, which is 144 months. Finally, subtract the result from one.

- $0.06 \div 12 = 0.005$
- $1 + 0.005 = 1.005$
- $1.005 \wedge - 144 = 0.48762628$

- 1 − 0.48762628 = 0.51237372

Step 3: Next, resolve the fraction by dividing the result from Step 1 by the result from Step 2.

- 0.005 ÷ 0.51237372 = 0.0097585

Step 4: Finally, solve for M, the monthly payment amount, by multiplying the outstanding principal balance of the loan by the result of Step 3.

- $10,000 × 0.0097585 = $97.59

The remainder of the examples in this attachment will only show the results of the formula.

Example 1. Brenda is single with no dependents and has $15,000 in Direct Subsidized and Unsubsidized Loans. The interest rate on Brenda's loans is 6 percent, and she has an AGI of $30,352.

Step 1: Determine the total monthly payment amount based on what Brenda would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the monthly payment amount would be $146.38.

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Brenda's AGI. In this example, an AGI of $30,352 corresponds to an income percentage factor of 71.89 percent.

- 0.7189 × $146.38 = $105.23

Step 3: Determine 20 percent of Brenda's discretionary income and divide by 12 (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). For Brenda, subtract the Poverty Guideline amount for a family of one from her AGI, multiply the result by 20 percent, and then divide by 12:

- $30,352 − $12,140 = $18,212
- $18,212 × 0.20 = $3,642.40
- $3,642.40 ÷ 12 = $303.53

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be the monthly ICR payment amount. In this example, Brenda will be paying the amount calculated under Step 2 ($105.23).

Note: Brenda would have a lower payment under other income-driven repayment plans. Specifically, Brenda's payment would be $101.18 under the PAYE and REPAYE plans. However, Brenda's payment would be $151.76 under the IBR plan, which is higher than the payment she would have under the ICR plan.

Example 2. Joseph is married to Susan and has no dependents. They file their Federal income tax return jointly. Joseph has a Direct Loan balance of $10,000, and Susan has a Direct Loan balance of $15,000. The interest rate on all of the loans is 6 percent.

Joseph and Susan have a combined AGI of $85,724 and are repaying their loans jointly under the ICR plan (for general information regarding joint ICR payments for married couples, see the fifth and sixth bullets under the heading ''General notes about the examples in this attachment'').

Step 1: Add Joseph's and Susan's Direct Loan balances to determine their combined aggregate loan balance:

- $10,000 + $15,000 = $25,000

Step 2: Determine the combined monthly payment amount for Joseph and Susan based on what both borrowers would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the combined monthly payment amount would be $243.96.

Step 3: Multiply the result of Step 2 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to Joseph and Susan's combined AGI. In this example, the combined AGI of $85,724 corresponds to an income percentage factor of 109.40 percent.

- 1.094 × $243.96 = $266.90

Step 4: Determine 20 percent of Joseph and Susan's combined discretionary income (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this, subtract the Poverty Guideline amount for a family of two from the combined AGI, multiply the result by 20 percent, and then divide by 12:

- $85,724 − $16,460 = $69,264
- $69,264 × 0.20 = $13,852.80
- $13,852.80 ÷ 12 = $1,154.40

Step 5: Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be Joseph and Susan's joint monthly payment amount. Joseph and Susan will jointly pay the amount calculated under Step 3 ($266.90).

Note: For Joseph and Susan, the ICR plan provides the lowest monthly payment of all of the income-driven repayment plans. Joseph and Susan would not be eligible for the IBR or PAYE plans, and would have a combined monthly payment under the REPAYE plan of $508.62.

Step 6: Because Joseph and Susan are jointly repaying their Direct Loans under the ICR plan, the monthly payment amount calculated under Step 5 applies to both Joseph's and Susan's loans. To determine the amount for which each borrower will be responsible, prorate the amount calculated under Step 4 by each spouse's share of the combined Direct Loan debt. Joseph has a Direct Loan debt of $10,000 and Susan has a Direct Loan debt of $15,000. For Joseph, the monthly payment amount will be:

- $10,000 ÷ ($10,000 + $15,000) = 40 percent
- 0.40 × $266.90 = $106.76

For Susan, the monthly payment amount will be:

- $15,000 ÷ ($10,000 + $15,000) = 60 percent
- 0.60 × $266.90 = $160.14

Example 3. David is single with no dependents and has $60,000 in Direct Subsidized and Unsubsidized Loans. The interest rate on all of the loans is 6 percent, and David's AGI is $36,114.

Step 1: Determine the total monthly payment amount based on what David would pay over 12 years using standard amortization. To do this, use the formula that precedes Example 1. In this example, the monthly payment amount would be $585.51.

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factors table (see Attachment 1 to this notice) that corresponds to David's AGI. In this example, an AGI of $36,114 corresponds to an income percentage factor of 80.33 percent.

- 0.8033 × $585.51 = $470.34

Step 3: Determine 20 percent of David's discretionary income and divide by 12 (discretionary income is AGI minus the HHS Poverty Guideline amount for a borrower's family size and State of residence). To do this, subtract the Poverty Guideline amount for a family of one from David's AGI, multiply the result by 20 percent, and then divide by 12:

- $36,114 − $12,140 = $23,974
- $23,974 × 0.20 = $4,794.80
- $4,794.80 ÷ 12 = $399.57

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be David's monthly payment amount. In this example, David will be paying the amount calculated under Step 3 ($399.57).

Note: David would have a lower payment under each of the other income-driven plans. Specifically, David's payment would be $149.20 under the PAYE and REPAYE plans and $223.80 under the IBR plan.

Interpolation. If an income is not included on the income percentage

factor table, calculate the income percentage factor through linear interpolation. For example, assume that Joan is single with an income of $50,000.

Step 1: Find the closest income listed that is less than Joan's income of $50,000 ($45,361) and the closest income listed that is greater than Joan's income of $50,000 ($56,891).

Step 2: Subtract the lower amount from the higher amount (for this discussion we will call the result the ''income interval''):

- $56,891 − $45,361 = $11,530

Step 3: Determine the difference between the two income percentage factors that correspond to the incomes used in Step 2 (for this discussion, we will call the result the ''income percentage factor interval''):

- 100.00 percent − 88.77 percent = 11.23 percent

Step 4: Subtract from Joan's income the closest income shown on the chart that is less than Joan's income of $50,000:

- $50,000 − $45,361 = $4,639

Step 5: Divide the result of Step 4 by the income interval determined in Step 2:

- $4,639 ÷ $11,530 = 40.23 percent

Step 6: Multiply the result of Step 5 by the income percentage factor interval:

- 11.23 percent × 40.23 percent = 4.52 percent

Step 7: Add the result of Step 6 to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $50,000 in income:

- 4.52 percent + 88.77 percent = 93.29 percent (rounded to the nearest hundredth)

The result is the income percentage factor that we will use to calculate Joan's monthly repayment amount under the ICR plan.

Attachment 3—Charts Showing Sample Income-Driven Repayment Amounts for Single and Married Borrowers

Below are two charts that provide first-year payment amount estimates for a variety of loan debt sizes and incomes under all of the income-driven repayment plans and the 10-Year Standard Repayment Plan. The first chart is for single borrowers who have a family size of one. The second chart is for a borrower who is married or a head of household and who has a family size of three. The calculations in Attachment 3 assume that the loan debt has an interest rate of 6 percent. For married borrowers, the calculations assume that the borrower files a joint Federal income tax return with his or her spouse and that the borrower's spouse does not have Federal student loans. A field with a ''-'' character indicates that the borrower in the example would not be eligible to enter the applicable income-driven repayment plan based on the borrower's income, loan debt, and family size.

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A SINGLE BORROWER

Family Size = 1							
	Income	Plan	$20,000	$40,000	$60,000	$80,000	$100,000
Initial Debt	$20,000	ICR	$117	$165	$195	$214	$236
		IBR	22	-	-	-	-
		PAYE	15	182	-	-	-
		REPAYE	15	182	348	515	682
		10-Year Standard	222	222	222	222	222
	40,000	ICR	131	327	390	429	472
		BR	22	272	-	-	-
		PAYE	15	182	348	-	-
		REPAYE	15	182	348	515	682
		10-Year Standard	444	444	444	444	444
	60,000	ICR	131	464	586	643	707
		IBR	22	272	522	-	-
		PAYE	15	182	348	515	-
		REPAYE	15	182	348	515	682
		10-Year Standard	666	666	666	666	666
	80,000	ICR	131	464	781	858	943
		IBR	22	272	522	772	-
		PAYE	15	182	348	515	682
		REPAYE	15	182	348	515	692
		10-Year Standard	888	888	888	888	888
	100,000	ICR	131	464	798	1,072	1,179
		IBR	22	272	522	772	1,022
		PAYE	15	182	348	515	682
		REPAYE	15	182	348	515	692
		10-Year Standard	1,110	1,110	1,110	1,110	1,110

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A MARRIED OR HEAD-OF-HOUSEHOLD BORROWER

Family Size = 3							
	Income	Plan	$20,000	$40,000	$60,000	$80,000	$100,000
Initial Debt	Income	Plan	$20,000	$40,000	$60,000	$80,000	$100,000
	$20,000	ICR	$0	$166	$195	$207	$229
		IBR	0	110	-	-	-
		PAYE	0	74	-	-	-
		REPAYE	0	74	240	407	574
		10-Year Standard	222	222	222	222	222

SAMPLE FIRST-YEAR MONTHLY REPAYMENT AMOUNTS FOR A MARRIED OR HEAD-OF-HOUSEHOLD BORROWER—Continued

Family Size = 3							
	Income	Plan	$20,000	$40,000	$60,000	$80,000	$100,000
	40,000	ICR	0	314	390	415	457
		IBR	0	110	360	-	-
		PAYE	0	74	240	407	-
		REPAYE	0	74	240	407	574
		10-Year Standard	444	444	444	444	444
	60,000	ICR	0	320	586	622	686
		IBR	0	110	360	610	-
		PAYE	0	74	240	407	574
		REPAYE	0	74	240	407	574
		10-Year Standard	666	666	666	666	666
	80,000	ICR	0	320	654	830	914
		IBR	0	110	360	610	860
		PAYE	0	74	240	407	574
		REPAYE	0	74	240	407	574
		10-Year Standard	888	888	888	888	888
	100,000	ICR	0	320	654	987	1,143
		IBR	0	110	360	610	860
		PAYE	0	74	240	407	574
		REPAYE	0	74	240	407	574
		10-Year Standard	1,110	1,110	1,110	1,110	1,110

[FR Doc. 2018–16582 Filed 8–1–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Understanding Catalyst Production and Development Needs at National Laboratories

AGENCY: Bioenergy Technologies Office, Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) to understand research, capabilities and yet-to-be addressed challenges pertinent to production scale-up of catalysts for the conversion of biomass and waste streams. Additionally, through this RFI, the Bioenergy Technologies Office (BETO) seeks to understand enhancement capabilities of process development units at the National Laboratories in order to increase their impact.

DATES: Responses to the RFI must be received no later than September 14, 2018.

ADDRESSES: Interested parties are to submit comments electronically to *CustomCatalystRFI@ee.doe.gov.* Responses must be provided as attachments to an email. Include ''Understanding Catalyst Production and Development RFI'' as the subject of the email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) attachment to the email, and 12 point font, 1 inch margins. Only electronic responses will be accepted. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Jim Spaeth, (720) 356–1784, or *CustomCatalystRFI@ee.doe.gov.* Further instructions can be found in the RFI document posted on EERE Exchange.

SUPPLEMENTARY INFORMATION: DOE posted on its website a RFI to solicit feedback from industry (including but not limited to research organizations, manufacturing organizations, catalyst manufacturers, and catalyst research consortia), academia, research laboratories, government agencies, and other biofuels and bioproducts stakeholders on ''catalyst productions capability for biochemical and thermochemical processes.'' Specifically, BETO seeks information to help identify and understand additional areas of research, capabilities, and yet-to be-addressed challenges pertinent to production scale-up challenges (typically in multi-kilogram quantities of novel catalysts used in technology development and engineering solutions for the efficient conversion of lignocellulosic, waste, and algal feedstocks to produce biofuels and bioproducts). The RFI [DE–FOA–00001951] is available at: *https://eere-exchange.energy.gov/.*

Confidential Business Information

Because information received in response to this RFI may be used to structure future programs, funding and/or otherwise be made available to the public, respondents are strongly advised to not include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response as detailed in the RFI [DE–FOA–00001951] at: *https://eere-exchange.energy.gov/.*

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Signed in Washington, DC, on July 27, 2018.

Jonathan Male,

Director, Bioenergy Technologies Office.

[FR Doc. 2018–16577 Filed 8–1–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–457]

Application to Export Electric Energy; ADG Group Inc.

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: ADG Group Inc. (ADG or Applicant) has applied for authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before September 4, 2018.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On July 17, 2018, DOE received an application from ADG for authorization to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities.

In its application, ADG states that it does not own, operate, or control any electric power generation, transmission, or distribution facilities, and that it has no franchised electric power service area. The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from third parties such as electric utilities and other suppliers within the United States pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential Permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five (5) copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning ADG's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–457. An additional copy is to be provided to both Xue Chao (David) Cai, ADG Group Inc., 77 King Street West, Suite 400, Toronto, Ontario, Canada M5K 0A1, and Peter P. Thieman, Dentons US LLP, 1900 K Street NW, Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program website at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Signed in Washington, DC, on July 24, 2018.

Christopher Lawrence,

Electricity Policy Analyst, Office of Electricity.

[FR Doc. 2018–16579 Filed 8–1–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on H2@Scale (Hydrogen at Scale): Determining Opportunities To Facilitate Wide-Scale Hydrogen Adoption for Energy Security and Economic Growth

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its Request for Information (RFI) on H2@Scale (Hydrogen at Scale): Determining Opportunities to Facilitate Wide-Scale Hydrogen Adoption for Energy Security and Economic Growth. The Office of Energy Efficiency and Renewable Energy (EERE) is specifically interested in information to quantify the increasing industrial demand for hydrogen, to identify and quantify the available domestic resources capable of generating sufficient hydrogen to sustainably meet the demand in the near- to long-terms across multiple sectors, and to identify opportunities to leverage current industrial infrastructure to better meet the growing demands for hydrogen across sectors.

DATES: Responses to the RFI must be received no later than 5:00 p.m. (ET) on October 31, 2018.

ADDRESSES: Interested parties are invited to submit comments using the Online Response Collector found at the specified web link included in the RFI document. Alternatively, responses can be submitted as an attachment to an email addressed to *fy18fctostrandedresources@ee.doe.gov* with ''H2@Scale RFI'' in the subject line. Email attachments can be provided as a Microsoft Word (.docx) file or an Adobe PDF (.pdf) file, prepared in accordance with the detailed instructions in the RFI. Documents submitted electronically should clearly indicate which topic areas and specific questions are being addressed, and should be limited to no more than 10MB in size. The complete RFI [DE–FOA–0001965] document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to *fy18fctostrandedresources@ee.doe.gov* or to Eric Miller at (202) 287–5829. Further instruction can be found in the RFI document posted on EERE Exchange at *https://eere-exchange.energy.gov/.*

SUPPLEMENTARY INFORMATION: The H2@Scale initiative aims to develop and

enable transformational technologies that can sustainably produce and efficiently utilize large quantities of affordable hydrogen to collectively enable energy storage, energy security, grid resiliency, domestic employment, and American dominance in energy innovation. The purpose of this RFI is to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders on opportunities and strategies for expanding and diversifying current hydrogen supply options, and for leveraging and multi-purposing current industrial infrastructure to accommodate widespread hydrogen usage. The RFI seeks input in five topic areas: Hydrogen supply expansion and diversification; expansion of markets requiring significant hydrogen demand; leveraging and/or multi-purposing industries and infrastructure to facilitate widespread adoption of hydrogen; potential sponsored competitions to incentivize widespread adoption of hydrogen across multiple sectors; and other innovative approaches to help enable H2@Scale.

Confidential Business Information: Because information received in response to this RFI may be used to structure future programs, funding and/or otherwise be made available to the public, respondents are strongly advised to not include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response as detailed in the RFI [DE–FOA–0001965] at: *https://eere-exchange.energy.gov/.*

Issued in Washington, DC, on July 23, 2018.

Sunita Satyapal,

Director, Fuel Cell Technologies Office.

[FR Doc. 2018–16578 Filed 8–1–18; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 9, 2018, from 9:00 a.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov*. See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov*.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- July 12, 2018

B. Report

- Annual Report on the Farm Credit System's Young, Beginning, and Small Farmer Mission Performance: 2017 Results

Dated: July 30, 2018.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2018–16629 Filed 7–31–18; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1162]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before September 4, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the webpage *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the webpage called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box,

(5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1162.

Title: Closed Captioning of Video Programming Delivered Using internet Protocol, and Apparatus Closed Caption Requirements.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or Household, Businesses or other for-profit, Not-for-profit institutions.

Number of Respondents and Responses: 1,172 respondents; 3,341 responses.

Estimated Time per Response: 0.084–10 hours.

Frequency of Response: One time and on occasion reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Mandatory; Required to obtain or retain benefits. The statutory authority for this collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and Sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

Total Annual Burden: 9,197 hours.

Total Annual Cost: $95,700.

Privacy Act Impact Assessment: Yes. As required by OMB Memorandum M–03–22 (September 26, 2003), the FC completed a Privacy Impact Assessment (PIA) on June 28, 2007, that gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys the PII covered by these information collection requirements. The PIA may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Nature and Extent of Confidentiality: Some assurances of confidentiality are being provided to the respondents. Parties filing petitions for exemption based on economic burden, requests for Commission determinations of technical feasibility and achievability, requests for purpose-based waivers, or responses to complaints alleging violations of the Commission's rules may seek confidential treatment of information they provide pursuant to the Commission's existing confidentiality rules.

The Commission is not requesting that individuals who file complaints alleging violations of our rules (complainants) submit confidential information (*e.g.,* credit card numbers, social security numbers, or personal financial information) to us. We request that complainants submit their names, addresses, and other contact information, which enables us to process complaints. Any use of this information is covered under the routine uses listed in the Commission's SORN, FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' The PIA that the FCC completed on June 28, 2007 gives a full and complete explanation of how the FCC collects, stores, maintains, safeguards, and destroys PII, as required by OMB regulations and the Privacy Act, 5 U.S.C. 552a. The PIA may be viewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission will update the PIA to cover the PII collected related to this information collection to incorporate various revisions to it as a result of revisions to the SORN and as required by OMB's Memorandum M–03–22 (September 26, 2003) and by the Privacy Act, 5 U.S.C. 552a.

Needs and Uses: The Commission is submitting this revised information collection to transfer certain information collection burdens associated with this OMB control number to another OMB control number. This change is being made to reflect the development of an online form for use by consumers in filing complaints with the Commission that allege violations of the FCC's disability accessibility requirements. The online form is part of an information collection reflected in OMB control number 3060–0874.

The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) directed the Commission to revise its regulations to mandate closed captioning on IP-delivered video programming that was published or exhibited on television with captions after the effective date of the regulations. Accordingly, the Commission requires video programming owners (VPOs) to send program files to video programming distributors and providers (hereinafter VPDs) with required captions, and it requires VPDs to enable the rendering or pass through of all required captions to the end user. The CVAA also directed the Commission to revise its regulations to mandate that all apparatus designed to receive, play back, or record video programming be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming, except that apparatus that use a picture screen that is 13 inches or smaller and recording devices must comply only if doing so is achievable. These rules are codified at 47 CFR 79.4 and 79.100–79.104.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–16511 Filed 8–1–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1103]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 1, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1103.

Title: Section 76.41 Franchise Application Process.

Type of Review: Extension of a currently approved collection.

Form Number: N/A.

Respondents: State, local or tribal government, Business or other for profit entities.

Number of Respondents and Responses: 22 respondents and 40 responses.

Estimated Hours per Response: 0.5 to 4 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure requirement.

Total Annual Burden: 90 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature of Response: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154(i), 157nt, 201, 531, 541 and 542.

Confidentiality: There is no need for confidentiality required with this collection of information.

Needs and Uses: The information collection requirements are as follows:

47 CFR 76.41(b) requires a competitive franchise applicant to include the following information in writing in its franchise application, in addition to any information required by applicable state and local laws:

(1) The applicant's name;

(2) The names of the applicant's officers and directors;

(3) The business address of the applicant;

(4) The name and contact information of a designated contact for the applicant;

(5) A description of the geographic area that the applicant proposes to serve;

(6) The PEG channel capacity and capital support proposed by the applicant;

(7) The term of the agreement proposed by the applicant;

(8) Whether the applicant holds an existing authorization to access the public rights-of-way in the subject franchise service area;

(9) The amount of the franchise fee the applicant offers to pay; and

(10) Any additional information required by applicable state or local laws.

The information collection requirements contained in 47 CFR 76.41(d) states when a competitive franchise applicant files a franchise application with a franchising authority and the applicant has existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority grant or deny the application within 90 days of the date the application is received by the franchising authority. If a competitive franchise applicant does not have existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority must perform grant or deny the application within 180 days of the date the application is received by the franchising authority. A franchising authority and a competitive franchise applicant may agree in writing to extend the 90-day or 180-day deadline, whichever is applicable.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–16514 Filed 8–1–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0149]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 1, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of

1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0149.

Title: Part 63, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17–84, FCC 18–74.

Form Number(s): N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 80 respondents; 88 responses.

Estimated Time per Response: 6–62 hours per response.

Frequency of Response: One-time reporting requirement and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 214 and 402 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,086 hours.

Total Annual Cost: $27,900.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Information filed in section 214 applications has generally been non-confidential. Requests from parties seeking confidential treatment are considered by Commission staff pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for a revision of a currently approved collection to OMB. The Commission will submit this information collection to OMB after this 60-day comment period. Section 214 of the Communications Act of 1934, as amended, requires that a carrier must first obtain FCC authorization either to (1) construct, operate, or engage in transmission over a line of communications; or (2) discontinue, reduce or impair service over a line of communications. Part 63 of Title 47 of the Code of Federal Regulations (CFR) implements Section 214. Part 63 also implements provisions of the Cable Communications Policy Act of 1984 pertaining to video which was approved under this OMB Control Number 3060–0149. In 2009, the Commission modified Part 63 to extend to providers of interconnected Voice of Internet Protocol (VoIP) service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under Section 214 of the Communications Act of 1934, as amended. In 2014, the Commission adopted improved administrative filing procedures for domestic transfers of control, domestic discontinuances and notices of network changes, and among other adjustments, modified Part 63 to require electronic filing for applications for authorization to discontinue, reduce, or impair service under section 214(a) of the Act. In July 2016, the Commission concluded that applicants seeking to discontinue a legacy time division multiplexing (TDM)-based voice service as part of a transition to a new technology, whether Internet Protocol (IP), wireless, or another type (technology transition discontinuance application) must demonstrate that an adequate replacement for the legacy service exists in order to be eligible for streamlined treatment and revised part 63 accordingly. The Commission concluded that an applicant for a technology transition discontinuance may demonstrate that a service is an adequate replacement for a legacy voice service by certifying or showing that one or more replacement service(s) offers all of the following: (i) Substantially similar levels of network infrastructure and service quality as the applicant service; (ii) compliance with existing federal and/or industry standards required to ensure that critical applications such as 911, network security, and applications for individuals with disabilities remain available; and (iii) interoperability and compatibility with an enumerated list of applications and functionalities determined to be key to consumers and competitors (the ''adequate replacement test'').

In June 2018, the Commission further modified the rules applicable to section 214(a) discontinuance applications. First, all carriers, whether dominant or non-dominant, that seek approval to grandfather data services below speeds of 25 Mbps download speed and 3 Mbps upload speed are now subject to a uniform reduced public comment period of 10 days and an automatic grant period of 25 days. Second, all carriers, whether dominant or non-dominant, seeking authorization to discontinue data services below speeds of 25 Mbps download speed and 3 Mbps upload speed that have previously been grandfathered for a period of at least 180 days are subject to a uniform reduced public comment period of 10 days and an automatic grant period of 31 days, provided they submit a statement as part of their discontinuance application that they have received Commission authority to grandfather the services at issue at least 180 days prior to the filing of the discontinuance application. This statement must reference the file number of the prior Commission authorization to grandfather the services the carrier now seeks to permanently discontinue. Third, carriers are no longer required to file an application to discontinue, reduce, or impair any service for which it has had no customers and no request for service for at least a 30-day period immediately preceding the discontinuance. Fourth, all carriers, whether dominant or non-dominant, that seek approval to discontinue legacy voice service can obtain further streamlined processing with a public comment period of 15 days and an automatic grant period of 31 days, provided (1) they offer a stand-alone interconnected VoIP service throughout the service area, and (2) at least one alternative stand-alone, facilities-based voice service is available from an unaffiliated provider throughout the affected service area (the ''alternative options test''). Finally, all carriers, whether dominant or non-dominant, that seek approval to grandfather legacy voice service are now subject to a uniform reduced public comment period of 10 days and an automatic grant period of 25 days. The Commission estimates that it will receive three fewer section 214(a) discontinuance applications annually in light of the Commission's forbearance from applying its section 214(a) discontinuance requirements to services for which the carrier has had no customers and no reasonable requests for service during the preceding 30-day period. The Commission also anticipates that the number of respondents and responses under the adequate replacement test will likely decrease from 5 and 25, respectively, to 2 and 10, respectively. The remaining 15 responses previously attributable to

the adequate replacement test will likely proceed pursuant to the less rigorous alternative options test. The Commission estimates that the total annual burden of the entire collection, as revised, is reduced from 1,923 hours to 1,086 hours.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2018–16513 Filed 8–1–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, August 7, 2018 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2018–16700 Filed 7–31–18; 4:15 pm]

BILLING CODE 6715–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Docket No. ATSDR–2015–0001]

Availability of Set 29 Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability; request for comment.

SUMMARY: The Agency for Toxic Substances and Disease Registry (ATSDR), within the Department of Health and Human Services (HHS) announces the availability of Set 29 Draft Toxicological Profiles for review and comment. All toxicological profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. ATSDR is seeking public comments and additional information or reports on studies about the health effects of Tribufos, Bromodichloromethane, Bromomethane, and 2-Hexanone for review and potential inclusion in the profiles. Although ATSDR considers key studies for these substances during the profile development process, this document solicits any relevant, additional information. ATSDR will evaluate the quality and relevance of such data or studies for possible inclusion into the profile.

ATSDR also seeks comments on the organization and format of the Toxicological Profile for Bromodichloromethane. In an effort to improve the usability of the profiles, ATSDR recently made content and organizational changes based on user feedback, as well as data identifying the most used profile content. Changes include: Removing redundant content; adding summary figures and tables to Chapters 1, 2, 5, and 6 that did not exist in previous Toxicological Profiles; and reformatting the Levels of Significant Exposure (LSE) tables in Chapter 2. ATSDR has only applied the changes to the Draft Toxicological Profile for Bromodichloromethane, but intends to use the new format for future profiles. Specifically, ATSDR would like to know:

(1) Does the chapter organization make it easier for you to find the information you need? For example, are you satisfied with the organization of the health effects chapter by organ system rather than exposure route?

(2) Are the new tables and figures clear and useful? Do they make the Toxicological Profile easier to read?

(3) If you have previously used any Toxicological Profile(s) for your work, which parts or content are the most useful to you, and what do you use it for?

(4) Does the profile contain all of the information you need? If no, please elaborate on what additional information would be helpful.

(5) Is there information you would like to see in the profile that is not currently included? If yes, please elaborate on the additional information you would like to see in the profile.

ATSDR remains committed to providing a public comment period for these documents as a means to provide the best service to the public regarding public health.

DATES: Comments must be submitted by October 31, 2018.

ADDRESSES: You may submit comments, identified by docket number ATSDR–2015–0001, by either of the following methods:

- *Internet:* Access the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Division of Toxicology and Human Health Sciences, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd. NE, MS F–57, Atlanta, GA, 30329. Attn: Docket No. ATSDR–2015–0001.

Instructions: All submissions must include the agency name and docket number for this notice. All relevant comments will be posted without change. This means that no confidential business information or other confidential information should be submitted in response to this notice. The public comments, responses, and other data submitted in response to the **Federal Register** notices are available by request from ATSDR. Contact CDC Info at 1–800–232–4636 or *cdcinfo@cdc.gov* to request this information.

FOR FURTHER INFORMATION CONTACT: Susan Ingber, Agency for Toxic Substances and Disease Registry, Division of Toxicology and Human Health Sciences, 1600 Clifton Rd. NE, MS F–57, Atlanta, GA, 30329, Email: *ATSDRToxProfileFRNs@cdc.gov;* Phone: 1–800–232–4636.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) regarding hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances [also called the Substance Priority List (SPL)]. This list identifies 275 hazardous substances that ATSDR and EPA have determined pose the most significant potential threat to human health. The SPL is available online at *www.atsdr.cdc.gov/spl.*

In addition, CERCLA provides ATSDR with the authority to prepare toxicological profiles for substances not found on the SPL. CERCLA authorizes ATSDR to establish and maintain inventory of literature, research, and studies on the health effects of toxic substances (CERCLA Section 104(i)(1)(B)); to respond to requests for health consultations (CERCLA Section 104(i)(4)); and to support the site-specific response actions conducted by the agency.

Availability

The Draft Toxicological Profiles are available online at *http://www.atsdr.cdc.gov/ToxProfiles* and at *www.regulations.gov,* Docket No. ATSDR–2015–0001.

Pamela I. Protzel Berman,

Director, Office of Policy, Partnerships and Planning, Agency for Toxic Substances and Disease Registry.

[FR Doc. 2018–16557 Filed 8–1–18; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announce the Intent To Award an Administrative Supplement

ACTION: Announcing the Intent to Award an Administrative Supplement for two (2) Help America Vote Act (HAVA) Training and Technical Assistance (T/TA) grantees, the National Disability Rights Network (NDRN) 90HAVA0001 and the National Federation of the Blind (NFB) 90HAVA0002.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award an administrative supplement to the current Help America Vote Act (HAVA) Training and Technical Assistance (T/TA) grantees held by the National Disability Rights Network (NDRN) and the National Federation of the Blind (NFB). The purpose of the HAVA programs are designed to establish and improve participation in the election process for individuals with a full range of disabilities. In each eligible state and territory, seven percent of HAVA funds are set aside for the Protection and Advocacy Systems (P&As) to ensure that individuals with disabilities have the opportunity to participate in every step of the voting process. After receiving training and technical assistance, P&As may inform others on the availability of accessible voting equipment and its use. The administrative supplement for FY 2018 will be in the amount of $122,721 bringing the total award for FY 2018 to $462,590.

Program Name: Help America Vote Act Training and Technical Assistance.

Recipients: National Disability Rights Network (NDRN) and National Federation of the Blind (NFB).

Period of Performance: The supplement award will be issued for the second year of the two-year project period of September 1, 2018, through August 30, 2019.

Total Award Amount: NDRN $326,274 in FY 2018 NFB $136,316 in FY2018.

Award Type: Administrative Supplement.

Statutory Authority: This program is authorized under Title II, Subtitle D, Part 5 of HAVA 42 U.S.C. 15461–62, Section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act) (42 U.S.C. 15002).

Basis for Award: The additional funding will not be used to begin new projects. The funding will be used to increase NDRN's capacity building efforts to provide training and technical assistance to the Protection and Advocacy Systems in the electoral process and NFB will be able to attend voting related conferences, conduct voting outreach campaigns and translate materials into Spanish.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Melvenia Wright, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Disabilities, Administration on Intellectual and Developmental Disabilities: telephone (202) 795–7472; email *Melvenia.Wright@acl.hhs.gov.*

Dated: July 26, 2018.

Lance Robertson,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2018–16561 Filed 8–1–18; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0126]

Revocation of Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection of Ebola Virus

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Zalgen Labs, LLC for the ReEBOV Antigen Rapid Test. FDA revoked this Authorization on May 18, 2018, under the Federal Food, Drug, and Cosmetic Act (FD&C Act), as requested by Zalgen Labs, LLC by letter dated March 1, 2018. The revocation, which includes an explanation of the reasons for revocation, is reprinted in this document.

DATES: The Authorization is revoked as of May 18, 2018.

ADDRESSES: Submit written requests for single copies of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, 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 revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Michael Mair, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4336, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On February 24, 2015, FDA issued an EUA to Corgenix, Inc. for the ReEBOV Antigen Rapid Test, subject to the terms of the Authorization. Notice of the issuance of the Authorization was published in the **Federal Register** on June 5, 2015 (80 FR 32140), as required by section 564(h)(1) of the FD&C Act. In response to requests from Zalgen Labs, LLC and Corgenix, Inc. to transfer ownership of the EUA for the ReEBOV Antigen Rapid Test from Corgenix, Inc. to Zalgen Labs, LLC, FDA amended and reissued the EUA to Zalgen Labs, LLC

in its entirety on November 3, 2016. Under section 564(g)(2), the Secretary of Health and Human Services may revoke an EUA if, among other things, the criteria for issuance are no longer met or other circumstances make such revocation appropriate to protect the public health or safety.

II. EUA Revocation Request for an In Vitro Diagnostic Device for Detection of the Ebola Virus

Pursuant to a request from Zalgen Labs, LLC on March 1, 2018, FDA revoked the EUA for the ReEBOV Antigen Rapid Test on May 18, 2018, because the criteria for issuance were no longer met and these circumstances made such revocation appropriate to protect the public health or safety.

III. Electronic Access

An electronic version of this document and the full text of the revocation are available on the internet at *https://www.regulations.gov.*

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g) of the FD&C Act are met, FDA has revoked the EUA for Zalgen Labs, LLC's ReEBOV Antigen Rapid Test. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

May 18, 2018

Matthew L. Boisen, Ph.D.
Director of Diagnostics Development
Zalgen Labs, LLC
20271 Goldenrod Lane, Suite 2083
Germantown, MD 20876

Dear Dr. Boisen:

This letter is in response to your letter dated March 1, 2018, regarding the Food and Drug Administration (FDA)'s Emergency Use Authorization (EUA150001) for emergency use of Zalgen Labs, LLC ("Zalgen") ReEBOV Antigen Rapid Test for the presumptive detection of Zaire Ebola virus (detected in the West Africa outbreak in 2014), Sudan Ebola virus, and Bundibugyo Ebola virus in fingerstick (capillary) whole blood, venous whole blood, and plasma from individuals with signs and symptoms of Ebola virus infection in conjunction with epidemiological risk factors (including geographic locations with high prevalence of Ebola infection).

In response to requests from Zalgen and Corgenix Inc. ("Corgenix") to transfer ownership of EUA150001 for the ReEBOV Antigen Rapid Test from Corgenix to Zalgen, FDA amended and reissued EUA150001 in its entirety on November 3, 2016. The amended EUA150001 allowed Zalgen and its authorized distributors to distribute the ReEBOV Antigen Rapid Test manufactured by Corgenix. In addition, condition of authorization "N" stated, "*Zalgen Labs, LLC may submit performance validation data (e.g., a method comparison study) to DMD/OIR/CDRH for the ReEBOV™ Antigen Rapid Test manufactured by Zalgen Labs, LLC (or a contract manufacturer). Upon review of this material and DMD/OIR/CDRH's concurrence, Zalgen Labs, LLC (and its authorized distributors) will be authorized to distribute the ReEBOV Antigen Rapid Test manufactured by Zalgen Labs, LLC (or an authorized contract manufacturer), subject to the conditions of authorization set forth in this letter.*"

On June 19, 2017, Zalgen submitted performance validation data to FDA intended to satisfy condition of authorization "N" in FDA's November 3, 2016, Letter of Authorization. FDA concluded that the data did not support that the Zalgen manufactured ReEBOV Antigen Rapid Test would perform as originally labeled in its intended use population, because Zalgen failed to demonstrate comparable performance of the Zalgen manufactured ReEBOV Antigen Rapid Test to the Corgenix manufactured ReEBOV Antigen Rapid Test. Therefore, FDA did not concur that condition of authorization "N" had been satisfied. Consequently, Zalgen remained unable to meet a condition precedent on Zalgen's authorization to distribute the Zalgen manufactured ReEBOV Antigen Rapid Test.

Page 2 – Dr. Boisen, Zalgen Labs, LLC

Pursuant to continued discussions with FDA, Zalgen requested in a letter dated March 1, 2018, that the request for transfer of EUA150001 from Corgenix be withdrawn. We interpret this request to mean that Zalgen is no longer pursuing FDA consent to permit Zalgen to manufacture the Corgenix developed ReEBOV Antigen Rapid Test. We understand that there is no longer viable Corgenix manufactured ReEBOV Antigen Rapid Test inventory remaining and therefore this product will no longer be made available. Accordingly, under section 564(g)(2) of the Federal Food, Drug and Cosmetic Act (the Act), 21 U.S.C. 360bbb-3(g)(2), FDA has determined that the criteria for authorization under section 564(c) of the Act are no longer met. These circumstances make revocation appropriate to protect the public health or safety.

Accordingly, FDA revokes EUA150001 for emergency use of the ReEBOV Antigen Rapid Test, under section 564(g) of the Act. As of the date of this letter, the ReEBOV Antigen Rapid Test that was authorized by FDA for use by clinical laboratories for the qualitative detection of RNA from Ebola virus is no longer authorized by FDA.

FDA encourages Zalgen to instruct its customers to discontinue use of and discard any remaining ReEBOV Antigen Rapid Test inventory immediately.

Notice of this revocation will be published in the Federal Register, pursuant to section 564 of the Act, 21 U.S.C. 360bbb-3.

Sincerely,

Rachel E. Sherman

Rachel Sherman, M.D., M.P.H.
Principal Deputy Commissioner

Dated: July 27, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16537 Filed 8–1–18; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2657]

Advancing the Development of Pediatric Therapeutics 5: Advancing Pediatric Pharmacovigilance; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Division of Pediatric and Maternal Health, Office of Surveillance and Epidemiology, and Office of Pediatric Therapeutics, Food and Drug Administration (FDA or the Agency) are announcing a public workshop entitled ''Advancing the Development of Pediatric Therapeutics 5: Advancing Pediatric Pharmacovigilance.'' The purpose of this 1-day workshop is to provide a forum to gather information on the latest developments in pediatric pharmacovigilance from the perspective of various stakeholders and to expand the conversation to include the utility and challenges of emerging pharmacovigilance tools, including specific challenges associated with pediatric data tools.

DATES: The public workshop will be held on Friday, September 14, 2018, from 8 a.m. to 5 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at FDAWhite Oak Campus, 10903 New Hampshire Ave. Bldg. 31 Conference Center, the Great Room (Rm. 1503A), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

FOR FURTHER INFORMATION CONTACT: For questions regarding the workshop, contact Denise Pica-Branco, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1732, *denise.picabranco@fda.hhs.gov*; or Meshaun Payne, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6668, *meshaun.payne@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Drugs and biologics (products) receive marketing approval only after undergoing premarket review and upon establishment of safety and efficacy through adequate and well-controlled clinical trials. Because all safety issues related to a product may not be detected in the premarket phase, FDA receives and analyzes postmarket safety information to determine if events reported in the postmarketing period are likely to be related to exposure to a product. When FDA determines that reported postmarketing events are likely related to a product, FDA can introduce labeling changes and other activities to inform the professional and lay public.

FDA receives reports through the MedWatch website (*https://www.fda.gov/Safety/MedWatch/HowToReport/default.htm*), which are then entered into the FDA Adverse Event Reporting System for subsequent analysis. Because the volume of reports is large and because reporting entities (product manufacturers and the professional or lay public) need only suspect a possible link between product exposure and an adverse event, FDA employs specific tools and strategies to assess postmarket safety reports and potential signals that arise from review of these reports. The process for receipt and assessment of such postmarket safety information is referred to as pharmacovigilance.

FDA has a specific regulatory mandate to perform pediatric pharmacovigilance and to present or make available the results of such pediatric pharmacovigilance to the Pediatric Advisory Committee.

II. Topics for Discussion at the Public Workshop

In this workshop, FDA will gather information on the latest developments in pediatric pharmacovigilance from the perspective of various stakeholders and expand the conversation to include the utility and challenges of emerging pharmacovigilance tools, including specific challenges associated with pediatric data tools.

III. Participation in the Public Workshop

Registration: Persons interested in attending this public workshop must register online at *https://www.eventbrite.com/e/advancing-the-development-of-pediatric-therapeutics-5-adept5-tickets-46654530958* by Thursday, September 6, 2018, midnight Eastern Time. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone. Onsite registration will not be available.

Registration for onsite participation or via webcast is free and based on space availability, with priority given to early registrants. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted.

If you need special accommodations due to a disability, please contact Denise Pica-Branco (*denise.picabranco@fda.hhs.gov*) or Meshaun Payne (*meshaun.payne@fda.hhs.gov*) no later than Thursday, September 6, 2018.

Streaming Webcast of the Public Workshop: Webcast information will be provided after participants have registered for the workshop. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.*

FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Dated: July 27, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16524 Filed 8–1–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2126]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food and Drug Administration's Research and Evaluation Survey for the Public Education Campaign on Tobacco Among the Lesbian Gay Bisexual Transgender Community

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) 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 FDA's Research and Evaluation Survey for the Public Education Campaign on Tobacco (RESPECT) among the Lesbian Gay Bisexual Transgender (LGBT).

DATES: Submit either electronic or written comments on the collection of information by October 1, 2018.

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 October 1, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 1, 2018. 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–2015–N–2126 for ''Food and Drug Administration's (FDA's) Research and Evaluation Survey for the Public Education Campaign on Tobacco (RESPECT) among LGBT.'' 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.

• 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.gpo.gov/fdsys/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.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), 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.

Food and Drug Administration's (FDA's) Research and Evaluation Survey for the Public Education Campaign on Tobacco (RESPECT) Among LGBT

OMB Control Number 0910–0808–Extension

The 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health and to reduce tobacco use by minors. Section 1003(d)(2)(D) of the FD&C Act (21 U.S.C. 393(d)(2)(D)) supports the development and implementation of FDA public education campaigns related to tobacco use. In May 2016, FDA began implementing a public education campaign to help prevent and reduce tobacco use among LGBT young adults and thereby reduce the public health burden of tobacco. The campaign continues to be implemented in 12 U.S. cities and features events, television and radio and print advertisements, digital communications, including videos, social media, and other forms of media. For the purpose of this notice, these campaign elements will be referred to as ''advertisements'' or ''ads.''

In support of the provisions of the Tobacco Control Act that require FDA to protect the public health and to reduce tobacco use, FDA requests OMB approval to collect information needed to evaluate FDA's campaign to reduce tobacco use among LGBT young adults. Comprehensive evaluation of FDA's public education campaigns is needed to ensure campaign messages are effectively received, understood, and accepted by those for whom they are intended. Evaluation is an essential organizational practice in public health and a systematic way to account for and improve public health actions.

To evaluate the effectiveness of FDA's RESPECT at reducing tobacco use among LGBT young adults aged 18 to 24, FDA contracted with RTI International (RTI) to conduct Web-based surveys with the target population in the 12 campaign cities and 12 comparison cities. The surveys include measures of tobacco-related knowledge, attitudes, beliefs, intentions, and use as well as measures of audience awareness of and exposure to campaign events and advertisements. The voluntary surveys also collect information on demographic variables, including sexual orientation, age, sex, race/ethnicity, education, and primary language. Baseline data collection for RESPECT was conducted between February and May 2016. Four subsequent waves of data collection were conducted with new (cross-sectional) and returning (longitudinal) respondents. This design facilitated analysis of relationships between individuals' exposure to campaign activities and baseline to follow-up changes in outcomes of interest between campaign and comparison cities. Information collection for baseline and the first four follow-ups was reviewed and approved by OMB.

FDA will continue to implement RESPECT in 12 U.S. cities through April 2019. To complete the evaluation of RESPECT, FDA is requesting an extension of the previously approved information collection in order to conduct two additional waves of data collection with the target population. The proposed sixth and seventh waves of data collection (*i.e.,* fifth and sixth follow-ups after baseline) will coincide with the official end of the campaign, and will serve as an assessment of the campaign at completion. Continued evaluation is necessary in order to determine the campaign's impact on outcomes of interest.

As in previous waves, new and returning survey respondents will be

invited to complete the online questionnaire. New (or cross-sectional) respondents will be recruited at LGBT social venues and via social media (*i.e.,* Facebook and Twitter). In-person recruitment will take place in a variety of LGBT venues. The owners or managers of potential recruitment sites will be asked a series of questions to determine the appropriateness of its clientele for participation in the study. For the fifth and sixth follow-ups, an estimated 60 new venues (20 annualized) will be assessed at 5 minutes per assessment, for an additional 5 hours (1.67 annualized). A total of 1,980 venues (660 annualized) will be assessed during the evaluation study, for a total of 165 hours (55 annualized).

Our goal is to recruit 75 percent of the sample via intercept interviews and 25 percent via social media. To obtain the target number of completed fifth and sixth follow-up questionnaires, an additional 11,904 adults (3,968 annualized) recruited in person and 2,736 adults (912 annualized) recruited via social media will complete screening questionnaires. For the entire evaluation study, a total of 33,717 adults (11,239 annualized) recruited in person will complete screening questionnaires along with 10,617 adults (3,539 annualized) recruited via social media. The estimated burden to complete the screening questionnaire is 5 minutes (0.083 hour), for a total of 2,799 hours (933 annualized) for in-person recruits and 881 hours (294 annualized) for social media recruits.

Based on analysis of response rates from prior waves of data collection, we expect 65 percent of intercept respondents will be deemed eligible and 50 percent of those will complete the fifth follow-up questionnaire. We expect 30 percent of those recruited via social media will be deemed eligible and complete the fifth follow-up questionnaire. Lastly, we expect 50 percent of returning (or longitudinal) respondents to complete the fifth and sixth follow-up questionnaires. We estimate that approximately 2,100 new respondents (700 annualized) and 6,678 returning (2,226 annualized) respondents will complete the fifth and sixth follow-up questionnaires, for a total of 8,778 responses (2,926 annualized).

OMB previously approved 3,156 (1,052 annualized) respondents recruited via social media and 9,456 (3,152 annualized) respondents recruited in person to complete the first four follow-up questionnaires. Adding the fifth and sixth follow-ups brings the total estimated number of follow up questionnaires completed by social media recruits to 5,256 (1,752 annualized) and by in-person recruits to 16,134 (5,378 annualized). At 40 minutes per completed questionnaire, the total burden is 3,507 hours (1,169 annualized) for social media respondents and 10,761 hours (3,587 annualized) for in-person respondents.

OMB also previously approved 393 hours (approximately 132 annualized) for social media respondents and 1,182 hours (394 annualized) for in-person respondents to complete baseline questionnaires. OMB also approved the pilot test of procedures in bars (6 hours [2 annualized]). As these study components are complete, the corresponding burden will not change. Lastly, the original study design included a media tracking component, which included a burden of 414 hours (138 annualized) for completing a 5-minute screening questionnaire and 999 hours (333 annualized) for completing the media tracking questionnaire. However, this component was dropped from the study; hence, the related burden has been deducted from the total study burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Respondent type and activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Venue Owners and Managers	660	1	660	0.083 (5 minutes)	55
General Population: Pilot test of Procedures in Bars.	27	1	27	0.083 (5 minutes)	2
General population—outcome screener (in person).	11,239	1	11,239	0.083 (5 minutes)	933
General population—outcome screener (social media).	3,539	1	3,539	0.083 (5 minutes)	294
LGBT young adults outcome baseline (social media).	263	1	263	0.500 (30 minutes)	132
LGBT young adults outcome baseline (in person)	788	1	788	0.500 (30 minutes)	394
LGBT young adults outcome follow-up questionnaire (social media).	1,752	1	1,752	0.667 (40 minutes)	1,169
LGBT young adults outcome follow-up questionnaire (in person).	5,378	1	5,378	0.667 (40 minutes)	3,587
Totals					6,566

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

To accommodate the additional waves of data collection, FDA requests approval to increase the number of burden hours under the existing control number. The previous number of approved responses was 53,967 (17,989 annualized), and the previous burden was 14,031 hours (4,677 annualized). The fifth and sixth follow-ups add 23,478 responses (7,826 annualized), which include responses to new venues assessments, screening questionnaires, and the follow-up questionnaires, for a total of 7,074 additional burden hours (2,357 annualized). Removing the media tracking component deducts 6,507 responses (2,169 annualized) and 1,413 burden hours (471 annualized). The totals for the entire evaluation study are increasing by 16,971 responses (5,657 annualized) and 5,661 hours (1,887 annualized) for a new total of 70,938 responses (23,646 annualized) and 19,692 burden hours (approximately 6,566 annualized).

Dated: July 25, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16538 Filed 8–1–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: August 14, 2018.

Open: 1:00 p.m. to 2:45 p.m.

Agenda: Director's and Program reports and presentations; business of the Board.

Closed: 2:55 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Room TE406, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Paulette S. Gray, Ph.D., Executive Secretary, Division of Extramural Activities, National Cancer Institute—Shady Grove, National Institutes of Health, 9609 Medical Center Drive, Room 7W444, Bethesda, MD 20892, 240–276–6340, *grayp@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NCI-Shady Grove campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ncab/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 26, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16492 Filed 8–1–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Chemosensory Systems.

Date: August 1, 2018.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: M. Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 27, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16506 Filed 8–1–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee (MDCC).

The meeting will be open to the public and accessible by teleconference. Participation is limited to space available. Individuals who plan to participate and need special assistance, such as reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Type of meeting: Open Meeting.

Date: September 17, 2018.

Time: 2:00 p.m. to 5:00 p.m. *Eastern Time*—Approximate end time.

Agenda: The purpose of this meeting is to bring together committee members, representing government agencies, patient advocacy groups, other voluntary health organizations, and patients and their families to update one another on progress relevant to the Action Plan for the Muscular Dystrophies and to coordinate activities and discuss gaps and opportunities leading to better understanding of the muscular dystrophies, advances in treatments, and improvements in patients' and their families' lives. Prior to the meeting, an agenda will be posted to the MDCC website: *https://mdcc.nih.gov/.*

Registration: To register, please contact Emily Carifi: *Emily.Carifi@nih.gov.*

WebEx/Phone Access:

Join WebEx Meeting: https://nih.webex.com/nih/j.php?MTID=m1c5fd34513186c7c87ebeeee5af47f05;

Meeting number (access code): 628 888 923, Meeting password: fEN63PND

Join by Phone: 1–650–479–3208 Call-in toll number (US/Canada)

Global call-in numbers: https://nih.webex.com/nih/globalcallin.php?serviceType=MC&ED=701170342&tollFree=0.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Glen H. Nuckolls, Ph.D., Executive Secretary, Muscular Dystrophy Coordinating Committee, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Boulevard, NSC 2203, Bethesda, MD 20892, (301) 496–5745, *glen.nuckolls@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

More information can be found on the Muscular Dystrophy Coordinating Committee home page: *https://mdcc.nih.gov/.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 27, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–16505 Filed 8–1–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Laboratory Service, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Laboratory Service, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Laboratory Service, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 12, 2017.

DATES: The accreditation and approval of Laboratory Service, Inc., as commercial gauger and laboratory became effective on June 12, 2017. The next triennial inspection date will be scheduled for June 2020.

FOR FURTHER INFORMATION CONTACT: Melanie Glass, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–2029.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Laboratory Service, Inc., 11731 Port Rd., Seabrook, TX 77586, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Laboratory Service, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Laboratory Service, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
N/A	D1364	Standard Test Method for Water in Volatile Solvents (Karl Fischer Reagent Titration Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: July 2, 2018.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–16516 Filed 8–1–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0035]

First Responders Community of Practice

AGENCY: Science and Technology Directorate, Department of Homeland Security.

ACTION: 60-Day Notice of Information Collection; request for comment. (Extension of a Currently Approved Collection, 1640–0016).

SUMMARY: The Department of Homeland Security (DHS), Science and Technology (S&T) First Responders Group (FRG) is proposing to extend currently approved OMB 1640–0016, an information collection, by inviting the public to comment on the collection: First Responders Community of Practice (FRCoP) User Registration Page (DHS Form 10059 (9/09)). The FRCoP web based tool collects profile information from first responders and select authorized non-first responder users to facilitate networking and formation of online communities. All users are

required to authenticate prior to entering the site. In addition, the tool provides members the capability to create wikis, discussion threads, blogs, documents, etc., allowing them to enter and upload content in accordance with the site's Rules of Behavior. Members are able to participate in threaded discussions and comment on other members' content. The FRCoP program is responsible for providing a collaborative environment for the first responder community to share information, best practices, and lessons learned. The Homeland Security Act of 2002 established this requirement. Interested persons may receive a copy of the collection by contacting the DHS S&T Paperwork Reduction Act (PRA) Coordinator.

DATES: Comments are encouraged and accepted until October 1, 2018.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0035, at:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

• *Mail and hand delivery or commercial delivery:* Science and Technology Directorate, ATTN: Chief Information Office—Mary Cantey, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number DHS–2018–0035. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: DHS/S&T/FRG System Owner: Rochele Smith, *rochele.smith@hq.dhs.gov,* (202) 254–8634 (Not a toll free number).

SUPPLEMENTARY INFORMATION: DHS, in accordance with the PRA (6 U.S.C. 193), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collection 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 provides the requested data in the desired format. DHS is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Homeland Security 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: First Responders Community of Practice User Registration Page (DHS Form 10059 (9/09)).

Prior OMB Control Number: 1640–0016.

Prior ***Federal Register*** *Document:* 78 FR 53464, August 29, 2013.

Type of Review: An extension of an information collection.

Respondents/Affected Public: Federal, State, Local, and Tribal Governments.

Frequency of Collection: Once per respondent.

Average Burden per Response: 30 minutes.

Total Estimated Number of Annual Responses: 2000.

Total Estimated Number of Annual Burden Hours: 1000.

Rick Stevens,

Chief Information Officer, Science and Technology Directorate.

[FR Doc. 2018–16452 Filed 8–1–18; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G]

Notice of Establishment of the Bureau of Indian Education Standards, Assessments, and Accountability System Negotiated Rulemaking Committee; Notice of Meetings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Establishment and notice of public meetings.

SUMMARY: The Department of the Interior is establishing the Bureau of Indian Education (BIE) Standards, Assessments, and Accountability System Negotiated Rulemaking Committee (Committee). The Committee will advise the Secretary of the Interior (Secretary) through the BIE and the Assistant Secretary—Indian Affairs on the development of regulations to fulfill the Secretary's responsibility to define standards, assessments, and accountability system consistent with ESEA section 1111, as amended, for schools funded by BIE on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools and the process for requesting a waiver for these definitions. This notice also announces the dates and locations of each of the public meetings of the Committee.

DATES: For a listing of the dates of each Committee meeting, refer to ''Committee Meetings'' under **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: For a listing of the locations of each Committee meeting, refer to ''Committee Meetings'' under **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer, Sue Bement, Education Program Specialist, Bureau of Indian Education, by any of the following methods:

• (Preferred method) Email to: *BIEcomments@bia.gov;*

• Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Sue Bement, C/O The Office of Regulatory Affairs and Collaborative Action, 1001 Indian School Road NW, Suite 312, Albuquerque, NM 87104.

• Telephone: (952) 851–5427.

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2017, a notice in the **Federal Register** (82 FR 43199) announced the U.S. Department of the Interior's intent to form a negotiated rulemaking committee under the Every Student Succeeds Act (ESSA), the Negotiated Rulemaking Act, and the Federal Advisory Committee Act (5 U.S.C. Appendix 2). On April 17, 2018, a notice in the **Federal Register** (83 FR 16806) announced the proposed membership. The Committee will advise the Secretary through the BIE and the Assistant Secretary—Indian Affairs on the development of regulations to fulfill the Secretary's responsibility to define standards, assessments, and accountability system consistent with ESEA section 1111 (20 U.S.C. 6311), as amended, for schools funded by BIE on a national, regional, or Tribal basis, as appropriate, taking into account the

unique circumstances and needs of such schools and the students served by such schools and the process for requesting a waiver for these definitions.

The April 17, 2018, notice discussed the issues to be negotiated and the interest group representatives proposed as members of the Committee.

The Secretary received additional proposed nominations in response to the April 17, 2018, notice and considered the nominations based on the qualifications outlined in the notice for approval. The nominees were approved to join the Committee and are included in this **Federal Register** Notice.

Committee Membership

The two nominees were received for consideration following the April 17, 2018, **Federal Register** notice and will now be appointed to the Committee.

Tribe(s) represented	Proposed committee members	Nominated by
Navajo Nation	Genevieve Jackson	Diné Bi Olta School Board Association, Inc.
Northwest Tribes	Dr. Amy McFarland	Chief Leschi Schools.

Committee Meetings

Revised regulations must be put in place as soon as possible, thus the Committee will be expected to meet frequently within a short time frame. The BIE expects to have three in-person meetings and one teleconference, with each in-person meeting lasting three days in length. The BIE has dedicated resources required to: Ensure the Committee is able to conduct meetings; provide technical assistance; and provide any additional support required to fulfill the Committee's responsibilities. The meeting dates and locations are as follows:

Date	Time	Location
Tuesday, September 25, 2018 Through Thursday, September 27, 2018.	Begin at 8:30 a.m. on September 25, and end at 4:30 p.m. on September 27, 2018, local time.	Bureau of Indian Affairs, Rocky Mountain Regional Office, Medicine Wheel Room—3rd floor, 2021 Fourth Avenue North Billings, MT 59101.
Tuesday, October 30, 2018 Through Thursday, November 1, 2018.	Begin at 8:30 a.m. on October 30, and end at 4:30 p.m. on November 1, 2018, local time.	Bureau of Indian Affairs, Southwest Regional Office, Pojoaque Classroom #271, 2nd floor, 1011 Indian School Road NW, Albuquerque, NM 87104.
Tuesday, December 4, 2018 Through Thursday, December 6, 2018.	Begin at 8:30 a.m. on December 4, and end at 4:30 p.m. on December 6, 2018, local time.	Office of Hearings & Appeals, 2nd Floor Conference Room, 801 N Quincy Street, Arlington, VA 22203.
1/2-day Webinar, Spring 2019	Begin at 11:30 a.m. and end at 2:30 p.m., Eastern Time.	Via Teleconference, 1 (866) 818–9861, Participant code: 70319382, Refer to BIE Negotiated Rulemaking Committee website for additional information.

Detailed information about Committee meetings, including detailed agendas, can be accessed at *https://www.bie.edu/Resources/NRMC/index.htm.*

Agenda for BIE Standards, Assessments, and Accountability System Negotiated Rulemaking Committee

At the first meeting, the Committee will conduct introductions of members at the start of the meeting and will continue with the following items on the agenda:

- Review and discussion of Committee Operations including operating protocols and decision-making criteria;
- Overview and discussion of existing regulations (25 CFR part 30) implemented at BIE schools and an overview topic paper;
- Overview and discussion of ESSA Section 8007(2) and ESEA Section 1111 and standards, assessments, and accountability topic papers;
- Discussion of the Committee's tasks and approach to draft regulations including discussion of draft regulations, outline work; formation of subcommittees and tasks between the first and second meeting; and
- Public comments.

The second meeting will focus on edits to the draft preamble and the proposed rule, public comments, and reaffirm Committee tasks in preparation for the third meeting.

The third meeting will focus on the draft proposed rule for publication, seek consensus on the draft, schedule government-to-government consultations including what key information will be shared during consultation, and public comment.

The final meeting, via WebEx, will review public comments received, discuss any substantive comments that will affect the proposed rule, and seek consensus on a recommended approach to addressing the comments. The final meeting will include a close-out discussion about the process.

Written comments may be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section above. 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 in your comment that the BIA withhold your personal identifying information from public review, the BIA cannot guarantee that it will be able to do so.

All meetings are open to the public; however, transportation, lodging, and means are the responsibility of the participating public.

Authority: The Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 *et seq.*

Dated: July 27, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2018–16588 Filed 8–1–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A51010.999900]

Proclaiming Certain Lands as Reservation for the Bois Forte Band of the Minnesota Chippewa Tribe of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Acting Assistant Secretary—Indian Affairs proclaimed approximately 1,146.17 acres, more or less, an addition to the reservation of the Bois Forte Band of the Minnesota Chippewa Tribe of Minnesota on July 9, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110), for the land described below. The land was proclaimed to be an addition to the reservation of the Bois Forte Band of the Minnesota Chippewa Tribe, Saint Louis County, State of Minnesota.

Reservation for the Bois Forte Band of the Minnesota Chippewa Tribe

23 Contiguous Parcels

Principal Meridian

Saint Louis County, State of Minnesota

Legal Description Containing 1,146.17 Acres, More or Less

Parcel 1: NW¼ NW¼, Section 34, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 2: That portion of the Westerly 100 ft. of the Easterly 600 ft. of Government Lot 2, Section 22, Township 62N, Range 16W, 4th Principal Meridian, lying South of County Highway 414 (0.92 acres)

Parcel 3: SE¼ NE¼, Section 33, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 4: N½ SE¼, Section 27, Township 62N, Range 16W, 4th Principal Meridian (80 acres)

Parcel 5: N½ SW¼, Section 27, Township 62N, Range 16W, 4th Principal Meridian (80 acres)

Parcel 6: NE¼ NE¼, Section 28, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 7: SE¼ NE¼, Section 28, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 8: S½ SW¼, Section 27, Township 62N, Range 16W, 4th Principal Meridian (80 acres)

Parcel 9: Government Lot 1, Section 27, Township 62N, Range 16W, 4th Principal Meridian (25.25 acres)

Parcel 10: S½ SE¼, Section 27, Township 62N, Range 16W, 4th Principal Meridian (80 acres)

Parcel 11: W½ SE¼, Section 22, Township 62N, Range 16W, 4th Principal Meridian (80 acres)

Parcel 12: SW¼ NW¼, Section 27, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 13: NE¼ NW¼, Section 27, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 14: W½ NE¼, Section 27, Township 62N, Range 16W, 4th Principal Meridian (80 acres)

Parcel 15: SE¼ NW¼, Section 27, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 16: S½ SW¼, Section 22, Township 62N, Range 16W, 4th Principal Meridian (80 acres)

Parcel 17: NW¼ NE¼, Section 34, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 18: SE¼ NE¼, Section 34, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 19: NE¼ NW¼, Section 34, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 20: NE¼ NE¼, Section 34, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 21: SW¼ NW¼, Section 34, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 22: SE¼ NW¼, Section 34, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

Parcel 23: SW¼, NE¼, Section 34, Township 62N, Range 16W, 4th Principal Meridian (40 acres)

The above described lands contain a total of 1,146.17 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads, and pipelines or any other valid easements or rights-of-way or reservations of record.

Dated: July 9, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2018–16583 Filed 8–1–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A51010.999900]

Proclaiming Certain Lands as Reservation for the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Principal Deputy Assistant Secretary—Indian Affairs proclaimed approximately 520 acres, more or less, an addition to the reservation of the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California on July 9, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 5110) for the lands described below. The land was proclaimed to be part of the reservation for the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California, County of San Diego, and State of California.

Reservation for the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California

One Tribal Trust Tract Encompasses Two Parcels

San Bernardino Base and Meridian San Diego County, California

Legal Descriptions Containing 520 Acres, More or Less

The Mowry Property (Tract 587–T–5532)

Parcel 1: APN 133–190–04

The South half, the West half of the Northeast quarter, the Northeast quarter of the Northeast quarter and the Northeast quarter of the Northwest quarter of Section 36, Township 10 South, Range 1 West, San Bernardino Base and Meridian in the County of San Diego, State of California, according to official plat thereof.

Parcel 2: APN 133–190–07

The Southeast quarter of the Northeast quarter of Section 36, Township 10 South, Range 1 West, San Bernardino Base and

Meridian, in the County of San Diego, State of California, according to official plat thereof.

The above described lands contain a total of 520 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easement for public roads and highways, public utilities, railroads, pipelines, or any other valid easement or rights-of-way or reservation of record.

Dated: July 9, 2018.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2018–16584 Filed 8–1–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM006200 L99110000.EK0000 XXX L4053RV]

Notice of Crude Helium Auction and Sale for Fiscal Year 2019 Delivery

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of auction and sale.

SUMMARY: The Secretary of the Interior (Secretary), through the Bureau of Land Management (BLM) New Mexico State Office, is issuing this Notice to conduct an auction and sale from the Federal Helium Program, administered by the BLM New Mexico, Amarillo Field Office. The Helium Stewardship Act of 2013 (HSA) requires the BLM to conduct an annual auction and sale of crude helium. Accordingly, the BLM will once again use the auction and sale process established in the **Federal Register** dated June 20, 2017, for a previous sale.

DATES: The schedule for the auction and sale process is:

Helium Auction

August 31, 2018—FY 2019 helium auction held in Amarillo, Texas

September 4, 2018—FY 2019 helium auction results published on the BLM website

September 5, 2018—Invoices for auction sent on or before this date; payments due 15 days from invoice

Helium Sale

August 31, 2018—Invitation for offers (IFO) posted for helium sale

September 4, 2018—Bids due from IFO

September 4, 2018—Award announcements published on the BLM website

September 5, 2018—Invoices for sale sent on or before; payments due 15 days from invoice

Helium Delivery

September 30, 2018—Helium transferred to buyers' storage accounts

If payment is not received by September 20, 2018, volumes will be re-offered for sale to all over bidders, proportionally, on September 21, 2018. Subsequently, for these re-offered volumes to count toward October 1, 2018 allocation percentages, payment must be received by September 28, 2018.

ADDRESSES: The August 31, 2018, helium auction will be held in the main conference room of the Amarillo Field Office, 801 South Fillmore, Suite 500, Amarillo, TX 79101. The BLM's Federal Helium Program HSA Implementation page website is located at *https://www.blm.gov/programs/energy-and-minerals/helium/federal-helium-operations.* Questions related to the auction can be submitted by phone to the BLM at 806–356–1000.

FOR FURTHER INFORMATION CONTACT: Samuel R.M. Burton, Amarillo Field Manager, at telephone: 806–356–1000, email: *sburton@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339. The FRS is available 24 hours a day, 7 days a week, to leave a message. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

A. Purpose and Background

In October 2013, Congress passed the HSA, which requires the Department of the Interior, through the BLM Director, to offer for auction and sale annually a portion of the helium reserves owned by the United States and stored underground at the Cliffside Gas Field near Amarillo, Texas.

On July 23, 2014, the BLM published a ''Final Notice for Implementation of Helium Stewardship Act Sales and Auctions'' in the **Federal Register** (79 FR 42808) (2014 Final Notice). The 2014 Final Notice contained information about the HSA, definitions of terms used in the Notice, the reasons for the action, and a process for conducting the auctions and sales in FY 2014.

On August 24, 2015, the BLM published a ''Notice of Final Action: Crude Helium Sale and Auction for Fiscal Year 2016 Delivery'' in the **Federal Register** (80 FR 51304) (2015 Final Notice). The 2015 Final Notice refined the process the BLM used in 2014 for conducting the auction and sale of crude helium. The BLM will use the process set forth in the 2015 Final Notice for the auction and sale of crude helium to occur in FY 2018 for FY 2019 delivery.

Both the 2014 and 2015 Final Notices are available from the BLM's HSA Implementation Page website (see **ADDRESSES**). Search under the ''Documents and Reports'' link.

B. Volumes Offered in the FY 2019 Helium Auction and Sale:

Table 1 identifies the volumes to be offered for auction and sale in FY 2018 for FY 2019 delivery.

TABLE 1—PROJECTED VOLUMES FOR AUCTION AND SALES FOR FY 2019 DELIVERY

Fiscal year (FY)	Forecasted production capability (NITEC study)	In-kind sales (sales to federal users)	Total remaining production available for sale/ auction or delivery	Volume available for auction	Volume available for non-allocated sale	Volume available for sale
	MMcf *	MMcf	MMcf	MMcf	MMcf	MMcf
FY 2019	825	155	300 ***	210 **	9	81

* MMcf means one million cubic feet of gas measured at standard conditions of 14.65 per square inch atmosphere (psia) and 60 degrees Fahrenheit.

** 70 percent of total production capacity after deducting in-kind (rounded).

*** Volumes offered fulfill the requirement of the HSA to reach Phase C.

C. FY 2019 Helium Auction

1.01 What is the minimum FY 2019 auction price and the FY 2019 sales price? The minimum FY 2019 auction price is $110 per Mcf (one thousand cubic feet of gas measured at standard conditions of 14.65 psia and 60 degrees Fahrenheit). The BLM will announce the FY 2019 sale price after the auction has concluded, and the BLM completes its analysis of the auction information. The BLM will use this information to publish the crude helium price for FY 2019.

1.02 What will happen to the helium offered but not sold in the helium auction? Any volume of helium offered, but not sold in the FY 2019 auction, will be added to the helium available for sale and will be offered in the FY 2019 sale.

1.03 When will the auction and sale take place? The BLM will offer helium for FY 2019 according to the following schedule:

Helium Auction

August 31, 2018—FY 2019 helium auction held in Amarillo, Texas
September 4, 2018—FY 2019 helium auction results published on the BLM website
September 5, 2018—Invoices for auction sent on or before this date; payments due 15 days from invoice

Helium Sale

August 31, 2018—Invitation for offers (IFO) posted for helium sale
September 4, 2018—Bids due from IFO
September 4, 2018—Award announcements published on the BLM website
September 5, 2018—Invoices for sale sent on or before; payments due 15 days from invoice

Helium Transfer

September 30, 2018—Helium transferred to buyers' storage accounts (in accordance with Section 1.08)

If payment is not received by September 20, 2018, volumes will be re-offered for sale to all over-bidders, proportionally, on September 21, 2018. Subsequently, for these re-offered volumes to count toward October 1, 2018 allocation percentages, payment must be received by September 28, 2018.

1.04 What is the auction format? The auction will be a live auction, held in the main conference room of the Amarillo Field Office at 1:00 p.m. Central Time, on August 31, 2018. The address is 801 South Fillmore, Suite 500, Amarillo, TX 79101. Anyone meeting the HSA definition of a qualified bidder may participate in the auction. The logistics for the auction and the pre-bid qualification form is included in a document entitled, ''FY 2019 Helium Auction Notice and Guide'' on the BLM's HSA Implementation Page website (see **ADDRESSES**). Click on the ''**Federal Register** Notices'' link.

1.05 Who is qualified to purchase helium at the auction? Only qualified bidders, as defined in 50 U.S.C. 167(9), may participate in and purchase helium at the auction. The BLM will make the final determination of who is a qualified bidder using the HSA's definition of a qualified bidder, regardless of whether or not that person was previously determined to be a qualified bidder. Payment must be received not later than the close of business September 20, 2018.

1.06 How many helium lots does the BLM anticipate offering at the FY 2019 auction? The BLM anticipates auctioning 210 MMcf in a total of 12 lots for delivery in FY 2019. The lots would be divided as follows:

5 lots of 25 MMcf each; and
5 lots of 15 MMcf each; and
2 lots of 5 MMcf each.

1.07 What must I do to bid at auction? The BLM has described the live auction procedures, including detailed bidding instructions and pre-bid registration requirements, in a document entitled, ''FY 2019 Auction Notice and Guide,'' which is available on the BLM's HSA Implementation Page website (see **ADDRESSES**). Click on the ''**Federal Register** Notices'' link.

1.08 When will helium that is purchased at sale or won at auction be available in the purchaser's storage account? The BLM will transfer the volumes purchased in the FY 2019 auction and sale to the buyer's storage accounts on September 30, 2018.

D. FY 2019 Helium Sale

2.01 Who will be allowed to purchase helium in the FY 2019 sale? The crude helium sale will be separated into two distinct portions, a non-allocated portion and an allocated portion. The non-allocated portion will be ten percent of the total amount offered for sale for FY 2019, and will be available to those storage contract holders who do not have ability to accept delivery of crude helium from the Federal Helium Pipeline (as defined in 50 U.S.C. 167(2)) as of May 30, 2018. The allocated portion will be 90 percent of the total amount offered for sale for FY 2019, and will be available to any person (including individuals, corporations, partnerships, or other entities) with the ability to accept delivery of crude helium from the Federal Helium Pipeline (as defined in 50 U.S.C. 167(2)).

2.02 How will helium sold in the FY 2019 sale be allocated among those participating in the non-allocated sale? The non-allocated sale will be made available to all qualified offerors not eligible to participate in the allocated sales. The minimum volume that can be requested is 1 MMcf. The total volume available for the non-allocated portion of the sale is 9 MMcf. Any volumes not sold at auction will be distributed between the non-allocated (10 percent) and the allocated sale (90 percent). Any volumes not purchased at the non-allocated sale will be sold in the allocated portion.

2.03 How will the helium sold in the FY 2019 sale be allocated among the persons to accept delivery of crude helium from the Federal Helium Pipeline? Any person wishing to participate in the allocated portion of the FY 2019 sale needs to report its excess refining capacity and operational capacity a minimum of 14 calendar days prior to the sale, using the Excess Refining Capacity form. The form can be downloaded from the BLM's HSA Implementation Page website (see **ADDRESSES**). Click on the links for ''Crude Helium Auctions & Sales'' and then ''FY 2019 Refiner Estimated Excess Capacity.'' Each person participating in the sale will then be allocated a proportional share based upon that person's operational capacity.

2.04 How does a person apply for access to the Federal Helium Pipeline for the purpose of taking crude helium? The steps for taking crude helium are provided in the BLM's HSA Implementation Page website (see **ADDRESSES**). The steps are contained in a document entitled, ''How to Establish a Storage Contract and Pipeline Connection Point.'' Click on the link for ''Helium Storage.'' Reporting forms can be downloaded from the same website address, click on the link for ''Documents and Reports.'' The forms show the requirements and due dates for each report. The length of time required to apply for and obtain access to the Federal Helium Pipeline can vary based on the person's plans for plant construction, pipeline metering installation, and other variables. The BLM is available to provide technical assistance, including contact information for applying for access and meeting any applicable National Environmental Policy Act requirements.

E. Delivery of Helium in FY 2019

3.01 When will I receive the helium that I purchase in a sale or win based

on a successful auction bid? Helium purchased at the FY 2019 sale or won at the FY 2019 auction will be delivered starting September 30, 2018, in accordance with the crude helium storage contract. The intent is to ensure delivery of all helium purchased at sale or auction up to the BLM's production capability for the year.

3.02 How will the BLM prioritize delivery? The HSA gives priority to Federal in-kind helium (*i.e.,* helium sold to Federal users) (50 U.S.C. 167d(b)(1)(D)) and (b)(3)). After meeting that priority, the BLM will make delivery on a reasonable basis, as described in the crude helium storage contract, to ensure storage contract holders who have purchased or won helium at auction have the opportunity during the year to have that helium produced or refined in monthly increments.

F. Background documents

Supplementary documents referenced in this Notice are available at the BLM's HSA Implementation Page website (see **ADDRESSES**) and include the following documents:

a. This **Federal Register** Notice for Fiscal year 2019 Delivery;

b. The HSA (50 U.S.C. 167);

c. FY 2019 Helium Auction Notice and Guide;

d. 2016 Storage Contract (template for information only);

e. Determination of Fair Market Value Pricing of Crude Helium;

f. Storage Fees;

g. Required Forms for Helium Reporting; and

h. FY 2014 through FY 2018 **Federal Register** Notices for Helium Auctions and Sales.

Authority: The HSA of 2013 (Pub. L. 113–40) codified to various sections in 50 U.S.C. 167–167q.

Richard T. Cardinale,

Acting Deputy Director, Operations.

[FR Doc. 2018–16685 Filed 8–1–18; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), consisting of 15 members appointed by the Secretary of Labor (the Secretary) as follows:

- Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multiemployer plan);
- three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans);
- one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and
- three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan).

No more than eight members of the Council shall be members of the same political party.

Council members must be qualified to appraise the programs instituted under ERISA. Appointments are for three-year terms. The Council's prescribed duties are to advise the Secretary with respect to carrying out his functions under ERISA, and to submit to the Secretary, or his designee, related recommendations. The Council will meet at least four times each year.

The terms of five Council members expire at the end of this year. The groups or fields they represent are as follows:

(1) Employee organizations;

(2) employers;

(3) actuarial counseling;

(4) investment counseling; and

(5) the general public.

The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse Council.

If you or your organization wants to nominate one or more people for appointment to the Council to represent one of the groups or fields specified above, submit nominations to Larry Good, Council Executive Secretary, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Ave. NW, Suite N–5623, Washington, DC 20210, or as email attachments to *good.larry@dol.gov.* Nominations must be received on or before September 17, 2018. Please allow three weeks for regular mail delivery to the Department of Labor. If sending electronically, please use an attachment in rich text, Word, or pdf format. Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination or, in the case of a nomination by an organization, by an authorized representative of the organization. The Department encourages you to include additional supporting letters of nomination. It will not consider self-nominees who have no supporting letters.

Nominations, including supporting letters, should:

- State the person's qualifications to serve on the Council (including any particular specialized knowledge or experience relevant to the nominee's proposed Council position);
- state that the candidate will accept appointment to the Council if offered;
- include which of the five positions (representing groups or fields) you are nominating the candidate to fill;
- include the nominee's full name, work affiliation, mailing address, phone number, and email address;
- include the nominator's full name, mailing address, phone number, and email address;
- include the nominator's signature, whether sent by email or otherwise.

Please do not include any information that you do not want publicly disclosed.

The Department will contact nominees for information on their political affiliation and their status as registered lobbyists. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Council. Historically, this has meant a commitment of at least 20 days per year. The Department of Labor has a process for vetting nominees under consideration for appointment.

Signed at Washington, DC, on July 30, 2018.

Preston Rutledge,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2018–16571 Filed 8–1–18; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Advisory Committee for Mathematical and Physical Sciences (#66).

DATE AND TIME:

August 14, 2018; 12:30 p.m.–5:00 p.m.

August 15, 2018; 8:30 a.m.–4:00 p.m.

PLACE: National Science Foundation, 2415 Eisenhower Ave. Alexandria, VA 22314.

MEETING INFORMATION: *https://www.nsf.gov/mps/advisory.jsp.*

TYPE OF MEETING: Open.

CONTACT PERSON: Christopher Coox, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703.292.5137; Email: *ccoox@nsf.gov.*

PURPOSE OF MEETING: To provide advice, recommendations, and counsel on major goals and policies pertaining to mathematical and physical sciences programs and activities.

Agenda

Tuesday, August 14, 2018

- Meeting opening, FACA briefing, introductions, and approval of previous meeting minutes
- MPS update
- Big Ideas: Quantum Leap: Leading the Next Quantum Revolution
- Big Ideas: Windows on the Universe: The Era of Multi-Messenger Astrophysics
- Preparation for meeting with the NSF Director and Chief Operating Officer (COO)

Wednesday, August 15, 2018

- Meeting opening and FACA briefing
- Update: Sexual Harassment
- Big Ideas: Harnessing the Data Revolution
- Big Ideas: Understanding the Rules of Life: Predicting Phenotype
- Discussion: Synthetic Biology
- Update from MPSAC sub-committee on the Physics Frontiers Centers Program
- Discussion with NSF Director and COO
- Wrap up and opportunity for public Q&A/comments

Dated: July 30, 2018.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2018–16551 Filed 8–1–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943–MLA–2; ASLBP No. 13–926–01–MLA–BD01]

Notice (Regarding Weapons at Atomic Safety and Licensing Board Proceeding); In the Matter of Crow Butte Resources, Inc. (Marsland Expansion Area)

July 27, 2018.

Atomic Safety and Licensing Board Panel Before the Licensing Board: G. Paul Bollwerk, III, Chairman, Dr. Richard E. Wardwell, Dr. Thomas J. Hirons

Notice is hereby given that the rules and policies regarding the possession of weapons in United States Courthouses and United States Federal Buildings in the State of Nebraska shall apply to all proceedings conducted in governmental or private facilities in Nebraska by the Atomic Safety and Licensing Board of the U.S. Nuclear Regulatory Commission.

Accordingly, no person other than federal law enforcement personnel or law enforcement personnel from the Dawes County Sheriff's Department, or any other authorized Nebraska state or local law enforcement organization, while performing official duties, shall wear or otherwise carry a firearm, edged weapon, impact weapon, electronic control device, chemical weapon, ammunition, or other dangerous weapon into the limited appearance session scheduled at the Chadron State College Student Center in Chadron, Nebraska, on Sunday, October 28, 2018, or the evidentiary hearing scheduled to begin on Tuesday, October 30, 2018, at the Crawford Community Building in Crawford, Nebraska.

This notice does not apply to state or local law enforcement officers responding to a call for assistance from within the Chadron State College Student Center or the Crawford Community Building.

For the Atomic Safety and Licensing Board.

Dated: Rockville, Maryland, July 27, 2018.

George P. Bollwerk III,

Chairman, Administrative Judge.

[FR Doc. 2018–16545 Filed 8–1–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8943–MLA–2; ASLBP No. 13–926–01–MLA–BD01]

Notice of Hearing (Notice of Evidentiary Hearing and Opportunity To Provide Oral, Written, and Audio-Recorded Limited Appearance Statements); In the Matter of Crow Butte Resources, Inc. (Marsland Expansion Area)

July 27, 2018.

Atomic Safety and Licensing Board Panel Before the Licensing Board: G. Paul Bollwerk, III, Chairman, Dr. Richard E. Wardwell, Dr. Thomas J. Hirons

The Atomic Safety and Licensing Board hereby gives notice that it will convene an evidentiary hearing to receive testimony and exhibits in this proceeding regarding intervenor Oglala Sioux Tribe's (OST) challenge to the May 2012 application of Crow Butte Resources, Inc., (CBR) seeking to amend the existing 10 CFR part 40 source materials license for its Crow Butte in situ uranium recovery (ISR) site to authorize CBR to operate a satellite ISR facility within the Marsland Expansion Area (MEA) in Dawes County, Nebraska. The evidentiary hearing will concern OST's admitted Contention 2, which raises hydrogeological-related environmental and safety matters regarding the proposed license amendment. In addition, the Board gives notice that, in accordance with 10 CFR 2.315(a) and the procedures specified below, it will entertain oral, written, and audio-recorded limited appearance statements from members of the public in connection with the issues raised by Contention 2.

A. Matters To Be Considered

As set forth by the Licensing Board in a July 20, 2018 issuance, OST Contention 2 provides as follows:

OST Contention 2: Failure to Include Adequate Hydrogeological Information to Demonstrate Ability to Contain Fluid Migration

The application and final environmental assessment fail to provide sufficient information regarding the geological setting of the area to meet the requirements of 10 CFR part 40, Appendix A, Criteria 4(e) and 5G(2); the National Environmental Policy Act; and NUREG–1569 section 2.6. The application and final environmental assessment similarly fail to provide sufficient information to establish potential effects of the project on the adjacent surface and ground-water resources, as required by NUREG–1569 section 2.7, and the National Environmental Policy Act.

LBP–18–3, 88 NRC __, __(slip op. at 43) (July 20, 2018). This issue will be the

subject matter of the evidentiary hearing and should be the focus of any limited appearance statements.[1]

B. Date, Time, and Location of Evidentiary Hearing

The Board will convene an evidentiary hearing conducted in accord with the procedures set forth in 10 CFR part 2, subpart L, regarding the environmental and safety matters specified in section A above on the following date at the specified location and time:

Date: Tuesday, October 30, 2018.

Time: 8:30 a.m. Mountain Time (MT).

Location: Crawford Community Building, 1005 1st Street, Crawford, Nebraska.

The hearing will continue from day-to-day until concluded. CBR, the NRC staff, and OST will be parties to the hearing and will sponsor witnesses and evidentiary material.

Any member of the public who plans to attend the hearing is advised that security measures may be employed at the entrance to the room where the hearing will take place, including searches of hand-carried items such as briefcases or backpacks, and is reminded to arrive in sufficient time to allow for security screening. Items that could readily be used as weapons will not be permitted in the room where the evidentiary hearing sessions will be held. Also, during the evidentiary hearing session no signs will be permitted in the hearing room.

C. Date, Time, and Location of Oral Limited Appearance Statement Session

A 10 CFR 2.315(a) oral limited appearance session regarding the MEA ISR proceeding will be held on the following date at the specified location and time:

Date: Sunday, October 28, 2018 (if there is sufficient interest).

Time: 2:00 p.m. to 4:00 p.m. MT.

Location: Scottsbluff Room, Chadron State College Student Center, 1000 Main Street, Chadron, Nebraska.

D. Participation Guidelines for Oral Limited Appearance Statements

Any person not a party, or the representative of a party, to this proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to the proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Licensing Board and/or the parties in their consideration of the matters of concern in this proceeding relating to OST Contention 2.

Oral limited appearance statements will be entertained during the hours specified in section C above, or such lesser period as may be necessary to accommodate the speakers who are present. In this regard, if all scheduled and unscheduled speakers present at the session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed in section C above. The Board also reserves the right to cancel the Sunday afternoon session scheduled above if there has not been a sufficient showing of public interest as reflected by the number of preregistered speakers.

Any member of the public who plans to attend the limited appearance session is strongly advised to arrive early to allow time to pass through any security measures that may be employed. Attendees are also requested not to bring any unnecessary hand-carried items, such as packages, briefcases, backpacks, or other items that might need to be examined individually. Items that could readily be used as weapons will not be permitted in the room where this session will be held. During the oral limited appearance session, signs no larger than 18 inches by 18 inches will be permitted, but may not be attached to sticks, held over one's head, or moved about in the room.

The time allotted for each limited appearance statement normally will be no more than five minutes, but to ensure everyone will have an opportunity to speak, may be further limited depending on the number of written requests to make an oral statement that are submitted in accordance with section E below and/or the number of persons present at the designated times.

E. Submitting a Request To Make an Oral Limited Appearance Statement

A person wishing to make an oral statement who has submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by email so as to be *received by 5:00 p.m. Eastern Time (ET) on Monday, October 12, 2018.* Based on its review of the requests received by October 12, 2018, the Licensing Board may decide that the Sunday afternoon session will not be held due to lack of adequate interest in that session. Written requests to make an oral limited appearance received after Monday, October 12, 2018, will be honored to the extent practicable.

Written requests to make an oral statement should be submitted to:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3A02, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5205 (verification (301) 415–5277).

Email: paul.bollwerk@nrc.gov and *sarah.ladin@nrc.gov*.

F. Submitting Written Limited Appearance Statements

As provided in 10 CFR 2.315(a), any person not a party, or the representative of a party, to the proceeding may submit a written statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the matters of concern in this proceeding relating to OST Contention 2.

A written limited appearance statement may be submitted at any time, however, for the statement to be the most helpful to the Board and parties relative to the evidentiary hearing on Contention 2, it should be submitted so as to be *received by Wednesday, October 24, 2018.* The written limited statement should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–1101 (verification (301) 415–1677).

Email: hearingdocket@nrc.gov.

[1] As the Board also indicated in its July 2018 issuance, LBP–18–3, 88 NRC at __(slip op. at 43), the scope of the safety and environmental concerns encompassed by this contention include the following: (1) The adequacy of the descriptions of the affected environment for establishing the potential effects of the proposed MEA operation on the adjacent surface water and groundwater resources; (2) exclusively as a safety concern, the absence in the applicant's technical report, in accord with NUREG–1569 section 2.7, of a description of the effective porosity, hydraulic porosity, hydraulic conductivity, and hydraulic gradient of site hydrogeology, along with other information relative to the control and prevention of excursions such as transmissivity and storativity; (3) the failure to develop, in accord with NUREG–1569 section 2.7, an acceptable conceptual model of site hydrology that is adequately supported by site characterization data so as to demonstrate with scientific confidence that the area hydrogeology, including horizontal and vertical hydraulic conductivity, will result in the confinement of extraction fluids and expected operational and restoration performance; and (4) whether the final EA contains unsubstantiated assumptions as to the isolation of the aquifers in the ore-bearing zones.

In addition, using the same method of service, a copy of the written limited appearance statement should be sent to the Licensing Board Chairman as follows:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3A02, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax: (301) 415–5599 (verification (301) 415–6094).

Email: paul.bollwerk@nrc.gov and *sarah.ladin@nrc.gov*.

G. Submitting Audio-Recorded Limited Appearance Statements

As provided in 10 CFR 2.315(a), any person not a party, or the representative of a party, to the proceeding may submit an audio-recorded statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence, they nonetheless may help the Board or the parties in their consideration of the matters of concern in this proceeding relating to OST Contention 2.

To ensure that the Licensing Board members will have the opportunity to review an audio-recorded limited appearance statements prior to the beginning of the evidentiary hearing, an audio-recorded limited appearance statement must be submitted so that it is *received by Friday, October 12, 2018.* All recordings *must* conform to the directions below in order for the Board and parties to consider the information and concerns contained therein. All audio-recorded limited appearance statements will be transcribed by a court reporter and included in the docket of this proceeding.

1. Size

Due to technical constraints, all audio-recorded limited appearance statements submitted must be no more than 15 minutes in length.

2. Format and Submission

Audio-recorded limited appearance statements may be sent to the Board one of two ways. An audio-recorded limited appearance statement may be sent by email to *paul.bollwerk@nrc.gov* as an attachment. The total size of the email cannot exceed 17 megabytes (MB). The attached file *must* be sent as an .mp3, .mp4, or .dss file.

An audio-recorded limited appearance statement may also be sent by mail on either a compact disc (CD) or digital versatile disc (DVD) to:

Mail: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3A02, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

H. Availability of Documentary Information Regarding the Proceeding

The CBR application and license and various staff documents relating to the application are available on the NRC website at *https://www.nrc.gov/info-finder/materials/uranium/licensed-facilities/crow-butte.html.*[2] These and other documents relating to this proceeding also are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the publicly-available records component of NRC's document system (ADAMS) at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room), including the agency's Electronic Hearing Docket, *https://adams.nrc.gov/ehd/* (under Docket No. 40–8943–MLA–2). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737 (available between 8:00 a.m. and 4:00 p.m. ET, Monday through Friday, except federal holidays), or by email to *pdr@nrc.gov.*

I. Information Updates to Schedule

Any updates or revisions to the evidentiary hearing schedule or the schedule for the limited appearance session can be found on the NRC website at *www.nrc.gov/public-involve/public-meetings/index.cfm,* or by calling (800) 368–5642, extension 5036 (available between 7:00 a.m. and 9:00 p.m. ET, Monday through Friday, except federal holidays), or by calling (301) 415–5036 (available seven days a week, twenty-four hours a day).

It is so ordered.

For the Atomic Safety and Licensing Board.

Rockville, Maryland, July 27, 2018.

George P. Bollwerk III,

Chairman, Administrative Judge.

[FR Doc. 2018–16546 Filed 8–1–18; 8:45 am]

BILLING CODE 7590–01–P

[2] On May 24, 2018, the staff notified the Board that, in accordance with 10 CFR 2.1202(a), the CBR license amendment license had been issued, effective immediately. *See* Letter from Emily Monteith, NRC Staff Counsel, to Licensing Board at 1 (May 24, 2018). Although section 2.1213(a) afforded OST the opportunity to seek a stay of this staff action, no such request was filed. Nonetheless, the CBR license amendment is subject to any merits determinations the Board might make relative to OST's pending contention.

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 455 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–199, CP2018–277.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–16523 Filed 8–1–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 85 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2018–196, CP2018–274.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–16525 Filed 8–1–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of notice required under 39 U.S.C. 3642(d)(1):* August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2018, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Parcel Select Contract 32 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–197, CP2018–275.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–16520 Filed 8–1–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 456 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–200, CP2018–278.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–16519 Filed 8–1–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 457 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–201, CP2018–279.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–16521 Filed 8–1–18; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* August 2, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on July 27, 2018, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 43 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2018–198, CP2018–276.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2018–16522 Filed 8–1–18; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83733; File No. SR–NYSEArca–2018–25]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change as Modified by Amendment No. 1 Thereto Regarding the Continued Listing and Trading of Shares of the Natixis Loomis Sayles Short Duration Income ETF

July 27, 2018.

I. Introduction

On April 16, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to continue listing and trading shares of the Natixis Loomis Sayles Short Duration Income ETF under NYSE Arca Rule 8.600–E, Managed Fund Shares.[4] The proposed rule change was published for comment in the **Federal Register** on May 3, 2018.[5] On June 5, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 1,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Currently, the Exchange lists and trades the shares pursuant to NYSE Arca Rule 8.600–E. As discussed further below, the Exchange submitted this proposed rule change to permit the fund's portfolio to deviate from two of the ''generic'' listing requirements applicable to Managed Fund Shares.

[5] *See* Securities Exchange Act Release No. 83122 (April 27, 2018), 83 FR 19578. (''Notice'').

2018.[6] On June 6, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. The Commission received no comments on the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings under Section 19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the proposed rule change as modified by Amendment No. 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares:[7] Natixis Loomis Sayles Short Duration Income ETF (''Fund''). The Shares are offered by Natixis ETF Trust (the ''Trust''), which is registered with the Commission as an open-end management investment company.[8] Natixis Advisors, L.P. (the ''Adviser'') is the investment adviser for the Fund. Loomis, Sayles & Company, L.P. is the Fund's sub-adviser (''Sub-Adviser''). ALPS Distributors, Inc. (the ''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Adviser is the Fund's administrator. State Street Bank and Trust Company (''State Street'') serves as the custodian, and transfer agent (''Transfer Agent'' or ''Custodian'') for the Fund.[9]

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[10] Commentary .06 to Rule 8.600–E is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser and Sub-Adviser are not registered as broker-dealers but each is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Natixis Loomis Sayles Short Duration Income ETF

Principal Investments

According to the Registration Statement, the Fund's investment objective is current income consistent with preservation of capital. Under normal market conditions,[11] the Fund will invest at least 80% of its net assets in ''Fixed-Income Securities'' (as described below).

The Fixed Income Securities in which the Fund may invest are the following:

- U.S. Government Securities, including U.S. Treasury Bills, U.S. Treasury Notes and Bonds, U.S. Treasury Floating Rate Notes, Treasury Inflation-Protected Securities (''TIPS''), and obligations of U.S. agencies or instrumentalities (*e.g.,* ''Ginnie Maes'', ''Fannie Maes'' and ''Freddie Macs'');
- agency and non-agency asset-backed securities (''ABS'');
- U.S. dollar-denominated foreign securities, including emerging market securities;
- Adjustable-Rate Mortgage Securities (''ARMs'');
- junior and senior loans;
- bank loans, loan participations and assignments;
- agency and non-agency mortgage-backed securities (''MBS'');

[6] *See* Securities Exchange Act Release No. 83385, 83 FR 27034 (June 11, 2018).

[7] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[8] Shares of the Fund commenced trading on the Exchange on December 28, 2017 pursuant to Commentary .01 to NYSE Arca Rule 8.600–E.

[9] The Trust is registered under the 1940 Act. On December 26, 2017, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–210156 and 811–23146) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30654 (August 20, 2013) (File No. 812–13942–02) (''Exemptive Order'').

[10] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[11] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

• collateralized mortgage obligations (''CMOs'');
• zero coupon and pay-in-kind securities;
• corporate bonds;
• Non-US government securities, supranational entities obligations issued by foreign governments, or international agencies and instrumentalities;
• inflation-linked and inflation-indexed securities;
• money market instruments; [12]
• mortgage-related securities (such as Government National Mortgage Association or Federal National Mortgage Association certificates);
• mortgage dollar rolls;
• variable and floating rate securities;
• Rule 144A securities;
• taxable municipal securities;
• step-coupon securities; and
• stripped securities.

The Fund may hold any portion of its assets in cash (U.S. dollars, foreign currencies or multinational currency units) and/or cash equivalents.[13]

Other Investments

While the Fund, under normal market conditions, will invest at least 80% of its net assets in the securities and financial instruments described above, the Fund may invest its remaining assets in the securities and financial instruments referenced below.

The Fund may enter into short sales of Fixed Income Securities.

The Fund may invest in exchange-traded funds (''ETFs'') [14] and exchange-traded notes (''ETNs''). [15]

The Fund may invest in bilateral credit default swaps, bilateral interest rate swaps and bilateral standardized commodity and equity index total return swaps. The Fund may invest in the following swaps: Interest rate, credit default, credit default swaps index (''CDX''), commodity, equity-linked, fixed income, credit default, credit-linked and currency exchange swaps or an index or indexes of the foregoing. The Fund may invest in swaptions.

The Fund may invest in the following options: U.S. exchange-traded and over-the-counter (''OTC'') options on Fixed Income Securities, domestic and foreign equity and fixed income indices, CDX, U.S. Treasury futures contracts, interest rates and currencies.

The Fund may invest in futures on Fixed Income Securities, domestic and foreign equity and fixed income indices, interest rates and CDX.

The Fund may invest in publicly or privately issued interests in investment pools whose underlying assets are credit default, credit-linked, interest rate, currency exchange, equity-linked or other types of swap contracts and related underlying securities or securities loan agreements.

The Fund may invest in non-exchange-traded open-end investment company securities.

With respect to any of the Fund's investments identified above, the Fund may purchase securities on a forward commitment or when-issued or delayed delivery basis.

Use of Derivatives by the Fund

Investments in derivative instruments will be consistent with the Fund's investment objective and policies. The Fund will typically use derivative instruments as a substitute for taking a position in the underlying asset where advantageous and/or as part of a strategy designed to reduce exposure to other risks, such as interest rate risk. The Fund may also use derivative instruments to enhance returns, manage portfolio duration, or manage the risk of securities price fluctuations. To limit the potential risk associated with such transactions, the Fund segregates or ''earmarks'' assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board of Trustees (the ''Board'') to cover its obligations under derivative instruments. In addition, the Fund has included appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged. Because the markets for certain securities, or the securities themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Creation and Redemption of Shares

According to the Registration Statement, the Fund issues and sells Shares of the Fund only in Creation Units of 100,000 Shares on a continuous basis through the Distributor at the net asset value (''NAV'') next determined after receipt of an order in proper form on any business day. The size of a Creation Unit is subject to change.

The consideration for purchase of Creation Units generally consists of ''Deposit Securities'' and the ''Cash Component'', which generally correspond pro rata, to the extent practicable, to the Fund securities, or, as permitted by the Fund, the ''Cash Deposit.'' Together, the Deposit Securities and the Cash Component or, alternatively, the Cash Deposit, constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Transfer Agent and Custodian, through the National Securities Clearing Corporation (''NSCC''), makes available on each business day, prior to the opening of the Core Trading Session on NYSE Arca (currently 9:30 a.m., Eastern Time (''E.T.'')), the identity and the required number of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information at the end of the previous business day).

The Fund may also permit the substitution of an amount of cash (a ''cash-in-lieu'' amount) to replace any Deposit Security of the Fund that is a non-deliverable instrument. The amount of cash contributed will be equivalent to the price of the instrument listed as a Deposit Security. The Fund reserves the right to permit the substitution of a ''cash in-lieu'' amount to be added to replace any Deposit Security under specified circumstances.

Procedures for Creating Creation Units

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be: (i) A ''Participating Party'' (*i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (ii) a participant of the Depository Trust Company (''DTC'') (''DTC Participant'') and must have executed an Authorized Participant agreement with the Distributor, and accepted by the Transfer Agent, with respect to creations and redemptions of Creation Units. A Participating Party or DTC Participant who has executed an ''Authorized Participant Agreement'' is referred to as an ''Authorized Participant.''

To initiate a creation order for a Creation Unit, an Authorized Participant must submit an irrevocable order to purchase Shares in proper form to the Transfer Agent no later than 2:00

[12] Money market instruments are short-term instruments referenced in Commentary .01 (c) to NYSE Arca Rule 8.600–E.

[13] For purposes of this filing, cash equivalents shall mean the short-term instruments enumerated in Commentary .01(c) to NYSE Arca Rule 8.600–E.

[14] For purposes of this filing, the term ''ETFs'' includes Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.,* 2X, -2X, 3X or -3X) ETFs.

[15] ETNs are Index-Linked Securities as described in NYSE Arca Rule 5.2–E(j)(6).

p.m., E.T. on any business day for creation of Creation Units to be effected based on the NAV of Shares of the Fund on the following business day.

Redemption of Creation Units

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form on a business day and only through a Participating Party or DTC Participant who has executed an Authorized Participant Agreement.

With respect to the Fund, State Street, through the NSCC, makes available immediately prior to the opening of the Core Trading Session on the NYSE Arca on each business day, the identity of the Fund's securities and/or an amount of cash that will be applicable to redemption requests received in proper form on that day. The Fund's securities received on redemption generally correspond pro rata, to the positions in the Fund's portfolio. The Fund's securities received on redemption (''Fund Securities'') will generally be identical to Deposit Securities that are applicable to creations of Creation Units.

Subject to the terms of the applicable Authorized Participant Agreement and any creation and redemption procedures adopted by the Fund and provided to all Authorized Participants, to initiate a redemption order for a Creation Unit, an Authorized Participant must submit an irrevocable order to redeem Shares in proper form to the Transfer Agent no later than 2:00 p.m., E.T. on any business day for redemption of Creation Units to be effected based on the NAV of shares of the Fund on that business day.

Unless cash only redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consists of Fund Securities—as announced on the business day of the request for a redemption order received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less the redemption transaction fee and variable fees.[16] The Fund may substitute a ''cash-in-lieu'' amount to replace any Fund Security in certain limited circumstances. The amount of cash paid out in such cases will be equivalent to the value of the instrument listed as the Fund Security. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the difference will be included in the Cash Component required to be delivered by an Authorized Participant.

Derivatives Valuation Methodology for Purposes of Determining Portfolio Indicative Value

On each business day, before commencement of trading in Fund Shares on NYSE Arca, the Fund discloses on its website the identities and quantities of the portfolio instruments and other assets held by the Fund that form the basis for the Fund's calculation of NAV at the end of the business day. The NAV of the Shares of the Fund is determined once each day the New York Stock Exchange (the ''NYSE'') is open, as of the close of its regular trading session (normally 4:00 p.m., E.T.) (''NYSE Close'').

In order to provide additional information regarding the intra-day value of Shares of the Fund, one or more major market data vendors disseminates every 15 seconds an updated Intraday Indicative Value (''IIV'') for the Fund as calculated by an information provider or market data vendor. A third party market data provider calculates the IIV for the Fund.

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.
- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- Swaps may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.
- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.
- OTC options and swaptions may be valued intraday through option valuation models (*e.g.,* Black-Scholes) or using exchange-traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the applicable Disclosed Portfolio includes information that market participants can use to value these positions intraday. On a daily basis, the Fund discloses the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E (c)(2) to the extent applicable.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares of the Fund trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares of the Fund at their NAV, which should ensure that Shares of the Fund will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there is any significant impact to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of block-size ''Creation Units'' (as described above) in-kind.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund would not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(b)(5) and Commentary .01(a)(1).

The Fund will not comply with the requirement of Commentary .01(b)(5) to NYSE Arca Rule 8.600–E that non-agency, non-government-sponsored entity (''GSE'') and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.[17] Instead, up to 30% of the weight of the

[16] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all Authorized Participants.

[17] Commentary .01(b)(5) to NYSE Arca Rule 8.600–E provides that the components of the fixed income portion of a portfolio shall meet the following criteria initially and on a continuing basis: non-agency, non-government-sponsored entity (''GSE'') and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

Fixed Income Securities portion of the Fund's portfolio may consist of non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities. The Adviser represents that permitting limited investments in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities, as described above, would be in the best interest of the Fund's shareholders because such investments have the potential to reduce the overall risk profile of the Fund's portfolio through diversification. In the Adviser's view, such investments would reduce the Fund's risk with respect to non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities by diversifying the Fund's exposure among borrowers of such debt issues. The Adviser represents that the Fund will only purchase U.S. dollar denominated non-agency ABS and MBS that are settled through DTC. In addition, by allowing the Fund to allocate up to 30% of the weight of its Fixed Income Securities investments in such issues would afford the Fund greater flexibility to invest in the most liquid available Fixed Income Securities issues, in that such issues are expected to be as liquid, or more liquid, than other possible Fund investments.

As noted above, the Fund may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities (*e.g.,* mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in such securities.[18] Investments in such equity securities will not be principal investments of the Fund.[19] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.[20] Because such securities must have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(A) through (D) to Rule 8.600–E exclude application of those provisions to certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E)) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E).[21] In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

The Exchange notes that the Commission has previously approved

[18] Commentary .01 (a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6). Commentary .01(a)(1) to Rule 8.600–E (U.S. Component Stocks) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

[19] For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

[20] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder. *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

[21] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E (j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3 in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units)(''2008 Approval Order''). *See also,* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares). *See also,* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf.*

listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund's investments in such securities.[22] Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

The Exchange notes that, other than Commentary .01(a)(1)(A) through (E) and Commentary.01(b)(5) to Rule 8.600–E, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

Availability of Information

The Fund's website (*www.im.natixis.com/us/active-short-duration-income-etf*) includes a form of the prospectus for the Fund that may be downloaded. The Fund's website includes additional quantitative information updated on a daily basis including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[23] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund discloses on its website the Disclosed Portfolio as defined in NYSE Arca Rule 8.600–E (c)(2) that forms the basis for the Fund's calculation of NAV at the end of the business day.[24]

On a daily basis, the Fund discloses the information required under NYSE Arca Rule 8.600–E (c)(2) to the extent applicable. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, is publicly disseminated daily prior to the opening of the Exchange via the NSCC. The basket represents one Creation Unit of the Fund. Authorized Participants may refer to the basket composition file for information regarding Fixed Income Securities, and any other instrument that may comprise the Fund's basket on a given day.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and the Fund's Forms N–CSR and Forms N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR, Form N–PX and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* Intra-day and closing price information regarding exchange-traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Intra-day and closing price information regarding Fixed Income Securities also will be available from major market data vendors. Price information relating to Rule 144A securities, interests in investment pools, OTC options, swaps and swaptions will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. Price information regarding non-exchange-traded investment company securities will be available from the applicable investment company. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares, ETFs and ETNs will be available via the Consolidated Tape Association (''CTA'') high-speed line. Exchange-traded options quotation and last sale information for options cleared via the Options Clearing Corporation (''OCC'') is available via the Options Price Reporting Authority. In addition, the IIV, as defined in NYSE Arca Rule 8.600–E (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the IIV, together with the Disclosed Portfolio, may allow investors to determine an approximate value of the underlying portfolio of the Fund on a daily basis and to provide an estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Rule 8.600–E (d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E. The

[22] *See* Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca-2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[23] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[24] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Exchange has obtained a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (''CSSA''). The Exchange is able to access from FINRA, as needed, trade information for certain Fixed Income Securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). FINRA also can access data obtained from the Municipal Securities Rulemaking Board (''MSRB'') relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund is calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Adviser is not registered as a broker-dealer but the Adviser is affiliated with a broker-dealer and has implemented and will maintain a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, ETNs, certain exchange-traded options and certain futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer

of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The website for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca 8.600–E (d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted. In addition, as noted above, investors have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. In the aggregate, at least 90% of the weight of the Fund's holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a CSSA.

As described above, deviations from the generic requirements of Commentary .01(a) are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns. Further, the proposed alternative requirements are narrowly tailored to allow the Fund to achieve its investment objective in manner that is consistent with the principles of Section 6(b)(5) of the Act. As a result, it is in the public interest to approve listing and trading of Shares of the Fund on the Exchange pursuant to the requirements set forth herein.

The Adviser represents that permitting limited investments in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities, as described above, would be in the best interest of the Fund's shareholders because such investments have the potential to reduce the overall risk profile of the Fund's portfolio. In the Adviser's view, such investments would reduce the Fund's risk with respect to non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities by diversifying the Fund's exposure among borrowers of such debt issues. In addition, by allowing the Fund to allocate up to 30% of the weight of its Fixed Income Securities investments in such issues would afford the Fund greater flexibility to invest in the most liquid available Fixed Income Securities issues, in that such issues are expected to be as liquid, or more liquid, than other possible Fund investments.

The Exchange also believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded open-end investment company securities. Investments in such equity securities will not be principal investments of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. Because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01 (A) through (D) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares. Other than Commentary .01(a)(1)(A) through (E) and Commentary.01(b)(5) to Rule 8.600–E, the Fund's portfolio will meet all other requirements of Rule 8.600–E.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively managed ETF that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an issue of Managed Fund Shares that, through permitted use of an increased level of non-agency ABS and MBS above that currently permitted by the generic listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E, will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Proceedings to Determine Whether to Approve or Disapprove SR–NYSEArca–2018–25 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [25] to determine whether the proposed rule change, as modified by Amendment No. 1, 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. Rather, as described

[25] 15 U.S.C. 78s(b)(2)(B).

below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[26] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Exchange 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, and to protect investors and the public interest.[27] In light of the portfolio's potential exposure to the permitted investments identified above (including junior loans, ABS, MBS, and interests in investment pools in particular), the Commission seeks commenters' views on the sufficiency of the information provided in the proposed rule change to support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Exchange Act as modified by Amendment No. 1. The Commission notes that the Exchange proposes to exempt equity interests in investment pools from all of the requirements of Commentary .01(a)(1) to NYSE Arca Rule 8.600–E.In light of the portfolio's potential exposure to the permitted investments identified above, the Commission seeks commenters' views on the sufficiency of the information provided in the proposed rule change to support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Exchange Act as modified by Amendment No. 1.

IV. Procedure: Request for Written Comments

Interested persons are invited to submit written views, data, and arguments concerning the foregoing, including whether the proposed rule change as modified by Amendment No. 1 is consistent with Section 6(b)(5) or any other provision of the Exchange 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 Exchange Act,[28] any request for an opportunity to make an oral presentation.[29]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by August 23, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 6, 2018.

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–NYSEArca–2018–25 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–NYSEArca–2018–25. 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–NYSEArca-2018–25 and should be submitted on or before August 23, 2018. Rebuttal comments should be submitted by September 6, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Robert W. Errett,

Deputy Secretary.

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[26] *Id.*

[27] 15 U.S.C. 78f(b)(5).

[28] 17 CFR 240.19b–4.

[29] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 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 Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[30] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83725; File No. SR–OCC–2017–020]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Amendments No. 1 and 2 to Proposed Rule Change Concerning Enhanced and New Tools for Recovery Scenarios

July 27, 2018.

On December 18, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2017–020 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] concerning enhanced and new tools for recovery scenarios.[3] The Proposed Rule Change was published for comment in the **Federal Register** on December 26, 2017.[4] On March 22, 2018, the Commission instituted proceedings under Section 19(b)(2)(B)(i) of the Act [5] to determine whether to approve or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 8, 2017, OCC also filed this proposal as an advance notice SR–OCC–2017–809 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(e)(1)) and Rule 19b–4(n)(1)(i) of the Act (17 CFR 240.19b–4(n)(1)(i)). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on January 23, 2018. Securities Exchange Act Release No. 82513 (Jan. 17, 2018), 83 FR 3244 (Jan. 23, 2018) (SR–OCC–2017–809).

[4] Securities Exchange Act Release No. 82531 (Dec. 19, 2017), 82 FR 61107 (Dec. 26, 2017) (SR–OCC–2017–020) (''Initial Filing'').

[5] 15 U.S.C. 78s(b)(2)(B)(i).

disapprove the Proposed Rule Change.[6] On June 20, 2018 the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the Proposed Rule Change.[7] On July 11, 2018, OCC filed Amendment No. 1 to the Proposed Rule Change. On July 12, 2018, OCC filed Amendment No. 2 to the Proposed Rule Change to supersede and replace Amendment No. 1 in its entirety, due to technical defects in Amendment No. 1. Therefore, the Initial Filing, as modified by Amendment No. 2, reflects the changes proposed.

Pursuant to Section 19(b)(1) of the Act[8] and Rule 19b–4 thereunder[9] the Commission is publishing notice of these Amendments No. 1 and 2 to the Proposed Rule Change as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the Proposed Rule Change, as modified by Amendments No. 1 and 2, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by the OCC would make certain revisions to OCC's Rules and By-Laws to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book following a default. Each of the tools proposed herein is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The purpose of this proposed rule change is to make certain revisions to OCC's Rules and By-Laws Laws that are designed to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish tools by which OCC could re-establish a matched book following a default. Each of the tools proposed herein is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario. Each of the proposed revisions also is designed to further OCC's compliance, in whole or in part, with the provisions of the Commission's rules identified immediately below.

On September 28, 2016, the Commission adopted amendments to Rule 17Ad–22[10] and added new Rules 17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii)[11] pursuant to Section 17A of the Securities Exchange Act of 1934[12] and the Payment, Clearing, and Settlement Supervision Act of 2010 (''Payment, Clearing and Settlement Supervision Act'').[13] In relevant part, these new rules collectively require a covered clearing agency (''CCA''), as defined by Rule 17Ad–22(a)(5),[14] to establish, implement, maintain and enforce written policies and procedures reasonably designed to: (1) Maintain a risk management framework including plans for recovery and orderly wind-down necessitated by credit losses, liquidity shortfalls, general business risk losses or any other losses, (2) effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing and settlement processes, including by addressing the allocation of credit losses a CCA might face if its collateral and other resources are insufficient to fully cover its credit exposures, (3) effectively identify, measure, monitor and manage credit exposures, including by describing the process to replenish any financial resource that a CCA may use following a default event or other event in which use of such resource is contemplated, (4) effectively identify, measure, monitor and manage liquidity risks that arises or is borne by the CCA by, at a minimum, describing the process for replenishing any liquid resource that a CCA may employ during a stress event, (5) ensure it has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations, (6) publicly disclose relevant rules and material procedures, including key aspects of its default rules and procedures, and (7) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the CCA. The relevant portions of each of these new requirements is restated below:

- Rule 17Ad–22(e)(3)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [m]aintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the [CCA], which . . . [i]ncludes plans for the recovery and orderly wind-down of the [CCA] necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.''[15]
- Rule 17Ad–22(e)(4)(viii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by . . . [a]ddressing allocation of credit losses the [CCA] may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the [CCA] may borrow from liquidity providers.''[16]
- Rule 17Ad–22(e)(4)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]ffectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by . . . [d]escribing the [CCA's] process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated.''[17]
- Rule 17Ad-22(e)(7)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies

[6] *See* Securities Exchange Act Release No. 82926 (Mar. 22, 2018), 83 FR 13171 (Mar. 27, 2018) (SR–OCC–2018–020).

[7] *See* Securities Exchange Act Release No. 83484 (Jun. 20, 2018), 83 FR 29846 (Jun. 26, 2018) (SR–OCC–2017–020).

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] 17 CFR 240.17Ad–22.

[11] 17 CFR 240.17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii).

[12] 15 U.S.C. 78q–1.

[13] 12 U.S.C. 5461 et seq.

[14] 17 CFR 240.17Ad–22(a)(5).

[15] 17 CFR 240.17Ad–22(e)(3)(ii).

[16] 17 CFR 240.17Ad–22(e)(v)(viii).

[17] 17 CFR 240.17Ad–22(e)(4)(ix).

and procedures reasonably designed to. . . [e]ffectively measure, monitor, and manage the liquidity risk that arises in or is borne by the [CCA], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following . . . [d]escribing the [CCA's] process to replenish any liquid resources that the clearing agency may employ during a stress event.'' [18]

• Rule 17Ad–22(e)(13) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]nsure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations. . .'' [19]

• Rule 17Ad–22(e)(23)(i) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]ublicly disclos[e] all relevant rules and material procedures, including key aspects of its default rules and procedures.'' [20]

• Rule 17Ad–22(e)(23)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to. . . [p]rovid[e] sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.'' [21]

OCC meets the definition of a CCA and is therefore subject to the requirements of the CCA rules, including new Rules 17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix), (e)(7)(ix), (e)(13), (e)(23)(i) and (e)(23)(ii).[22]

Proposed Changes

Summary of Proposed Changes

In order to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish new tools by which OCC could re-establish a matched book following a default, OCC is proposing to make the following revisions to its Rules and By-Laws:

(1) Revise the existing assessment powers in Section 6 of Article VIII of OCC's By-Laws, specifically to:

(a) Establish a rolling ''cooling-off period'' that would be triggered by the payment of a proportionate charge against the Clearing Fund (''triggering proportionate charge''), during which period the aggregate liability of a Clearing Member to replenish the Clearing Fund (inclusive of assessments) would be 200% of the Clearing Member's required contribution as of the time immediately preceding the triggering proportionate charge;

(b) Clarify that a Clearing Member that chooses to terminate its membership status during a cooling-off period will not be liable for replenishment of the Clearing Fund immediately following the expiration of such cooling-off period, provided that the withdrawing Clearing Member satisfies enumerated criteria, including providing notice of such termination by no later than the end of the cooling-off period and by closing-out and/or transferring of all its open positions with OCC by no later than the last day of the cooling-off period; and

(c) Delineate between the obligation of a Clearing Member to replenish its contributions to the Clearing Fund and its obligations to meet additional ''assessments'' that may be levied following a proportionate charge to the Clearing Fund.

(2) Adopt a new Rule 1011 [23] that would provide OCC with discretionary authority to call for voluntary payments from non-defaulting Clearing Members in a circumstance where one or more Clearing Members has already defaulted and OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[24] Rule 1011 also would establish that OCC would prioritize compensation of Clearing Members that made voluntary payments from any amounts recovered from the defaulted Clearing Members.

(3) Adopt a new Rule 1111 that would provide authority to:

(a) Allow OCC to call for voluntary tear-ups (''Voluntary Tear-Up,'' as defined below) of non-defaulting Clearing Member and/or customer positions at any time following the suspension or default of a Clearing Member, with the scope of any such Voluntary Tear-Ups being determined by the Risk Committee of OCC's Board (''Risk Committee'');

(b) Allow OCC's Board to vote to tear-up the ''Remaining Open Positions'' (defined below) of a defaulted Clearing Member, as well as any ''Related Open Positions'' (defined below) in a circumstance where OCC has attempted one or more auctions of such defaulted Clearing Member's remaining open positions and OCC has determined that it may not have sufficient resources to satisfy its obligations and liabilities resulting from such default with the scope of any such tear-up (''Partial Tear-Up'') being determined by the Risk Committee; and

(c) Allow OCC's Board to vote to re-allocate losses, costs and fees imposed upon holders of positions extinguished in a Partial Tear-Up through a special charge levied against remaining non-defaulting Clearing Members.

(4) Revise the descriptions and authorizations in Article VIII of OCC's By-Laws concerning the use of the Clearing Fund to reflect the discretion of OCC to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from a Voluntary Tear-Up or a mandatory tear-up (''Partial Tear-Up,'' as defined below).

Discussion of Proposed Changes

Each of the proposed revisions to OCC's Rules and By-Laws is described in more detail in the following sub-sections:

1. Proposed Changes to OCC's Assessment Powers

a. Current Assessment Powers

OCC's current assessment powers are described in Section 6 of Article VIII of OCC's By-Laws. Section 6 establishes a general requirement for each Clearing Member to promptly make good any deficiency in its required contribution to the Clearing Fund whenever an amount is paid out of its Clearing Fund contribution (whether by proportionate

[18] 17 CFR 240.17Ad–22(e)(7)(ix).

[19] 17 CFR 240.17Ad–22(e)(13).

[20] 17 CFR 240.17Ad–22(e)(23)(i).

[21] 17 CFR 240.17Ad–22(e)(23)(ii).

[22] 17 CFR 240.17Ad–22(e)(3)(ii), (e)(4)(viii), (e)(4)(ix) and (e)(7)(ix).

[23] OCC is amending the Initial Filing to renumber proposed Rule 1009 to proposed Rule 1011 and updated related cross references in Rule 1111 to reflect this renumbering. OCC is also amending the Default Management Policy as submitted in the Initial Filing to update similar cross references.

[24] Under the Initial Filing, OCC's authority to conduct Partial Tear-Ups, as well as call for voluntary payments or to conduct Voluntary Tear-Ups, would be conditioned in part on OCC having determined that, notwithstanding the availability of any remaining resources, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Under the Initial Filing, the proposed text of Rules 1009(a), 1111(a) and 1111(b) incorrectly transcribed this condition to require that OCC determine that, notwithstanding the availability of any remaining resources, OCC *does* not have sufficient resources to satisfy its obligations and liabilities resulting from such default (emphasis added). In each such instance, OCC is amending the proposed text of Rules 1009(a) (which is being renumbered as Rule 1011(a)), 1111(a) and 1111(b) in Exhibit 5B of the Initial Filing to delete the word ''does'' and insert in its place the word ''may.''

charge or otherwise).[25] In this regard, a Clearing Member's obligation to replenish the Clearing Fund is not currently subject to any pre-determined limit. Notwithstanding the foregoing, a Clearing Member can limit the amount of its liability for replenishing the Clearing Fund (at an additional 100% of the amount of its then-required Clearing Fund contribution) by winding-down its clearing activities and terminating its status as a Clearing Member. Any Clearing Member seeking to so limit its liability for replenishing the Clearing Fund must: (i) notify OCC in writing not later than the fifth business day after the proportionate charge that it is terminating its status as a Clearing Member, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction, through any of its accounts, and (iii) close out or transfer all of its open positions as promptly as practicable after giving notice to OCC. Thus, withdrawal from clearing membership is the only means by which a Clearing Member currently can limit its liability for replenishing the Clearing Fund.

b. Proposed Changes to Assessment Powers

OCC proposes to revise Section 6 of Article VIII of OCC's By-Laws to make three primary modifications regarding its existing authority to assess proportionate charges against Clearing Members' contributions to the Clearing Fund. First, the proposal introduces an automatic minimum fifteen calendar day ''cooling-off'' period that begins when a proportionate charge is assessed by OCC against Clearing Members' Clearing Fund contributions. While the cooling-off period will continue for a minimum of fifteen consecutive calendar days, if one or more of the events described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws occur(s) during that fifteen calendar day period and result in one or more proportionate charges against the Clearing Fund, the cooling-off period shall be extended through either (i) the fifteenth calendar day from the date of the most recent proportionate charge resulting from the subsequent event, or (ii) the twentieth day from the date of the proportionate charge that initiated the cooling-off period, whichever is sooner.

During a cooling-off period, each Clearing Member would have its aggregate liability to replenish the Clearing Fund capped at 200% of the Clearing Member's then-required contribution to the Clearing Fund. Once the cooling-off period ends each remaining Clearing Member would be required to replenish the Clearing Fund in the amount necessary to meet its then-required contribution. Once the cooling-off period ends, any remaining losses or expenses suffered by OCC as a result of any event described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws that occurred during such cooling-off period could not be charged against the amounts Clearing Members have contributed to replenish the Clearing Fund upon the expiration of the cooling-off period.[26]

Second, in connection with the cooling-off period, the proposal would extend the time frame within which a Clearing Member may provide a termination notice to OCC to avoid liability for replenishment of the Clearing Fund after the cooling-off period and would modify the obligations of such a terminating Clearing Member for closing-out and transferring its remaining open positions. Specifically, to effectively terminate its status as a Clearing Member and not be liable for replenishing the Clearing Fund after the cooling-off period, a Clearing Member would be required to: (i) notify OCC in writing of its intent to terminate not later than the last day of the cooling-off period, (ii) not initiate any opening purchase or opening writing transaction, and, if the Clearing Member is a Market Loan Clearing Member or a Hedge Clearing Member, not initiate any Stock Loan transaction, through any of its accounts, and (iii) close-out or transfer all of its open positions by no later than the last day of the cooling-off period. If a Clearing Member fails to satisfy all of these conditions by the end of a given cooling-off period, it would not have completed all of the requirements necessary to terminate its status as a Clearing Member under Article VIII, Section 6 of OCC's By-Laws and therefore it would remain subject to the obligation to replenish the Clearing Fund after the end of the cooling-off period.

Third, the proposal would clarify the distinction between ''replenishment'' of the Clearing Fund and a Clearing Member's obligation to answer ''assessments.'' In this context, the term ''replenish'' (and its variations) shall to refer to a Clearing Member's standing duty, following any proportionate charge against the Clearing Fund, to return its Clearing Fund contribution to the amount required from such Clearing Member for the month in question.[27] The term ''assessment'' (and its variations) shall refer to the amount, during any cooling-off period, that a Clearing Member would be required to contribute to the Clearing Fund in excess of the amount of the Clearing Member's pre-funded required Clearing Fund contribution.

Proposed Addition of Ability To Request Voluntary Payments

OCC proposes to add new Rule 1011, which will provide a framework by which OCC could receive voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211,[28] OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Under new Rule 1011, OCC will initiate a call for voluntary payments by issuing

[25] Under Article VIII, Section 6 of OCC's By-Laws, OCC currently has authority to assess proportionate charges against Clearing Members' contributions to the Clearing Fund in certain enumerated situations. For example, Section 6 generally provides that if the conditions regarding a Clearing Member default specified in subparagraphs (a)(i) through (vi) of Article VIII, Section 5 of OCC's By-Laws are satisfied, OCC will make good resulting losses or expenses that are suffered by OCC by applying the defaulting Clearing Member's Clearing Fund contribution after first applying other funds available to OCC in the accounts of the Clearing Member. If the sum of the obligations, however, exceeds the total Clearing Fund contribution and other funds of the defaulting Clearing Member available to OCC, then OCC will charge the amount of the remaining deficiency on a proportionate basis against all non-defaulting Clearing Members' required contributions to the Clearing Fund at the time. Section 5(b) of Article VIII of OCC's By-Laws similarly provides for proportionate charges against Clearing Members' contributions to the Clearing Fund when certain conditions are met that involve a failure by a bank or a securities or commodities clearing organization to perform obligations to OCC when they are due.

[26] After a cooling-off period has ended, the occurrence of any event described in clauses (i) through (iv) of Article VIII, Section 5(a) of OCC's By-Laws that results in a proportionate charge against the Clearing Fund would trigger a new cooling off period, and thusly, a cap of 200% of each Clearing Member's then-required contribution would again apply.

[27] This assumes that the proportionate charge resulted in the Clearing Member's actual Clearing Fund contribution dropping below the amount of its required contribution (*i.e.,* that the Clearing Member did not have excess above its required contribution that was sufficient to cover the amount of the proportionate charge allocated to such Clearing Member).

[28] Rule 707 addresses the treatment of funds in a Clearing Member's X–M accounts. Rule 1001 addresses the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution. Rules 1104 through 1107 concern the treatment of the portfolio of a defaulted Clearing Member. Rules 2210 and 2211 concern the treatment of Stock Loan positions of a defaulted Clearing Member.

a ''Voluntary Payment Notice'' inviting all non-defaulting Clearing Members to make payments to the Clearing Fund in addition to any amounts they are otherwise required to contribute pursuant to Rule 1001. The Voluntary Payment Notice would specify the terms applicable to any voluntary payment, including but not limited to, that any voluntary payment may not be withdrawn once made, that no Clearing Member shall be obligated to make a voluntary payment and that OCC shall retain full discretion to accept or reject any voluntary payment. Rule 1011 specifies that if OCC subsequently recovers from the defaulted Clearing Member or the estate(s) of the defaulted Clearing Member(s), OCC would seek to compensate first from such recovery all non-defaulting Clearing Members that made voluntary payments (and if the amount recovered from the defaulted Clearing Member(s) is less than the aggregate amount of voluntary payments, non-defaulting Clearing Members that made voluntary payments each would receive a percentage of the recovery that corresponds to that Clearing Member's percentage of the total amount of voluntary payments received).

Proposed Addition of Ability To Conduct Voluntary Tear-Ups

OCC proposes to add new Rule 1111, which, in relevant part, will establish a framework by which non-defaulting Clearing Members and non-defaulting customers of Clearing Members could be given an opportunity to voluntarily extinguish (*i.e.,* voluntarily tear-up) their open positions at OCC in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.

While Risk Committee approval is not needed to commence a voluntary tear-up, the Risk Committee would be responsible for determining the appropriate scope of each voluntary tear-up. To ensure OCC retains sufficient flexibility to effectively deploy this tool in an extreme stress event, proposed Rule 1111(c) is drafted to provide the Risk Committee with discretion to determine the appropriate scope of each voluntary tear-up.[29] New Rule 1111(c) also would impose standards designed to circumscribe the Risk Committee's discretion, requiring that any determination regarding the scope of a voluntary tear-up shall (i) be based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants.

Once the Risk Committee has determined the scope of the Voluntary Tear-Up, OCC will initiate the call for voluntary tear-ups by issuing a ''Voluntary Tear-Up Notice.'' The Voluntary Tear-Up Notice shall inform all non-defaulting Clearing Members of the opportunity to participate in a Voluntary Tear-Up.[30] The Voluntary Tear-Up Notice would specify the terms applicable to any voluntary tear-up, including but not limited to, that no Clearing Member or customers of a Clearing Member shall be obligated to participate in a voluntary tear-up and that OCC shall retain full discretion to accept or reject any voluntary tear-up.

OCC is not proposing a tear-up process that would require the imposition of ''gains haircutting'' (*i.e.,* the reduction of unpaid gains) on a portion of OCC's cleared contracts.[31] Instead, OCC has determined that its tear-up process—for both Voluntary Tear-Ups as well as Partial Tear-Ups—should be initiated on a date sufficiently in advance of the exhaustion of OCC's financial resources such that OCC would be expected to have adequate remaining resources to cover the amount it must pay to extinguish the positions of Clearing Members and customers without haircutting gains.[32]

In OCC's proposed tear-up process, the holders of torn-up positions would be assigned a Tear-Up Price and OCC would draw on its remaining financial resources in order to extinguish the torn-up positions at the assigned Tear-Up Price without forcing a reduction in the amount of unpaid value of such positions. OCC is amending the Initial Filing to clarify that while OCC does not intend, in the first instance, for its tear-up process to serve as a means of loss allocation, circumstances may arise such that, despite best efforts, OCC has inadequate remaining financial resources to extinguish torn-up positions at their assigned Tear-Up Price without forcing a reduction in the amount of unpaid value of such positions (*e.g.,* despite best efforts, market movements not accounted for by monitoring, additional Clearing Member defaults occur immediately preceding a tear-up). In such circumstances, despite best efforts, OCC would use its partial tear-up process as a means of loss allocation.[33]

The proposed changes would provide OCC with two separate and non-exclusive means of equitably re-allocating the losses, costs or expenses imposed upon the holders of torn-up positions as a result of the tear-up(s). First, the proposed changes to Article VIII would provide OCC discretion to use remaining Clearing Fund contributions to re-allocate losses imposed on non-defaulting Clearing Members and customers from such tear-up(s). Second, Rule 1111(a) would provide that if OCC subsequently recovers from the defaulted Clearing Member or the estate(s) of the defaulted Clearing Member(s) and the amount of such recovery exceeds the amount OCC received in voluntary payments, then non-defaulting Clearing Members and non-defaulting customers that voluntarily tore-up open positions and incurred losses from such tear-ups would be repaid from the amount of the recovery in excess of the amount OCC received in voluntary payments.[34] If the amount recovered is less than the aggregate amount of Voluntary Tear-Up,

[29] Notwithstanding the discretion that would be afforded by the text of proposed Rule 1111(c), OCC anticipates that the scope of voluntary tear-ups likely would be dictated by the cleared contracts remaining in the portfolio(s) of the defaulted Clearing Member(s).

[30] Since OCC does not know the identities of Clearing Members' customers, OCC would depend on each Clearing Member to notify its customers with positions in scope of the Voluntary Tear-Up of the opportunity to participate in such tear-up.

[31] In general, forced gains haircutting is a tool that can be more easily applied to products whose gains are settled at least daily, like futures through an exchange of variation margin, and by central counterparties with comparatively large daily settlement flows. Listed options, which constitute the vast majority of the contracts cleared by OCC, do not have daily settlement flows and any attempt to reduce the ''unrealized gains'' of a listed options contract would require the reduction of the option premium that is embedded within the required margin (such a process would effectively require haircutting the listed option's initial margin).

[32] OCC anticipates that it would determine the date on which to initiate Partial Tear-Ups by monitoring its remaining financial resources against the potential exposure of the remaining unauctioned positions from the portfolio(s) of the defaulted Clearing Member(s).

[33] This change does not impact the statutory basis for the proposed rule change.

[34] In order to effect re-allocation of the losses, costs or expenses imposed upon the holders of torn-up positions, OCC expects that after it has completed its tear-up process and re-established a matched book, holders of both voluntarily torn-up and mandatorily torn-up positions would be provided with a limited opportunity to re-establish positions in the contracts that were voluntarily or mandatorily extinguished. After the expiration of such period, OCC would seek to collect the information on the losses, costs or expenses that had been imposed on the holders of torn-up positions. Based on the information collected, OCC would determine whether it can reasonably determine the losses, costs and expenses sufficiently to re-allocate such amounts.

each non-defaulting Clearing Member and non-defaulting customer that incurred losses from voluntarily torn-up positions would be repaid in an amount proportionate to the percentage of its total amount of losses, costs and fees imposed on Clearing Members or customers as a result of the Voluntary Tear-Ups.

With respect to Voluntary Tear-Ups, new Rule 1111(h) would clarify that no action or omission by OCC pursuant to and in accordance Rule 1111 shall constitute a default by OCC.

Proposed Addition of Ability To Conduct Partial Tear-Ups

OCC proposes to add new Rule 1111, which, in relevant part, will provide the Board with discretion to extinguish the remaining open positions of any defaulted Clearing Member or customer of such defaulted Clearing Member(s) (such positions, ''Remaining Open Positions''), as well as any related open positions as necessary to mitigate further disruptions to the markets affected by the Remaining Open Positions (such positions, ''Related Open Positions''), in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default (such tear-ups hereinafter collectively referred to as ''Partial Tear-Ups''). Like the determination for Voluntary Tear-Ups, the Risk Committee shall determine the appropriate scope of each Partial Tear-Up and such determination shall (i) be based on then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. Once the Risk Committee has determined the scope of the Partial Tear-Up, OCC will initiate the Partial Tear-Up process by issuing a ''Partial Tear-Up Notice.'' The Partial Tear-Up Notice shall (i) identify the Remaining Open Positions and Related Open Positions designated for tear-up, (ii) identify the open positions of non-defaulting Clearing Members and non-defaulting customers that will be subject to Partial Tear-Up (such positions, ''Tear-Up Positions''), (iii) specify the termination price (''Partial Tear-Up Price'') for each position to be torn-up, and (iv) list the date and time as of which the Partial Tear-Up will occur.[35] With regard to the date and time of a Partial Tear-Up, Rule 1111(d) specifies that the Risk Committee shall set the date and time. With regard to the Partial Tear-Up Price, OCC anticipates that it is likely to use the last established end-of-day settlement price, in accordance with its existing practices concerning pricing and valuation. However, given that it is not possible to know in advance the precise circumstances that would cause OCC to conduct a tear-up, Rule 1111(f) has been drafted to allow OCC to exercise reasonable discretion, if necessary, in establishing the Partial Tear-Up Price by some means other than its existing practices concerning pricing and valuation.[36] Specifically, Rule 1111(f) would require that OCC, in exercising any such discretion, would act in good faith and in a commercially reasonable manner to adopt methods of valuation expected to produce reasonably accurate substitutes for the values that would have been obtained from the relevant market if it were operating normally, including but not limited to the use of pricing models that use the market price of the underlying interest or the market prices of its components. Rule 1111(f) further specifies that OCC may consider the same information set forth in subpart (c) of Section 27, Article VI of OCC's By-Laws.[37]

The scope of any Partial Tear-Up will be determined in accordance with Rule 1111(e).[38] With respect to the extinguishment of Remaining Open Positions, OCC will designate Tear-Up Positions in identical Cleared Contracts and Cleared Securities on the opposite side of the market and in an aggregate amount equal to that of the Remaining Open Positions. OCC will only designate Tear-Up Positions in the accounts of non-defaulting Clearing Members (inclusive of such Clearing Members' customer accounts) with an open position in the applicable Cleared Contract or Cleared Security.[39] Tear-Up Positions shall be designated and applied by OCC on a pro rata basis across all the identical positions in Cleared Contracts and Cleared Securities on the opposite side of the market in the accounts of non-defaulted Clearing Members and their customers.[40]

Rule 1111(e)(iii) provides that every Partial Tear-Up position is automatically terminated upon and with effect from the Partial Tear-Up Time, without the need for any further step by any party to such Cleared Contract or Cleared Security, and that upon termination, either OCC or the relevant Clearing Member (as the case may be) shall be obligated to pay the other the applicable Partial Tear-Up Price. Rule

[35] Since OCC does not know the identities of Clearing Members' customers, OCC would depend on each Clearing Member to notify its customers with positions in scope of the Partial Tear-Up of the possibility of tear-up.

[36] For example, OCC has observed certain rare circumstances in which a closing price for an underlying security of an option may be stale or unavailable. A stale or unavailable closing price could be the result of a halt on trading in the underlying security, or a corporate action resulting in a cash-out or conversion of the underlying security (but that has not yet been finalized), or the result of an ADR whose underlying security is being impacted by certain provisions under foreign laws. OCC would consider the presence of these factors on its end-of-day prices in determining whether use of the discretion that would be afforded under proposed Rule 1111(f) might be warranted.

[37] In relevant part, subpart (c) reads as follows: ''In determining a close-out amount, the Corporation may consider any information that it deems relevant, including, but not limited to, any of the following: (1) Prices for underlying interests in recent transactions, as reported by the market or markets for such interests; (2) quotations from leading dealers in the underlying interest, setting forth the price (which may be a dealing price or an indicative price) that the quoting dealer would charge or pay for a specified quantity of the underlying interest; (3) relevant historical and current market data for the relevant market, provided by reputable outside sources or generated internally; and (4) values derived from theoretical pricing models using available prices for the underlying interest or a related interest and other relevant data. Amounts stated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the current rate of exchange, as determined by the Corporation. A position having a positive close-out value shall be an 'asset position' and a position having a negative close-out value shall be a 'liability position.' ''

[38] OCC is amending the Initial Filing to reflect that after further evaluation of its proposed recovery tools and the proposed tear-up process, OCC does not believe there would be a need to assign or transfer any hedging transactions established with relation to tear-up positions. OCC is therefore amending the Initial Filing to remove text in proposed Rule 1111(e) concerning proposed authority for OCC to offer to assign or transfer any hedging transactions related to Remaining Open Positions with related Tear-Up Positions. This change does not impact the statutory basis for the proposed rule change.

[39] Since, as stated in the Initial Filing, the objective of Partial Tear-Ups is to extinguish the Remaining Open Positions cleared by the defaulted Clearing Member(s) *or customer of such defaulted Clearing Member(s)* (emphasis added), OCC does not believe there would be a need to designate Tear-Up Positions to the non-defaulted customers of a defaulted Clearing Member. OCC is therefore amending the Initial Filing to remove references to non-defaulted customers of defaulted Clearing Members.

[40] OCC is amending the Initial Filing to clarify that a non-defaulted Clearing Member would be required to allocate the assigned Tear-Up Positions on a pro rata basis across those customers that have open positions in such Cleared Contract or Cleared Security in such account, and for any listed option positions being extinguished, allocation across customer accounts should occur in accordance with such Clearing Member's procedures for allocating exercises and assignments. This change does not impact the statutory basis for the proposed rule change.

1111(e)(iii) further provides that the corresponding open position shall be deemed terminated at the Partial Tear-Up Price.[41]

Rule 1111(g) provides that to the extent losses imposed upon non-defaulting Clearing Members and non-defaulting customers resulting from a Partial Tear-Up can reasonably be determined, the Board may elect to re-allocate such losses among all non-defaulting Clearing Members through a special charge to all non-defaulting Clearing Members in an amount corresponding to each such non-defaulting Clearing Member's proportionate share of the variable amount of the Clearing Fund at the time such Partial Tear-Up is conducted.[42]

With respect to Partial Tear-Ups, new Rule 1111(h) would clarify that no action or omission by OCC pursuant to and in accordance Rule 1111 shall constitute a default by OCC.

2. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (''Act''),[43] requires, among other things, that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest. OCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[44] and the rules thereunder applicable to OCC for the reasons set forth below.

As stated above, each of the changes is designed to provide OCC with tools to address the risks OCC might confront in a recovery and orderly wind-down scenario. In this regard, the proposed changes are designed to further address the risks of liquidity shortfalls and credit losses resulting from a Clearing Member default or certain other loss events and to establish tools to enable OCC to re-establish a matched book and limit OCC's potential exposure to losses from a Clearing Member default, in each case as might result from an unprecedented loss scenario that exceeds OCC's standard risk management and default management procedures. OCC's process in crafting the proposed changes was informed by published guidance from OCC's primary regulators (the Commission and the Commodity Futures Trading Commission), the publications of key international organizations (including the Bank for International Settlements, the International Organization of Securities Commissions and the Financial Stability Board) and the publications of key industry trade organizations. OCC's proposal was further informed by conversations with, among others, OCC's Board, OCC's Risk Committee, Clearing Members and market participants.

Informed by these perspectives, OCC has crafted the proposed changes with the aim of enhancing its ability to address an unprecedented loss event but also, to the extent possible, providing a reasonable amount of certainty to Clearing Members, customers and other stakeholders about the potential consequences of such an event and the resources and tools that would be expected to be available to OCC in support of its clearing operations.[45] Accordingly, the proposed changes should leave Clearing Members, customers and other stakeholders in a position to better evaluate the risks and benefits of clearing in order to facilitate their own risk management, and to the extent applicable, their own regulatory and capital considerations. The proposed changes also seek to avoid a result that would force only particular clearing participants to shoulder certain losses in an extreme stress scenario (*i.e.,* holders of positions extinguished in Partial Tear-Ups),[46] and instead leaves OCC and its Board with discretionary tools that could provide a more equitable method of allocating the losses from such an event more broadly, consistent with the general principle of mutualized loss that upon which central clearing rests. In this regard, OCC believes the proposed changes foster cooperation and coordination with participants in the clearing system, consistent with Section 17A(b)(3)(F) of the Act.[47]

As stated above, the proposed changes are designed to enable OCC to further address the risks of liquidity shortfalls and credit losses resulting from a Clearing Member default or certain other loss events and to re-establish a matched book and limit OCC's potential exposure to losses from a Clearing Member default, in each case as might result from an unprecedented loss scenario that exceeds OCC's standard risk management and default management procedures. OCC believes that the proposed changes will facilitate its ability to fully allocate, and ultimately extinguish, the loss so that it has a better opportunity of withstanding an extreme stress scenario without sacrificing its viability as a going concern or its ability to continue to provide its critical clearing services. In this regard, OCC believes that the proposed changes remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[48]

The proposed changes are designed to enhance the stability of the clearing system generally and are aimed at ensuring that OCC has adequate tools and resources to better protect market participants from the risks of extreme stress scenarios and unprecedented loss events. In this regard, OCC believes that the proposed changes are reasonably designed to protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.[49]

The proposed changes also are designed to further OCC's compliance, in whole or in part, with the provisions of the Commission's rules discussed immediately below:

Recovery and Orderly Wind-Down

In relevant part, Rule 17Ad–22(e)(3)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . plan[] for the recovery and orderly wind-down of the [CCA] necessitated by credit losses, liquidity shortfalls, losses from general

[41] OCC is amending the Initial Filing and the proposed text of Rule 1111(e)(iii) to clarify that if, in certain circumstances discussed above (see fn. 27 and associated text), OCC, in its discretion, determines that its remaining resources are inadequate to pay the applicable Partial Tear-Up Price for each position being extinguished in the Partial Tear-Up, OCC shall be obligated to pay each relevant Clearing Member a pro rata amount of the applicable Partial Tear-Up Price based on OCC's remaining resources, and the relevant Clearing Member shall have a claim against the Corporation for the value of the difference between the pro rata amount received and the Partial Tear-Up Price. This change does not impact the statutory basis for the proposed rule change.

[42] For the avoidance of doubt, the special charge would be distinct and separate from a Clearing Member's obligation to satisfy Clearing Fund assessments, and therefore, would not be subject to the aforementioned assessment cap in the amount of 200% of a Clearing Member's then-required contribution to the Clearing Fund.

[43] 15 U.S.C. 78q–1(b)(3)(F).

[44] *Id.*

[45] OCC notes that the very nature of an extreme stress and unprecedented loss event means that its impact is difficult to predict and quantify in advance.

[46] Absent a means of re-allocating the potential losses, costs and fees imposed upon holders of positions extinguished during tear-ups, the holders of such positions would be left to individually address such losses, costs and fees.

[47] 15 U.S.C. 78q–1(b)(3)(F).

[48] *Id.*

[49] *Id.*

business risk, or any other losses.'' [50] As stated above, each of the proposed changes is designed to provide OCC with tools to address the risks OCC might confront in a recovery and orderly wind-down scenario.[51] Consistent with the requirements of Rule 17Ad–22(e)(3)(ii), the proposed tools would enable OCC to better address the risks of liquidity shortfalls and credit losses resulting from a Clearing Member default or certain other loss events and, if necessary, to ultimately re-establish a matched book in a recovery or orderly wind-down scenario.[52] In this context, the proposed changes serve as a critical component of OCC's recovery and orderly wind-down plan. As a result, in OCC's view, the proposed changes are consistent with the requirements of Rule 17Ad–22(e)(3)(ii) as to the recovery and orderly wind-down plan.[53]

Allocation of Credit Losses Above Available Resources

In relevant part, Rule 17Ad–22(e)(4)(viii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [a]ddress[ ] allocation of credit losses the [CCA] may face if its collateral and other resources are insufficient to fully cover its credit exposures . . .'' [54] The proposed changes would provide OCC with three distinct tools that could be used to allocate any credit losses OCC may face in excess of collateral and other resources available to OCC. First, new Rule 1011 would provide a framework by which OCC could receive voluntary payments in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211,[55] OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Second, new Rule 1111 would establish a framework by which non-defaulting Clearing Members and non-defaulting customers of Clearing Members could be given an opportunity to participate in Voluntarily Tear-Ups in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default. Finally, new Rule 1111 also would provide the Board with discretion to mandatorily tear-up Remaining Open Positions and Related Open Positions, in a circumstance where a Clearing Member has defaulted and OCC has determined that, notwithstanding the availability of any remaining resources under OCC Rules 707, 1001, 1104 through 1107, 2210 and 2211, OCC may not have sufficient resources to satisfy its obligations and liabilities resulting from such default.[56] In OCC's view, each of these tools could be deployed by OCC, if necessary, to allocate credit losses in excess of the collateral and other resources available to OCC, in accordance with Rule 17Ad–22(e)(4)(viii).[57]

Replenishment of Financial Resources Following a Default

In relevant part, Rule 17Ad–22(e)(4)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [d]escrib[e] the [CCA's] process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated.'' [58] OCC's Clearing Members have a standing obligation to replenish the Clearing Fund following any proportionate charge. The proposed changes would establish a rolling cooling-off period, triggered by the payment of a proportionate charge against the Clearing Fund, during which period the aggregate liability of a Clearing Member to replenish the Clearing Fund (inclusive of assessments) would be 200% of the Clearing Member's required contribution as of the time immediately preceding the triggering proportionate charge. Compared to the current requirement under which a Clearing Member may cap its liability to proportionate charges at an additional 100% of its then-required contribution, a Clearing Member would instead be permitted to cap its liability for proportionate charges at an additional 200% of its then-required Clearing Fund contribution.

OCC believes that the proposed approach improves predictability for OCC and for Clearing Members regarding the size of Clearing Fund contributions that are likely to be subject to assessments for proportionate charges. Additionally, replacing the five business day withdrawal period with the withdrawal period commensurate with the cooling-off period (which, as proposed would be a minimum of fifteen calendar days) would give Clearing Members a more reasonable period in which to meet the wind-down and termination requirements necessary to cap their liability. OCC believes that this would afford them greater certainty regarding their maximum liability with respect to the Clearing Fund during extreme stress events, which in turn, facilitates Clearing Members' management of their own risk management, and to the extent applicable, regulatory capital considerations. And OCC believes this increased predictability would also be beneficial to OCC by helping it to more reliably understand the amount of Clearing Fund contributions that will likely be available to it after a proportionate charge is assessed.[59]

OCC believes that the relative certainty provided by the proposed cooling-off period and 200% cap on assessments ultimately could reduce the risks of successive or ''cascading'' defaults, in which the financial demands on remaining non-defaulting Clearing Members to continually replenish OCC's Clearing Fund (and similar guaranty funds at other CCPs to which such Clearing Members might belong) have the effect of further weakening such Clearing Members to the point of default. In this regard, the proposed changes are designed to provide OCC, Clearing Members and other stakeholders with sufficient time to manage the ongoing default(s)

[50] 17 CFR 240.17Ad–22(e)(3)(ii).

[51] Indeed, the OCC's separately filed recovery and orderly wind-down plan identifies OCC's assessment powers, ability to call for voluntary payments, ability to call for Voluntary Tear-Ups and ability to impose Partial Tear-Ups among its ''Recovery Tools.'' OCC has filed a proposed rule change with the Commission in connection with this proposal. *See* Securities Exchange Act Release No. 82352 (December 19, 2017), 82 FR 61072 (December 26, 2017) (SR–OCC–2017–021). On March 22, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change. *See* Securities Exchange Act Release No. 82927 (March 22, 2018), 83 FR 13176 (March 27, 2018) (SR–OCC–2017–021).

[52] 17 CFR 240.17Ad–22(e)(3)(ii).

[53] 17 CFR 240.17Ad–22(e)(3)(ii).

[54] 17 CFR 240.17Ad–22(e)(v)(viii).

[55] Rule 707 addresses the treatment of funds in a Clearing Member's X–M accounts. Rule 1001 addresses the size of OCC's Clearing Fund and the amount of a Clearing Member's contribution. Rules 1104 through 1107 concern the treatment of the portfolio of a defaulted Clearing Member. Rules 2210 and 2211 concern the treatment of Stock Loan positions of a defaulted Clearing Member.

[56] Rule 1111(g), which would provide the Board authority to equitably re-allocate losses, costs and fees directly imposed as a result of a Partial Tear-Up among all non-defaulting Clearing Members through a special charge, would serve as a discretionary tool to redistribute the credit losses allocated through Partial Tear-Up.

[57] 17 CFR 240.17Ad–22(e)(v)(viii).

[58] 17 CFR 240.17Ad–22(e)(4)(ix).

[59] Under the existing approach, it is less certain from OCC's standpoint regarding whether Clearing Members would reasonably be able to cap their liability to proportionate charges within five business days.

without further aggravating the extreme stresses facing market participants.

OCC recognizes that the proposed changes would limit the maximum amount of Clearing Fund resources that could be available to OCC in an extreme stress scenario, which introduces the possibility, however remote, that the proposed 200% cap ultimately could be reached. If during any cooling-off period the amount of aggregate proportionate charges against the Clearing Fund approaches the 200% cap, the amount remaining in the Clearing Fund may no longer be sufficient to comply with the applicable minimum regulatory financial resources requirements in the CCAs. In any such event, OCC's existing authority under Rule 603 would permit OCC to call on participants for additional initial margin, which could ensure that OCC's minimum financial resources remain in excess of applicable CCA requirements.[60] OCC recognizes that the imposition of increased margin requirements could have an immediate pro-cyclical impact on participants (and consequential impacts on the broader financial system) that is potentially greater than the impact of replenishing the Clearing Fund. These risks would be limited to a specific extreme stress event and could be mitigated by certain factors. First, OCC, in coordination with its regulators, would carefully evaluate any potential increase in the context of then-existing facts and circumstances. Second, during the cooling-off period, Clearing Members and their customers will have the opportunity to reduce or rebalance their respective portfolios in order to mitigate their exposures to stress losses and initial margin increases. Finally, since initial margin is not designed to be subject to mutualized loss, the risk of loss faced by Clearing Members for amounts posted as additional margin would be substantially less than for replenishments of the Clearing Fund.

Given the products cleared by OCC and the composition of its clearing membership, OCC has determined that a minimum 15-calendar day cooling-off period, rolling up to a maximum of 20 calendar days, is likely to be a sufficient amount of time for OCC to manage the ongoing default(s) and take necessary steps in furtherance of stabilizing the clearing system. Further, through conversations with Clearing Members, OCC believes that the proposed cooling-off period is likely to be a sufficient amount for Clearing Members (and their customers) to orderly reduce or rebalance their positions, in an attempt to mitigate stress losses and exposure to potential initial margin increases as they navigate the stress event. Through conversations with Clearing Members, OCC also believes that the proposed cooling-off period is likely to be a sufficient amount for certain Clearing Members to orderly close-out their positions and transfer customer positions as they withdraw from clearing membership. OCC believes the proposed cooling-off period, coupled with the other proposed changes to OCC's assessment powers, is likely to provide Clearing Members with an adequate measure of stability and predictability as to the potential use of Clearing Fund resources, which OCC believes removes the existing incentive for Clearing Members to withdraw following a proportionate charge.[61]

In light of the foregoing, OCC believes that the proposed changes would enhance and strengthen its process to replenish the Clearing Fund following a default or other event in which use of the Clearing Fund is contemplated, in accordance with Rule 17Ad–22(e)(4)(ix).[62]

Replenishment of Liquid Resources

In relevant part, Rule 17Ad–22(e)(7)(ix) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [d]escrib[e] the [CCA's] process to replenish any liquid resources that the clearing agency may employ during a stress event.'' [63] Since the use any part of the cash portion of OCC's Clearing Fund would constitute a depletion of one of OCC's liquid resources, OCC's assessment power, discussed above, is the primary means of replenishing the Clearing Fund cash that OCC used to address the stress event. For the same reasons stated above, OCC believes that the proposed changes enhance and strengthen its process to replenish the Clearing Fund, as necessary, following a default or other stress event in which the Clearing Fund is used, and therefore, OCC views the proposed changes as consistent with Rule 17Ad–22(e)(7)(ix).[64]

Timely Action to Contain Losses

In relevant part, Rule 17Ad–22(e)(13) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [e]nsure the [CCA] has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations . . .'' [65] The proposed changes would provide OCC with the authority to call for Voluntary Tear-Ups and OCC's Board with the discretion to impose Partial Tear-Ups, which would provide OCC with authority necessary to extinguish certain losses (and attendant liquidity demands) thereby potentially enabling OCC to continue to meet its remaining obligations to participants. As designed, Voluntary Tear-Ups and Partial Tear-Ups would be initiated on a date sufficiently in advance of the exhaustion of OCC's financial resources such that OCC is expected to have adequate resources remaining to cover the amount it must pay to extinguish the positions of Clearing Members and customers without haircutting gains. Accordingly, OCC believes that its authority and capacity to conduct a Partial Tear-Up should be timely, relative to the adequacy of OCC's remaining financial resources. Finally, OCC believes it has the operational and systems capacity sufficient to support the proposed changes, and OCC's policies and procedures will be updated accordingly to reflect the existence of these new tools. As a result, OCC believes that the proposed changes conform to the relevant requirements in Rule 17Ad–22(e)(13).[66]

Public Disclosure of Key Aspects of Default Rules

In relevant part, Rule 17Ad–22(e)(23)(i) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]ublicly disclos[e] all relevant rules and material procedures, including key aspects of its default rules and procedures.'' [67] As stated above, each of the tools discussed herein are contemplated to be deployed by OCC if an extreme stress event has placed OCC into a recovery or orderly wind-down scenario, and therefore, the tools discussed herein constitute key aspects of OCC's default rules. By

[60] Rule 603 provides that ''[t]he Risk Committee may, from time to time, increase the amount of margin which may be required in respect of a cleared contract, open short position or exercised contract if, in its discretion, it determines that such increase is advisable for the protection of [OCC], the Clearing Members or the general public.''

[61] OCC initially considered a fixed 15-calendar day cooling-off period; however, OCC concluded that a fixed 15-calendar day cooling-off period may increase the risks of successive or cascading Clearing Member defaults and may perversely incentivize Clearing Members to seek to withdraw from clearing membership. Through conversations with Clearing Members, OCC believes that these potentially disruptive consequences are mitigated by the proposed rolling cooling-off period.

[62] 17 CFR 240.17Ad–22(e)(4)(ix).

[63] 17 CFR 240.17Ad–22(e)(7)(ix).

[64] 17 CFR 240.17Ad–22(e)(7)(ix).

[65] 17 CFR 240.17Ad–22(e)(13).

[66] 17 CFR 240.17Ad–22(e)(13).

[67] 17 CFR 240.17Ad–22(e)(23)(i).

incorporating the proposed changes into OCC's Rules and By-Laws, as further supplemented by the discussion in OCC's public rule filing, OCC believes that proposed changes would conform to the relevant requirements in Rule 17Ad–22(e)(23)(i).[68]

Sufficient Information Regarding the Risks, Fees and Costs of Clearing

In relevant part, Rule 17Ad–22(e)(23)(ii) requires that each CCA ''establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . [p]rovid[e] sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.'' [69] The proposed changes would clearly explain to Clearing Members and market participants that an extreme stress scenario could result in the use—and theoretically the exhaustion—of OCC's financial resources, inclusive of OCC's proposed assessment powers. Proposed changes to Section 6, Article VIII of OCC's By-Laws would explain Clearing Members' replenishment obligation and liability for assessments. The proposed changes also would clearly explain, through proposed Rules 1011 and 1111, that as OCC nears the exhaustion of its assessment powers, Clearing Members may be asked for voluntary payments and, if necessary, Clearing Members and customers may be asked to participate in a Voluntary Tear-Up and/or subject to a Partial Tear-Up. Proposed Rules 1011(b) and 1111(a)(ii) also would make clear that Clearing Members that made voluntary payments and Clearing Members and customers whose tendered positions were extinguished in the Voluntary Tear-Up would be prioritized in the distribution of any recovery from the defaulted Clearing Member(s). Proposed changes to Article VIII would clarify that the Clearing Fund contributions remaining after OCC has conducted a Voluntary Tear-Up or Partial Tear-Up could be used to compensate the non-defaulting Clearing Members and non-defaulting customers for the losses, costs or fees imposed upon them as a result of such Voluntary Tear-Up or Partial Tear-Up. Proposed Rule 1111(g) would make clear that, following a Partial Tear-Up, OCC's Board may seek to equitably re-allocate losses, costs and fees directly imposed as a result of a Partial Tear-Up among all non-defaulting Clearing Members through a special charge. By incorporating the proposed changes into OCC's Rules and By-Laws, as further supplemented by the discussion in OCC's public rule filing, OCC believes that is has provided sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they could incur by participating OCC, consistent with the requirements in Rule 17Ad–22(e)(23)(ii).[70]

(B) *Clearing Agency's Statement on Burden on Competition*

Section 17A(b)(3)(I) of the Act [71] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe the proposed rule change would have any impact or impose any burden on competition. The primary purpose of the proposed changes is to make certain revisions to OCC's Rules and By-Laws Laws that are designed to enhance OCC's existing tools to address the risks of liquidity shortfalls and credit losses and to establish tools by which OCC could re-establish a matched book following a default. As explained above, each of the tools proposed herein is contemplated to be deployed by OCC in an extreme stress event that has placed OCC into a recovery or orderly wind-down scenario. The proposed rule change is intended to provide Clearing Members, market participants and other stakeholders with greater certainty as to their liabilities and potential exposure to OCC in the event of an unprecedented loss scenario. OCC does not believe that the proposed changes would discriminatorily impact any Clearing Member's access to OCC's services or unnecessarily disadvantage or favor any particular user in relationship to another user. OCC recognizes that the nature of a Partial Tear-Up means that only particular Clearing Members and market participants holding certain positions may be impacted; however, the risk of Partial Tear-Ups is extremely remote, and even then, the proposed changes seek to provide means of equitably re-allocating the losses, costs and fees imposed by Voluntary Tear-Up or Partial Tear-Up. Therefore, OCC believes that the proposed changes would not have any impact or impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 Commissions internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2017–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2017–020. 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

[68] 17 CFR 240.17Ad–22(e)(13).

[69] 17 CFR 240.17Ad–22(e)(23)(ii).

[70] 17 CFR 240.17Ad–22(e)(23)(ii).

[71] 15 U.S.C. 78q–1(b)(3)(I).

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 Section, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal or 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–OCC–2017–020 and should be submitted on or before August 17, 2018.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[72]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16535 Filed 8–1–18; 8:45 am]

BILLING CODE 8011–01–P

[72] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83726; File No. SR–MIAX–2018–16]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders

July 27, 2018.

Pursuant to the provisions of 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 July 16, 2018, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 518, Complex Orders, to update its rule text regarding stock-option orders, in connection with the upcoming launch of such orders on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 518, Complex Orders, to update its rule text regarding stock-option orders, in connection with the upcoming launch of such orders on the Exchange. In particular, the Exchange is proposing to (i) adopt new rule text to introduce a new price protection feature for certain stock-option strategies, (ii) delete certain existing rule text to eliminate an unnecessary execution price restriction for the stock component of a stock-option strategy, and (iii) make certain minor clarifying edits to existing rule text.

Complex orders began trading on the Exchange on October 24, 2016.[3] In its rule filing to establish the trading of complex orders, the Exchange adopted rules for handling stock-option orders.[4] The Exchange also indicated that it would determine when stock-option orders would be made available for trading in the System[5] and would communicate such determination to Members[6] via Regulatory Circular.[7] The Exchange is now proposing to make certain changes to its rule text, in connection with the upcoming launch of such orders on the Exchange, which is scheduled for the third quarter of 2018.

Currently, the Exchange provides price protection for certain complex option trading strategies such as Vertical Spreads[8] and Calendar Spreads[9] to prevent executions at potentially erroneous prices. Specifically, the Exchange provides a Vertical Spread Variance (''VSV'') price protection and a Calendar Spread Variance (''CSV'') price protection. The VSV establishes minimum and maximum trading price limits for Vertical Spreads.[10] The CSV establishes a minimum trading price limit for Calendar Spreads.[11] If the execution price of a complex order would be outside of the limits established for Vertical Spreads and Calendar Spreads, such complex order will be placed on the Strategy Book and will be managed to the appropriate trading price limit as described in Rule 518(c)(4), Managed Interest Process for Complex Orders. Orders to buy below the minimum trading price limit and orders to sell above the maximum trading price limit (in the case of Vertical Spreads) will be rejected by the System.[12]

The Exchange now proposes to adopt new subsection (g) in Rule 518, Interpretations and Policies .01, to provide a price protection feature for certain stock-option strategies that have a single option component tied to a stock component with a standard deliverable.[13] The proposed price protection feature, named ''Parity Price Protection,'' will provide price protection for strategies that consist of a

[3] *See* MIAX Regulatory Circular 2016–43, October 20, 2016.

[4] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26).

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] *See supra* note 4.

[8] A ''Vertical Spread'' is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have the same expiration but different strike prices. *See* Exchange Rule 518.05(a).

[9] A ''Calendar Spread'' is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have different expirations but the same strike price. *See* Exchange Rule 518.05(b).

[10] *See* Exchange Rule 518.05(a).

[11] *See* Exchange Rule 518.05(b).

[12] *See* Exchange Rule 518.05(c).

[13] The standard stock deliverable is 100 shares.

sale of one call [14] and the purchase of one hundred shares of the underlying stock (''Buy-Write'') and the contra side of the strategy, or that consist of the purchase of one put [15] and the purchase of one hundred shares of the underlying stock (''Married-Put'') and the contra side of the strategy. The Exchange will establish a Parity Spread Variance (''PSV'') value between $0.00 and $0.50. The PSV value will be uniform for all option classes traded on the Exchange as determined by the Exchange and communicated to Members via Regulatory Circular prior to accepting such orders on the Exchange. The PSV will be used to calculate a minimum option trading price limit that the System will prevent the option leg from trading below by applying the PSV value to the strike price of the option to establish a parity protected price for the strategy. For call option legs, the PSV value is added to the strike price of the option; for put option legs, the PSV value is subtracted from the strike price of the option. The System will then prevent the strategy from trading below its parity protected price limit to ensure that the strategy does not execute at a potentially erroneous price.

The examples below provide an illustration of how the protection is calculated for Buy-Write and Married-Put strategies. For the purposes of the following examples the PSV used in the calculations is $.10.

Following is an example of the operation of the price protection feature for a Married-Put Strategy:

Example 1 (Married-Put)

In its simplest terms the parity price of a put option can be expressed as (Strike Price − Stock Price = Put Option Parity Price). If, for example, the stock is trading at $45.00 and the Strike Price of the put option is $50.00, the parity price of the put option would then be $5.00 ($50.00 − $45.00 = $5.00). The Exchange is able to leverage the parity relationship between the components to establish a minimum option trading price limit for Married-Put Strategies by simply subtracting the PSV from the strike price of the option. The effect on the option price can be seen in the following calculation (($50.00 − $0.10) − $45.00 = $49.90 − $45.00 = $4.90). The Exchange will calculate the parity protected price for a Married-Put Strategy by leveraging the put option parity formula by simply subtracting the PSV from the strike price of the option. This would result in a parity protected price for the strategy of $49.90 using the figures above.

This allows for the stock component and the option component prices to fluctuate to achieve the strategy's net price, but ensures that the strategy will not trade below its parity protected price. Married Put Strategy interest received to sell a price protected Married-Put Strategy below $49.90 will be placed on the Strategy Book [16] at $49.90. Married Put Strategy interest received to buy a price protected Married-Put Strategy below $49.90 will be rejected.

Example 2 (Buy-Write)

In its simplest terms the parity price of a call option can be expressed as (Stock Price − Strike Price = Call Option Parity Price). If, for example, the stock is trading at $45.00 and the Strike Price of the call option is $40.00, the parity price of the call option would then be $5.00 ($45.00 − $40.00 = $5.00). The Exchange is able to leverage the parity relationship between the components to establish a minimum option trading price limit for Buy-Write Strategies by adding the PSV to the strike price of the option. The effect on the option price can be seen in the following calculation ($45.00 − ($40.00 + $.10) = $45.00 − $40.10 = $4.90). The Exchange will calculate the parity protected price for a Buy-Write Strategy by leveraging the call option parity formula by simply adding the PSV to the strike price of the option. This would result in a parity protected price for the strategy of $40.10 net debit using the figures above.

This allows for the stock component and the option component prices to fluctuate to achieve the strategy's net price, but ensures that the strategy will not trade below its parity protected price. Buy-Write strategy interest received to sell a price protected Buy-Write Strategy below $40.10 net debit will be placed on the Strategy Book at $40.10 net debit.[17] Buy-Write strategy interest received to buy a price protected Buy-Write Strategy below $40.10 net debit will be rejected.

Second, the Exchange proposes to delete certain existing rule text from Exchange Rule 518, Interpretations and Policies .01, subsection (b), to eliminate an unnecessary execution price restriction for the stock component of a stock-option strategy. Exchange Rule 518, Interpretations and Policies .01 subsection (b), contains a paragraph that provides that, ''[t]he execution price of the underlying security component must be also within the high-low range for the day in the underlying security at the time the stock-option order is processed and within a certain price from the current market, which the Exchange will establish and communicate to Members via Regulatory Circular. If the underlying security component price is not within these parameters, the stock-option order is not executable.'' [18] The Exchange does not believe that this execution price restriction for the stock component is necessary given the existing price protections already in place on the Exchange.

The Exchange believes that the execution price restriction for the stock component of a stock-option strategy is unnecessary because all complex orders on the Exchange, including stock-option orders, receive Implied Complex MIAX Best Bid or Offer (''icMBBO'') protection.[19] The icMBBO is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. For stock-option orders, the icMBBO for a complex strategy is calculated using the best price (whether displayed or non-displayed) on the Simple Order Book [20] in the individual option component(s), and the NBBO [21] in the stock component.[22] Exchange Rule 518(c)(2)(ii) provides, in relevant part, that incoming complex orders and quotes will not be executed at prices inferior to the icMBBO or at a price that is equal to the icMBBO when there is a Priority Customer Order (as defined in Rule 100) at the best icMBBO price. Further, the rule provides that complex orders will never be executed at a price that is outside of the individual component prices on the Simple Order Book, and the net price of a complex order executed against another complex order on the Strategy Book will never be

[14] The term ''call'' means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the number of units of the underlying security covered by the option contract. *See* Exchange Rule 100.

[15] The term ''put'' means an option contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the number of units of the underlying security covered by the option contract. *See* Exchange Rule 100.

[16] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[17] A seller of the strategy would receive a $40.10 net credit.

[18] *See* Exchange Rule 518, Interpretations and Policies .01(b).

[19] *See* Exchange Rule 518(a)(11).

[20] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[21] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[22] *See* Exchange Rule 518(a)(11).

inferior to the price that would be available if the complex order legged into the Simple Order Book. Accordingly, as a result of the icMBBO price protection feature, the execution price for the stock component of a stock-option order will always be inside the NBBO of the stock. Therefore, rule text stating that the execution price of the underlying security component must be within the high-low range for the day is unnecessary, as the icMBBO protection ensures that executions are always within the NBBO.

Finally, the Exchange proposes to make a number of minor, non-substantive edits to Rule 518, Interpretations and Policies .05(e), to add clarity and precision to the Exchange's rule text. Since the Exchange will be introducing the trading of complex strategies which include a ''stock'' component, the Exchange seeks to clarify certain aspects of the rule that are intended to apply only to the ''option'' component of a complex strategy. Specifically, the Exchange proposes to clarify the definition of a Wide Market Condition, as described in Interpretations and Policies .05, subsection (e)(1), so that it is clear that it is only applying to the ''option'' component of a complex strategy. The new proposed rule text will provide that, ''[a] 'wide market condition' is defined as any individual option component of a complex strategy having, at the time of evaluation, an MBBO [23] quote width that is wider than the permissible valid quote width as defined in Rule 603(b)(4).'' By definition, the MBBO is comprised of option interest only, therefore providing additional detail to the existing rule adds clarity to the Exchange's rules.

Similarly, the Exchange proposes to clarify that Simple Market Auction or Timer Events (''SMAT Events'') pertain only to ''option'' components of a complex strategy, by amending Interpretations and Policies .05, subsection (e)(2)(i) and (e)(2)(ii), to include the term ''option component'' in the first sentence of each section. By definition, the Exchange's Simple Market is comprised of option interest only, on the Simple Order Book, therefore providing additional detail to the existing rule adds clarity to the Exchange's rules.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [24] in general, and furthers the objectives of Section 6(b)(5) of the Act [25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes establishing a parity price protection for certain Buy-Write and Married-Put strategies promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by ensuring that strategies are not executed at potentially erroneous prices.

Given the relationship that the stock price, strike price, and option price have to each other, the Exchange is able to calculate a minimum option trading price limit for the option leg of certain stock-option strategies with a call or a put component. Specifically, the parity price of a call option can be derived by subtracting the strike price from the stock price (Stock Price − Strike Price = Call Option Parity Price); and the parity price of a put option can be derived by subtracting the stock price from the strike price (Strike Price − Stock Price = Put Option Parity Price). Using these relationships the PSV may be applied to establish a minimum option trading price limit that the System will prevent the option leg from trading below to establish a parity protected price for the strategy to ensure the strategy does not trade below its parity protected price at a potentially erroneous price.

The Exchange believes that Members will benefit from the proposed risk protection measure as the protection ensures that these stock-option strategies are not executed below their parity protected price as calculated by the Exchange. Consequently, the proposed risk protection is designed to encourage Members to submit additional order flow and liquidity to the Exchange in these strategies, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest. This protection should provide Members with confidence that protections are in place on the Exchange to reduce the risk of these strategies being executed at potentially erroneous prices. As a result, the Exchange believes that the proposed price protection feature will promote just and equitable principles of trade.

Additionally the Exchange's proposal to remove unnecessary rule text from its current rule which requires that the execution price of the underlying security component be within the high-low range for the day in the underlying security at the time the stock-option order is processed is consistent with Section 6(b) of the Act [26] in general, and furthers the objectives of Section 6(b)(5) of the Act [27] in particular. The Exchange believes that its existing icMBBO price protection feature will sufficiently guard against potentially erroneous transaction prices for complex strategies which include an underlying stock component. The icMBBO for a complex strategy involving a stock component is calculated using the best price on the Simple Order Book in the individual option component(s) and the NBBO in the stock component.[28] Every complex order entered on the Exchange receives the icMBBO price protection [29] and as a result, the execution price for the stock component of a stock-option order will always be inside the NBBO of the stock. Removal of the unnecessary rule text will protect investors and the public interest by providing clarity and precision in the Exchange's rules. Further, the Exchange notes that other exchanges that offer stock-option orders do not have this provision in their rules.[30]

Finally, the Exchange proposes to make minor non-substantive changes to its rule to clarify that Wide Market Conditions and Simple Market Auction or Timer Events on the Exchange are related to the ''option'' components only for complex strategies. The Exchange believes the proposed changes promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to add clarity and precision to the Exchange's rules. The Exchange believes that the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

[23] The term ''MBBO'' means the best bid or offer on the Simple Order Book on the Exchange. *See* Exchange Rule 518(a)(13).

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *See supra* note 21.

[29] *See supra* note 19.

[30] *See* CBOE Rule 6.53C.06 and NASDAQ ISE Rule 722.

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. The Exchange believes the proposed rule change will foster competition as it provides a risk protection mechanism for certain complex strategies entered on the Exchange and may promote competition by enabling Members to trade more aggressively on the Exchange knowing that these strategies will not be executed below [sic] parity protected price at potentially erroneous prices. Accordingly, the price protection feature should instill additional confidence in Members that submit certain stock-option orders to the Exchange that their orders receive price protection, and thus should encourage Members to submit additional order flow and liquidity to the Exchange, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

The removal of unnecessary rule text pertaining to the execution price of the stock component of a stock-option order does not impose any burden on competition as the proposed change will align the Exchange's rule with that of other exchanges.[31] Further, the additional proposed changes remedy minor non-substantive issues in the text of various rules identified in this proposal.

The Exchange does not believe the proposed rule change will impose any burden on intra-market competition as price protection is available to all market participants that submit orders in certain stock-option strategies. The Exchange further believes that the proposed price protection should promote inter-market competition, and result in more competitive order flow to the Exchange by protecting market participants from potentially erroneous executions occurring at prices below the parity protected price of the strategy, as calculated by the Exchange.

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, and believes the proposed change will enhance competition.

[31] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [32] and Rule 19b–4(f)(6) [33] thereunder.

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [34] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [35] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because it will enable market participants to benefit from the proposed parity price protection feature, which is designed to safeguard against the possibility of executions occurring at potentially erroneous prices. MIAX also states that the proposal protects investors and the public interest by deleting a provision requiring the execution price of the underlying security component of a stock-option order to be within the underlying component's high-low range for the day. MIAX notes that this provision is unnecessary because all complex orders on MIAX are protected by the icMBBO price protection feature, which assures that the stock leg of a stock-option order will not be executed at a price that is inferior to the NBBO for the stock. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed parity price protection feature is designed to prevent Buy-Write and Married Put strategies from executing at potentially erroneous prices. As noted above, Buy-Write and Married Put interest to buy that is priced below the parity protected price for the strategy will be rejected, and Buy-Write and Married Put interest to sell that is priced below the parity protected price will be placed on the Strategy Book at the parity protected price for the strategy. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.[36]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6).

[35] 17 CFR 240.19b–4(f)(6)(iii).

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–MIAX–2018–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2018–16. 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

[36] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–MIAX–2018–16 and should be submitted on or before August 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16528 Filed 8–1–18; 8:45 am]

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[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83728; File No. SR–BOX–2018–24]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility To Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network

July 27, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 19, 2018, BOX Options Exchange LLC (the "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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule on the BOX Market LLC ("BOX") options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section VI. (Technology Fees) of the BOX Fee Schedule to establish BOX Connectivity Fees for Participants and non-Participants who connect to the BOX network. Connectivity fees will be based upon the amount of bandwidth that will be used by the Participant or non-Participant. Further, BOX Participants or non-Participants connected as of the last trading day of each calendar month will be charged the applicable Connectivity Fee for that month. The Connectivity Fees will be as follows:

Connection type	Monthly fees
Non-10 Gb Connection.	$1,000 per connection.
10 Gb Connection	5,000 per connection.

The Exchange also proposes to amend certain language and numbering in Section VI.A to reflect the changes discussed above. Specifically, BOX proposes to add the title "Third Party Connectivity Fees" under Section VI.A. Further, the Exchange proposes to add Section VI.A.2 which details the proposed BOX Connectivity Fees discussed above.

Participants and non-Participants with ten (10) Gigabit Connections will be charged a monthly fee of $5,000 per connection. Participants and non-Participants with non-10 Gigabits Connections will be charged a monthly fee of $1,000 per connection. The Exchange notes that another exchange in the industry has similar connectivity fees.[5] The Exchange also notes that certain fees will continue to be assessed by the datacenters and will be billed directly to the market participant.

Next, the Exchange is amending Section VI.C. High Speed Vendor Feed ("HSVF") of the Fee Schedule. Specifically, BOX is proposing to delete Section VI.C. and reclassify the HSVF Connection as a Port Fee. The Exchange believes this reclassification is more accurate, as HSVF subscription is not dependent on a physical connection to the Exchange. Instead, subscribers must be credentialed by BOX to receive the HSVF. The HSVF Fee will remain unchanged, BOX will assess a HSVF Port Fee of $1,500 per month[6] for each month a Participant or non-Participant is credentialed to use the HSVF Port. The Exchange notes that another

[5] *See* Miami International Securities Exchange LLC ("MIAX") Fee Schedule. MIAX charges its Members and non-Members a monthly fee of $1,100 for each 1 Gigabit connection and $5,500 for each 10 Gigabit connection to MIAX's Primary/Secondary Facility. The Exchange notes a minor difference between MIAX's connectivity fees and BOX's proposal. MIAX prorates their connectivity fees when a Member makes a change to their connectivity (by adding or deleting connections). BOX notes that, like the Exchange's Port Fees and HSVF Fees, Participants or non-Participants connected as of the last trading day of each calendar month will be charged the applicable Connectivity Fee for that month.

[6] The Exchange notes that with the proposed change discussed herein, Participants and non-Participants credentialed to use the HSVF Port who also have physical connections to the BOX system will be charged for both the HSVF monthly fee and the applicable amount for their physical connections to BOX. For example, if non-Participant X is credentialed to use the HSVF Port and has three (3) physical non-10Gb connections to BOX, non-Participant X will be charged $1,500 for the monthly HSVF Port Fee and $3,000 for the three non-10Gb physical connections to BOX.

exchange in the industry charges similar fees.[7]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 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 BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Connectivity Fees in general constitute an equitable allocation of fees, and are not unfairly discriminatory, because they allow the Exchange to recover costs associated with offering access through the network connections. The proposed Connectivity Fees are also expected to offset the costs BOX incurs in maintaining, and implementing ongoing improvements to the trading systems, including connectivity costs, costs incurred on software and hardware enhancements and resources dedicated to software development, quality assurance, and technology support. The Exchange believes that its proposed fees are reasonable in that they are competitive with those charged by another exchange. Further, the Exchange believes that the proposed Connectivity Fees are not unfairly discriminatory as they are assessed to all market participants who wish to connect to the BOX network.

The Exchange believes that the proposed HSVF Port Fee is reasonable as it is similar to fees assessed at another exchange in the industry.[9] Further, the Exchange believes that charging Participants and non-Participants for both the HSVF monthly fee and applicable physical connection fees as outlined in the example above is reasonable as it is in line with another exchange in the industry.[10] Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it allows the Exchange to recoup ongoing expenditures made by the Exchange in order to offer such services to Participants and non-Participants.

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. Unilateral action by BOX in establishing fees for services provided to its Participants and others using its facilities will not have an impact on competition. As a small Exchange in the already highly competitive environment for options trading, BOX does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Exchange Act. BOX's proposed fees, as described herein, are comparable to and generally lower than fees charged by other options exchanges for the same or similar services. Lastly, the Exchange believes the proposed change will not impose a burden on intramarket competition as the proposed fees are applicable to all Participants and others using its facilities that connect to BOX.

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 Exchange Act[11] and Rule 19b–4(f)(2) thereunder,[12] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–BOX–2018–24 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–BOX–2018–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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–BOX–2018–24, and should be submitted on or before August 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16531 Filed 8–1–18; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Cboe Data Services, LLC. (''Cboe CDS'') Fee Schedule. Cboe CDS charges its Customers that receive data through a direct connection to CDS or through a connection to CDS provided by an extranet provider $500 per port per month. Cboe CDS's port fee applies to receipt of any Cboe Options data feed but is only assessed once per data port. In addition to the data port fee, Cboe Exchange Inc. (''Cboe'') charges connectivity fees based on the bandwidth used to connect to the Exchange to receive such data. *See* Cboe Fee Schedule.

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See supra* note 7.

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33184]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 27, 2018.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2018. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 21, 2018, 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 writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Branch Chief, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Broadstone Real Estate Access Fund, Inc. [File No. 811–23303]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on July 11, 2018, and amended on July 19, 2018.

Applicant's Address: 800 Clinton Square, Rochester, New York 14604.

Cohen & Steers Active Commodities Strategy Fund, Inc. [File No. 811–22938]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 13, 2018, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $50,599 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on July 11, 2018.

Applicant's Address: 280 Park Avenue, 10th Floor New York, New York 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16527 Filed 8–1–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83735; File No. SR–OCC–2018–008]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology

July 27, 2018.

I. Introduction

On May 30, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2018–008 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder to propose changes to OCC's By-Laws and Rules, the formalization of a substantially new Clearing Fund Methodology Policy (''Policy''), and the adoption of a document describing OCC's new Clearing Fund and stress testing methodology (''Methodology Description'').[3] The proposed changes are primarily designed to enhance OCC's overall resiliency, particularly with respect to the level of OCC's pre-funded financial resources. Specifically, the proposed changes would:

(1) Reorganize, restate, and consolidate the provisions of OCC's By-Laws and Rules relating to the Clearing Fund into a newly revised Chapter X of OCC's Rules;

(2) modify the coverage level of OCC's Clearing Fund sizing requirement to protect OCC against losses stemming from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions (*i.e.,* adopt a ''Cover 2 Standard'' for sizing the Clearing Fund);

(3) adopt a new risk tolerance for OCC to cover a 1-in-50 year hypothetical market event at a 99.5% confidence level over a two-year look-back period;

(4) adopt a new Clearing Fund and stress testing methodology, which would be underpinned by a new scenario-based one-factor risk model stress testing approach, as detailed in the newly proposed Policy and Methodology Description;

(5) document governance, monitoring, and review processes related to Clearing Fund and stress testing;

(6) provide for certain anti-procyclical limitations on the reduction in Clearing Fund size from month to month;

(7) increase the minimum Clearing Fund contribution requirement for Clearing Members to $500,000;

(8) modify OCC's allocation weighting methodology for Clearing Fund contributions;

(9) reduce from five to two business days the timeframe within which Clearing Members are required to fund Clearing Fund deficits due to monthly or intra-month resizing or due to Rule amendments;

(10) provide additional clarity in OCC's Rules regarding certain anti-procyclicality measures in OCC's margin model; and

(11) make a number of other non-substantive clarifying, conforming, and organizational changes to OCC's By-Laws, Rules, Collateral Risk Management Policy, Default Management Policy, and filed procedures, including retiring OCC's existing Clearing Fund Intra-Month Re-sizing Procedure, Financial Resources Monitoring and Call Procedure (''FRMC Procedure''), and Monthly Clearing Fund Sizing Procedure, as these procedures would no longer be relevant to OCC's proposed Clearing Fund and stress testing methodology and would be replaced by the proposed Rules, Policy, and Methodology Description described herein.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 5, at 83 FR 28018.

On June 7, 2018, OCC filed Amendment No. 1 to the Proposed Rule Change.[4] The Proposed Rule Change, as amended, was published for public comment in the **Federal Register** on June 15, 2018.[5] On July 11, 2018, OCC filed Amendment No. 2 to the Proposed Rule Change.[6] The Commission received five comment letters in support of the proposal.[7] This order approves the Proposed Rule Change as modified by Amendments No. 1 and 2.

II. Background

The Proposed Rule Change concerns proposed changes to OCC's By-Laws [8] and Rules,[9] the formalization of the substantially new Policy, and the adoption of OCC's new Methodology Description.[10] According to OCC, the changes comprising the Proposed Rule Change are primarily designed to enhance OCC's overall resiliency, particularly with respect to the level of OCC's pre-funded financial resources.[11]

As enumerated in the Notice of Filing, the specific modifications that OCC proposes are as follows: (1) Reorganize, restate, and consolidate the provisions of OCC's By-Laws and Rules relating to the clearing fund into a revised Chapter X of OCC's Rules; (2) modify the coverage level of OCC's clearing fund sizing requirement to protect OCC against losses stemming from the default of the two clearing member groups that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions (*i.e.,* adopt a ''Cover 2 Standard'' for sizing the clearing fund); (3) adopt a new risk tolerance for OCC to cover a 1-in-50 year hypothetical market event at a 99.5% confidence level over a two-year look-back period; (4) adopt a new clearing fund and stress testing methodology, which would be underpinned by a new scenario-based one-factor risk model stress testing approach, as detailed in the proposed Policy and Methodology Description; (5) document governance, monitoring, and review processes related to the clearing fund and stress testing; (6) provide for certain anti-procyclical limitations on the reduction in clearing fund size from month to month; (7) increase the minimum clearing fund contribution requirement for clearing members from $150,000 to $500,000; (8) modify OCC's allocation weighting methodology for clearing fund contributions; (9) reduce from five to two business days the timeframe within which clearing members are required to fund clearing fund deficits due to monthly or intra-month resizing; (10) provide additional clarity in OCC's Rules regarding certain anti-procyclicality measures in OCC's margin model; and (11) make a number of other non-substantive clarifying, conforming, and organizational changes to OCC's By-Laws, Rules and filed procedures, including retiring OCC's existing Clearing Fund Intra-Month Re-sizing Procedure, Financial Resources Monitoring and Call Procedure, and Monthly Clearing Fund Sizing Procedure, as these procedures would be replaced by the proposed Rules, Policy, and Methodology Description.[12]

The remainder of this section will first provide an overview of OCC's current process for sizing the clearing fund, followed by a more detailed discussion of the specific changes proposed by OCC, with particular focus on the following categories: (a) Stress testing; (b) total financial resources; (c) financial resource sufficiency; (d) allocation of clearing fund contributions; and (e) textual clarification and consolidation.

A. OCC's Current Process for Sizing the Clearing Fund

OCC's process for determining the size of its clearing fund was initially approved in 2011,[13] and enhanced in 2015,[14] resulting in OCC's current process. Currently, OCC resizes its clearing fund at the beginning of each month to maintain financial resources, in excess of margin, to cover its credit exposures to its clearing members. The current process is effectively an extension of OCC's daily margin process, in which OCC calculates what it refers to as the ''daily draw'' based on observations from its margin model at specific confidence levels each day.[15] OCC tracks the rolling five-day average of these daily draws and, at the beginning of each month, sets the clearing fund size to the sum of (1) the largest five-day rolling average observed over the last three months and (2) a $1.8 billion buffer.[16]

As described in detail below, OCC is proposing three primary changes to the existing approach. First, instead of simply relying on its margin model, OCC would rely on the proposed stress testing framework, including both sizing and sufficiency stress tests. Second, OCC would set the size of its clearing fund based on a Cover 2 Standard. Third, OCC would eliminate the current $1.8 billion static buffer because it would be obsolete in light of the new sizing stress tests and increased coverage afforded by the move to a Cover 2 Standard that, together, would function as a dynamic buffer.

B. Stress Testing

OCC proposes to adopt a new stress testing methodology, as detailed in both the proposed Policy and the proposed

[4] In Amendment No. 1, OCC corrected formatting errors in Exhibits 5A and 5B without changing the substance of the Proposed Rule Change.

[5] Securities Exchange Act Release No. 83406 (Jun. 11, 2018), 83 FR 28018 (Jun. 15, 2018) (SR–OCC–2018–008) (''Notice of Filing''). On May 30, 2018, OCC also filed a related advance notice (SR–OCC–2018–803) (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Act. 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on July 6, 2018. Securities Exchange Act Release No. 83561 (Jun. 29, 2018), 83 FR 31594 (Jul. 6, 2018) (SR–OCC–2018–803).

[6] In Amendment No. 2, OCC made three non-substantive changes to the proposal. Specifically, OCC (1) updated a cross-reference in Article VI, Section 27 of the OCC By-Laws to reflect the relocation of OCC's clearing fund-related rules, (2) added an Interpretation and Policy to proposed Rule 1001 to clarify the applicability of the 5 percent month-over-month limitation in the reduction of clearing fund size is not intended to apply to the initial changes in to OCC's clearing fund sizing resulting from implementation of the proposed methodology, and (3) clarified an implementation date of September 1, 2018 for the proposed changes in the filing.

[7] *See* letter from Andrej Bolkovic, CEO, ABN AMRO Clearing Corporation LLC (''AACC''), dated June 26, 2018, to Brent Fields, Secretary, Commission (AACC Letter I); letter from Chris Concannon, President and COO, Cboe Global Markets (''CBOE''), dated July 6, 2018, to Brent Fields, Secretary, Commission (CBOE Letter I); letter from Matthew R. Scott, President, Merrill Lynch Professional Clearing Corp. (''MLPRO''), dated July 6, 2018, to Brent J. Fields, Secretary, Commission (MLPRO Letter I); letter from Kurt Eckert, Partner, Wolverine Execution Services (''WEX''), dated July 12, 2018, to Brent Fields, Secretary, Commission (WEX Letter I); and letter from Mark Dehnert, Managing Director, Goldman Sachs & Co. LLC (''GS''), dated July 17, 2018, to Brent J. Fields, Secretary, Commission (GS Letter I), *available at https://www.sec.gov/comments/sr-occ-2018-008/occ2018008.htm.*

[8] OCC's By-Laws are available at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_bylaws.pdf.*

[9] OCC's Rules are available at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/occ_rules.pdf.*

[10] *See* Notice of Filing, 83 FR at 28018.

[11] *See id.*

[12] *See id.* at 28018–19.

[13] *See* Securities Exchange Act Release No. 65386 (Sep. 23, 2011), 76 FR 60572 (Sep. 29, 2011) (Order Approving Clearing Fund I).

[14] *See* Securities Exchange Act Release No. 75528 (Jul. 27, 2015), 80 FR 45690 (Jul. 31, 2015) (Order Approving Clearing Fund II).

[15] *See* Order Approving Clearing Fund I, 76 FR at 60572–60573. Each day, OCC estimates credit exposures under the stressed margin model for two scenarios: The greater of the two estimates is the daily draw. The two scenarios are of (1) the single largest credit exposure that would arise out of the default of a single clearing member group (''idiosyncratic default'') and (2) the credit exposure that would arise out of the default of two-randomly selected clearing member groups (''minor systemic default''). *See* Notice of Filing, 83 FR at 28019.

[16] *See* Order Approving Clearing Fund II, 80 FR at 45691.

Methodology Description.[17] OCC believes that its proposed methodology would enable it to measure its credit exposure at a level sufficient to cover potential losses under extreme but plausible market conditions.[18] To do so, OCC proposes to conduct daily stress tests that consider a range of relevant stress scenarios and related price changes, including but not limited to: (1) Relevant peak historic price volatilities; (2) shifts in other market factors including, as appropriate, price determinants and yield curves; and (3) the default of one or multiple clearing members.[19]

The stress scenarios used in OCC's proposed methodology would consist of two types of scenarios: Historical scenarios and hypothetical scenarios.[20] Historical Scenarios would replicate historical events in current market conditions, which include the set of currently existing securities and their prices and volatility levels.[21] Hypothetical scenarios, rather than replicating past events, would simulate events in which market conditions change in ways that may have not yet been observed.[22] Hypothetical Scenarios, constructed using statistical methods, would generally include price shocks specific to various instruments, such as equity products, volatility products, and fixed income products. Each scenario would represent a draw from a multivariate distribution fitted to historical data regarding the relevant instrument (*e.g.,* returns of the S&P 500).[23] In a hypothetical scenario, the shock to a risk driver would be used to determine the relative shock to each associated risk factor (*i.e.,* related underlying security).[24] For example, OCC would establish the size of its clearing fund according to a scenario that is based on statistically generated up or down price shocks for the SPX assuming a 1-in-80 year market event.[25]

OCC's proposed stress testing framework would categorize OCC's inventory of stress tests by each stress test's intended purpose: Adequacy, sizing, sufficiency, and informational.[26] Specifically, OCC would use the (1) ''Adequacy Stress Tests'' to determine whether the financial resources collected from all clearing members collectively are adequate to cover OCC's risk tolerance; (2) ''Sizing Stress Tests'' to establish the monthly size of the clearing fund; (3) ''Sufficiency Stress Tests'' to monitor whether OCC's credit exposure to the portfolios of individual clearing member groups is at a level sufficiently large enough to necessitate OCC calling for additional resources so that OCC continues to maintain sufficient financial resources to guard against potential losses under a wide range of stress scenarios, including extreme but plausible market conditions; and (4) ''Informational Stress Tests'' to monitor and assess the size of OCC's pre-funded financial resources against a wide range of stress scenarios that may include extreme but implausible and reverse stress testing scenarios.[27]

C. Total Financial Resources

As noted above, OCC proposes to (i) to adopt a new clearing fund methodology, which would be underpinned by a new scenario-based one-factor risk model stress testing approach,[28] modify the coverage level of OCC's clearing fund sizing requirement to a Cover 2 Standard; (iii) provide for certain anti-procyclical limitations on the reduction in clearing fund size from month to month; and (iv) reduce from five business days to two business days the timeframe within which clearing members are required to satisfy clearing fund deficits due to monthly or intra-month resizing.[29]

1. Proposal To Change the Monthly Clearing Fund Size Calculation

As discussed above, OCC proposes to replace the methodology by which it determines the monthly clearing fund size with an approach based on hypothetical stress scenarios that assume SPX shocks (up and down) associated with a 1-in-80-year market event.[30] Under the proposal, OCC would continue determining the size of its clearing fund each month based on the peak-five daily rolling average of estimated stress exposures; however, such exposures would be based on the output from OCC's stress testing framework going forward as opposed to the margin-derived approach described above.[31]

As its benchmark for identifying extreme but plausible market conditions, OCC proposes to adopt a credit risk tolerance defined by OCC's largest potential aggregate credit exposure to two clearing member groups under a 1-in-50-year hypothetical market event as opposed to the greater of exposures arising under an idiosyncratic default or a minor systemic default.[32] OCC further proposes to base its daily draw on the aggregate credit exposures estimated under a 1-in-80-year hypothetical market event.[33] Additionally, OCC proposes to size the clearing fund to a Cover 2 Standard.[34]

OCC believes that sizing the clearing fund to cover a 1-in-80-year event would provide sufficient coverage in excess of the exposures estimated under a 1-in-50-year event to justify no longer collecting the $1.8 prudential margin of safety.[35]

2. Proposal To Limit Reductions in Clearing Fund Size From Month to Month

Currently, OCC does not constrain month-over-month changes in the size of the clearing fund. OCC proposes to adopt two limitations on month-over-month decreases in the size of the clearing fund. First, OCC proposes to prohibit a clearing fund decrease of more than 5 percent month-over-month.[36] Second, OCC proposes to limit the clearing fund decreases based on its daily monitoring of OCC's financial resources. When determining the size of the clearing fund at the beginning of a given month, OCC would not allow that size to be less than 90 percent of the peak credit exposures estimated under the stress tests used for daily monitoring during the last five business days of the

[17] *See* Notice of Filing, 83 FR at 28021.

[18] *See id.*

[19] *See id.*

[20] *See id.* Because not all of the underlying securities in current portfolios existed during the events on which historical scenarios are based, OCC has developed methodologies to approximate the past price and volatility movements as appropriate. *See id.* at 28023.

[21] *See id.* at 28021.

[22] *See id.* at 28022.

[23] *See id.* at 28023. Risk drivers are a selected set of securities or market indices (*e.g.,* the Cboe S&P 500 Index (''SPX'') or the Cboe Volatility Index (''VIX'')) that are used to represent the main sources or drivers for the price changes of the risk factors. *See id.* at 28021, n. 25. The term risk factor refers broadly to all of the individual underlying securities (such as Google, IBM and Standard & Poor's Depositary Receipts (''SPDR''), S&P 500 Exchange Traded Funds (''SPY''), etc.) listed on a market. *See id.*

[24] *See id.* at 28022.

[25] *See id.* at 28023.

[26] *See id.* at 28024.

[27] *See id.* at 28024–26.

[28] OCC detailed the new methodology in the proposed Policy and Methodology Description.

[29] *See* Notice of Filing, 83 FR at 28020.

[30] *See id.* at 28023.

[31] *See id.* at 28024. Specifically, OCC would identify its exposures under a 1-in-80-year hypothetical event. *See id.*

[32] *See id.* at 28021. As discussed above, OCC's hypothetical stress scenarios represent draws from a fitted distribution of 2-day log returns for a given risk driver. OCC noted in its proposal that a 1-in-50-year hypothetical market event corresponds to a 99.9921 percent confidence interval under OCC's chosen distribution of 2-day logarithmic S&P 500 index returns. *See id.,* n. 24.

[33] *See id.* at 28024.

[34] *See id.* at 28021.

[35] *See id.,* n. 23.

[36] *See id.* at 28027.

preceding month.[37] These limitations are designed to reduce the potential for cyclical movements in the size of the clearing fund, as well as reduce the need for OCC to call for additional financial resources intra-month.[38]

3. Timing of Clearing Fund Contributions

In addition to revising the methodology for sizing OCC's total financial resources, OCC proposes generally to reduce the time in which each clearing member must make its clearing fund contribution.[39] Clearing members currently have five business days to satisfy a clearing fund deficiency arising out of the monthly sizing or intra-month resizing processes. OCC proposes to reduce that time to two business days.[40] OCC also proposes to require clearing members to satisfy any clearing fund deficit resulting from a decrease in the value of the clearing member's existing contribution within one hour of notification by OCC.[41]

D. Financial Resource Sufficiency

As noted above, OCC proposes to (i) adopt a new clearing fund methodology, as detailed in the newly-proposed Policy and Methodology Description and (ii) document governance, monitoring, and review processes related to the clearing fund and stress testing.[42] Proposed changes to OCC's clearing fund methodology include the assessment of OCC's clearing fund against a wide range of historical scenarios.[43]

1. Proposal To Monitor the Sufficiency of OCC's Financial Resources

Currently, OCC monitors the sufficiency of its financial resources daily by estimating whether the size of the clearing fund is sufficient to cover a maximum potential loss from a simulated idiosyncratic default.[44] Under its current procedures, when OCC observes credit exposures estimated under the idiosyncratic default in excess of 75 percent of the clearing fund size, OCC issues a margin call against the clearing member group generating the credit exposures.[45] The size of such a margin call is the difference between the idiosyncratic default exposure and the base clearing fund amount.[46] The margin call is allocated among the individual clearing members in the clearing member group based on each clearing member's proportionate share of the risk to OCC.[47] OCC may limit the size of the margin call to each clearing member to the lesser of $500 million or 100 percent of such clearing member's net capital.[48]

OCC's current procedures also call for increases to the total size of the clearing fund in more extreme scenarios. When OCC observes credit exposures estimated under the idiosyncratic default[49] exceeding 90 percent of the clearing fund size OCC must, under its procedures, increase the size of the clearing fund.[50] The size of the increase to the clearing fund is the greater of $1 billion or 125 percent of the difference between the idiosyncratic default exposure and the clearing fund.[51]

OCC proposes to revise this process by replacing the above-described idiosyncratic default approach with an approach that compares the size of the clearing fund to the exposures estimated under a set of historical scenario stress tests (''Sufficiency Stress Tests'').[52] The Sufficiency Stress Tests proposed by OCC include the largest market moves up and down during 2008 on a cover 2 basis and the market moves associated with the 1987 market crash on a cover 1 basis.[53]

OCC proposes to call for additional margin when it observes that one or more clearing member groups' exposure under a Sufficiency Stress Test exceeds 75 percent of the clearing fund.[54] Under the proposal, the size of the margin call would be the amount by which the Sufficiency Stress Test exposure exceeds the 75 percent threshold.[55] Similar to the current process, OCC proposes to retain authority to limit such margin calls to each clearing member to $500 million or 100 percent of the clearing member's net capital.[56]

OCC also proposes to revise the process for increasing the size of the clearing fund under more extreme scenarios. OCC proposes to increase the size of the clearing fund when it observes a Sufficiency Stress Test exposure in excess of 90 percent of the clearing fund.[57] Similar to the current process, the size of the clearing fund increase would be the greater of $1 billion or 125 percent of the difference between the Sufficiency Stress Test exposure and the clearing fund.[58] OCC also proposes to provide new authority to its Chief Executive Officer, Chief Administrative Officer, and Chief Operating Officer to temporarily increase the size of the clearing fund, subject to notice and later review by OCC's Board Risk Committee (''RC'').[59]

Additionally, OCC proposes to add a new threshold at which it would commence enhanced monitoring of a clearing member group.[60] Where OCC observes that a clearing member group's Sufficiency Stress Test exposure exceeds 65 percent of the clearing fund, OCC would commence enhanced monitoring of, and provide notice to the clearing member group.[61]

2. Proposal To Document Governance Processes Related to the Clearing Fund and Stress Testing

OCC proposes to establish, as part of its rules, processes for the governance, monitoring, and review of the stress testing framework and clearing fund methodology described above.[62] Such processes would cover daily, monthly, and annual review of OCC's stress testing framework and clearing fund methodology.

On a daily basis, OCC's staff would monitor the size of the clearing fund against OCC's risk tolerance and sufficiency stress tests.[63] OCC staff would be required to report material issues to the Executive Vice President of OCC's Financial Risk Management group (''EVP–FRM''). The EVP–FRM

[37] *See id.* As discussed below, OCC proposes to monitor the sufficiency of its financial resources daily by comparing the size of the clearing fund to the output of several historical stress tests.

[38] *See id.*

[39] *See id.* at 28028–29.

[40] *See id.* at 28029.

[41] *See id.* at 28028.

[42] *See id.* at 28020.

[43] *See id.*

[44] *See id.* at 28019. As noted above, an idiosyncratic default is one of the two scenarios that OCC currently uses to determine the size of the clearing fund each month. *See supra* note 15. Specifically, the single largest credit exposure that would arise out of the default of a single clearing member group.

[45] *See id.*

[46] *See id.* As noted above in section II.A., the base clearing fund amount is the size of the clearing fund less the $1.8 billion prudential margin of safety.

[47] *See id.,* n. 13.

[48] *See id.* at 28019.

[49] OCC would reduce the size of the idiosyncratic default exposure by factoring in margin calls issued due to a breach of the 75 percent threshold described above. *See id.*

[50] *See id.*

[51] *See id.*

[52] *See id.* at 28024.

[53] *See id.* OCC proposes to measure the clearing fund against the two largest exposures under the 2008-like events and the one largest exposure under a 1987-like event. *See id.*

[54] *See id.* at 28025.

[55] *See id.*

[56] *See id.*

[57] *See id.* at 28025–26.

[58] *See id.* at 28026.

[59] *See id.*

[60] *See id.* at 28025. Based on OCC's procedures, staff understands that such monitoring would entail escalation within OCC's Financial Risk Management group noting the relevant clearing member, the future potential for breach of the 75 percent margin call threshold, and a summary of the apparent risk drivers resulting in the stress exposures.

[61] *See id.*

[62] *See id.* at 28026.

[63] *See id.*

would further escalate issues with OCC management as applicable.

On a monthly basis, OCC's staff would provide reports and analyses of the daily stress tests to OCC's Management Committee and RC.[64] OCC's staff would also be responsible for conducting a comprehensive analysis of stress test results, scenarios, models, parameters, and assumptions monthly or more frequently when the products cleared or markets served by OCC display high volatility or become less liquid or when the size or concentration of positions held by OCC's participants increases significantly.[65]

On an annual basis, OCC's Model Validation Group would be required to perform a model validation of OCC's clearing fund methodology.[66] The RC would review such validations.[67] The RC would also be responsible for annual review and approval of the Policy.[68]

E. Allocation of Clearing Fund Contributions

As noted above, OCC proposes to (i) increase the minimum clearing fund contribution requirement for clearing members to $500,000 and (ii) modify OCC's allocation weighting methodology for clearing fund contributions.[69]

1. Proposal To Increase the Minimum Clearing Fund Contribution

Currently, the minimum amount a clearing member must contribute to OCC's clearing fund (the ''fixed amount'') is $150,000.[70] OCC proposes to increase the fixed amount to $500,000.[71] The minimum contribution requirement has been in place since June 5, 2000,[72] and has remained static while the average size of OCC's clearing fund has increased significantly.[73] OCC also noted that other CCPs' minimum requirements are well in excess of OCC's minimum contribution requirement.[74] OCC analyzed the impact of the proposed change on its clearing members and discussed such impacts with the potentially affected clearing members, the majority of which did not express concerns over the proposed increase.[75]

2. Proposal To Modify the Clearing Fund Allocation Weighting

In addition to the fixed amount described above, most clearing members are required to contribute an additional amount to OCC's clearing fund (the ''variable amount''). The variable amount is based on the weighted average of each clearing member's proportionate share of total risk, open interest, and volume.[76] Currently, OCC uses the following weighting in its allocation of clearing fund requirements: 35 percent total risk; 50 percent open interest; and 15 percent volume.[77] OCC proposes to modify the allocation weighting as follows: 70 percent total risk; 15 percent open interest; and 15 percent volume.[78]

F. Textual Clarification and Consolidation

Finally, as noted above, OCC proposes to (i) reorganize, restate, and consolidate the provisions of OCC's By-Laws and Rules relating to the Clearing Fund into a newly-revised Chapter X of OCC's Rules; (ii) provide additional clarity in OCC's Rules regarding certain anti-procyclicality measures in OCC's margin model; and (iii) make a number of other non-substantive clarifying, conforming, and organizational changes to OCC's By-Laws, Rules, and filed procedures, including retiring OCC's existing Clearing Fund Intra-Month Re-sizing Procedure, Financial Resources Monitoring and Call Procedure, and Monthly Clearing Fund Sizing Procedure, as these procedures would be replaced by the proposed Rules, Policy, and Methodology Description.[79]

1. Proposal To Reorganize, Restate, and Consolidate Certain Rule Text

The primary provisions that address OCC's Clearing Fund are currently located in Article VIII of the By-Laws and Chapter X of the Rules.[80] OCC believes that consolidating all of the Clearing Fund-related provisions of its By-Laws and Rules into one place would provide more clarity around, and enhance the readability of, OCC's Clearing Fund requirements.[81] Given the scope of changes described above, OCC believes that it is appropriate to make such revisions at this time.[82]

The changes to the provisions currently residing in OCC's By-Laws require an affirmative vote of two-thirds of the directors then in office, but not less than a majority of the number of directors fixed by the By-Laws; however, changes to OCC's rules generally require only a majority vote of OCC's Board of Directors.[83] OCC proposes to amend its By-Laws to maintain the existing requirements for modifying those rules that would be moved from Article VIII of OCC's By-Laws to Chapter X of its Rules.[84]

2. Proposal To Add Rule Text Clarifying Anti-Procyclicality Measures in OCC's Margin Model

OCC's existing methodology for calculating margin requirements incorporates measures designed to ensure that margin requirements are not lower than those that would be calculated using volatility estimated over a historical look-back period of at least ten years.[85] OCC now proposes to amend its Rule 601(c) to reflect this practice.[86] OCC believes that the proposed change would provide more clarity and transparency in its rules.[87]

3. Proposal To Make Other Non-Substantive Changes to OCC's Rules

OCC proposes a number of clarifying, conforming, and organizational changes to its By-Laws, Rules, Collateral Risk Management Policy, Default Management Policy, and Clearing Fund-related procedures in connection with the proposed enhancements to its Pre-Funded Financial Resources and the relocation of OCC's Clearing Fund-related By-Laws into Chapter X of the Rules.[88]

In addition to the relocation of rules described above, OCC would also make minor, non-substantive revisions. For example, OCC would replace text referencing ''computed contributions to the Clearing Fund'' and ''as fixed at the time'' with text stating ''required contributions to the Clearing Fund'' and ''as calculated at the time'' to more accurately reflect that these rules are intended to refer to a Clearing Member's required Clearing Fund contribution

[64] *See id.* at 28026–27.

[65] *See id.* at 28026.

[66] *See id.* at 28027.

[67] *See id.*

[68] *See id.*

[69] *See id.* at 28020.

[70] *See id.* at 28028. The initial amount that a new clearing member must contribute to OCC's clearing fund is also $150,000. *See id.* at 28027.

[71] *See id.* at 28028. OCC similarly proposes to increase the initial contribution. *See id.* at 28027.

[72] *See id.* (citing Securities Exchange Act Release No. 42897 (June 5, 2000), 65 FR 36750 (June 9, 2000) (SR–OCC–99–9)).

[73] *See id.* at 28027.

[74] *See id.*

[75] *See id.*

[76] *See id.* at 28028. Total risk refers to a clearing member's margin requirement. *See id.,* n. 43. Additionally, the current methodology calculates volume based on executed volume. *See id.* at 28028.

[77] *See id.*

[78] *See id.* The definition of total risk would remain the same, but OCC would calculate volume based on cleared volume as opposed to executed volume. *See id.*

[79] *See id.* at 28020.

[80] *See id.*

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] *See id.*

[85] *See id.* at 28029.

[86] *See id.*

[87] *See id.*

[88] *See id.* at 28029–30.

amount as calculated under the proposed rules.[89]

Further, OCC proposes to update references to Article VIII of the By-Laws in its Collateral Risk Management Policy and Default Management Policy to reflect the relocation of OCC's Clearing Fund-related By-Laws into Chapter X of the Rules.[90]

Finally, OCC proposes to replace procedures regarding its processes for (i) the monthly resizing of its Clearing Fund, (ii) the addition of financial resources, and (iii) the execution of any intra-month resizing of the Clearing Fund.[91] OCC proposes to retire its existing procedures because the relevant rule requirements would be maintained in the proposed rules as well as the Clearing Fund Methodology Policy and Clearing Fund Methodology Description included as part of the Proposed Rule Change.[92]

III. Summary of Comments

As noted above, the Commission received five comment letters—AACC Letter I, CBOE Letter I, MLPRO Letter I, WEX Letter I, and GS Letter I—supporting the changes in the Proposed Rule Change.[93] Two of the commenters urge the Commission to approve the proposal as expeditiously as possible.[94] AACC believes that the proposal would remediate two problems with the current clearing fund methodology: (1) OCC's current clearing fund sizing methodology failing to contain sufficient anti-procyclicality measures, and (2) OCC's current clearing fund contribution allocation methodology failing to appropriately incentivize clearing member risk management.[95]

Regarding the clearing fund sizing methodology, AACC believes that the proposal would implement a number of measures intended to provide stability and consistency to the size of OCC's clearing fund.[96] Specifically, AACC supports (1) sizing the clearing fund based on a variety of risk factors, and (2) testing the size of the clearing fund on a daily basis against extreme but plausible market events, thereby lowering the likelihood that OCC's clearing fund would be insufficient to protect OCC and market participants in the event of a clearing member default.[97] MLPRO believes that the proposed changes would create a more transparent and predictable model.[98] Similarly, GS supports OCC's proposal to include more comprehensive testing scenarios by including observed market events over a longer historical period, which would improve the overall quality of OCC's stress testing and strengthen OCC's ability to model risk scenarios.[99] Additionally, WEX believes that the proposed changes, specifically changes regarding how the monthly clearing fund sizing process will address anti-procyclicality, should help reduce operational issues related to a clearing member's obligations increasing and decreasing.[100]

AACC states that, from a theoretical perspective, OCC's proposed sizing methodology constitutes a significant improvement over the current sizing methodology in that the size of the clearing fund would be less influenced by changes in volatility because OCC is introducing other risk drivers into the sizing methodology as well as monitoring and augmenting such risk drivers on a daily basis based on market conditions.[101] AACC also comments that the proposal would cause the size of OCC's clearing fund to become more stable because OCC would test for adequacy and sufficiency on a daily basis using a series of historical and hypothetical stress tests that are rooted in extreme but plausible market events.[102]

Commenters also believe that the proposal would improve OCC's risk models by correcting existing shortcomings.[103] CBOE comments that the adoption of a Cover 2 standard would ensure that the size of the clearing fund is sufficient to protect OCC against losses from the simultaneous default of its two largest Clearing Members under extreme, but plausible market conditions.[104] GS also agrees with OCC's proposal to adopt a Cover 2 Standard.[105] MLPRO comments that the adoption of a Cover 2 standard in establishing a new model to measure the adequacy of the clearing fun and address potential default scenarios would address issues that MLPRO identifies with OCC's current model.[106] MLPRO also supports OCC's (1) adopting risk tolerance and stress testing assumptions that are developed from extreme, but plausible scenarios, and (2) calibrating individual equity price movements to the price shock for the applicable equity index to address issues with the current model.[107]

Regarding the changes to the clearing fund allocation methodology, commenters believe that the proposal would better align clearing members' required clearing fund contribution to the risk they present to OCC and other market participants.[108] AACC states that the proposed changes would place more emphasis on the economic risk presented by a clearing member's cleared contracts than the operational risk presented by a high volume clearing member, thereby better recognizing that certain types of clearing members present a relatively lower risk to OCC even though they may represent a higher percentage of overall activity (*i.e.,* clearing members with market-maker and other risk-neutral customers).[109] Similarly, WEX supports allocation based on cleared volumes as opposed to executed volumes in consideration of where a positon is cleared as opposed to where it is executed.[110] MLPRO also supports increases the weighting of total risk in the allocation process.[111] Commenters also believe that the proposed changes make sense from a default and liquidation perspective.[112]

Commenters AACC and WEX believe that the proposed changes would have positive effects on the listed options market.[113] Similarly, MLPRO believes that the proposed changes would increase liquidity in the listed options market.[114] Additionally, GS believes that the proposed changes will greatly enhance OCC's resiliency and risk management.[115]

IV. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such

[89] *See id.* at 28031, n. 52.

[90] *See id.* at 28031.

[91] *See id.*

[92] *See id.*

[93] *See supra* note 7.

[94] AACC Letter I at 1; MLPRO Letter I at I.

[95] AACC Letter I at 1.

[96] *Id.* at 2.

[97] *Id.* at 2–3.

[98] MLPRO Letter I at 2.

[99] GS Letter I at 2. In its letter, GS refers to OCC's movement to a 1-in-80-year period from a 1-in-50-year model. The Commission notes that OCC's current process is not based on a 1-in-50-year model, and that OCC is now proposing to adopt a new risk tolerance based on a 1-in-50-year hypothetical event. *See* Notice of Filing, 83 FR at 31596. Further, OCC proposes to base the size of the clearing fund on the aggregate credit exposures estimated under a 1-in-80-year hypothetical market event (as opposed to an historical market event). *See id.* at 31600.

[100] WEX Letter I at 1.

[101] AACC Letter I at 3.

[102] *Id.*

[103] CBOE Letter I at 1; MLPRO Letter I at 1–2.

[104] CBOE Letter I at 1.

[105] GS Letter I at 2.

[106] MLPRO Letter I at 1–2.

[107] *Id.*

[108] AACC Letter I at 4; WEX Letter I at 1; GS Letter I at 1.

[109] AACC Letter I at 4.

[110] WEX Letter I at 2.

[111] MLPRO Letter I at 2.

[112] AACC Letter I at 4; GS Letter I at 1.

[113] AACC Letter I at 5; WEX Letter I at 2.

[114] MLPRO Letter I at 1.

[115] GS Letter I at 2.

proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[116] After carefully considering the Proposed Rule Change, the Commission finds the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act[117] and Rules 17Ad–22(e)(1) and 17Ad–22(e)(4) thereunder.[118]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest.[119] Based on its review of the record, the Commission believes that the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in OCC's custody or control, and, in general, protect investors and the public interest by enhancing OCC's overall risk management for the reasons set forth below.

First, as described above, OCC's current process for sizing the clearing fund was established in 2011 and strengthened under a 2015 interim approach. The current process is essentially an extension of OCC's margin model. In general, margin requirements for clearing members are very reactive to market movements and changes in clearing member portfolios. Because OCC's current process for sizing the clearing fund is based on a relatively dynamic daily margin process, the size of the clearing fund can at times be volatile and cyclical in nature. The Proposed Rule Change would base the sizing and monitoring of OCC's clearing fund on a stable inventory of stress tests rather than continuing to rely on a dynamic margin model. The Commission believes this new approach would provide OCC with a more precise, rigorous, and stable assessment of the financial resources it would need to hold in its clearing fund to cover its credit risk exposure to its members in extreme but plausible market conditions.

Second, with respect to the robustness of the new stress testing framework itself, the Commission believes that the stress tests proposed in OCC's framework are an improvement over OCC's current approach in this area, as the stress tests comprise a wide range of foreseeable stress scenarios. The scenarios cover historical events as extreme as the 2008 financial crisis and 1987 market crash as well as hypothetical events derived from a dataset of historical S&P returns. OCC's proposed stress testing framework would also include a category of stress tests designed specifically for review of OCC's financial resources against implausible scenarios and reverse stress tests. Such stress tests would not directly affect the total amount of OCC's financial resources, but would facilitate a more forward looking risk management process. Accordingly, while as an ongoing supervisory matter the Commission expects OCC to consider and, as necessary, implement future enhancements to its suite of stress tests, the Commission believes that the suite of stress tests that OCC proposes to establish in its risk management framework pursuant to the Proposed Rule Change represents a material improvement to OCC's current risk management practices for estimating potential future losses in extreme but plausible market conditions.

Third, as described above, OCC proposes to adopt several enhancements to its methodology for determining the size of its clearing fund. OCC proposes to adopt an internal credit risk tolerance based on hypothetical stress scenarios, which would provide OCC with a benchmark that it believes represents extreme but plausible market conditions. The Commission believes that establishing such a tolerance is a valuable step in accurately estimating the total financial resources necessary to cover OCC's exposures in extreme but plausible market conditions. Next, OCC proposes to set the size of its clearing fund to cover a scenario that is more extreme than its internal tolerance to ensure consistent coverage, which the Commission believes would be another valuable step in accurately estimating OCC's necessary total financial resources. Further, OCC proposes to cover its two largest credit exposures when setting the size of the clearing fund, which goes further than OCC's current practice of covering the greater of OCC's single largest exposure or two random exposures. For the same reasons, the Commission believes this, too, would improve OCC's risk management practices. Finally, OCC proposes to limit the potential reductions in the size of the clearing fund month-over-month. Such limitations would avoid large drops in the clearing fund size over a short period of time and unnecessary reductions followed by immediate calls for additional resources at the beginning of each month.

Fourth, the proposal discussed above would expand and improve upon the scope of stress scenarios against which OCC monitors is financial resources. Under the proposal, OCC would continue to review the size of its clearing fund against exposures under a stress scenario designed to replicate the 1987 market crash, and would also introduce monitoring against other historical scenarios such as the largest market moves up and down observed during the 2008 financial crisis. In addition, OCC would continue its practice of collecting additional resources in margin collateral and clearing fund requirements where stress exposures exceed 75 percent and 90 percent, respectively, of the size of the clearing fund. Based on a review of the parameters of the scenario replicating the 1987 market crash, the Commission believes that the scenario presents potential losses that are extreme while also plausible in light of their historical basis. Additionally, the Commission believes that the scenario would provide stress exposure estimates that would be meaningful for the monitoring of OCC's total financial resources. The Commission also believes that the introduction of new historical scenarios, such as those replicating the financial crisis, would provide additional depth to the monitoring of OCC's financial resources. The Commission believes, therefore, that the changes proposed in the Proposed Rule Change include the adoption of a wide range of stress scenarios for the testing of OCC's financial resources.

Fifth, OCC would document its periodic review and analysis of its stress testing framework and clearing fund methodology, which would include (1) daily review of stress test outputs, (2) monthly (or more frequently as needed) analysis of the stress test results, scenarios, models, parameters, and assumptions, and (3) annual validation of the clearing fund methodology. OCC also would clearly define the process for escalating the results of its daily and monthly analyses and require on an annual basis Board level review and

[116] 15 U.S.C. 78s(b)(2)(C).

[117] 15 U.S.C. 78q–1(b)(3)(F).

[118] 17 CFR 240.17Ad–22(e)(1); 17 CFR 240.17Ad–22(e)(4).

[119] 15 U.S.C. 78q–1(b)(3)(F).

approval of the Clearing Fund Methodology Policy. The Commission believes that these governance processes would help ensure that OCC is in a position to continuously monitor, analyze, and adjust as necessary both the stress testing framework and the clearing fund methodology, thereby helping to ensure the accuracy and reliability of the methodology by which OCC tests the sufficiency of its financial resources.

Taken together, and for the reasons discussed above, the Commission believes that the proposed changes will increase the likelihood that OCC will have sufficient financial resources in excess of margin to address credit losses that could arise from a wide range of stress scenarios including, but not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions. Having an improved capacity to access and apply sufficient financial resources to credit losses in a wide range of stress scenarios should, in turn, enhance OCC's ability to continue to promptly and accurately clear and settle securities transactions for participants in the options markets during periods of market stress. Therefore, the Commission believes that the proposal is consistent with promoting the prompt and accurate clearance and settlement of securities transactions.

The Commission further believes that the proposed changes are consistent with assuring the safeguarding of securities and funds which are in OCC's custody or control, or for which it is responsible. By establishing a clearing fund that is sized to address credit losses that could arise from a wide range of stress scenarios including, but not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions, the proposal will enhance OCC's ability to use the clearing fund as a means to safeguard the securities and funds it holds for its Clearing Members during periods of market stress. In addition, the Commission believes that the proposed changes to OCC's allocation weighting will allow OCC to better manage its credit exposures to its clearing members by better aligning each clearing member's contributions to the credit risk it poses to OCC. This improved ability to manage credit exposure in the form of clearing fund amounts more closely calibrated to credit exposure should, in turn, improve OCC's ability to rely upon the clearing fund as a resource to safeguard the securities and funds it holds during periods of market stress.

Finally, the Commission believes that OCC's proposed measures addressing the potential procyclical nature of clearing fund obligations, as well as the textual clarifications and reorganization set forth in the proposal, are consistent with the protection of investors and the public interest. The enhanced certainty for Clearing Members that should be achieved in the form of clearly established and understood limitations on the reduction in Clearing Fund size from month to month should make it easier for Clearing Members, and their customers and investors more broadly, to more easily anticipate and manage financial resource demands that can arise from OCC's risk management processes in respect of the clearing fund. In addition, the reorganization and consolidation of rule provisions related to OCC's clearing fund would enhance the readability of OCC's public-facing rules, and additional clarification of OCC's margin rules would promote transparency by providing the public with information about OCC's risk management processes. The Commission believes that the additional clarity, predictability and transparency provided by these proposed changes would generally be consistent with the protection of investors and the public interest by removing potential sources of confusion, surprise or misunderstanding regarding the operations and potential consequences of OCC's risk management processes in respect of the clearing fund.

Accordingly, and for the reasons stated above, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.[120]

B. Consistency With Rule 17Ad–22(e)(4) Under the Act

1. Total Financial Resources

Rules 17Ad–22(e)(4)(i) and (iii) under the Act requires, among other things, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by, among other things, maintaining financial resources at the minimum to enable OCC to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for OCC in extreme but plausible market conditions.[121]

As described above, the proposal includes enhancements to OCC's methodology for sizing its clearing fund to ensure that it maintains sufficient financial resources, including: (i) Adoption of an internal credit risk tolerance that OCC believes represents extreme but plausible market conditions; (ii) sizing the clearing fund to cover credit exposures under scenarios that are more extreme than OCC's risk tolerance, (iii) sizing the clearing fund to cover the default of the two clearing member groups that that would potentially cause the largest aggregate credit exposure for OCC; (iv) limiting the potential reduction in clearing fund size month-over-month; and (v) shortening the time by which each clearing member must fund its clearing fund contribution.

Taken together, the Commission believes that proposed changes described above are designed to improve the process by which OCC sizes its total financial resources and are consistent with the requirements of Rules 17Ad–22(e)(4)(i) and (iii) under the Act. First, the proposal is designed to cover credit exposures in excess of those posed by any one clearing member group because OCC is proposing to cover the largest aggregate exposure to two clearing member groups. Second, the proposal is designed to cover credit exposures in extreme but plausible market conditions because OCC proposes to size its clearing fund based on scenarios that are more extreme than those that OCC believes to represent extreme but plausible market conditions. Further, based on the Commission's detailed analysis of the relevant scenarios through the supervisory process, the Commission believes that OCC has defined extreme but plausible scenarios in an acceptable manner for the markets served. Finally, the Commission believes that proposal would support the consistent and stable maintenance of an appropriate level of total financial resources by limiting month-over-month reductions in the size of clearing fund and requiring clearing members to make clearing fund contributions within two business days. Accordingly, the Commission believes that the proposed modifications to OCC's clearing fund sizing methodology are consistent with Rule 17Ad–22(e)(4)(i) and (iii).[122]

[120] 15 U.S.C. 78q–1(b)(3)(F).

[121] 17 CFR 240.17Ad–22(e)(4)(i) and (iii).

[122] *Id.*

2. Financial resource sufficiency

Rule 17Ad–22(e)(4)(vi) under the Act requires OCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes by testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements under paragraphs Rules 17Ad–22(e)(4)(i) through (iii).[123] Such testing must include (A) Conducting stress testing of OCC's total financial resources once each day using standard predetermined parameters and assumptions; (B) conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considering modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current and evolving market conditions; (C) conducting a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by the covered clearing agency's participants increases significantly; and (D) reporting the results of such analyses to appropriate decision makers at OCC, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate clearing or guaranty fund requirements, and any other relevant aspects of its credit risk management framework, in supporting compliance with the minimum financial resources requirements set forth in paragraphs (e)(4)(i) through (iii) of Rule 17Ad–22.[124] Additionally, pursuant to Rule 17Ad–22(e)(4)(vii) under the Act, the policies and procedures required under Rule 17Ad–22(e)(4) must include the performance of a model validation of OCC's credit risk models not less than annually or more frequently as may be contemplated by OCC's risk management framework.[125]

After reviewing and assessing the proposal, the Commission believes that the proposed changes described above are consistent with Rules 17Ad–22(e)(4)(vi) and (vii) under the Act,[126] because, among other reasons, (i) they are designed to improve the testing of OCC's financial resources; (ii) expanding the scope of stress scenarios against which OCC monitors its financial resources would increase the likelihood that OCC maintains sufficient financial resources at all times; and (iii) the formalization of OCC's processes for the periodic review and analysis its stress testing framework and clearing fund methodology is designed to support OCC's monitoring of its financial resources.

In addition, the Commission believes that (i) the daily testing of OCC's financial resources against the sufficiency stress tests, including stress tests based on market movements in the 2008 financial crisis and the 1987 market crash included in the proposal would be consistent with the daily stress testing requirements of Rule 17Ad–22(e)(4)(vi)(A), as described above; (ii) the at least monthly analysis of stress test results, scenarios, models, parameters, and assumptions, with more frequent review and analysis as required would be consistent with the monthly comprehensive analysis requirements set forth in Rule 17Ad–22(e)(4)(vi)(B) and (C) as described above; and (iii) the annual validation of OCC's clearing fund methodology discussed in more detail above would be consistent with model validation requirements of Rule 17Ad–22(e)(4)(vii). The proposal also contemplates the reporting and escalation of such testing, analyses, and validations to OCC's management and Board of Directors, which the Commission believes would be consistent with the reporting requirements of Rule 17Ad–22(e)(4)(vi)(D).

Accordingly, taken together and for the reasons discussed above, the Commission believes that the proposed stress testing and clearing fund methodology governance changes are consistent with Rules 17Ad–2(e)(4)(vi) and (vii).[127]

3. Proposal To Modify the Clearing Fund Allocation Methodology

As noted above, Rule 17Ad–22(e)(4) under the Act requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to, among other things, effectively manage its credit exposures to participants.[128]

As discussed above, OCC manages its credit exposures not covered by margin through the allocation of clearing fund requirements to its clearing members. OCC proposes to determine the size of is clearing fund based on the measurement of its credit exposures under hypothetical stress scenarios, and to monitor such exposures under historical stress scenarios. OCC also proposes to increase the initial and minimum clearing fund contribution amounts from $150,000 to $500,000, and to modify the allocation weighting used to determine the variable amount that most clearing members contribute to the clearing fund. Specifically, under the proposal, the proposed clearing fund contribution requirements would be based on an allocation methodology of 70 percent of total risk, 15 percent of open interest and 15 percent of open interest (as opposed to the current weighting of 35 percent total risk, 50 percent open interest, and 15 percent volume).

The Commission believes that the changes described above are reasonably designed to improve OCC's management of its credit exposures to participants. First, OCC's overall clearing fund size has increased significantly since the current initial and minimum contributions were set in 2000 and OCC's requirements are lower than the minimum requirements imposed by other CCPs. The Commission believes that the proposed changes to OCC's initial and minimum clearing fund contribution amounts are designed to better manage the risks posed by clearing members with minimal open interest, and are commensurate with the growth of OCC's clearing fund over time. The Commission also believes that the changes to OCC's allocation weighting will allow OCC to better manage its credit exposures to its clearing members by better aligning each clearing member's contributions to the credit risk it poses to OCC, thereby allowing OCC to better manage its credit exposures to its participants.

Accordingly, based on the foregoing, the Commission believes that the proposed changes pertaining to the sizing, monitoring, and allocation of clearing fund requirements are consistent with Exchange Act Rule 17Ad–22(e)(4).[129]

C. Consistency With Rule 17Ad–22(e)(1) Under the Act

Rule 17Ad–22(e)(1) under the Act requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to

[123] 17 CFR 240.17Ad–22(e)(4)(vi) (citing 17 CFR 240.17Ad–22(e)(4)(i)–(iii)).

[124] 17 CFR 240.17Ad–22(e)(4)(vi)(A)–(D).

[125] 17 CFR 240.17Ad–22(e)(4)(vii).

[126] 17 CFR 240.17Ad–22(e)(4)(vi) and (vii).

[127] *Id.*

[128] 17 CFR 240.17Ad–22(e)(4).

[129] *Id.*

provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[130] The Commission has stated that, in establishing and maintaining policies and procedures to address legal risk, a covered clearing agency generally should consider whether its rules, policies and procedures, and contracts are clear, understandable, and consistent with relevant laws and regulations.[131]

The Commission believes that the proposed consolidation and reorganization of OCC's Rules described above would improve readability by locating all rules related to the clearing fund in one place, thereby enhancing the clarity, transparency, consistency, and understandability of OCC's Rules related to the clearing fund. Additionally, by amending the Rules to accurately reflect OCC's current margin practices, the Commission believes OCC's Rules will be more transparent and understandable.

Accordingly, the Commission finds that the proposed textual reorganization and clarifications are consistent with Rule 17Ad–22(e)(1).[132]

V. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, the requirements of Section 17A of the Act[133] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[134] that the Proposed Rule Change (SR–OCC–2018–008), as modified by Amendments No. 1 and 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[135]

Robert W. Errett,

Deputy Secretary.

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[130] 17 CFR 240.17Ad–22(e)(1).

[131] Securities Exchange Act Release 78961 (Sep. 28, 2016), 81 FR 70786, 70802 (Oct. 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards'').

[132] 17 CFR 240.17Ad–22(e)(1).

[133] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[134] 15 U.S.C. 78s(b)(2).

[135] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83732; File No. SR–OCC–2017–021]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendments No. 1 and 2 to Proposed Rule Change Concerning Updates to and Formalization of OCC's Recovery and Orderly Wind-Down Plan

July 27, 2018.

On December 8, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2017–021 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] concerning enhanced and new tools for recovery scenarios.[3] The Proposed Rule Change was published for comment in the **Federal Register** on December 26, 2017.[4] On March 22, 2018, the Commission instituted proceedings under Section 19(b)(2)(B)(i) of the Act[5] to determine whether to approve or disapprove the Proposed Rule Change.[6] On June 20, 2018 the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the Proposed Rule Change.[7] On July 11, 2018, OCC filed Partial Amendment No. 1 to the Proposed Rule Change. On July 13, 2018, OCC filed Partial Amendment No. 2 to the Proposed Rule Change to supersede and replace Partial Amendment No. 1 in its entirety, due to technical defects in Partial Amendment No. 1. Therefore, the Initial Filing, as modified by Amendment No. 2, reflects the changes proposed.

Pursuant to Section 19(b)(1) of the Act[8] and Rule 19b–4 thereunder[9] the Commission is publishing notice of these Partial Amendments No. 1 and 2 to the Proposed Rule Change as described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the Proposed Rule Change, as modified by Amendments No. 1 and 2, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of Partial Amendments to the Proposed Rule Change

This Partial Amendment No. 2 would make the following three amendments to the Initial Filing: (1) Removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures; (2) updating the list of OCC's Critical Support Functions;[10] and (3) making three changes to Chapter 5 of the RWD Plan in order to conform to a change contemporaneously proposed in Amendment No. 2 to OCC proposed rule change SR–OCC–2017–020 concerning enhanced and new tools for recovery scenarios.[11]

With regard to the removal of sections of the RWD Plan concerning OCC's proposed authority to require cash settlement of certain physically delivered options and single stock futures, OCC proposes to amend the following text on pages 16 and 55–56 of the Initial Filing (new text is underlined and proposed deletions are marked in strikethrough text).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 8, 2017, OCC also filed a related advance notice (SR–OCC–2017–810) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Act (''Advance Notice''). 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. The Advance Notice was published in the **Federal Register** on January 23, 2018. Securities Exchange Act Release No. 82513 (Jan. 17, 2018), 83 FR 3224 (Jan. 23, 2018) (SR–OCC–2017–810).

[4] Securities Exchange Act Release No. 82352 (Dec. 19, 2017), 82 FR 61072 (Dec. 26, 2017) (SR–OCC–2017–021) (''Initial Filing'').

[5] 15 U.S.C. 78s(b)(2)(B)(i).

[6] *See* Securities Exchange Act Release No. 82927 (March 22, 2018), 83 FR 13176 (March 27, 2018) (SR–OCC–2018–021).

[7] *See* Securities Exchange Act Release No. 83485 (Jun. 20, 2018), 83 FR 29843 (Jun. 26, 2018) (SR–OCC–2017–021).

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] The amendment to the list of Critical Support Functions would be made to the confidential and redacted portions of the RWD Plan.

[11] *See* Amendment No. 2 to SR–OCC–2017–020. The three amendments to Chapter 5 also would be made to the confidential and redacted portions of the RWD Plan.

Proposed Chapter 5 would explain that OCC's Enhanced Risk Management Tools are designed to supplement OCC's existing processes and other existing tools in scenarios where OCC faces heightened stresses. Contrary to the Recovery Tools (which are described in greater detail below), the use of OCC's Enhanced Risk Management Tools would not be intended to be limited strictly to situations in which a Recovery Trigger Event has occurred. Rather, OCCs Enhanced Risk Management Tools have been designed such that they could be used prior to the occurrence of a Recovery Trigger Event (and preferably, the Enhanced Risk Management Tools would be used prophylactically in an effort to prevent the occurrence of a Recovery Trigger Event). As proposed, OCC would not anticipate there being a rigid order or timing for the deployment of its Enhanced Risk Management Tools~~, subject to one caveat—"Cash Settlement of Physically Delivered Options and Single Stock Futures" would only be deployed in very narrow circumstances where a correspondent clearing organization has rejected the settlement obligations of an OCC Clearing Member and OCC does not believe it has sufficient liquid resources immediately available to facilitate settlement through a substitute broker~~.

OCC also proposes to amend the following text on pages 22–23 and 61–63 of the Initial Filing (including associated footnotes).

~~Cash Settlement of Physically Delivered Options and Single Stock Futures. OCC is in the process of proposing a new Rule 913, which would provide OCC the ability to require cash settlement of otherwise physically-settled delivery obligations arising from exercised or assigned stock options and/or physically-settled matured stock futures in the event that a correspondent clearing corporation rejects the settlement obligations for such stock options and/or stock futures (such rejected stock options and/or stock futures hereinafter, "Rejected Cleared Securities") and either of the two following necessary conditions exists: (i) the liquidity demand on OCC to fund an alternative form of settlement for such Rejected Cleared Securities (i.e., settlement through the use of a "substitute broker") would exceed the amount of liquid resources immediately available to OCC, or (ii) no agent is available to serve as substitute broker to facilitate alternative settlement for OCC. In these extremely limited circumstances, fixing cash settlement amounts pursuant to proposed Rule 913 would provide OCC with the ability to substantially reduce the liquidity demands that it might otherwise face if required to fund an alternative form of settlement to effect physical delivery. The Recovery Plan would include cash settlement of otherwise physically-delivered options and single-stock futures pursuant to proposed Rule 913 among OCC's Enhanced Risk Management Tools.~~

~~The Recovery Plan would acknowledge that, assuming one of the two necessary conditions exists, the process for initiating cash settlement would be driven by the preparation of a "Close-Out Action Plan," which would recommend impacted options and single-stock futures be cash settled in lieu of physical delivery. The Recovery Plan would also acknowledge that execution of cash settlement would occur in accordance with OCC's "Alternative Cash Settlement of Cleared Contracts Procedure." The Recovery Plan recognizes that a key risk of this particular tool would be the potentially detrimental impacts on Clearing Members and their customers, who would receive a cash settlement amount when they had anticipated receiving physical securities.~~

OCC plans to resubmit the proposed cash settlement tool previously filed in SR–OCC–2017–018 and SR–OCC–2017–807 on a separate timeline from the rest of its enhanced and new tools for recovery scenarios and would submit a subsequent filing to the Commission to amend the RWD Plan at that time.

In addition, OCC proposes to make the following amendments on pages 32 and 72 of the Initial Filing.

- *Tools to address liquidity shortfalls:* minimum Clearing Fund cash contribution, borrowing against Clearing Fund, OCC's credit facility, and OCC's non-bank facility ~~and cash settlement of physically-delivered options and single stock futures~~.

With regard to updating the list of OCC's Critical Support Functions, the amendment would revise OCC's RWD Plan to consistently identify one of OCC's internal functions as a Critical Support Function.

Finally, OCC proposes to make two changes to Chapter 5 of the RWD Plan, which would align an exhibit, a related list and a related paragraph with the certain changes OCC is contemporaneously proposing in Amendment No. 2 to proposed rule change SR–OCC–2017–020 concerning enhanced and new tools for recovery scenarios.[12] Specifically, OCC would change the aforementioned exhibit, list and paragraph in Chapter 5 to recognize that while OCC does not intend, in the first instance for its tear-up process to serve as a means of loss allocation, circumstances may arise such that, despite best efforts, OCC has inadequate remaining financial resources to extinguish torn-up positions at their assigned Tear-Up Price without forcing a reduction in the amount of unpaid value of such positions (*e.g.,* despite best efforts, market movements not accounted for by monitoring, additional Clearing Member defaults occur immediately preceding a tear-up). In such circumstances, despite best efforts,

[12] *See* Amendment No. 2 to SR–OCC–2017–020.

OCC would use its partial tear-up process as a means of loss allocation.

OCC has included an updated Exhibit 5 containing its RWD Plan as well as an Exhibit 4 showing the changes proposed in this Partial Amendment No. 2 to the proposed rule text in the Initial Filing, with the proposed changes in the Initial Filing marked in underlined and strikethrough text. Exhibits 4 and 5 have been redacted and filed separately with the Commission and confidential treatment for Exhibits 4 and 5 is requested pursuant to 17 CFR 240.24b–2.

The partial amendment would not change the purpose of or basis for the proposed rule change. All other representations in the Initial Filing remain as stated therein and no other changes are being made.

II. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

As the Commission stated in Securities Exchange Act Release No. 83485, the Commission shall by order approve or disapprove the proposed rule change by August 23, 2018.[13]

III. 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 Commissions internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2017–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2017–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *http://www.theocc.com/about/publications/bylaws.jsp*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal or 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–OCC–2017–021 and should be submitted on or before August 17, 2018.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

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[13] *See* Securities Exchange Act Release No. 83485 (June 20, 2018), 83 FR 29843 (June 26, 2018) (SR–OCC–2017–021).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83731; File No. SR–GEMX–2018–26]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Protocol Definitions That Members Use To Enter Quotes and Orders

July 27, 2018.

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 July 16, 2018, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 codify the definitions of the protocols that Members can use to enter quotes and orders on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the definitions of the protocols that Members use to enter quotes and orders on the Exchange, specifically, the Specialized Quote Feed (''SQF''), Ouch to Trade Options (''OTTO''), Financial Information eXchange (''FIX''), and Nasdaq Precise (''Precise''). On April 27, 2017, the Exchange filed a proposed rule change that established the ports that Members use to connect to the Exchange, including ports used for quote and order entry—*i.e.,* SQF, OTTO and FIX.[3] The Exchange has also filed proposed rule changes that briefly describe the availability of Precise, which is the Exchange's proprietary front-end interface used by Electronic Access Members (''EAMs'') and their Sponsored Customers[4] to send orders to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80649 (May 10, 2017), 82 FR 22595 (May 16, 2017) (SR–GEMX–2017–07).

[4] A ''Sponsored Customer'' is a non-member of the Exchange that trades under a sponsoring member's execution and clearing identity pursuant to a sponsorship arrangement between such non-

Continued

Exchange and perform other related functions.[5] The protocols used by Members to submit quotes and orders play an important role in the operation of the trading system as critical Exchange functionality used by Members to transact in options is offered through these protocols. The Exchange therefore believes that codifying definitions of these protocols in its rules will increase transparency around its operations.

As it relates to FIX, OTTO, and SQF, the proposed language is substantially similar to the language included in SR–GEMX–2017–07 with changes to more clearly and accurately reflect the certain information included on each protocol, such as by separating out different categories of messages (*e.g.,* auction orders, auction notifications, and auction responses). Furthermore, the proposed definitions will be harmonized where appropriate with definitions to be included in the rules of the Exchange's affiliated options markets, including by using consistent terms to define the buckets of information transmitted, or the features available, on each protocol.[6] Although the Exchange is changing how it categorizes various features included on FIX, OTTO, and SQF as part of its harmonization effort, the list of features included in the proposed definitions are intended to be exhaustive with respect to the buckets of information provided on each protocol. The Exchange also seeks to memorialize Precise to reflect the specific categories of features that are available on the Precise front-end today (*e.g.,* order and execution management, market data, and risk management). Overall, the Exchange believes that the proposed changes will allow Members to more easily understand what information is available on which protocol.

As proposed, Supplementary Material .03 to Rule 715 (*i.e.,* Types of Orders) will provide that the Exchange offers Members the following protocols for entering orders and quotes respectively:

A. Financial Information eXchange Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the FIX protocol as follows: ''FIX is an interface that allows market participants to connect and send orders and auction orders into the Exchange. Data includes the following: (1) Options Symbol Directory Messages; (2) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (3) Option Trading Action Messages (*e.g.,* halts, resumes); (4) Execution Messages; (5) Order Messages (order messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of FIX in its rulebook: ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) Execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages.

B. Ouch To Trade Options Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the OTTO protocol as follows: ''OTTO is an interface that allows market participants to connect and send orders, auction orders and auction responses into the Exchange. Data includes the following: (1) Options Auction Notifications (*e.g.,* Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (5) Option Trading Action Messages (*e.g.,* halts, resumes); (6) Execution Messages; (7) Order Messages (order messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of OTTO in its rulebook: ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages.

C. Specialized Quote Feed Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the SQF protocol as follows: ''SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into the Exchange. Data includes the following: (1) Options Auction Notifications (*e.g.,* opening imbalance, Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Option Trading Action Messages (*e.g.,* halts, resumes); (5) Execution Messages; (6) Quote Messages (quote/sweep messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of SQF in its rulebook: ''Specialized Quote Feed'' or ''SQF'' is an interface that allows market makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the market maker.[7]

D. Nasdaq Precise

''Nasdaq Precise'' or ''Precise'' is a front-end interface that allows Electronic Access Members and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) Order and execution management: Enter, modify, and cancel orders on the Exchange, and manage executions (*e.g.,* parent/child orders, inactive orders, and post-trade allocations); (2) market data: Access to real-time market data (*e.g.,* NBBO and

member and sponsoring member, as set forth in Supplementary Material to Rule 706. Market makers must connect to the Exchange via SQF, which is the Exchange's quoting protocol, and are therefore not eligible to use Precise.

[5] *See* Securities Exchange Act Release No. 81109 (July 10, 2017), 82 FR 32594 (July 14, 2017) (SR–GEMX–2017–28) (proposed rule change regarding how Immediate-or-Cancel Orders will be handled); and Securities Exchange Act Release No. 81970 (October 27, 2017), 82 FR 50910 (November 2, 2017) (SR–GEMX–2017–50) (proposed rule change related to the Kill Switch risk protection).

[6] The Exchange's affiliates—*i.e.,* Nasdaq ISE, LLC (''ISE''), Nasdaq MRX, LLC (''MRX''), Nasdaq PHLX LLC (''Phlx''), Nasdaq Options Market (''NOM''), and Nasdaq BX, LLC (''BX'')—intend to file similar rule changes as part of this exercise.

[7] All of the notification messages available on SQF ports as described above (*i.e.,* options symbol directory messages, system event messages, trading action messages, etc.) are configurable in that market makers can select the specific types of notifications they wish to receive on their SQF ports. As such, SQF Purge Interface ports are a subpart of SQF ports that have been configured to only receive and notify of purge requests.

Exchange BBO); (3) risk management: set customizable risk parameters (*e.g.,* kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (*e.g.,* order history and done away trade reports).

Precise is a software application that is offered by the Exchange to EAMs and their Sponsored Customers. Use of Precise is completely voluntary. The Exchange makes Precise available to EAMs and their Sponsored Customers as a convenience for entering and managing orders, but the protocol is not an exclusive means for any user to send orders to GEMX. Precise is merely a front-end interface to the Exchange's existing trading system, and is designed as an alternative to the Exchange's other protocols (*i.e.,* FIX, OTTO, and SQF) for the sending of orders to GEMX. Precise is also an alternative to similar front-end order and execution management systems currently offered by other technology providers as well as other exchanges.[8]

Precise provides users with access to GEMX's regular order book. The protocol offers order and execution features that allow users to send, modify, and cancel their orders, and manage executions. For example, the protocol offers users the capability to stage larger orders and divide them into smaller orders for execution (*i.e.,* parent/child orders), or stage multiple orders to send for execution at a later time (*i.e.,* inactive orders). Precise also offers post trade allocation, including the capability for users to directly adjust clearing information on the front-end protocol. Precise users can also access and display real-time market data such as the National Best Bid and Offer (''NBBO'') and the Exchange Best Bid and Offer (''Exchange BBO'').

Precise also provides risk management capabilities that allow users to set customizable risk parameters.[9] For example, Precise supports the kill switch risk protection feature, which is an optional tool that enables members to initiate a message(s) to the Exchange's trading system to promptly cancel orders and restrict entry of new orders until re-entry has been enabled.[10] Lastly, Precise provides a comprehensive audit trail of orders and trades through its book keeping and reporting features, including order history reports and done away trade reports.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it codifies the protocols used to connect to the Exchange's trading system. As discussed above, the Exchange previously filed to establish FIX, OTTO, and SQF in SR–GEMX–2017–07. These protocols will now be codified in the Exchange's rulebook. In addition, the Exchange has briefly described Precise in various proposed rule changes filed with the Commission. In the interest of transparency, the Exchange has included a more fulsome description of the functionalities offered via Precise in this proposed rule change, and is codifying language in its rules that would describe this protocol.

While no functional changes to the protocols are proposed in this filing, the Exchange believes that including a description of the protocols in its rulebook will benefit Members by increasing transparency around the operation of the Exchange. Furthermore, the proposed definitions being included in the rulebook will more clearly and accurately reflect the information included on the protocols, and will be harmonized with language to be included in the rules of its affiliated exchanges to the extent that the protocols operate in the same manner. The protocols described in this filing provide a range of important features to Members, including the ability to submit quotes and orders, and perform other functions necessary to manage trading on the Exchange. The Exchange believes codifying the quote and order entry protocols will increase transparency to the Members that use these protocols to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the Exchange is codifying the quote and order entry protocols that Members use to connect to the Exchange's trading system. The Exchange does not believe that codifying these protocols in the rulebook will have any competitive impact. FIX, OTTO, and SQF were established in SR–GEMX–2017–07, and are already available to Members, who use these protocols to connect and manage their trading activity on the Exchange. Adding rule language that describes these Exchange offerings will increase transparency around the operation of the Exchange without having any impact on intermarket or intramarket competition. Furthermore, Precise is a voluntary piece of functionality that EAMs and their Sponsored Customers may use as a convenience for entering and managing orders and executions, as an alternative to the Exchange's other protocols (*i.e.,* FIX, OTTO, and SQF). Precise is also an alternative to similar front-end order and execution management systems currently offered by other technology providers as well as other exchanges (*e.g.,* PULSe). If market participants believe that other products available in the marketplace are more beneficial than Precise, they will simply use those products instead. For the foregoing reasons, the Exchange does not believe that its proposal to codify Precise will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

[8] For example, Cboe Exchange, Inc. currently offers a similar front-end order and execution management system called PULSe℠ that allows users to send orders to Cboe Options Exchange, C2 Options, Cboe Futures Exchange, and other U.S. options and stock exchanges. *See https://www.cboe.org/hybrid/pulsesalessheet.pdf.*

[9] The Exchange is characterizing the risk protections on Precise under a broader category of risk management compared to the risk protection categories on the other protocols because Precise also supports administrator capability for accessing and setting risk parameters for multiple users within a member firm.

[10] *See* Rule 711(d). Precise is able to send a message to the Exchange to initiate the kill switch through Precise.

[11] Done away trade reports allow Precise users to record orders and executions, including executions on a different venue than the Exchange.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2018–26 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–GEMX–2018–26. 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–GEMX–2018–26 and should be submitted on or before August 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

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[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. In this case, the Commission waives the five-day pre-filing requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83729; File No. SR–ISE–2018–65]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Definitions of the Protocols That Members Can Use To Enter Quotes and Orders

July 27, 2018.

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 July 16, 2018, Nasdaq ISE, LLC (''ISE'' 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 codify the definitions of the protocols that Members can use to enter quotes and orders on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the definitions of the protocols that Members use to enter quotes and orders on the Exchange, specifically, the Specialized Quote Feed (''SQF''), Ouch to Trade Options (''OTTO''), Financial Information eXchange (''FIX''), and Nasdaq Precise (''Precise''). On June 23, 2017, the Exchange filed a proposed rule change that established the ports that Members use to connect to the Exchange, including ports used for quote and order entry—*i.e.,* SQF, OTTO and FIX.[3] The Exchange has also filed several proposed fee and other rule changes that briefly describe the availability of Precise, which is the Exchange's proprietary front-end interface used by Electronic Access Members (''EAMs'') and their Sponsored Customers [4] to send

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81095 (July 7, 2017), 82 FR 32409 (July 13, 2017) (SR–ISE–2017–62).

[4] A ''Sponsored Customer'' is a non-member of the Exchange that trades under a sponsoring member's execution and clearing identity pursuant to a sponsorship arrangement between such non-member and sponsoring member, as set forth in

orders to the Exchange and perform other related functions.[5] The protocols used by Members to submit quotes and orders play an important role in the operation of the trading system as critical Exchange functionality used by Members to transact in options and stock tied to options is offered through these protocols. The Exchange therefore believes that codifying definitions of these protocols in its rules will increase transparency around its operations.

As it relates to FIX, OTTO, and SQF, the proposed language is substantially similar to the language included in SR–ISE–2017–62 with changes to more clearly and accurately reflect the certain information included on each protocol, such as by separating out different categories of messages (*e.g.,* auction orders, auction notifications, and auction responses). Furthermore, the proposed definitions will be harmonized where appropriate with definitions to be included in the rules of the Exchange's affiliated options markets, including by using consistent terms to define the buckets of information transmitted, or the features available, on each protocol.[6] Although the Exchange is changing how it categorizes various features included on FIX, OTTO, and SQF as part of its harmonization effort, the list of features included in the proposed definitions are intended to be exhaustive with respect to the buckets of information provided on each protocol. The Exchange also seeks to memorialize Precise to reflect the specific categories of features that are available on the Precise front-end today (*e.g.,* order and execution management, market data, and risk management). Overall, the Exchange believes that the proposed changes will allow Members to more easily understand what information is available on which protocol.

As proposed, Supplementary Material .03 to Rule 715 (*i.e.,* Types of Orders) will provide that the Exchange offers Members the following protocols for entering orders and quotes respectively:

A. Financial Information eXchange Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the FIX protocol as follows: ''FIX is an interface that allows market participants to connect and send orders and auction orders into the Exchange. Data includes the following: (1) Options Symbol Directory Messages; (2) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (3) Option Trading Action Messages (*e.g.,* halts, resumes); (4) Execution Messages; (5) Order Messages (order messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of FIX in its rulebook: ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) Execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages.

B. Ouch To Trade Options Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the OTTO protocol as follows: ''OTTO is an interface that allows market participants to connect and send orders, auction orders and auction responses into the Exchange. Data includes the following: (1) Options Auction Notifications (*e.g.,* Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (5) Option Trading Action Messages (*e.g.,* halts, resumes); (6) Execution Messages; (7) Order Messages (order messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of OTTO in its rulebook: ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages.

C. Specialized Quote Feed Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the SQF protocol as follows: ''SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into the Exchange. Data includes the following: (1) Options Auction Notifications (*e.g.,* opening imbalance, Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Option Trading Action Messages (*e.g.,* halts, resumes); (5) Execution Messages; (6) Quote Messages (quote/sweep messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of SQF in its rulebook: ''Specialized Quote Feed'' or ''SQF'' is an interface that allows market makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the market maker.[7]

D. Nasdaq Precise

''Nasdaq Precise'' or ''Precise'' is a front-end interface that allows Electronic Access Members and their Sponsored Customers to send orders to the Exchange and perform other related

Supplementary Material to Rule 706. Market makers must connect to the Exchange via SQF, which is the Exchange's quoting protocol, and are therefore not eligible to use Precise.

[5] *See* Securities Exchange Act Release No. 53788 (May 11, 2006), 71 FR 28728 (May 17, 2006) (SR–ISE–2006–19) (proposed fee change establishing Precise). SR–ISE–2006–19 described Precise as ISE's proprietary front-end interface used by EAMs to send orders to ISE and view market data. *See also* Securities Exchange Act Release No. 81034 (June 27, 2017), 82 FR 30923 (July 3, 2017) (SR–ISE–2017–58) (proposed rule change regarding how Immediate-or-Cancel Orders will be handled); and Securities Exchange Act Release No. 81971 (October 27, 2017), 82 FR 50907 (November 2, 2017) (SR–ISE–2017–94) (proposed rule change related to the Kill Switch risk protection).

[6] The Exchange's affiliates—*i.e.,* Nasdaq GEMX, LLC (''GEMX''), Nasdaq MRX, LLC (''MRX''), Nasdaq PHLX LLC (''Phlx''), Nasdaq Options Market (''NOM''), and Nasdaq BX, LLC (''BX'')—intend to file similar rule changes as part of this exercise.

[7] All of the notification messages available on SQF ports as described above (*i.e.,* options symbol directory messages, system event messages, trading action messages, etc.) are configurable in that market makers can select the specific types of notifications they wish to receive on their SQF ports. As such, SQF Purge Interface ports are a subpart of SQF ports that have been configured to only receive and notify of purge requests.

functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (*e.g.,* parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (*e.g.,* NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (*e.g.,* kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (*e.g.,* order history and done away trade reports).

Precise is a software application that is offered by the Exchange to EAMs and their Sponsored Customers. Use of Precise is completely voluntary. The Exchange makes Precise available to EAMs and their Sponsored Customers as a convenience for entering and managing orders, but the protocol is not an exclusive means for any user to send orders to ISE. Precise is merely a front-end interface to the Exchange's existing trading system, and is designed as an alternative to the Exchange's other protocols (*i.e.,* FIX, OTTO, and SQF) for the sending of orders to ISE. Precise is also an alternative to similar front-end order and execution management systems currently offered by other technology providers as well as other exchanges.[8]

Precise provides users with access to ISE's regular and complex order books. The protocol offers order and execution features that allow users to send, modify, and cancel their orders, and manage executions. For example, the protocol offers users the capability to stage larger orders and divide them into smaller orders for execution (*i.e.,* parent/child orders), or stage multiple orders to send for execution at a later time (*i.e.,* inactive orders). Precise also offers post trade allocation, including the capability for users to directly adjust clearing information on the front-end protocol. Precise users can also access and display real-time market data such as the National Best Bid and Offer (''NBBO'') and the Exchange Best Bid and Offer (''Exchange BBO'').

Precise also provides risk management capabilities that allow users to set customizable risk parameters.[9] For example, Precise supports the kill switch risk protection feature, which is an optional tool that enables members to initiate a message(s) to the Exchange's trading system to promptly cancel orders and restrict entry of new orders until re-entry has been enabled.[10] Lastly, Precise provides a comprehensive audit trail of orders and trades through its book keeping and reporting features, including order history reports and done away trade reports.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it codifies the protocols used to connect to the Exchange's trading system. As discussed above, the Exchange previously filed to establish FIX, OTTO, and SQF in SR–ISE–2017–62. These protocols will now be codified in the Exchange's rulebook. In addition, the Exchange has briefly described Precise in various proposed rule changes filed with the Commission. In the interest of transparency, the Exchange has included a more fulsome description of the functionalities offered via Precise in this proposed rule change, and is codifying language in its rules that would describe this protocol.

While no functional changes to the protocols are proposed in this filing, the Exchange believes that including a description of the protocols in its rulebook will benefit Members by increasing transparency around the operation of the Exchange. Furthermore, the proposed definitions being included in the rulebook will more clearly and accurately reflect the information included on the protocols, and will be harmonized with language to be included in the rules of its affiliated exchanges to the extent that the protocols operate in the same manner. The protocols described in this filing provide a range of important features to Members, including the ability to submit quotes and orders, and perform other functions necessary to manage trading on the Exchange. The Exchange believes codifying the quote and order entry protocols will increase transparency to the Members that use these protocols to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the Exchange is codifying the quote and order entry protocols that Members use to connect to the Exchange's trading system. The Exchange does not believe that codifying these protocols in the rulebook will have any competitive impact. FIX, OTTO, and SQF were established in SR–ISE–2017–62, and are already available to Members, who use these protocols to connect and manage their trading activity on the Exchange. Adding rule language that describes these Exchange offerings will increase transparency around the operation of the Exchange without having any impact on intermarket or intramarket competition. Furthermore, Precise is a voluntary piece of functionality that EAMs and their Sponsored Customers may use as a convenience for entering and managing orders and executions, as an alternative to the Exchange's other protocols (*i.e.,* FIX, OTTO, and SQF). Precise is also an alternative to similar front-end order and execution management systems currently offered by other technology providers as well as other exchanges (*e.g.,* PULSe). If market participants believe that other products available in the marketplace are more beneficial than Precise, they will simply use those products instead. For the foregoing reasons, the Exchange does not believe that its proposal to codify Precise will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[8] For example, Cboe Exchange, Inc. currently offers a similar front-end order and execution management system called PULSe℠ that allows users to send orders to Cboe Options Exchange, C2 Options, Cboe Futures Exchange, and other U.S. options and stock exchanges. *See https://www.cboe.org/hybrid/pulsesalessheet.pdf.*

[9] The Exchange is characterizing the risk protections on Precise under a broader category of risk management compared to the risk protection categories on the other protocols because Precise also supports administrator capability for accessing and setting risk parameters for multiple users within a member firm.

[10] *See* Rule 711(d). Precise is able to send a message to the Exchange to initiate the kill switch through Precise.

[11] Done away trade reports allow Precise users to record orders and executions, including executions on a different venue than the Exchange.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(8).

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2018–65 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–ISE–2018–65. 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–ISE–2018–65 and should be submitted on or before August 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

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[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83730; File No. SR–MRX–2018–25]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Definitions of the Protocols That Members Can Use To Enter Quotes and Orders

July 27, 2018.

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 July 16, 2018, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 codify the definitions of the protocols that Members can use to enter quotes and orders on the Exchange.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to codify the definitions of the protocols that Members use to enter quotes and orders on the Exchange, specifically, the Specialized Quote Feed (''SQF''), Ouch to Trade Options (''OTTO''), and Financial Information eXchange (''FIX''). On July 20, 2017, the Exchange filed a proposed rule change that established the ports that Members use to connect to the Exchange, including ports used for quote and order entry—*i.e.,* SQF, OTTO and FIX.[3] The protocols used by Members to submit quotes and orders play an important role in the operation of the trading system as critical Exchange functionality used by Members to transact in options is offered through

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81312 (August 3, 2017), 82 FR 37253 (August 9, 2017) (SR–MRX–2017–13).

these protocols. The Exchange therefore believes that codifying definitions of these protocols in its rules will increase transparency around its operations.

The proposed language is substantially similar to the language included in SR–MRX–2017–13 with changes to more clearly and accurately reflect the certain information included on each protocol, such as by separating out different categories of messages (*e.g.,* auction orders, auction notifications, and auction responses). Furthermore, the proposed definitions will be harmonized where appropriate with definitions to be included in the rules of the Exchange's affiliated options markets, including by using consistent terms to define the buckets of information transmitted, or the features available, on each protocol.[4] Although the Exchange is changing how it categorizes various features included on FIX, OTTO, and SQF as part of its harmonization effort, the list of features included in the proposed definitions are intended to be exhaustive with respect to the buckets of information provided on each protocol. The Exchange believes that the proposed changes will allow Members to more easily understand what information is available on which protocol.

As proposed, Supplementary Material .03 to Rule 715 (*i.e.,* Types of Orders) will provide that the Exchange offers Members the following protocols for entering orders and quotes respectively:

A. Financial Information eXchange Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the FIX protocol as follows: ''FIX is an interface that allows market participants to connect and send orders and auction orders into the Exchange. Data includes the following: (1) Options Symbol Directory Messages; (2) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (3) Option Trading Action Messages (*e.g.,* halts, resumes); (4) Execution Messages; (5) Order Messages (order messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of FIX in its rulebook: ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers[5] to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) Execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages.

B. Ouch To Trade Options Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the OTTO protocol as follows: ''OTTO is an interface that allows market participants to connect and send orders, auction orders and auction responses into the Exchange. Data includes the following: (1) Options Auction Notifications (*e.g.,* Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (5) Option Trading Action Messages (*e.g.,* halts, resumes); (6) Execution Messages; (7) Order Messages (order messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of OTTO in its rulebook: ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages.

C. Specialized Quote Feed Ports

When the Exchange initially filed to adopt order and quote entry protocols, it described the SQF protocol as follows: ''SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into the Exchange. Data includes the following: (1) Options Auction Notifications (*e.g.,* opening imbalance, Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Option Trading Action Messages (*e.g.,* halts, resumes); (5) Execution Messages; (6) Quote Messages (quote/sweep messages, risk protection triggers or purge notifications).''

The Exchange now proposes to codify the following definition of SQF in its rulebook: ''Specialized Quote Feed'' or ''SQF'' is an interface that allows market makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) Options symbol directory messages (*e.g.,* underlying instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the market maker.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it codifies the protocols used to connect to the Exchange's trading system. As discussed above, the Exchange previously filed to establish FIX, OTTO, and SQF in SR–MRX–2017–13. These protocols will now be codified in the Exchange's rulebook.

While no functional changes to the protocols are proposed in this filing, the Exchange believes that including a description of the protocols in its

[4] The Exchange's affiliates—*i.e.,* Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), Nasdaq PHLX LLC (''Phlx''), Nasdaq Options Market (''NOM''), and Nasdaq BX, LLC (''BX'')—intend to file similar rule changes as part of this exercise.

[5] A ''Sponsored Customer'' is a non-member of the Exchange that trades under a sponsoring member's execution and clearing identity pursuant to a sponsorship arrangement between such non-member and sponsoring member, as set forth in Supplementary Material to Rule 706.

[6] All of the notification messages available on SQF ports as described above (*i.e.,* options symbol directory messages, system event messages, trading action messages, etc.) are configurable in that market makers can select the specific types of notifications they wish to receive on their SQF ports. As such, SQF Purge Interface ports are a subpart of SQF ports that have been configured to only receive and notify of purge requests.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

rulebook will benefit Members by increasing transparency around the operation of the Exchange. Furthermore, the proposed definitions being included in the rulebook will more clearly and accurately reflect the information included on the protocols, and will be harmonized with language to be included in the rules of its affiliated exchanges to the extent that the protocols operate in the same manner. The protocols described in this filing provide a range of important features to Members, including the ability to submit quotes and orders, and perform other functions necessary to manage trading on the Exchange. The Exchange believes codifying the quote and order entry protocols will increase transparency to the Members that use these protocols to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the Exchange is codifying the quote and order entry protocols that Members use to connect to the Exchange's trading system. The Exchange does not believe that codifying these protocols in the rulebook will have any competitive impact. FIX, OTTO, and SQF were established in SR–MRX–2017–13, and are already available to Members, who use these protocols to connect and manage their trading activity on the Exchange. Adding rule language that describes these Exchange offerings will increase transparency around the operation of the Exchange without having any impact on intermarket or intramarket competition.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2018–25 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–MRX–2018–25. 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–MRX–2018–25 and should be submitted on or before August 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16526 Filed 8–1–18; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. In this case, the Commission waives the five-day pre-filing requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83724; File No. SR–OCC–2018–010]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Definition of Flexibly Structured Options

July 27, 2018.

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 July 16, 2018, The Options Clearing Corporation (''OCC'') 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 OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend the definition of the term ''flexibly structured option'' as provided in Article I, Section 1.F.(8) of OCC's By-Laws to conform the definition to a recent rule change by Cboe Exchange, Inc. (''Cboe Options'' or ''CBOE''). The proposed changes to OCC's By-Laws can be found in Exhibit 5 to the filing. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the By-Laws and Rules.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Flexibly structured options are options that give investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. OCC currently defines a ''flexibly structured option'' as an option having variable terms that are negotiated between the parties to a confirmed trade pursuant to Exchange Rules and that do not correspond to the variable terms[6] of any series of non-flexibly structured options previously opened for trading on the Exchange (other than a series of quarterly options or short term options).[7] In addition, OCC's By-Laws currently provide that once a series of non-flexibly structured options (other than a series of quarterly options or short term options) is opened for trading on an options exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options.[8] In other words, with the exception of quarterly options and short term options series, once an exchange opens a non-flexibly structured option series having identical terms to a flexibly structured option, the flexibly structured option would become fungible with the non-flexibly structured option series.

Pursuant to a recent rule change, Cboe Options has made all flexibly structured options fungible with subsequently-introduced non-flexibly structured options series having identical variable terms.[9] This includes non-flexibly structured quarterly options and short term options series.[10] As a result, for instance, under Cboe Options' rules, a flexibly structured option that has the same terms as a subsequently-introduced quarterly or short term option series would now be fungible with that non-flexibly structured quarterly or short term option series.

Cboe Options has requested that OCC amend its By-Laws to allow Cboe Options' rule change to become effective. Cboe Options noted in its rule change that the change ''will have the effect of more FLEX Options becoming fungible with Non-Flex Options, which will potentially increase the liquidity available to traders of FLEX Options.''[11]

To clear and settle flexibly structured options traded on Cboe Options in a manner that is consistent with Cboe Options' rules, OCC proposes to amend its definition of ''flexibly structured option'' in Article I of its By-Laws by deleting ''(other than a series of quarterly options or short term options)'' in the two instances in which it appears in the definition.[12] OCC added this text to its definition of a flexibly structured option in 2009 to ensure consistency with Cboe Options rules, which were amended at that time to, among other things, allow for flexibly structured options to become fungible with subsequently introduced non-flexibly structured options series that have the same terms (other than a series of quarterly options or short term options).[13] Consistent with Cboe Options' rule change at that time, OCC amended its definition of flexibly structured options in 2009 to provide that a flexibly structured option cannot have the same terms as any series of non-flexibly structured options previously opened for trading on the exchange other than a series of quarterly options or short term options.[14] OCC intended the 2009 amended definition to clarify that a flexibly structured option could share the same terms as a non-flexibly structured quarterly or short term option series and still be considered a flexibly structured option. Consistent with Cboe Options' most recent rule change, OCC proposes to eliminate from the language of its definition of a flexibly structured option the first instance of ''(other than a series of quarterly options or short term options)'' to provide that a flexibly structured option cannot share the same terms as a non-flexibly structured option series that has been previously opened for trading on the exchange, including a currently-trading quarterly options or short term options series. Consistent with Cboe Options' rules, OCC believes that this change would amend the definition in a manner to make it clear that flexibly structured options cannot share the same terms as non-flexibly structured option series

[5] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[6] OCC By-Laws, Article I., Section 1.V.(1), which defines ''variable terms'' in respect of a series of option contracts other than OTC options to mean ''the name of the underlying interest, the exercise price (or, in respect of a series of delayed start options that does not yet have a set exercise price, the exercise price setting formula and exercise price setting date), the index value determinant and the index multiplier (in the case of a flexibly structured index option), the cap interval (in the case of a capped option) and the expiration date of such option contract.''

[7] OCC By-Laws, Article I. Non-flexibly structured weekly options are called ''short term options'' in OCC's By-Laws and Rules. Under Article I of OCC By-Laws, the term ''quarterly option'' means ''an option of a series of stock options or index options that expires on the last business day of a calendar quarter,'' and the term ''short term option'' means ''an option of a series of options that expires one week after it is opened for trading.''

[8] OCC By-Laws, Article I., Section 1.F.(8).

[9] *See* Securities Exchange Act Release No. 83205 (May 9, 2018), 83 FR 22550 (May 15, 2018) (SR–CBOE–2018–008) (Order Approving a Proposed Rule Change Relating to Flexibly Structured Options) (''Cboe Options has proposed to amend the rule to make all FLEX Options fungible with Non-FLEX Options that have identical terms.'')

[10] This also includes weekly expirations and End of Month (''EOM'') expirations. Cboe Options stated in its proposal that flexibly structured options with these expirations were not originally intended to be fungible. *See* Securities Exchange Release Act No. 82622 (February 2, 2018), 83 FR 5668 (February 8, 2018) (SR–CBOE–2018–008) (Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options).

[11] *See* Securities Exchange Act Release No. 82622 (February 2, 2018), 83 FR 5668 (February 8, 2018) (SR–CBOE–2018–008) (Notice of Filing of a Proposed Rule Change Relating to Flexibly Structured Options).

[12] OCC By-Laws, Article I., Section 1.F.(8).

[13] *See* Securities Exchange Act Release No. 59675 (April 1, 2009), 74 FR 15794 (April 7, 2009) (SR–OCC–2009–05); Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR–CBOE–2008–115).

[14] *See* Securities Exchange Act Release No. 59060 (December 5, 2008), 73 FR 76075 (December 15, 2008) (SR–CBOE–2008–115) (''subject to certain aggregation requirements for cash settled options, the current FLEX Rules do permit the expiration of FLEX Options on the same day that Non-FLEX quarterly index options (''QIX'') and Non-FLEX Weeklys Options expire.'').

that have been previously opened for trading on the exchange.

The second instance of ''(other than a series of quarterly options or short term options)'' in the flexibly structured option definition was adopted in 2009 to provide, consistent with Cboe Options rules then in effect and as an exception to general fungibility, that a quarterly options or short term options series with the same terms as a flexibly structured option would not become fungible with that flexibly structured option. As noted above, Cboe Options has recently adopted a rule change to eliminate this restriction and allow all flexibly structured options to become fungible with non-flexibly structured options series having identical variable terms that are later opened for trading on the exchange.[15] Accordingly, OCC proposes to eliminate the second instance of this text from the language of the definition of a flexibly structured option in OCC's By-Laws to make it consistent with Cboe Options' rules. As amended, OCC's definition of a flexibly structured option would provide that once a series of non-flexibly structured options is opened for trading on an exchange, any existing flexibly structured option contracts that have identical variable terms shall be fully fungible with options in such series, and shall cease to be flexibly structured options. OCC believes that this change would allow OCC clear and settle flexibly structured options traded on Cboe Options in a manner that is consistent with Cboe Options' rules and would have the effect of making more flexibly structured options fungible with identical non-flexibly structured options series.

(2) Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (''Act'')[16] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, to foster cooperation and coordination with persons engaged in clearance and settlement, and, in general, to protect investors and the public interest. OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of Act[17] because it is designed to promote the prompt and accurate clearance and settlement of securities transactions in flexibly structured options. The proposed rule change accomplishes this by maintaining consistency between OCC's By-Laws and Rules and Cboe Options' rules as applied to the clearance and settlement of flexibly structured options. OCC further believes that the proposed rule change accomplishes this by providing that all flexibly structured options are subject to the same requirements. The proposed rule change would make all flexibly structured options fungible with subsequently introduced non-flexibly structured options with identical terms, thereby increasing operational efficiency by eliminating the need for OCC to monitor and treat a certain group of flexibly structured options (*i.e.,* ones with the same terms as quarterly options and short term options series) differently than other flexibly structured options. In addition, Cboe Options has noted that its rule change will potentially increase the liquidity available to traders of flexibly structured options.[18] Moreover, the Commission has previously noted that it would be concerned if flexibly structured options were to act as a surrogate for trading in standardized options (*i.e.,* non-flexibly structured exchange-traded options) and that allowing for flexibly structured options to become fungible with standardized options would help alleviate this concern.[19] In this respect, the Commission noted the following when it initially approved Cboe Options' rules to provide for fungibility between flexibly structured options and standardized options series with the same terms:

> However, the rules, as proposed by the CBOE, help to ensure that FLEX market participants cannot avoid the protections provided to retail investors in the standardized options market simply by trading FLEX Options. In this regard, once a series is open for trading, new FLEX Options are not permitted in that series. In addition, once a Non-FLEX Options series is open, all outstanding FLEX Options in the same series become fungible with the standardized market, are traded pursuant to standardized market trading rules, and are aggregated for position and exercise limit purposes. These rules help to alleviate these surrogate concerns and should help to ensure that FLEX Options market continues to operate as intended.[20]

The proposed rule change would help to further address this concern by allowing all flexibly structured options to become fungible with non-flexibly structured options series with the same terms that are later opened for trading on the exchange.

In addition, the proposed rule change is not inconsistent with the existing By-Laws and Rules of OCC, including any rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[21] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition.[22] The proposed rule change would not affect the competitive dynamics between clearing members, but rather would solely affect the treatment of flexibly structured options with the same terms as quarterly options and short term options series. In this respect, it would facilitate consistent treatment of such flexibly structured options with all other flexibly structured options, providing that all flexibly structured options will become fungible with subsequently-introduced standardized options with the same terms. The proposed rule change also would not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. The proposed rule change would treat equally all holders of flexibly structured options with the same terms as subsequently introduced quarterly options and short term options series, providing that such flexibly structured options held by them would become fungible with such standardized options series. For the foregoing reasons, OCC believes the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been 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)

[15] *See supra* note 9.

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] *See supra* note 10.

[19] *See* Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR–CBOE–2008–115). *See also supra* note 9.

[20] *See* Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (order approving SR–CBOE–2008–115).

[21] 15 U.S.C. 78q–1(b)(3)(I).

[22] 15 U.S.C. 78q–1(b)(3)(I).

of the Act [23] and Rule 19b–4(f)(4)(ii) [24] thereunder because it effects a change in an existing service that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[25]

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–OCC–2018–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2018–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_18_010.pdf.*

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–OCC–2018–010 and should be submitted on or before August 23, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16532 Filed 8–1–18; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(4)(ii).

[25] Notwithstanding the foregoing, implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation § 40.6.

[26] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before October 1, 2018.

ADDRESSES: Send all comments to Susan Suckfiel, Supervisory Financial Analyst, Office of Capital Access, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Susan Suckfiel, Supervisory Financial Analyst, 202–205–6443, *susan.suckfiel@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*;

SUPPLEMENTARY INFORMATION: SBA Form 1050, Settlement Sheet is used in SBA's 7(a) Loan Program to collect information from lenders and borrowers regarding the disbursement of loan proceeds. SBA relies on this information during the guaranty purchase review process as a component in determining whether to honor a loan guaranty. The currently approved form primarily requires the lender and borrower to certify to whether they complied with a series of loan requirements. The current form also requires submission of documentation (*e.g.,* joint payee or cancelled checks, invoices or paid receipts, and wire transfer records) in support of the certification. SBA has determined that this current information collection lacks enough specificity to yield the information regarding use of proceeds that would enable the agency to effectively monitor compliance with loan disbursement procedures. As a result, SBA is proposing to change both the content and format of the Form 1050.

The form will be divided into several sections to clearly identify the information to be submitted. The revised form will continue to collect the same basic identifying information such as loan amount, loan number and lender's name. In addition, the form will continue to require certifications from both the lender and borrower regarding compliance with the disbursement requirements and accuracy of information submitted. However, generally the enumerated statements will be reduced or combined and replaced with requests for specific information. the revised form will include a listing of all of the uses of loan proceeds. For each applicable use, information regarding the names of the payees, the amount disbursed, and the authorized amount remaining will be collected. The revised form will also include a section to document the borrower's equity injection of cash, assets, and any seller contribution (on full standby for the life of the loan).

These changes will allow the lender to more clearly document all of the sources and uses of funds at the time of loan closing. This additional information will better allow both lenders and SBA staff to ensure that the necessary information is collected at the time of loan origination

(a) Solicitation of Public Comments

SBA is requesting comments on (i) Whether the collection of information is necessary for the agency to properly

perform its functions; (ii) whether the burden estimates are accurate; (iii) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (iv) whether there are ways to enhance the quality, utility, and clarity of the information.

(b) Summary of Information Collection

Title: Settlement Statement.
Form Numbers: SBA Form 1050.
OMB Control Number: 3245–0200.
Description of Respondents: SBA Lenders and Borrowers.
Estimated Number of Respondents: 28,224.
Frequency of Response per Respondent: 1.
Total Estimated Annual Responses: 28,224.
Total Estimated Annual Hour Burden: 4,800.

Curtis Rich,
Management Analyst.

[FR Doc. 2018–16558 Filed 8–1–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15614 and #15615; CALIFORNIA Disaster Number CA–00285]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 07/25/2018.
Incident: Klamathon Fire.
Incident Period: 07/05/2018 through 07/23/2018.

DATES: Issued on 07/25/2018.
Physical Loan Application Deadline Date: 09/24/2018.
Economic Injury (EIDL) Loan Application Deadline Date: 04/25/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Siskiyou.
Contiguous Counties:
California: Del Norte, Humboldt, Modoc, Shasta, Trinity.
Oregon: Jackson, Josephine, Klamath.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	7.220
Businesses without Credit Available Elsewhere	3.610
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15614 5 and for economic injury is 15615 0.

The States which received an EIDL Declaration # are California, Oregon.

(Catalog of Federal Domestic Assistance Number 59008)

Linda E. McMahon,
Administrator.

[FR Doc. 2018–16541 Filed 8–1–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15586 and #15587; Pennsylvania Disaster Number PA–00084]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 07/24/2018.
Incident: Flooding.
Incident Period: 06/20/2018 through 06/21/2018.

DATES: Issued on 07/24/2018.
Physical Loan Application Deadline Date: 09/24/2018.
Economic Injury (EIDL) Loan Application Deadline Date: 04/24/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allegheny, Westmoreland.
Contiguous Counties:
Pennsylvania: Armstrong, Beaver, Butler, Cambria, Fayette, Indiana, Somerset, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	7.220
Businesses without Credit Available Elsewhere	3.610
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15586 6 and for economic injury is 15587 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: July 24, 2018.

Linda E. McMahon,
Administrator.

[FR Doc. 2018–16544 Filed 8–1–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15610 and #15611; Maryland Disaster Number MD–00037]

Administrative Declaration of a Disaster for the State of Maryland

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Maryland dated 07/25/2018.

Incident: Severe Flooding.

Incident Period: 05/27/2018.

DATES: Issued on 07/25/2018.

Physical Loan Application Deadline Date: 09/24/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 04/25/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Baltimore City, Howard.

Contiguous Counties:

Maryland: Anne Arundel, Baltimore, Carroll, Frederick, Montgomery, Prince George's.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	7.220
Businesses without Credit Available Elsewhere	3.610
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15610 6 and for economic injury is 15611 0.

The State which received an EIDL Declaration # is Maryland.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: July 25, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–16542 Filed 8–1–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15612 and #15613; Pennsylvania Disaster Number PA–00085]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 07/25/2018.

Incident: Flooding.

Incident Period: 07/02/2018.

DATES: Issued on 07/25/2018.

Physical Loan Application Deadline Date: 09/24/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 04/25/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Blair.

Contiguous Counties:

Pennsylvania: Bedford, Cambria, Centre, Clearfield, Huntingdon.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	7.220
Businesses without Credit Available Elsewhere	3.610
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.610
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15612 6 and for economic injury is 15613 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Dated July 25, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–16543 Filed 8–1–18; 8:45 am]

BILLING CODE 8025–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 552 (Sub-No. 22); Docket No. EP 558 (Sub-No. 21); Docket No. EP 750]

Railroad Revenue Adequacy—2017 Determination; Railroad Cost of Capital—2017; Uniform Railroad Costing System—2017 Calculations

AGENCY: Surface Transportation Board.

ACTION: Decision seeking comment.

SUMMARY: The Board is seeking comment on whether to make adjustments to its 2017 annual cost of capital determination, revenue adequacy determination, and Uniform Railroad Costing System calculations, to account for a one-time revaluation of rail carriers' deferred tax liabilities due to the reduction of the federal corporate income tax rate in the Tax Cuts and Jobs Act enacted in December 2017.

DATES: Comments are due by August 16, 2018. Reply comments are due by September 5, 2018.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet, (202) 245–0368. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our website, *http://www.stb.gov*. Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

By the Board, Board Members Begeman and Miller.

Decided: July 27, 2018.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2018–16624 Filed 8–1–18; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2018–0021; Dispute Number WT/DS536]

WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Measures on Fish Fillets From Vietnam

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that Vietnam has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement). You can find the request at *www.wto.org* in a document designated as WT/DS536/2. USTR invites written comments concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments during the course of the dispute settlement proceedings, you should submit your comment on or before September 4, 2018, to be assured of timely consideration by USTR.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in Section III below. The docket number USTR–2018–0021. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395–9483.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsel Ryan Majerus at *Ryan_M_Majerus@ustr.eop.gov* or (202) 395–0380.

SUPPLEMENTARY INFORMATION:

I. Background

Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires notice and opportunity for comment after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Pursuant to this provision, USTR is providing notice that Vietnam has requested a dispute settlement panel pursuant to the WTO *Understanding on Rules Procedures Governing the Settlement of Disputes* (DSU). The panel established by the WTO will hold its meetings in Geneva, Switzerland.

II. Major Issues Raised by Vietnam

On January 8, 2018, Vietnam requested consultations with the United States. You can find the consultation request at *www.wto.org* in a document designated as WT/DS536/1. The United States and Vietnam held consultations on March 1, 2018. On June 8, 2018, Vietnam requested the WTO to establish a WTO dispute settlement panel regarding the U.S. Department of Commerce (DOC) determinations in the following antidumping proceedings on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam:

- *Fifth Administrative Review and Fourth New Shipper Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* (DOC investigation number A–552–801).
- *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Sixth Antidumping Duty Administrative Review and New Shipper Review* (DOC investigation number A–552–801).
- *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Seventh Antidumping Duty Administrative Review* (DOC investigation number A–552–801).

Vietnam's request for establishment of a panel appears to be concerned with the alleged use of ''zeroing'', timeliness of a request for revocation, applying a Vietnam-wide entity rate based on facts available, and Section 129 of the URAA. Vietnam claims that certain alleged measures of the United States are not consistent with the United States' obligations under Articles 1, 2, 6, 9, 11, and 18 the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (Antidumping Agreement), Articles VI and XVI of the GATT 1994, and Paragraph 1.2 of Part I of the *Protocol on the Accession of the Socialist Republic of Viet Nam* (Accession Protocol).

III. Public Comments: Requirements for Submissions

USTR invites written comments concerning the issues raised in this dispute. All submissions must be in English and sent electronically via *www.regulations.gov.*

To submit comments via *www.regulations.gov,* enter docket number USTR–2018–0021 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''notice'' under ''document type'' on the left side of the search-results page, and click on the link entitled ''comment now!'' For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on ''How to Use *Regulations.gov*'' on the bottom of the home page.

The *www.regulations.gov* website allows users to provide comments by filling in a ''type comment'' field, or by attaching a document using an ''upload file'' field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type ''see attached'' in the ''type comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''type comment'' field.

For any comments submitted electronically that contain business confidential information (BCI), the file name of the business confidential version should begin with the characters ''BC''. Any page containing BCI must clearly be marked ''BUSINESS CONFIDENTIAL'' on the top and bottom of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character

''P''. Follow the ''BC'' and ''P'' with the name of the person or entity submitting the comments or rebuttal comments. If this is not sufficient to protect BCI or otherwise protect business interests, please contact Sandy McKinzy at (202) 395–9483 to discuss whether alternative arrangements are possible.

USTR may determine that information or advice contained in a comment, other than BCI, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2018–0021, accessible to the public at *www.regulations.gov.* The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is composed, or in the event of an appeal from a panel, USTR will make the following documents publicly available at *www.ustr.gov:* the U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute. If a dispute settlement panel is composed, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, also will be available on the website of the World Trade Organization, at *www.wto.org.*

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.

[FR Doc. 2018–16562 Filed 8–1–18; 8:45 am]

BILLING CODE 3290–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–11]

Petition for Exemption; Summary of Petition Received; Honeywell Aerospace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 7, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0472 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: A.W. Pendergrass (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, July 27, 2018.

Dale Bouffiou,

Deputy Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0472.

Petitioner: Honeywell Aerospace.

Section(s) of 14 CFR Affected: § 21.303(b)(3).

Description of Relief Sought: Honeywell Aerospace (Honeywell) petitioned the Federal Aviation Administration for an exemption from § 21.303(b)(3) of Title 14, Code of Federal Regulations (CFR). The proposed exemption, if granted, would allow Honeywell to add articles from the Civil Aviation Administration of China (CAAC), approved supplemental type certificate to its existing parts manufacture approval issued by the Federal Aviation Administration under 14 CFR Subpart K.

[FR Doc. 2018–16554 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, the State Route 84 (SR 84) Expressway Widening and SR 84/Interchange 680 (I–680) Interchange Improvements Project from post miles 17.9 to 22.9 on SR 84 and from post miles 10.3 to 15.3 on I–680 in the County of Alameda, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 31, 2018. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Brian Gassner, Environmental

Branch Chief, 111 Grand Avenue MS 8B, Oakland, CA 94612, 510–286–6025 (Voice), email *brian.gassner@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The State Route 84 (SR 84) Expressway Widening and SR 84/Interchange 680 (I–680) Interchange Improvements Project would widen and conform SR 84 to expressway standards between south of Ruby Hill Drive and the I–680 interchange. The project would also improve SR 84/I–680 interchange ramps and extend the existing southbound I–680 High Occupancy Vehicle/express lane (HOV/express lane) northward by approximately 2 miles, to approximately 0.8 mile north of Koopman Road. The project area is in Pleasanton, Sunol, and unincorporated Alameda County. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the project, approved on May 30th, 2018. The EA, FONSI, and other project records are available by contacting Caltrans at the address provided above. The Caltrans EA and FONSI can be viewed and downloaded from the project website at *www.dot.ca.gov/d4/84expresswayproject*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA)
2. Fixing America's Surface Transportation Act (Fast Act)
3. Clean Air Act
4. Federal-Aid Highway Act
5. Clean Water Act
6. Historic Sites Act
7. Section 106 of the National Historic Preservation Act
8. Archeological Resources Protection Act
9. Archeological and Historic Preservation Act
10. Antiquities Act
11. Endangered Species Act
12. Migratory Bird Treaty Act
13. Fish and Wildlife Coordination Act
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17. Farmland Protection Policy Act
18. Uniform Relocation Assistance and Real Property Acquisition Policies Act
19. Rehabilitation Act
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21. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
22. Resource Conservation and Recovery Act (RCRA)
23. Safe Drinking Water Act
24. Occupational Safety and Health Act
25. Atomic Energy Act
26. Toxic Substances Control Act
27. Federal Insecticide, Fungicide and Rodenticide Act
28. E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management
29. E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
30. E.O. 12088, Federal Compliance with Pollution Control Standards

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: July 27, 2018.

Tashia Clemons,

Director, Planning and Environment, Federal Highway Administration, Sacramento, California.

[FR Doc. 2018–16569 Filed 8–1–18; 8:45 am]

BILLING CODE 4910–RY–P

FEDERAL REGISTER

Vol. 83 Thursday,

No. 149 August 2, 2018

Part II

Department of Homeland Security

U.S. Customs and Border Protection

Department of the Treasury

19 CFR Parts 113, 181, 190, et al.
Modernized Drawback; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 113, 181, 190, and 191

[USCBP–2018–0029]

RIN 1515–AE23

Modernized Drawback

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend U.S. Customs and Border Protection (CBP) regulations to implement changes to the drawback regulations as directed by the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). These proposed regulations establish a new process for drawback pursuant to TFTEA which liberalizes the merchandise substitution standard, simplifies recordkeeping requirements, extends and standardizes timelines for filing drawback claims, and requires the electronic filing of drawback claims. TFTEA allows a transition period wherein drawback claimants will have the choice between filing claims under the existing process detailed in the current regulations or filing claims under the proposed new process. This document explains how filings during the transition period will work, discusses the interim policy guidance procedures for filing claims prior to these regulations becoming final, and proposes to make TFTEA-related changes, dealing with bonds, regarding joint and several liability for the importer of the goods and the drawback claimant, and technical corrections and conforming changes to CBP regulations. This document also proposes to clarify the prohibition on the filing of a substitution drawback claim for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise; or the substituted merchandise is the subject of a different claim for refund or drawback of tax under any provision of the Internal Revenue Code. CBP is proposing these amendments regarding excise taxes to protect the revenue by clarifying the relationship between drawback claims and Federal excise tax liability. Further, CBP proposes to add a basic importation and entry bond condition to foster compliance.

DATES: Comments must be received on or before September 17, 2018.

ADDRESSES: You may submit comments, identified by docket number USCBP–2018–0029, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP–2018–0029 . All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of the document.

Docket: For access to the docket or to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Trade, Regulations and Rulings, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, U.S. Customs and Border Protection, Office of Trade, Trade Policy and Programs, 202–863–6532, *randy.mitchell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rulemaking. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rulemaking, explain the reason for any recommended change, and include data, information, or authority to support such recommended change. *See* **ADDRESSES** above for information on how to submit comments.

Background

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(b) TFTEA-Drawback substitution claims cannot designate imported merchandise if the associated entry summary was already included on a drawback claim filed prior to February 24, 2018.
2. Filing Requirements and Deadline
(a) All TFTEA-Drawback claims are required to be submitted electronically in ACE.
(b) The import entry summary line item must be identified for all imported merchandise for TFTEA-Drawback claims.
(c) TFTEA-Drawback claims have a uniform five-year filing deadline from the date of importation of the designated imported merchandise.
3. HTSUS-Based Substitution Standards
(a) TFTEA-Drawback substitution claims for most manufacturing and unused merchandise have new standards based on HTSUS classification.
(b) The new standards do not apply to certain claims if substitution is based upon alternative rules (source material for sought chemical elements, wine, and finished petroleum derivatives) or if pursuant to NAFTA drawback.
4. ''Lesser of'' Rule for Substitution Claims
(a) TFTEA-Drawback substitution claims are generally subject to a ''lesser of'' rule regarding the amount of duties, taxes, and fees to be refunded where the amount to be refunded will be equal to 99 percent of the lesser of (1) the amount of duties, taxes, and fees paid with respect to the imported merchandise; or (2) the amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported.
(b) The TFTEA-Drawback ''lesser of'' rule does not apply to certain claims if substitution is based upon alternative rules (wine and finished petroleum derivatives) or if pursuant to NAFTA drawback.
5. Expanded Scope and Calculation Methods for Refunds
(a) The scope of refunds for direct identification and substitution manufacturing drawback claims will be expanded from duties to also include taxes and fees.

[1] For purposes of this document, ''TFTEA-Drawback'' is the term generally used to refer to drawback under section 1313, as amended by the Trade Facilitation and Trade Enforcement Act of 2015.

(b) TFTEA-Drawback direct identification claim refunds will be calculated based on the invoice value of the designated imported merchandise, which is unchanged from the current requirements.
(c) TFTEA-Drawback substitution claim refunds will be calculated based on the per unit average value reported on the line from the entry summary that covered the designated imported merchandise.
(d) The imported merchandise reported on a single entry summary line item may not be the basis of a direct identification and a substitution claim under TFTEA-Drawback.
6. Recordkeeping and Proof of Export
(a) *Congress, through TFTEA, changed the starting date for the three-year time period for maintaining supporting records for drawback claims from the date of payment to the date of liquidation.*
(b) Claimants for manufacturing drawback must provide a certification that they are in possession of the relevant bill of materials or formula for the manufactured goods, in lieu of actual submission thereof, for each claim filed.
(c) Congress, through TFTEA, permits the future use of an electronic export system as automated proof of export for drawback claims, but no system will be reliable for this purpose on February 24, 2018; and, proof of export must be documented in records that are summarized for the drawback claim.
7. Transfers of Merchandise and Liability
(a) Specific formats for certificates of delivery and specific formats for certificates of manufacture and delivery are no longer required when drawback products or other drawback-eligible goods are transferred between parties, although records of manufacture and transfer must be provided and maintained to support the drawback claim.
(b) The first drawback claim to be filed that designates any portion of imported merchandise from a given entry summary line item will determine the type of drawback eligibility for all other imported merchandise covered by that entry summary line item.
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I. Authority

Drawback, as provided for in section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), is the refund or remission, in whole or in part, of duties, taxes, and fees imposed and paid under Federal law upon importation or entry and due on the imported merchandise. Drawback is a privilege, not a right, subject to compliance with prescribed rules and regulations administered by U.S. Customs and Border Protection (CBP). *See* 19 U.S.C. 1313(l). Currently, the implementing regulations regarding drawback are contained in part 191 of the CBP Regulations (title 19 of the Code of Federal Regulations (CFR) (19 CFR part 191)) and part 181 of the CBP Regulations (19 CFR part 181, subpart E, which pertains to drawback claims under the North American Free Trade Agreement (NAFTA)). Additionally, the Internal Revenue Code (IRC) of 1986, as amended (IRC), codified as title 26 of the United States Code (26 U.S.C.), is the main body of domestic statutory tax law of the United States and includes, *inter alia,* laws covering Federal excise taxes. Federal excise taxes are imposed on the manufacture and distribution of certain consumer goods, such as distilled spirits, wines, beer, tobacco products, imported taxable fuel and petroleum products. These Federal excise taxes, and certain limitations regarding drawback claims, are discussed below in the section titled *Federal Excise Tax and Substitution Drawback Claims.*

In essence, a drawback claim is a request for a refund or remission of certain duties, taxes, and fees imposed upon importation which is filed with CBP after the merchandise or articles have been exported or destroyed. There are three main categories of drawback: Manufacturing drawback, rejected merchandise drawback, and unused merchandise drawback. Each main category of drawback is discussed, in turn, below.

Manufacturing drawback may be claimed on exported articles that have been manufactured or produced in the United States with imported duty-paid merchandise (direct identification manufacturing drawback), as well as on exported articles that have been manufactured or produced in the United States using domestic merchandise substituted for imported duty-paid merchandise meeting the statutory criteria (substitution manufacturing drawback). *See* 19 U.S.C. 1313(a) and (b).

Rejected merchandise drawback may be available upon the exportation or destruction of imported duty-paid merchandise entered or withdrawn for consumption meeting the statutory criteria (*i.e.,* not conforming to sample or specifications, shipped without consent, determined to be defective at the time of import, or ultimately sold at retail and returned). *See* 19 U.S.C. 1313(c).

Unused merchandise drawback may be claimed on imported merchandise that was exported or destroyed without having been used within the United States (direct identification unused merchandise drawback) as well as on goods that were exported or destroyed without being used that were substituted for imported merchandise meeting the appropriate criteria (substitution unused merchandise drawback). *See* 19 U.S.C. 1313(j)(1) and (2).

Originally, as provided for in section 3 of the second Act of Congress, the Tariff Act of July 4, 1789, drawback of 99% of duties paid on imported merchandise (except distilled spirits) was permitted if the merchandise was exported within a year. However, drawback expanded over time to, among other things, provide for refunds of taxes and fees in some situations, allow for merchandise to be destroyed as an alternative to exportation, allow for the substitution of goods on which drawback could be claimed, and provide more than just a single year within which goods must be exported or destroyed.

Historically, drawback claims were submitted entirely on paper. While filing a claim entirely on paper is currently still an option, most drawback claims consist of two portions: The electronic transmission of the entry summary data for the designated imported merchandise via the CBP-authorized electronic data interchange (EDI); and the physical delivery of the CBP Form 7551 (Drawback Entry) and all required documents supporting the claim. For TFTEA-Drawback claims, filers will electronically transmit the drawback entry summary data and the entry summary data for the designated imported merchandise to CBP and will upload all documents required to support the claim. CBP has programmed the Automated Commercial Environment (ACE) for receiving

electronic drawback claims.[2] An electronically submitted drawback claim will not be complete until the claim has been successfully transmitted with all required documents uploaded. Information for filing a drawback entry is contained in the relevant CBP and Trade Automated Interface Requirements (CATAIR) document, which is available at: *https://www.cbp.gov/trade/ace/catair.*

Upon receipt of a claim, CBP conducts an initial review, which allows CBP the opportunity to work with claimants to ensure that the claim is complete and timely. Once a complete claim is timely filed, drawback specialists review the supporting documentation to ensure that the claim is properly documented and the amount of the drawback is correctly calculated. In many instances, it is necessary for CBP to contact claimants to obtain additional supporting documentation, such as when there are questions regarding the identity of the merchandise in transfer scenarios or to confirm the actual date and fact of exportation. If additional information is required, CBP will send a request for information (CBP Form 28) to the claimant through the ACE portal or through the end of the transition period by physically transmitting the request, depending upon the method used to file the claim was filed. Claimants generally respond via the method by which they were contacted. The increased use of electronic filing and correspondence will expedite claim processing and payment.

Requests for information do not toll the deadlines for timely filing. In any event, claimants are bound by the deadlines for claims with respect to filing, amending, and perfecting.

II. Modernized Drawback

A. TFTEA-Drawback Overview

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125, 130 Stat. 122, February 24, 2016) was signed into law. Section 906 of TFTEA, *Drawback and Refunds,* made significant changes to the drawback laws which generally liberalize the standards for substituting merchandise, ease documentation requirements, extend and standardize timelines for filing drawback claims, and require electronic filing. However, while the changes are significant, on balance, section 906 of TFTEA left most of 19 U.S.C. 1313 unchanged. In other words, except for the significant changes brought about by Section 906 of TFTEA which are discussed below, most of the underlying processes involved in drawback remain unchanged. CBP also notes that additional steps to further automate or simplify the drawback claims process (which may or may not require regulatory changes) are anticipated to be announced subsequent to the implementation of the changes proposed in this document.

1. Transition Period (February 24, 2018–February 23, 2019)

(a) Claims may be filed under the existing drawback process or the TFTEA-Drawback process during the transition period.

Section 906(q)(3) of TFTEA provides for a transition period, beginning February 24, 2018, and ending February 23, 2019, during which claimants may file claims under the current drawback process and regulations detailed in part 191 (and under section 313 of the Tariff Act of 1930 as in effect on the day before TFTEA was signed into law) or under the amended statute and the implementing regulations (proposed part 190). February 23, 2019, is the last day of the transition period. During the transition period, claimants may choose which process to file on a claim-by-claim basis, meaning that claimants may file some claims under the old drawback process and some claims under the TFTEA-Drawback process throughout the entirety of the transition period. For purposes of this document, ''TFTEA-Drawback'' is the term generally used to refer to drawback under section 1313, as amended by TFTEA, and the implementing regulations contained in proposed Part 190.

While TFTEA-Drawback claims have been accepted in ACE since February 24, 2018, it is not until February 24, 2019, that all claims must be filed in compliance with the amended statute. Section II.B, *Filing a TFTEA-Drawback Claim,* below, contains information on how to file claims, including during the transition period under the interim policy guidance procedures announced February 8, 2018, in anticipation of the delay in finalizing these proposed regulations. Accordingly, the changes proposed in this document have no immediate effect on the drawback processes and requirements contained in part 191 of the CBP regulations. The transition period allows claimants the opportunity to choose which drawback regime to operate under while providing additional time, if needed, to complete any programming requirements for transmitting claims in ACE.

(b) TFTEA-Drawback substitution claims cannot designate imported merchandise if the associated entry summary was included on a drawback claim filed under part 191(and vice versa).

Claimants are precluded from filing TFTEA-Drawback substitution claims for imported merchandise associated with an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a claim under part 191, including during the transition period. Nevertheless, claimants may continue to make claims (including substitution claims) under part 191 for these entries through the end of the transition period on February 23, 2019. Similarly, claimants are precluded from filing any drawback claims under part 191 for imported merchandise associated with an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a TFTEA-Drawback substitution claim, including during the transition period. These limitations exist because drawback refund amounts are claimed at the entry summary header level (*i.e.,* the aggregate of all lines for which drawback was claimed on an entry) for claims under part 191 and CBP is unable to trace whether merchandise from a specific line on an entry summary was designated as the basis for a drawback claim under part 191.

2. New Filing Requirements and Deadline

(a) All TFTEA-Drawback claims are required to be submitted electronically in ACE.

While all TFTEA-Drawback claims must be filed electronically, it is not until February 24, 2019 (the first day after the end of the transition period), that all drawback claims must be filed electronically. *See* 19 U.S.C. 1313(r)(3)(B). Consequently, claims filed under part 191 do not have to be filed electronically. Drawback claims must be filed electronically through a combination of transmitting certain information to the system and uploading supporting documentation.

By moving to a fully electronic environment as of February 24, 2019, CBP will be able to better validate all drawback claims based upon certain criteria specific to the type of drawback claim, including (but not limited to) the timeliness of the claim, the amount of refund claimed, and the suitability of

[2] On February 9, 2018, in anticipation of delays regarding the proposal and finalization of the TFTEA-Drawback regulations, CBP posted interim policy guidance for filing TFTEA-Drawback claims in ACE during the transition period, available at: *https://www.cbp.gov/trade/programs-administration/entry-summary/ace-process-and-policy.* This interim policy guidance is discussed in detail below in section B, Filing a TFTEA-Drawback Claim.

the merchandise involved. As a result, drawback claimants should benefit from expedited processing, review, and payment of claims.

(b) The import entry summary line item must be identified for all imported merchandise for TFTEA-Drawback claims.

Many of the benefits for drawback claim processing noted above are made possible by systematic enhancements in ACE concerning line item reporting. Line item reporting, which is required for all TFTEA-Drawback claims, requires claimants to provide certain relevant information for the designated imported merchandise on a drawback claim associated with the line item on an entry summary, including the tariff classification, quantity, and value, as well as the duties, taxes, and fees assessed thereon. Line item reporting will enable more system validations at the line level and will help ensure that CBP does not overpay refunds.

(c) TFTEA-Drawback claims have a uniform five-year filing deadline from the date of importation of the designated imported merchandise.

All TFTEA-Drawback claims must be filed not later than 5 years after the date the merchandise on which drawback is claimed was imported. *See* 19 U.S.C. 1313(r)(1). Previously, section 1313 provided three-year filing deadlines beginning from different starting points for various types of claims (*e.g.,* three years from the receipt of imported merchandise or three years after the date of importation or withdrawal). This five-year deadline does not apply to claims filed under the existing drawback laws provided for in part 191 during the transition period.

3. HTSUS-Based Substitution Standards

(a) TFTEA-Drawback substitution claims for most manufacturing and unused merchandise have new standards based on HTSUS classification.

Section 906(b) provides a new standard for determining which merchandise may be substituted for imported merchandise as the basis for a substitution claim. This standard generally requires that both the imported merchandise and the exported merchandise be classified or classifiable within the same the 8-digit number in the Harmonized Tariff Schedule of the United States (HTSUS) classification. This standard replaces the ''same kind and quality'' and ''commercially interchangeable'' standards that were applied, respectively, to substitution manufacturing drawback claims (19 U.S.C. 1313(b)) and substitution unused merchandise drawback claims (19 U.S.C. 1313(j)(2)). Prior to TFTEA, determining whether goods were of the same kind and quality or were commercially interchangeable was a commodity-specific question that imposed burdens on claimants (to prove that the merchandise met the applicable standard) and on CBP (to research and rule on the eligibility of the goods to be substituted). The new standards will reduce much of the above-cited burdens by generally eliminating uncertainty as to the whether the standard for substitution has been met.

Substitution under 19 U.S.C. 1313(b), for manufacturing drawback claims, is subject to a new standard that requires the substituted merchandise used in manufacturing to be classifiable under the same 8-digit HTSUS subheading number as the designated imported merchandise. Similarly, substitution under 19 U.S.C. 1313(j)(2), for unused merchandise drawback claims, is subject to a new standard that requires the substituted merchandise to be classifiable under the same 8-digit HTSUS subheading number as the imported merchandise, except that there are restrictions with respect to HTSUS basket provisions (*i.e.,* subheadings with descriptions that begin with the term ''other''). Specifically, and only for unused merchandise drawback claims, merchandise cannot be substituted if the 8-digit HTSUS subheading number begins with the term ''other'', unless the imported merchandise and the substituted merchandise are both classifiable under the same 10-digit HTSUS statistical reporting number and the description for that 10-digit HTSUS statistical reporting number does not begin with the term ''other''. *See* 19 U.S.C. 1313(j)(5). In lieu of the HTSUS classification for unused merchandise drawback claims, substitution may also be based on the first 8 digits of the 10-digit Department of Commerce Schedule B number (the code for exporting goods from the United States). *See* 19 U.S.C. 1313(j)(6).

Under the new substitution standards, the correct HTSUS classification is a critical aspect of the exercise of reasonable care. Accordingly, importers and drawback claimants should take note that prospective rulings on classification may be requested pursuant to 19 CFR 177.1(a)(1).

(b) The new standards do not apply to certain claims if substitution is based upon alternative rules (source material for sought chemical elements, wine, and finished petroleum derivatives) or if pursuant to NAFTA drawback.

Certain types of merchandise are exempt from the new substitution standards discussed above. Substitution manufacturing claims for sought chemical elements have a special rule for source material regardless of the 8-digit HTSUS subheading number. *See* 19 U.S.C. 1313(b)(4) (which defines a sought chemical element as either an element from the Periodic Table of Elements or a chemical compound consisting of such elements). Unused merchandise claims involving wine have a distinct standard involving price variations and color. *See* 19 U.S.C. 1313(j)(2). Both manufacturing and unused merchandise drawback claims for finished petroleum products, if filed under 19 U.S.C. 1313(p), are already subject to more specific HTSUS-based substitution standards. Substitution manufacturing claims for NAFTA drawback remain subject to the ''same kind and quality'' standard in part 181, consistent with 19 U.S.C. 3333(a)(3).

4. ''Lesser of'' Rule for Substitution Claims

(a) TFTEA-Drawback substitution claims are generally subject to a ''lesser of'' rule regarding the amount of duties, taxes, and fees to be refunded where the amount to be refunded will be equal to 99 percent of the lesser of (1) the amount of duties, taxes, and fees paid with respect to the imported merchandise; or (2) the amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported.

Section 906(g) of TFTEA provides for a ''lesser of'' rule, as a safeguard, to ensure that the revenue is protected in light of the liberalization and simplification of the standards for substitution drawback claims. The ''lesser of'' rule provides that the refund will be equal to 99 percent of the lesser of the amount of duties, taxes, and fees paid with respect to the imported merchandise and/or that would have been paid on the substituted merchandise had it been imported. In all claims subject to the ''lesser of'' rule, it is incumbent on the claimant to properly calculate the proper amount of the claimed refund.

For manufacturing drawback claims, the substituted merchandise is that which was used in manufacturing, in lieu of the designated imported merchandise, and the ''lesser of'' comparison is based upon the amount of duties, taxes, and fees that would apply to the substituted merchandise if it were imported (with this amount reduced by the value of the materials recovered during destruction, if applicable). *See* 19 U.S.C. 1313(l)(2)(C). For unused merchandise drawback claims, the substituted merchandise is the exported or destroyed merchandise and the

''lesser of'' comparison is based upon the amount of duties, taxes, and fees that would apply to the exported or destroyed merchandise if it were imported (with this amount reduced by the value of the materials recovered during destruction, if applicable). *See* 19 U.S.C. 1313(l)(2)(B). TFTEA-Drawback claimants must provide the comparative value (*i.e.,* the ''lesser of'' comparison for either manufacturing drawback claims or for unused merchandise drawback claims), as part of a substitution claim.

(b) The TFTEA-Drawback ''lesser of'' rule does not apply to certain claims if substitution is based upon alternative rules (wine and finished petroleum derivatives) or if pursuant to NAFTA drawback.

The ''lesser of'' rule does not apply to claims for wine based on 19 U.S.C. 1313(j)(2) or to claims for finished petroleum products under 19 U.S.C. 1313(p). *See* 19 U.S.C. 1313(l)(2)(D). Claims under these provisions are subject to other specific limitations. It is important to note that sought chemical elements are not exempt from the ''lesser of'' rule, even though there is a special rule for the substitution of source material. *See* 19 U.S.C. 1313(b)(4). NAFTA drawback allows for substitution manufacturing claims (under certain conditions) and these claims are not subject to the ''lesser of'' rule discussed herein, but they remain subject to the discrete NAFTA drawback ''lesser of duty'' rule regarding the amount of duty owed as compared between the relevant countries. *See* 19 U.S.C. 3333 and 19 CFR 181.44.

5. Expanded Scope and Calculation Methods for Refunds

(a) The scope of refunds for direct identification and substitution manufacturing drawback claims will be expanded from duties to also include taxes and fees.

Section 906(g) of TFTEA provides for the refund of taxes and fees, along with duties, for manufacturing drawback claims. *See* 19 U.S.C. 1313(l)(2)(C). This is an expansion of the scope of refunds available for manufacturing drawback claims (19 U.S.C. 1313(a) and (b)). Previously, the statutory provisions for direct identification and substitution manufacturing drawback specified only the refund of duties. This expansion is specifically provided for claims with respect to manufactured articles in paragraph (l)(2)(C) of 19 U.S.C. 1313. However, this expansion is not applicable to all drawback claim provisions. Refunds of duties, taxes, and fees were already allowed for in claims involving unused merchandise prior to the new language provided for by TFTEA. *See* 19 U.S.C. 1313(l)(2)(B). In contrast, there was neither any pre-existing authority for refunds of taxes and fees for claims involving rejected merchandise nor did TFTEA otherwise expand the scope of refunds beyond duties by generally referencing 19 U.S.C. 1313(l). The provisions that provide for refunds of duties, taxes, and fees are limited to unused merchandise and manufacturing drawback claims in 19 U.S.C. 1313(l)(2)(B) and (C), respectively.

There is also a noteworthy difference regarding the statutory provisions for substitution manufacturing drawback claims whereby the merchandise must be imported duty-paid. *See* 19 U.S.C. 1313(b)(1). No such requirement exists for direct identification manufacturing claims. *See* 19 U.S.C. 1313(a). The result of this difference is that imported merchandise that is duty-free may be designated as the basis for a direct identification manufacturing drawback claim, but not for a substitution manufacturing drawback claim.

(b) TFTEA-Drawback direct identification claim refunds will be calculated based on the invoice value of the designated imported merchandise, which is unchanged from the current requirements.

CBP currently requires all drawback claimants, regardless of the type of claim, to calculate drawback refunds based on the invoice value of the designated imported merchandise. TFTEA-Drawback direct identification claims will continue to be calculated based on the invoice value of the designated imported merchandise. This includes all drawback claims that are based upon direct identification (*e.g.,* manufacturing, rejected merchandise, and unused merchandise drawback claims). It should also be noted that all NAFTA drawback claims will continue to be calculated based on the invoice value of the designated imported merchandise. *See* 19 U.S.C. 3333 and 19 CFR 181.44.

(c) TFTEA-Drawback substitution claim refunds will be calculated based on the per unit average value reported on the line from the entry summary that covered the designated imported merchandise.

Section 906(g) of TFTEA authorized CBP to calculate refunds based upon the per unit average of the duties, taxes, and fees reported on the entry summary line item that covered the designated imported merchandise if this method would result in simplification of the drawback claims process for CBP without posing a risk to the revenue of the United States. Per unit averaging requires that the drawback claimant calculate the per unit average value of the designated imported merchandise (*i.e.,* the entered value for the applicable entry summary line item apportioned equally over each unit covered by the line item) and request a refund 99% of the amount of duties, taxes and fees applicable thereto. The legislative history for Section 906(g) clarifies that CBP is authorized to utilize per unit averaging solely to allow for the simplification of drawback claims and CBP is not to allow for the ''manipulation of claims in order to maximize refunds to the detriment of the revenue of the United States.'' *See* H.R. Rep. no. 114–376, at 221 (2015). Accordingly, CBP is proposing in these regulations to allow the use of per unit averaging in the context of substitution manufacturing drawback claims (19 U.S.C. 1313(b)) and substitution unused merchandise drawback claims (19 U.S.C. 1313(j)(2)), but not for direct identification manufacturing drawback claims (19 U.S.C. 1313(a)), rejected merchandise drawback claims (19 U.S.C. 1313(c)), or direct identification unused merchandise drawback claims (19 U.S.C. 1313(j)(1)).

This determination was made only after much internal consideration as well as outreach to various trade stakeholders. A significant justification for the use of per unit averaging exclusively for substitution claims is that TFTEA imposed a ''lesser of'' rule for drawback claims involving substitution that safeguards against risks to the revenue. Simply put, by importing high and low value goods together on a single line, the claimant could manipulate the drawback claim through per-unit averaging by strategically exporting or destroying the low value goods, where the per-unit average of duties, taxes, and fees to be refunded was greater than that associated with the low value goods. The lesser of rule prevents this type of manipulation. No ''lesser of'' rule was authorized under TFTEA for direct identification claims.

The application of per unit averaging method of calculating drawback refunds requires the equal apportionment of the amount of duties, taxes, and fees eligible for drawback for all units covered by a single line item on an entry summary to each unit of merchandise (and is required for certain substitution drawback claims). In this method, the ratio of the total value of imported units as reported on a line item divided by the total quantity of imported units reported on a line item is to be multiplied by the quantity of units designated as the basis for the drawback claim to determine the

average per unit value. The refund per unit of the designated imported merchandise is to be 99% of the duties, taxes, and fees applicable to the average per unit value and this amount is calculated to two decimal places (and subject to the ''lesser of'' rule).

Example 1. Substitution Unused Merchandise TFTEA-Drawback Claim

A substitution unused merchandise drawback claim is filed for 500 exported articles with a value of $110 per unit. The 500 units of designated imported merchandise were reported on an entry summary line item that covered 1000 units with an entered value of $100,000 and a duty rate of 2.5%. Therefore, regarding the amount of duties to be refunded pursuant to the ''lesser of'' methodology, the calculation of drawback will be based on the per unit value of $100 for the designated imported merchandise rather than the value of $110 for the exported merchandise.

The designated imported merchandise has a per unit value of $100. This applicable duty rate (2.5%) is applied to the average per unit value ($100) to determine the amount of duties apportioned to each unit at $2.50.

The amount available for a drawback refund is 99% of the duties paid per unit ($2.50), which is $2.48. This amount of refundable duties per unit ($2.48) is multiplied by the quantity of designated imported merchandise (500 units) to calculate the total amount available for the drawback refund, which is $1,240. Similar calculations must be completed for applicable taxes and fees as well.

Example 2. Substitution Manufacturing TFTEA-Drawback Claim

A substitution manufacturing drawback claim is filed for 200 exported finished articles with a value of $400 per unit.[3] The designated imported merchandise was reported on an entry summary line item that covered 800 units with an entered value of $160,000 (averaging $200 per unit) and a duty rate of 3.1%. To manufacture the finished articles, the manufacturer actually used 600 units of substituted domestically sourced merchandise that is classifiable under the same 10-digit tariff provision. The domestically sourced merchandise has a substituted value of $180 per unit. Therefore, regarding the amount of duties to be refunded pursuant to the ''lesser of'' methodology, the calculation of drawback will be based on the per unit value of $180 for the substituted merchandise rather than the value of $200 for the designated imported merchandise.

The substituted merchandise has a per unit value of $180. This applicable duty rate (3.1%) is applied to the average per unit value ($180) to determine the amount of duties apportioned to each unit at $5.58.

The amount available for a drawback refund is 99% of the duties paid per unit ($5.58), which is $5.52. This amount of refundable duties per unit ($5.52) is multiplied by the quantity of designated imported merchandise (600 units) to calculate the total amount available for the drawback refund, which is $3,312. Similar calculations must be completed for applicable taxes and fees as well.

Per unit averaging facilitates verification of the amounts of drawback refunds claimed. CBP does not receive invoice data that is usefully searchable electronically. By moving to the per unit averaging calculation methodology for substitution claims that is based on entry summary line data, CBP will gain the ability to automate validations of refund calculations made by the claimant. This should lead to faster and more efficient processing of claims, which will benefit both drawback claimants and CBP. These efficiencies are gained through the use of entry summary line item data, which is required for all TFTEA-Drawback claims, and will enable the per unit averaging calculation to take place as an automated verification rather than a manual process.

(d) The imported merchandise reported on a single entry summary line item may not be the basis of a direct identification and a substitution claim under TFTEA-Drawback.

A consequence of using per unit averaging for substitution claims under TFTEA-Drawback is that a single entry summary line item cannot be used for both direct identification and substitution drawback claims. Consequently, CBP proposes to limit each line on an entry summary to designation as the basis for either direct identification or substitution claims, but never both. Therefore, all associated imported merchandise on that line may only be designated as the basis for either direct identification or substitution claims under TFTEA-Drawback. If both types of claims were allowed on a single line on an entry summary, CBP would be unable to issue full refunds for all drawback claims that could lawfully be made against a specific entry summary line item in some situations. For example, in some situations where substitution claims using the per unit average of the line item were to be claimed prior to a direct identification claim, the total amount of drawback remaining on the line may not be sufficient to pay the proper amount of drawback tied to the high value goods.

CBP has also chosen this proposed policy in expectation of the efficiencies to be gained by both claimants and CBP regarding calculating and verifying refunds. Accordingly, importers and drawback claimants need to be aware of the limitation on line item designations prior to importing merchandise or receiving transferred merchandise, because the first-filed claim on a line will dictate the type of claim available for any remaining merchandise of the same line.

6. Recordkeeping and Proof of Export

(a) Congress, through TFTEA, changed the starting date for the three-year time period for maintaining supporting records for drawback claims from the date of payment to the date of liquidation.

For all TFTEA-Drawback claims, section 906(o) replaced the previous requirement to maintain supporting records for three years from the date of payment of the claim with the new requirement to maintain records for three years from the date of liquidation of the claim. *See* 19 U.S.C. 1508(c)(3). This extension of the recordkeeping time period provides CBP with more time to request documents needed to verify or audit claims. This new timeframe requires claimants with accelerated payment privileges to maintain supporting records longer than before TFTEA (because claims are paid prior to liquidation for claimants that obtain the privilege of accelerated payment).

(b) Claimants for manufacturing drawback must provide a certification that they are in possession of the relevant bill of materials or formula for the manufactured goods, in lieu of actual submission thereof, for each claim filed.

Currently, claimants for manufacturing drawback are required to provide a bill of materials or formula to CBP upon request, for any claim filed. CBP has and will continue to request these records for review in the context of verifications, audits, and other administrative actions. The purpose of this requirement is to ensure that the claims are consistent with the applicable bill(s) of materials or formula(s) that accompanied the

[3] It is noteworthy that the value of the exported (or destroyed) finished article is not germane to the application of the ''lesser of'' rule for substitution manufacturing drawback claims. The comparison in value is between the value of the designated imported merchandise and the substituted merchandise.

claimant's application to operate under the applicable general or specific manufacturing drawback ruling. TFTEA expressly added a requirement for substitution manufacturing drawback claims that the person making the claim must submit the bill of materials or formula identifying the drawback-eligible merchandise and manufactured article(s) by the 8-digit HTSUS subheading numbers and the quantities of merchandise with each claim. *See* 19 U.S.C. 1313(b)(3)(A). For administrative efficiency and consistency with how drawback claims are reviewed and verified, rather than requiring the actual submission of these records with each claim, CBP will require a certification in ACE as to possession of these records. This certification requirement applies to both direct identification and substitution manufacturing claims.

(c) Congress, through TFTEA, permits the future use of an electronic export system as automated proof of export for drawback claims, but no system will be reliable for this purpose on February 24, 2018; and, proof of export must be documented in records that are summarized for the drawback claim.

Claimants whose exported goods are the basis for a claim of drawback must provide proof that establishes fully the date and fact of exportation and the identity of the exporter. These requirements are provided for in proposed § 190.72. Under TFTEA-Drawback, proof of exportation is required in the form of export summary data that is provided as part of a complete drawback claim filed with CBP. However, the underlying supporting records must fully prove the exportation through records kept in the normal course of business. TFTEA also provides for proof of export to be established via an electronic export system of the United States, as determined by the Commissioner of CBP. *See* 19 U.S.C. 1313(i). Currently, the Automated Export System (AES) is not able to fully establish the required elements. Accordingly, until such time as the Commissioner of CBP announces the availability of a capable electronic system through a general notice in the Customs Bulletin, records kept in the normal course of business shall be used to establish fully the date and fact of exportation and the identity of the exporter, and such records must be maintained by claimants whose exported goods are the basis for a claim of drawback.

7. Transfers of Merchandise and Liability

(a) Specific formats for certificates of delivery and specific formats for certificates of manufacture and delivery are no longer required when drawback products or other drawback-eligible goods are transferred between parties, although records of manufacture and transfer must be provided and maintained to support the drawback claim.

Section 906 removed the longstanding requirements for the submission of Certificates of Delivery (CDs) and Certificates of Manufacture and Delivery (CMDs) by stating that no additional certificates of transfer or manufacture shall be required 19 U.S.C. 1313(b), and by stating that no additional certificates of transfer are required in 19 U.S.C. 1313(c), (j), and (p). Section 906(l), *Drawback Certificates,* removed the recordkeeping requirements relating to these certificates for drawback claims by striking 19 U.S.C. 1313(t). Instead of CDs and CMDs, parties involved in transfers of drawback products or other drawback-eligible goods must maintain records, which may include records kept in the normal course of business, to evidence the transfers.

(b) The first drawback claim to be filed that designates any portion of imported merchandise from a given entry summary line item will determine the type of drawback eligibility for all other imported merchandise covered by that entry summary line item.

As previously explained in part 5(d), above, there is a limitation that imported merchandise on a single entry summary line item cannot be designated as the basis for both direct identification and substitution drawback claims under TFTEA, due to the different methods of calculating refund amounts. Because the transferor can transfer the merchandise covered by a specific line item to different transferees, the transferees might unwittingly attempt to file different types of claims, which is not permitted. In an effort to best inform transferees of the possible limitation, if a transferor has already filed a certain type of drawback claim designating a portion of merchandise from an entry summary line item, or otherwise has knowledge of an already-filed claim that does likewise, then the transferor must designate whether the merchandise is eligible for substitution or direct identification claims and notify the transferee of that designation at the time of transfer. This should help transferees to avoid attempting to make drawback claims for the transferred merchandise under the mutually exclusive bases of direct identification and substitution. If, at the time of transfer, the transferor is not aware of a particular type of drawback claim already filed relating to the entry summary line item, then the designation shall so indicate to the transferee. Notification of the designation from the transferor to the transferee must be documented in records, which may include records kept in the normal course of business. Notwithstanding the designation made, however, the type of the first drawback claim to be filed relating to that entry summary line item will dictate the type of any subsequent claims relating to that same entry summary line item.

Because this notification requirement is not effective until February 24, 2018, parties who anticipate making substitution-based claims under TFTEA-Drawback designating imported merchandise that was entered and transferred prior to this date, should consult with the transferor about whether the transferred merchandise potentially is eligible for substitution-based claims under TFTEA-Drawback. Such eligibility only exists if the transferred merchandise was not previously used as the basis for any non-TFTEA drawback claim, because all types of non-TFTEA drawback claims must be calculated based on invoice values, which conflicts with the use of per unit averaging when determining refunds for imported merchandise on a single entry summary line item.

It is important to note, again, that this notification of designation requirement is proposed in an effort to better inform claimants of possible limitations on the type of drawback claim that can be filed in situations involving transferred merchandise. The designation, however, is not a guarantee of the type of claim that can be filed. Drawback claimants must remain aware that the first drawback claim to be filed on a given entry summary line item will control the type of claim that subsequently can be filed in the case of transferred merchandise.

(c) Importers are now jointly and severally liable with drawback claimants for refunds associated with their imported merchandise, when designated on a drawback claim.

Section 906(f) established joint and several liability for the drawback claimant and the importer of the imported merchandise that is designated as the basis of the claim. *See* 19 U.S.C. 1313(k). Accordingly, importers should be aware of this liability when transferring imported merchandise to other parties for purposes of drawback. Therefore, it is proposed to amend § 113.62 to reflect this liability in the import entry bond conditions.

B. Filing a TFTEA-Drawback Claim

TFTEA-Drawback claims must be filed electronically. A complete TFTEA-Drawback claim will consist of the successful transmission of the data required for the TFTEA-Drawback entry and the upload of all required documents supporting the claim. When submitting the claim, the filer must provide, among other things, the drawback entry number, filing port code, claimant ID number, drawback provision, total drawback claim amount requested, the import entry summary(s) and line item number(s) for the designated imported merchandise, other required line item data including the HTSUS subheading number at the 10-digit level, information on exportation or destruction, and, if applicable, the NAFTA coding sheet. Proposed section 190.51 provides detailed information about specific data elements, certifications, and supporting documents that may be required depending on the particular type of drawback claim.

After transmission, the filer will receive an automated message indicating either that the electronic transmission has been accepted or rejected. In the case of a rejection, the automated message will inform the filer regarding the reason(s) for the rejection. Uploads of required forms, and any other supporting documentation should be submitted through ACE, Document Image System, after the successful electronic transmission. Further, related to filing claims electronically, as noted below in the section explaining the proposed regulations, a definition for ''drawback office'' has been added to § 190.2 clarifying that CBP has the authority to share or transfer work between drawback offices at its discretion.

For the interim period between February 24, 2018 and the date on which the new TFTEA-Drawback regulations will become effective, CBP developed interim procedures for accepting electronically filed TFTEA-Drawback claims. Specifically, to enable ACE to recognize and accept such claims, notwithstanding the absence of the necessary regulatory requirements for a complete TFTEA-Drawback claim, ACE was programed with provisional placeholder requirements, modeled on the draft regulatory package then under development. Corresponding provisional Customs and Trade Automated Interface Requirements (CATAIR) Guidelines were provided to enable claimants to program their systems to interface with these provisional placeholder requirements in ACE. And on February 9, 2018, CBP posted on its website a document entitled *Drawback: Interim Guidance for Filing TFTEA Drawback Claims* (*Interim Guidance*), to further inform and provide guidance to the trading community regarding the temporary procedures for electronically filing TFTEA-Drawback claims during the interim period until the implementing regulations are finalized and operational. This *Interim Guidance* was subsequently twice updated, to provide additional clarity.

The *Interim Guidance* explained that the provisional requirements for electronically-filed TFTEA-Drawback claims that are reflected in the provisional CATAIR and described in the *Interim Guidance* document are placeholders only, and will not be used to process the claims beyond their initial acceptance in ACE. The actual final requirements for such claims will be established once the rulemaking process is complete and the new regulations are implemented and effective. To the extent that the final requirements established through rulemaking ultimately differ from the provisional placeholders used to accept TFTEA-Drawback claims in ACE prior to the effective date of the final rule, the *Interim Guidance* explained that claimants will be permitted to perfect their claims in accordance with the new requirements before the claims are processed for payment.

The interim procedures outlined and explained in the *Interim Guidance* will remain in place until this rulemaking is complete and the final rule to implement the regulatory changes pending for TFTEA-Drawback claims is implemented and effective.

The programming specifics for electronic transmission are explained in more detail in the TFTEA-Drawback CATAIR Guidelines, which can be accessed at: *https://www.cbp.gov/trade/ace/catair.* Specific questions related to filing TFTEA-Drawback claims may be directed to a client representative or the ACE Account Service Desk at 1–866–530–4172 or *ACE.Support@cbp.dhs.gov.* Filers should be aware that a delay of more than 24 hours in uploading all required accompanying documentation after the transmission of the claim data will mean that the filing date will be tied to the uploading of documents rather than the date of transmitting the claim data. In some instances, this later official date of filing could affect the timeliness of a claim.

C. Required TFTEA-Drawback Certifications for Existing Manufacturing Rulings and Privileges

While the processes regarding general and specific manufacturing rulings detailed in appendices A and B of the proposed part 190 will be largely unchanged from those described in the appendices of part 191, TFTEA does have some impact on existing rulings. The existing rulings were issued based on the requirements of 19 CFR part 191, which do not comport with the TFTEA-Drawback requirements (*e.g.,* the new substitution standard and timeframes). Accordingly, in order to continue operating under an existing manufacturing ruling, a manufacturer or producer must file a supplemental application for a limited modification to that ruling. To ensure compliance with the TFTEA-Drawback requirements, the limited application must include revised parallel columns and a bill of materials or formula, which must be annotated with the applicable HTSUS subheading numbers. In addition, a certification must be provided to confirm that all TFTEA-Drawback claims made under the subject manufacturing ruling will be in conformity with all of the applicable statutory and regulatory requirements. Any supplemental application to modify a ruling issued under 19 CFR part 191 (so that it remains viable for TFTEA-Drawback claims) must be submitted to CBP no later than February 23, 2019, which is the close of the transition period for drawback claimants. Any ruling issued under 19 CFR part 191 that is not modified by this deadline will not apply to TFTEA-Drawback claims; and, manufacturers and producers would need to apply for a new ruling under 19 CFR part 190.

Similar to manufacturing rulings, drawback privileges granted under 19 CFR part 191 will not comport with TFTEA-Drawback. The privileges are the waiver of prior notice of intent to export or destroy and accelerated payment. With each claim that is filed under 19 CFR part 190, a certification of conformity with TFTEA-Drawback is required for claimants to continue to operate under one or both privileges if granted pursuant to 19 CFR part 191. Unlike for manufacturing rulings, these certifications will be made electronically with each TFTEA-Drawback claim. These certifications are limited to the drawback provisions under which they were originally granted in accordance with 19 CFR part 191, except that privileges granted under 19 U.S.C. 1313(j)(1) and 19 CFR 191 may be applied to TFTEA-Drawback

claims made under 1313(j)(1) or 1313(j)(2).

The certification processes described above are designed to ease the administrative burden on CBP while minimizing the disruption to those operating under existing manufacturing rulings and/or privileges. However, claimants are responsible for performing the requisite due diligence prior to filing any TFTEA-Drawback claims; and, the consequences of false or inaccurate claims include, but are not limited to, the denial of drawback refunds and the associated privileges, noted above.

D. Federal Excise Tax and Substitution Drawback Claims

The Internal Revenue Code (IRC) of 1986, as amended, codified as title 26 of the United States Code (26 U.S.C.), is the main body of domestic statutory tax law of the United States and includes laws covering Federal excise taxes. Federal excise taxes are imposed on the manufacture and distribution of certain consumer goods, including upon the importation of distilled spirits, wines, beer, tobacco products, and certain imported taxable fuel and petroleum products. While there are also excise taxes on other products, it is these taxes, because of the structure of the tax and the manner in which they are collected, that are eligible for drawback under 19 U.S.C. 1313.

1. Distilled Spirits, Wines, and Beer: Imposition of Federal Excise Tax and Exemptions

Chapter 51 of the IRC sets forth excise tax collection and related provisions applicable to distilled spirits, wines, and beer. In general, this chapter provides that a Federal excise tax is imposed on all wines, distilled spirits, and beer produced in or imported into the United States. 26 U.S.C. 5001, 5041, 5051.

Statutory exceptions to the required payment of Federal excise tax exist. For example, when wine, distilled spirits, or beer are exported after payment or determination of tax, the IRC provides for ''drawback'' in an amount equal to the tax paid. 26 U.S.C. 5055, 5062. Under these provisions, the excise taxes are refunded upon exportation. Similarly, drawback is also available when wine, distilled spirits, or beer are exported from bonded premises regulated by the Alcohol and Tobacco Tax and Trade Bureau (TTB), where no tax has been paid, although tax liability attached at the time of production or import. While tax must ordinarily be paid upon removal of wine, distilled spirits, or beer from TTB-bonded premises, the removal may occur ''without payment of tax'' for the purpose of export. 26 U.S.C. 5214(a), 5362(c), 5053(a). Although removed from a TTB-bonded facility, the product is still subject to bond and still carries a tax liability until the product is exported. 26 U.S.C. 5053, 5175, 5362. Similarly, Title 19 also provides for ''drawback equal in amount to the tax found to have been paid or determined on . . . bottled spirits and wines manufactured or produced in the United States'' upon exportation. 19 U.S.C. 1313(d). Under these drawback provisions, a refund is made upon exportation if tax has already been paid, or if an unpaid tax liability exists, it is extinguished upon exportation. The net economic effect is identical.

2. Tobacco: Imposition of Federal Excise Tax and Exemptions

Under Chapter 52 of the IRC, a Federal excise tax is imposed on all tobacco products and cigarette papers and tubes manufactured in or imported into the United States. 26 U.S.C. 5701. The tax on domestically-produced tobacco products and cigarette papers and tubes is imposed at the time of manufacture but generally is not paid or determined until the products are removed from TTB-bonded premises. 26 U.S.C. 5702, 5703. Upon exportation of tobacco products and cigarette papers and tubes upon which the tax has been paid, the IRC permits drawback of the tax paid. 26 U.S.C. 5706. In addition, tobacco products and cigarette papers and tubes may be removed from TTB-bonded premises, without the payment of Federal excise tax, for export. 26 U.S.C. 5704. Under these provisions, the excise tax liability is extinguished upon exportation. The net economic effect is identical.

3. Other Excise Taxes

Chapter 32 of the IRC imposes various excise taxes, including taxes on gasoline, diesel fuel, and kerosene (taxable fuel). For example, 26 U.S.C. 4081 imposes tax on the removal of taxable fuel from any refinery or terminal and on entry into the United States for consumption, use, or warehousing. The IRC permits the refund of this tax when taxable fuel is exported. 26 U.S.C. 6416, 6427. When the taxable fuel is imported into an IRS-registered facility, it is taxed upon removal from the facility and is not eligible for drawback under 19 U.S.C. 1313. Some taxable fuel, however, is not imported into an IRS-registered facility, in which case the tax is due upon importation and may be eligible for drawback under 19 U.S.C. 1313.

4. Federal Excise Taxes Have Been Improperly Refunded

Under customs law, a form of drawback known as ''substitution drawback'' also occurs when products are imported into the United States and sufficiently similar products are exported or destroyed. 19 U.S.C. 1313(j)(2). Treasury Department audits and analyses have revealed that for a number of years, CBP has received and approved claims for substitution drawback under 19 U.S.C. 1313(j)(2) for imported bottled and bulk wine, even in circumstances in which no excise tax was paid on the substituted exported merchandise. CBP has not identified a record of the first time it granted a section 1313(j)(2) drawback claim for wine based on exported merchandise on which tax had not been paid—a claim for ''double drawback,'' drawback of the excise tax on both the imported product and the exported product.

An example of a claim for ''double drawback'' of wine proceeds as follows:

> A domestic winery imports 100 liters of wine, pays Federal excise tax on the wine, and sells the imported wine in the United States. The domestic winery then exports 100 liters of its domestically-produced wine from TTB-bonded premises without payment of Federal excise tax. The domestic winery files a § 1313(j)(2) drawback claim with CBP on the basis that the 100 liters of domestically-produced wine are commercially interchangeable with the to the 100 liters of imported wine. The domestic winery receives a refund of 99 percent of the Federal excise taxes that it paid on the 100 liters of imported wine.

In this example, imported products are introduced into the U.S. market, in net effect, free of 99 percent of Federal excise tax. As a result, in this example, the U.S. Treasury ultimately receives only one percent of the Federal excise tax on the imported products that are consumed in the United States. By contrast, domestically-produced wine consumed in the United States is fully taxed. This practice results in revenue loss from having untaxed goods circulating in commerce. It also has the effect of giving imported wine a clear tax advantage in the domestic market over domestically produced wine. Because the revenue loss (or tax break) comes in the form of a reduction of tax on imported product, it puts domestically produced products at a disadvantage as compared to imports in the U.S. market.

This result is inconsistent with the broader statutory excise tax regime, which (on net) generally imposes excise taxes on all subject goods consumed in the United States, whether produced domestically or imported for domestic

consumption. In the above example, by contrast, the importer/exporter winery has (on net) paid no Federal excise tax on the exported wine and virtually no Federal excise tax on the imported wine. In net effect, the winery has introduced imported wine 99% free of excise tax to compete with domestically produced wine that is fully taxed.

CBP currently permits this practice only with respect to wine. But as explained, the IRC imposes excise tax and provides exemptions from such tax for other goods, including distilled spirits, beer, tobacco products, and certain taxable fuel. Some producers have already requested that CBP extend its current treatment of wine to distilled spirits, and it is possible that firms dealing in these other goods may seek similar treatment.

5. Statutory Prohibition on Double Drawback

The allowance of substitution drawback claims in circumstances where internal revenue taxes have not been paid on the substituted product results in imported product being introduced into commerce with no net payment of excise tax—a ''double drawback'' that is at odds with the broader statutory schemes of both customs drawback and excise taxation.

As noted above, the IRC generally imposes excise taxes upon all covered domestic products and products imported for domestic consumption. The Customs Modernization and Informed Compliance Act (Mod Act), Public Law 103–182, 632, 107 Stat. 2057 (1993) (enacted as Title VI of the North American Free Trade Agreement Implementation Act), added a clause to 19 U.S.C. 1313(v) providing in relevant part that ''[m]erchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback.'' This provision is best read to preclude, among other things, exported or destroyed merchandise from being used as the basis for *both* a substitution drawback claim and a drawback of internal revenue taxes upon exportation or destruction. In other words, exported merchandise on which excise taxes have been paid *can* form the basis of a substitution drawback claim, but exported products on which *no* excise tax has been paid cannot be used to erase existing tax liability on imported products.

While Congress did not specifically define the term ''drawback'' in § 1313(v), its meaning is clear in context and within the broader statutory scheme governing drawback and excise taxes. In context, drawback encompasses the refund or remission of an excise tax that was paid, determined, or otherwise imposed by Federal law. The term is often used to refer to the refund of taxes that have been paid previously. *See, e.g.,* 19 U.S.C. 1313(a), (c)(1), (j)(1), (j)(2) (providing for taxes to be ''refunded as drawback''). But it is not limited to refunds, as other provisions use the term more broadly to refer to an unpaid tax liability that is extinguished. *See, e.g.,* § 1313(d) (''there shall be allowed . . . a drawback equal in amount to the tax found to have been paid *or determined*'') (emphasis added); sections 1313(n)(2), (n)(4), (o)(3) (using the phrase ''refunded, waived, or reduced'' to refer to the extinguishing of tax liability under subsections (a), (b), (f), (h), (p), and (q), each of which uses the phrase ''drawback''). Nor is section 1313(v)'s use of the term ''drawback'' limited to drawback of taxes imposed upon importation. Section 1313(v) refers to ''any'' claim for drawback. That broad and inclusive language contrasts with the language Congress used when it referred to only specific types of drawback. *See, e.g.,* sections 1313(j), (k)(1), and (1)(2)(A), (B), and (C) (referring to drawback ''under this section''); section 1313(n)(2) (referring to ''NAFTA drawback''); section 1313(n)(4) (referring to ''Chile FTA drawback''). The fact that Congress expressly limited ''drawback'' in certain subsections of section 1313 but did not do so when it referred to ''any'' drawback in subsection (v) indicates that ''drawback'' is not so limited for purposes of this subsection.

Accordingly, when wine, distilled spirits, beer, tobacco products, or other products subject to excise tax are exported from TTB-bonded premises ''without payment of tax,'' pursuant to 26 U.S.C. 5214, 5362, 5053, or 5704, the extinguishment of tax liability upon export is best understood as a form of drawback within the broad prohibition of 19 U.S.C. 1313(v).

This interpretation is further supported by the broader statutory scheme, which operates (in net effect) to subject all wine, distilled spirits, and beer consumed in the United States, whether produced domestically or imported, to an excise tax. The evident purpose of section 1313(v) is to advance that objective by preventing excessive revenue loss through multiple claims for drawback based on a single export. And to the same end, the statutes that govern withdrawal of wine, distilled spirits, beer, or tobacco products from TTB-bonded premises authorize regulations that may be necessary to protect revenue. *See* 26 U.S.C. 5175, 5214(a)(4), 5362(c), 5053(a), and 5704(b).

A contrary interpretation would undermine the statutory scheme of excise taxes that applies to imports and cause undue revenue loss. As just one example, a contrary reading of the statutory scheme would appear to permit an importer of distilled spirits to manufacture inexpensive liquor and destroy it, without having paid the excise tax imposed on domestically-produced liquor under 26 U.S.C. 5001. The importer in this scenario could then use the destruction of that domestically-produced liquor to seek a drawback under 19 U.S.C. 1313(j)(2) of the excise tax on liquor they import. Because the excise tax per gallon may far exceed the marginal cost of production of some types of liquor,[4] these manufacturers would receive a significant economic benefit, despite having never paid excise taxes on the domestically-produced liquor. They would also have avoided excise tax payment not once but twice—on both the domestically produced liquor and the imported liquor—without, on net, increasing domestic production for consumption or export. The statutory framework that imposes excise tax on the domestic consumption of alcohol would have been almost wholly subverted.

A contrary interpretation would also seem to permit the following hypothetical transaction:

> A distilled spirits importer imports 200 gallons of liquor into a TTB-bonded facility. It pays excise tax on 100 gallons and sells those in the United States. It then exports the remaining 100 gallons without payment of Federal excise tax. The importer files a § 1313(j)(2) drawback claim with CBP on the basis that the 100 gallons of imported liquor sold in the United States is commercially interchangeable with the 100 gallons of imported liquor exported without payment of excise tax. The importer receives a refund of 99 percent of the Federal excise taxes that it paid on the 100 imported gallons sold in the United States.

In this hypothetical, too, imported products would be introduced into the U.S. market, in net effect, free of 99 percent of Federal excise tax. As a result, the U.S. Treasury would receive only one percent of the Federal excise tax on the imported products that are consumed in the United States. Such essentially tax-free treatment of domestically-consumed imported

[4] In 2006, the U.S. Department of Agriculture estimated that that the cost of production of neutral grain spirits at about $0.53 per proof gallon. *See* ''Economic Feasibility of Ethanol Production from Sugar in the United States,'' *available at https://www.usda.gov/oce/reports/energy/EthanolSugarFeasibilityReport3.pdf.* The excise tax on distilled spirits is $13.50 per proof gallon (*see* 26 U.S.C. 5001(a)(1)), or more than 25 times the cost of production.

alcohol does not comport with the statutory drawback scheme in the IRC or Title 19.

Because drawback under 19 U.S.C. 1313 does not require CBP to verify whether substitute exported merchandise is tax paid, CBP does not have records that would identify instances of double drawback at issue here. Treasury Department audits and analyses have revealed that CBP began refunding excise taxes on wine under 19 U.S.C. 1313(j)(2) in approximately 2004 when the San Francisco office permitted drawback for such a claim. Some of these drawback claims may have included a double refund. It is possible that this change took place due to a misunderstanding of a 2004 amendment to the drawback statute designed to provide for drawback of the Harbor Maintenance Tax. *See* Miscellaneous Trade and Technical Corrections Act of 2003, Public Law 108–429, 118 Stat. 2433, 2579 at section 1557(a)(1) (2004). CBP has never issued a ruling or regulation authorizing the current treatment with respect to wine. Nevertheless, because CBP has approved substitution unused drawback claims based on wine exports for which no excise tax has been paid, its treatment of this issue must be changed through a notice and comment process. *See* 19 U.S.C. 1625(c).

Because of the concern that the statutory scheme was being subverted and because of concerns with revenue losses both realized and potential, on October 15, 2009, CBP proposed amending title 19 of the Code of Federal Regulations to preclude the filing of substitution drawback claims for internal revenue excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or where the substituted merchandise had been the subject of a different claim for refund or drawback of excise tax under any provision of the IRC. *See* Drawback of Internal Revenue Excise Tax, 74 FR 52928. The Alcohol and Tobacco Tax and Trade Bureau (TTB) within the Department of the Treasury published a related proposed rulemaking in the same October 15, 2009, edition of the **Federal Register** (Drawback of Internal Revenue Taxes, 74 FR 52937). Both notices solicited public comments on the proposed amendments. Subsequently, the notices of proposed rulemaking were withdrawn as announced in the **Federal Register** (75 FR 9359) on March 2, 2010.

A number of importers of distilled spirits have since sought the same treatment for their products that wine currently receives. Consistent with the analysis in this document, CBP has denied these requests, but has not corrected the treatment of wine through a notice and comment process, as required by 19 U.S.C. 1625(c).

6. Impact of Failing To Curtail Double Drawback

For the reasons explained above, CBP believes that the phrase ''any other claim for drawback'' in section 1313(v), read in context of the broader statutory scheme, encompasses the refund or remission of an excise tax that was paid, determined, or otherwise imposed by Federal law. To the extent section 1313(v) can be considered ambiguous, however, CBP has determined that there are compelling economic and fiscal reasons to resolve any ambiguity to preclude substitution drawback claims for excise tax paid on imported merchandise where no excise tax was paid on the substituted merchandise.

As explained below, firms dealing in distilled spirits, beer, tobacco products, and certain taxable fuels have a strong economic incentive to seek the same double drawback treatment currently afforded to wine. If CBP fails to adopt a uniform interpretation and application of section 1313(v), firms dealing in other products subject to Federal excise tax could also pursue substitution drawback claims similar to those that have been made for wine under section 1313(j)(2). The statutory provisions governing excise tax on other goods—beer, distilled spirits, tobacco products, and certain fuels—are substantially similar (and in many material respects, identical) to those governing excise tax on wine. Maintaining the current treatment of drawback claims for wine risks a growth in future revenue loss attributable to double drawback.

While proponents of the double drawback practice argue that it promotes exports, the observed economic effects of the practice do not support the view that it is an effective or efficient export promotion measure. Double drawback also places domestic products made for domestic consumption, which are subject to excise tax across the board, at a relative disadvantage to products imported for domestic consumption, for which 99 percent of the excise tax may be refunded based on a double drawback claim. The interpretation of section 1313(v) reflected in this proposed rule would avoid such market-distorting disparities.

A more detailed analysis follows in two parts. First, the available trade data suggest that double drawback promotes imports. In contrast, the trade data provide little evidence that total wine exports increased in response to double drawback. Second, a revenue analysis elucidates the incentives that double drawback creates for firms that deal in goods other than wine and provides initial projections of U.S. Government revenue loss that could result if these firms were provided the same double drawback treatment currently available only for substituted wine.

7. Analysis of Trade Statistics

Imported wine that benefits from double drawback enters the U.S. market with a substantial tax advantage over domestically produced wine. While this tax advantage exists for all imported wine benefiting from double drawback, it is largest for imported bulk wine. Because the customs value of imported bulk wine is lower than the value for bottled wine, excise tax levied by volume comprises a greater percentage of its average price, meaning that producers have a stronger economic incentive to claim double drawback on bulk wine.[5]

U.S. import statistics are consistent with these incentives. Import volumes of wine have grown rapidly during the period double drawback has been available. In 2004, total U.S. imports of wine, either bottled or bulk, were 576 million liters by volume.[6] *See* Table B. By 2016, that figure had grown to 880 million liters, an increase of over 50 percent. *Id.* Much of this increase in imports has been driven by bulk wine, which has made rapid gains in U.S. market share. In 2004, imported bulk wine accounted for 0.9 percent of domestic wine consumption. By 2016, imported bulk wine accounted for 6.2 percent of domestic wine consumption. *See* Table A. By volume, imports of bulk wine grew by 875 percent over that period. *See* Table B. Of course, other factors affecting wine trade unrelated to drawback may also have affected this growth.

In contrast to the rapid growth of imports, the U.S. trade statistics provide little evidence that total wine exports by volume increased from 2004 to 2016. The total volume of wine exports only grew by 5.5 percent over that period.

[5] For most imported wine, the tax is $0.282 per liter. 26 U.S.C. 5041(b). On a percentage of unit value basis, the tax is larger for bulk wine than for bottled wine, because the average value of bulk wine is less. The average value of imports of bulk wine hovered around $1.10 per liter in the years 2001 to 2016—much less than the average value per liter of imported bottled wines, which was about five times as great during the same period. *See* Table E.

[6] CBP believes the practice of double drawback began in or around 2004. For that reason, this analysis addresses trade statistics beginning in 2004.

See Table B. Disaggregating exports into those eligible for drawback and those ineligible for drawback casts further doubt on the effect of drawback on total exports. Exports from the United States to NAFTA countries, Canada and Mexico, are not eligible for substitution drawback. Therefore, they are not subsidized through the double drawback mechanism. Yet the volume of U.S. wine exports to these countries experienced a compound annual growth rate (CAGR) of 3.3 percent, while export volumes to countries for which substitution drawback was available experienced a 0.01 percent CAGR over the same period. *See* Table D.

Although the value of U.S. bottled wine exports has risen from 2004 to 2016 (from $600 million to $1.05 billion), the average unit value of the exports also increased during that period (from $2.30 to $6.10). *See* Table B and Table E. At the same time, volumes of bottled wine exports fell by a third. *See* Table B. U.S. wine export values grew substantially faster (5.2 percent CAGR) than did export volumes (0.4 percent CAGR) from 2004 to 2016. *See* Table B and Table C. This suggests that the increase in bottled wine exports by value was driven by price increases in the average unit value of the exports, not by an increase in export volumes. Because the excise tax on wine is levied by volume and not by value, this suggests that the increase in the value of exports is not directly connected to the availability of double drawback and is due to other factors.

While U.S. trade statistics do not indicate a significant increase in total wine exports, they do indicate a change in the composition of exports while double drawback has been available. From 2004 to 2016, the share of exported wine in bulk containers rose from 20.8 percent to 50.6 percent by volume, consistent with the shift in composition of imports discussed above. *See* Table B. This growth in the share of bulk exports is only evident for exports to non-NAFTA countries, which rose from 16.2 percent to 55.2 percent. *See* Table D. Exports to NAFTA countries, which are not eligible for double drawback, show no shift toward bulk exports over that period. *See id.* In addition, while U.S. exports of bulk wine have grown during the period from 2004 to 2016, growth in the volume of bulk wine imports has been much greater. Overall, during the same period, there has been an increase in the U.S. trade deficit for wine—including for bulk wine. *See* Table C.

In short, while it is not possible to say that double drawback is the primary driver of the wine trade trends, available trade data are consistent with the view that double drawback may have promoted wine imports but that it has not been an effective export promotion measure.

8. Revenue Loss Analysis

Maintaining the current double drawback treatment of wine and extending that treatment to other products subject to excise tax—distilled spirits, beer, tobacco products, and certain taxable fuels—would cause significant revenue loss to the U.S. Government.

(a) Data

Because drawback claims have not previously captured the tax-paid status on substituted exports, the exact amount of revenue lost to double drawback involving imported wine is not certain. Nevertheless, analysis of CBP import data and individual drawback claims at the firm level permit a reasonable estimate of the historical revenue loss from double drawback treatment of wine imports.[7] Because CBP has not kept drawback summary statistics based on tariff category and type of tax, this estimate with respect to wine is based on an analysis of individual drawback claims made by firms involved in wine trade and comparing the ratios of drawback claimed for duties with those claimed for taxes to differentiate between shipments of bulk and bottled wine. These firm-level data are statutorily-protected from public disclosure. *See* 26 U.S.C. 6103 (confidentiality of tax return information); 18 U.S.C. 1905 (Trade Secrets Act). With respect to other products, Treasury's estimates are based on current excise tax revenue for each product.[8] The estimated rate at which firms are projected to take advantage of double drawback (''takeup rate'') is informed by the economic incentives and data described below—chiefly, excise tax as a share of product value, and the potential growth in exports resulting from the expansion of double drawback treatment.

(b) Theory, Assumptions, and Estimate

Excise taxes on most products addressed in this rule are applied based on volume, not as a percentage of value. For example, the standard excise tax on wine is $1.07 per wine gallon.[9] The greater the ratio of excise tax to product value, the greater the incentive to avoid payment of the tax through means such as double drawback. The historical experience with respect to wine bears this out: Excise tax as a share of customs value has been about 5 percent for bottled wine and 25 percent for bulk wine in recent years. *See* Table E. Based on differences in the tariff rates for bottled and bulk wine that are reflected in the amounts of individual drawback transactions, Treasury estimates the takeup rate for double drawback of wine to be 13 percent for bottled imports and 24 percent for bulk imports. The difference in these rates indicates that tax as a share of value is an important determinant of takeup rate. For some products, such as beer, tax as a share of customs value is similar to that of wine. For other products subject to excise tax, tax as a share of value is much higher than it is for wine—sometimes exceeding 100 percent. Indeed, for some distilled spirits, excise tax can be many multiples the cost of production.[10] Excise tax as a share of tobacco products' value is also much higher than it is as a share of the value of wine.[11] This dynamic creates a strong incentive for firms that deal in these other products to seek double drawback of excise taxes paid on imports by inexpensively manufacturing domestic products for either export or destruction. Because of the strength of this incentive, firms dealing in these products likely would take advantage of double drawback at higher rates than the wine industry has historically if it were available to them.

A second factor of particular concern is the market-distorting incentive for re-routing shipments that an expansion of double drawback would create. Double drawback creates an incentive for firms that both import and export to route a shipment destined for another country through the United States to claim excise tax relief on imports into the United States. Under this approach, first, a firm imports 200 units of, for example, distilled spirits. It removes 100 units from customs custody for domestic sale and pays excise tax for their import. It then imports the second 100 units into TTB bond, without

[7] *See* U.S. International Trade Commission Interactive DataWeb, *available at https://dataweb.usitc.gov/* (trade data by product classification, volume, value, and country of origin, retrieved from the U.S. Census Bureau).

[8] *See* IRS Statistics of Income Tax Stats—Excise Tax Statistics, *available at https://www.irs.gov/statistics/soi-tax-stats-excise-tax-statistics/.*

[9] 26 U.S.C. 5041(b).

[10] For example, the average customs value of exported grain alcohol is $2.78 per proof gallon (USITC DataWeb, *supra* note 7) while the tax is $13.50 per proof gallon (26 U.S.C. 5001(a)(1)). The customs value includes profits and other expenses in addition to the cost of production. In 2006, the U.S. Department of Agriculture estimated the cost of production of neutral grain spirits at about $0.53 per proof gallon. *See* ''Economic Feasibility of Ethanol Production from Sugar in the United States,'' *supra* note 1.

[11] *See* Table E; *infra* note 19.

having paid excise tax on their import and then exports the product from bond, and also uses that exportation to seek drawback under 19 U.S.C. 1313(j)(2) of the import tax paid on the first 100 units. The first 100 units of distilled spirits would then have been consumed domestically at 1 percent of the normal tax rate, without increasing domestic production or net exports. Depending on the cost of shipping, firms would have an incentive to route shipments destined for other countries through the United States—without increasing domestic production or exports—to claim double drawback on their U.S. imports. In the analysis, we assume trade re-routing of all distilled spirits from Canada and Mexico bound for non-NAFTA countries is feasible. We also assume that trade re-routing of gin, vodka, and grain alcohol worldwide is feasible, though the analysis does not rely on substantial rerouting of these products.

The following estimates also assume a 7 percent reduction in revenue loss by comparison to the historical data concerning wine due to the Craft Beverage Modernization Act (CBMA), Public Law 115–97, § 13801–13808 (2017). The CBMA provides lower overall effective tax rates for smaller producers than for larger producers. This assessment of the effects of the CBMA is based on the assumption that most double drawback claims would be taken by large multinational firms paying the full rate on marginal imports above the limit identified in the CBMA. The transaction costs involved in drawback support the view that drawback most benefits larger firms that are involved in both exporting and importing.

The following estimates further assume that double drawback of wine, distilled spirits, and beer would grow with real GDP. That is, Treasury assumes that consumption of excise-taxed beverages, and drawback on those taxes, would grow with the overall economy. Treasury uses the Administration's forecast of taxable fuel and tobacco excise tax revenue to estimate change over time. Both of these forecasts decrease slightly over time, consistent with recent trends in excise revenue.[12]

In total, the incentives for firms that deal in distilled spirits, beer, tobacco products, and certain fuels—in addition to the continued double drawback treatment of wine—could cause a revenue loss of $674 million to $3.3 billion on an average annual basis over the next ten years, if double drawback treatment were extended to commodities other than wine and not eliminated.[13]

(c) Wine

In fiscal year 2015, CBP paid $54.9 million in excise tax refunds and had initial tax collections from wine imports of $335 million, according to CBP data.[14] As noted above, the tax as a share of customs value is 5 percent for bottled wine and 25 percent for bulk wine. The estimated takeup rate—that is, the rate of double drawback claims—is 13 percent for bottled imports and 25 percent for bulk imports, demonstrating that tax as a share of value is an important determinant of the takeup rate. Assuming that double drawback continues to grow with real GDP, the current treatment of wine is estimated to cause between $51 million and $69 million in revenue loss to the U.S. Government annually over the next ten years.[15]

(d) Distilled Spirits

With respect to distilled spirits, fiscal year 2016 excise tax revenue from imports was $1.5 billion, according to TTB collections data. A large portion of imports are, however, imported into TTB bond and then are treated as domestic collections. U.S. Census Bureau data suggest actual import excise tax revenue is closer to $2.6 billion.[16] The tax as a share of customs value for distilled spirits—currently $13.50 per proof gallon [17]—is 5 to 8 times higher than it is for wine, creating a significantly greater incentive to export to take advantage of double drawback. Further, as noted above, the tax is much higher than the cost of production for inexpensive distilled spirits.[18] For this reason, Treasury expects strong behavioral responses to generate substitution drawback claims if distilled spirits become eligible for double drawback, including purposeful destruction of inexpensive distilled spirits and routing of goods destined for other countries through the United States when feasible. We estimate that up to 45 percent of imported spirits would be commercially viable predicates for double drawback claims.[19] Varying the projected takeup rate between 25 percent and 75 percent for these claims, annual U.S. Government revenue loss from allowing double drawback on distilled spirits is estimated to range from $312 million to $937 million annually over ten years.

(e) Beer

With respect to beer, fiscal year 2016 excise tax revenue from imports was $542 million, according to TTB collections data. The tax of $18 per barrel is 12.3 percent of the value of imports and 15.5 percent of the value of exports,[20] suggesting firms have a stronger incentive to claim double drawback on beer than bottled wine. However, qualifying, non-NAFTA exports of beer amount to only 4 percent of imports, suggesting limited scope for

[12] Excise Tax Statistics, *supra* note 8. From 2010 to 2016, excise tax revenue for imported beer, wine, and distilled spirits grew much more quickly than revenue for tobacco products or taxable fuels. *See id.*

[13] These estimates are in nominal U.S. dollars, whereas the figures in the Executive Orders 13563 and 12866 analysis are in undiscounted and discounted 2016 U.S. dollars. Because of this difference, only a rough estimate of the total transfers from the rule and this alternate analysis can be determined. This estimate can be determined by adding the revenue losses of extending double drawback to the rule's undiscounted net transfers from the U.S. Government to trade members.

[14] *See id.* Refunds or drawback paid in any given year may be paid for imports made in previous years. The $54.9 million figure is a summation of individual drawback claims from CBP data that are statutorily-protected from public disclosure. TTB publishes the $335 million figure. *See* TTB Statistical Release, ''Tax Collections Cumulative Summary, FY 2015,'' *available at https://www.ttb.gov/statistics/final15.pdf.*

[15] These estimates are slightly different from the wine double drawback estimates shown in Table 49 of the Executive Orders 13563 and 12866 analysis. This is because these estimates are in nominal U.S. dollars, whereas the figures in Table 49 are in undiscounted 2016 U.S. dollars.

[16] Accessed through the USITC DataWeb, *supra* note 7.

[17] 26 U.S.C. 5001(a)(1). The CBMA reduces the excise tax on a portion of imported goods. The estimates reported in this analysis assume the CBMA is extended indefinitely, reducing the revenue loss by roughly 7 percent.

[18] *See supra* note 10.

[19] For the years 2014–2016, vodka, gin, and grain alcohol imports represented 34% of total spirits imports. Because the cost of production for these spirits is so low relative to the tax, we expect a strong behavioral response, including increased exports, trade re-routing, and destruction, such that all imports could qualify for duty drawback. In contrast, brandy, liqueurs, and cordials are relatively high value spirits, making destruction and increased exports less feasible. For these products, we assume that opportunities to claim double drawback are limited by current exports, which amount to 2 percent of current spirits imports. Finally, we assume that all spirits exports from Canada and Mexico to non-NAFTA countries could be re-routed through the United States to take advantage of double drawback. Using United Nations International Trade Statistics data for 2014–2016, we estimate that, at current trade levels, this re-routing would generate double drawback claims for up to 8 percent of US spirits imports. Adding these shares of imports together, without rounding, sums to 45 percent of US imports.

[20] In 2016, the average customs value of imported beer was $145.98 per barrel while the average free alongside ship (FAS) value of exports was $116.06 per barrel. *See* USITC DataWeb, *supra* note 7. The U.S. Census Bureau defines ''customs value'' and ''FAS export value'' in their Guide to Foreign Trade Statistics, § 8, *available at https://www.census.gov/foreign-trade/guide/sec2.html#customs_value.* Treasury uses customs value and FAS value, because data on cost of production are not available.

takeup of double drawback. Varying the projected takeup rate between 10 percent and 30 percent on existing imports and exports, and varying the increase in qualifying exports between 10 percent and 30 percent, annual U.S. Government revenue loss from extending double drawback to beer is estimated to range from $9 million to $28 million annually over ten years.

(f) Tobacco Products

With respect to tobacco products, fiscal year 2016 excise tax revenue on imports was $829 million according to TTB collections data. The tax incentives to claim double drawback are especially strong for tobacco products. For instance, in 2016, the Federal excise tax on a carton of cigarettes was 199 percent of the average customs value of a carton of imported cigarettes and 408 percent of the average export value of a carton of cigarettes exported from the United States based on U.S. Census Bureau trade data.[21] The tax rate by value is about 40 times larger for cigarettes than that for bottled wine, suggesting the incentive to claim drawback on cigarettes is considerably larger than the incentive to claim drawback on wine. Extending the double drawback treatment to tobacco products would create significant incentives to shift production of tobacco products overseas. It would also create a great incentive for importers to contract with domestic producers to match imports and exports for drawback; the incentive would be to import products for domestic sale and export domestically produced cigarettes. Because domestically produced tobacco products account for 95 percent of domestic tobacco consumption, Treasury assumes that tobacco firms would gradually respond by contracting with importers and setting up foreign production facilities. Accounting for this slow ramp-up in drawback claims, Treasury estimates that between 3 percent and 18 percent of excise revenue on tobacco products would be lost due to an extension of double drawback to tobacco products over the next 10 years, or between $332 million and $2.2 billion annually.[22] In the long run, Treasury estimates that U.S. Government revenue losses would be substantially higher, with increasing shifts of domestic production overseas.

(g) Taxable Fuels

Finally, with respect to taxable fuels, current annual excise tax revenue on imports is roughly $2 billion according to U.S. Census Bureau data on imports of gasoline and diesel fuel.[23] Due to the lack of detailed data on fuel imports, differentiating between those importations eligible for drawback under 19 U.S.C. 1313 and those that are not, it is quite difficult to estimate the takeup rate on substitution drawback for taxable fuels. Even a small takeup rate, however, could have a significant economic impact. Assuming, for example, that 1 percent to 5 percent of imported fuel receives double drawback of excise taxes, the U.S. Government revenue loss would range between $20 million and $98 million annually over ten years.

9. Conclusion

This proposed rule would protect the integrity of excise tax revenue collections by ensuring that 19 U.S.C. 1313(j)(2) substitution drawback is not employed to evade the statutory prohibition on using a single exportation as the basis for two drawback claims. It would preclude the filing of substitution drawback claims for excise tax paid on imported merchandise in situations where no excise tax was paid upon the substituted merchandise or limit the amount of drawback allowable to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise, and thus eliminate double drawback. CBP invites comments from interested members of the public on this proposal.

TABLE A—IMPORT SHARES BY VOLUME OF TOTAL U.S. TABLE WINE CONSUMPTION [1]

Year	Imported wine container size [2]		Imported sum
	Two liters or less (bottles)	Over four liters (bulk) [3]	
2004	26.0	0.9	26.9
2005	26.8	1.8	28.6
2006	26.5	3.6	30.1
2007	27.2	3.8	30.9
2008	25.4	4.6	30.0
2009	24.5	8.7	33.2
2010	25.7	6.5	32.2
2011	24.6	7.7	32.3
2012	22.8	12.7	35.5
2013	23.5	8.9	32.4
2014	21.9	7.3	29.2
2015	22.9	6.6	29.5
2016	21.9	6.2	28.1
2004–2016:			
CAGR [4] (Pct)	−1.4	17.1	0.4
Total growth (Pct)	−15.7	567.2	4.5

Sources:
U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed February 2, 2018.
Alcohol and Tobacco Tax and Trade Bureau, ''Tax Collections,'' accessed March 2, 2018.
1. Total U.S. wine consumption is estimated using gross excise tax collections and tax rates for wine.
2. The ITC website explains that: ''General Imports measure the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses under Customs custody or from Foreign Trade Zones.''
3. The amount of imported wine in containers between 2 and 4 liters in size is negligible and is omitted from the table.

[21] In 2016, the average customs value of 1,000 imported cigarettes was $25.335 while the average FAS value of 1,000 exported cigarettes was $12.345. *See* USITC DataWeb, *supra* note 6. The Federal excise tax on 1,000 cigarettes is $50.33. 26 U.S.C. 5701(b)(1).

[22] The range of possible outcomes is large, primarily due to uncertainty in the timing of firm responses rather than the magnitude of response. Specifically, Treasury does not know how quickly tobacco companies might set up new or use existing overseas production operations to serve the U.S. market.

[23] Retrieved from USITC DataWeb, *supra* note 7.

4. CAGR is compound annual growth rate.

Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit imports codes 2204215005, 2204215015, 2204215015, 2204215025, 2204215030, 2204215035, 2204215040, 2204215045, 2204215046, 2204215050, 2204215055, 2204215060, and 2204296000.

TABLE B—VOLUME OF U.S. TOTAL WINE EXPORTS AND GENERAL IMPORTS BY CONTAINER SIZE (ALL COUNTRIES)

[Millions of liters of wine with not over 14 percent alcohol by volume]

Year	Total exports [1]		Exported sum	Pct share in large containers	General imports [2]		Imported sum	Pct share in large containers
	Container	Size			Container	Size		
	Two liters or less (bottles)	Over two liters (bulk)			Two liters or less (bottles)	Over four liters (bulk) [3]		
2004	259	68	327	20.8	556	20	576	3.5
2005	177	100	278	36.2	602	40	642	6.2
2006	189	138	327	42.3	615	84	699	12.0
2007	207	169	376	45.0	661	92	753	12.2
2008	209	201	410	49.0	623	112	735	15.2
2009	177	171	349	49.2	612	218	830	26.3
2010	171	196	368	53.4	658	168	826	20.3
2011	185	190	375	50.8	673	211	884	23.9
2012	196	167	364	46.1	659	365	1024	35.6
2013	207	172	379	45.4	671	255	926	27.5
2014	195	176	371	47.5	655	219	874	25.1
2015	205	180	385	46.7	685	197	882	22.3
2016	171	175	345	50.6	685	195	880	22.2
2004–2016:								
CAGR [4] (Pct)	−3.4	8.2	0.4	7.7	1.8	20.9	3.6	16.7
Total growth (Pct)	−34.1	156.6	5.5	143.2	23.2	875.0	52.8	538.2

Source: U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed February 2, 2018.

1. The ITC describes total exports as ''Domestic exports plus foreign exports'' on their website.

2. The ITC website explains that ''General Imports measure the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses under Customs custody or from Foreign Trade Zones.''

3. The amount of imported wine in containers between 2 and 4 liters in size is negligible and is omitted from the table.

4. CAGR is compound annual growth rate.

Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit exports codes 2204214000 and 2204290020. HTS imports codes used include 2204215005, 2204215015, 2204215025, 2204215030, 2204215035, 2204215040, 2204215045, 2204215046, 2204215050, 2204215055, 2204215060, and 2204296000.

TABLE C—VALUE OF U.S. TOTAL WINE EXPORTS AND GENERAL IMPORTS BY CONTAINER SIZE (ALL COUNTRIES)

[Millions of U.S. dollars of wine with not over 14 percent alcohol by volume]

Year	Total exports, free alongside ship (FAS) [1]		Exported sum	Pct share in large containers	General imports, general customs value [2]		Imported sum	Pct share in large containers
	Container	Size			Container	Size		
	Two liters or less (bottles)	Over two liters (bulk)			Two liters or less (bottles)	Over four liters (bulk) [3]		
2004	600	82	682	12.0	2,658	19	2,677	0.7
2005	452	91	543	16.8	2,891	35	2,926	1.2
2006	616	121	737	16.4	3,153	67	3,220	2.1
2007	635	151	786	19.2	3,494	77	3,571	2.2
2008	645	182	827	22.0	3,511	114	3,625	3.1
2009	549	202	751	26.9	3,029	157	3,186	4.9
2010	702	212	914	23.2	3,143	149	3,292	4.5
2011	869	213	1,082	19.7	3,420	225	3,645	6.2
2012	905	199	1,104	18.0	3,458	400	3,858	10.4
2013	1,037	235	1,272	18.5	3,652	281	3,933	7.1
2014	921	240	1,161	20.7	3,708	242	3,950	6.1
2015	1,035	227	1,262	18.0	3,709	202	3,911	5.2
2016	1,050	205	1,255	16.3	3,779	217	3,996	5.4
2004–2016:								
CAGR [4] (Pct)	4.8	7.9	5.2	2.6	3.0	22.5	3.4	18.5
Total growth (Pct)	75.0	150.0	84.0	35.9	42.2	1,042.1	49.3	665.1

Source: U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed February 15, 2018.

The ITC describes total exports as ''Domestic exports plus foreign exports'' on their website. The U.S. Census Bureau provides definitions of FAS export value and customs value in their Guide to Foreign Trade Statistics, § 8, *available at https://www.census.gov/foreign-trade/guide/sec2.html#customs_value.*

1. The ITC website explains that ''General Imports measure the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses under Customs custody or from Foreign Trade Zones.''

2. The amount of imported wine in containers between 2 and 4 liters in size is negligible and is omitted from the table.
3. CAGR is compound annual growth rate.
Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit exports codes 2204214000 and 2204290020. HTS imports codes used include 2204215005, 2204215015, 2204215025, 2204215030, 2204215035, 2204215040, 2204215045, 2204215046, 2204215050, 2204215055, 2204215060, and 2204296000.

TABLE D—VOLUME OF U.S. TOTAL WINE EXPORTS [1] BY DESTINATION

[Millions of liters of wine with not over 14 percent alcohol by volume]

Year	Exports to NAFTA countries	Pct share in large containers [2]	Exports to non-NAFTA countries	Pct share in large containers
2004	37	56.7	290	16.2
2005	35	50.7	243	34.1
2006	40	38.0	287	42.9
2007	50	37.2	325	46.2
2008	55	39.8	354	50.5
2009	48	29.4	301	52.3
2010	42	33.3	325	56.0
2011	46	33.4	329	53.2
2012	53	30.9	311	48.6
2013	50	18.0	330	49.6
2014	57	22.6	314	52.0
2015	61	27.0	324	50.4
2016	55	25.6	291	55.2
2004–2016:				
CAGR [3] (Pct)	3.3	−6.4	0.0	10.8
Total growth (Pct)	47.6	−54.8	0.2	240.6

Source: Treasury calculations based on import data from U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed March 2, 2018.
1. The ITC website describes total exports as ''Domestic exports plus foreign exports.''
2. Large containers is defined here as containers over 2 liters in size.
3. CAGR is compound annual growth rate.
Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit exports codes 2204214000 and 2204290020.

TABLE E—AVERAGE VALUE OF U.S. TOTAL WINE EXPORTS AND GENERAL IMPORTS AND EFFECTIVE TAX RATES BY CONTAINER SIZE (ALL COUNTRIES)

[U.S. dollars per liter of wine with not over 14 percent alcohol by volume]

Year	Average value per liter of total exports [1]				Average value per liter of general imports [2]			
	Two liters or less (bottles)		Over two liters (bulk)		Two liters or less (bottles)		Over four liters (bulk) [3]	
	Value per liter [4]	Tax/value (pct)	Value per liter	Tax/value (pct)	Value per liter	Tax/value (pct)	Value per liter	Tax/value (pct)
2004	2.3	12.2	1.2	23.5	4.8	5.9	1.0	29.8
2005	2.5	11.1	0.9	31.2	4.8	5.9	0.9	32.3
2006	3.3	8.7	0.9	32.2	5.1	5.5	0.8	35.4
2007	3.1	9.2	0.9	31.6	5.3	5.3	0.8	33.8
2008	3.1	9.1	0.9	31.2	5.6	5.0	1.0	27.8
2009	3.1	9.1	1.2	24.0	4.9	5.7	0.7	39.2
2010	4.1	6.9	1.1	26.2	4.8	5.9	0.9	31.9
2011	4.7	6.0	1.1	25.3	5.1	5.6	1.1	26.5
2012	4.6	6.1	1.2	23.8	5.2	5.4	1.1	25.8
2013	5.0	5.6	1.4	20.7	5.4	5.2	1.1	25.7
2014	4.7	6.0	1.4	20.7	5.7	5.0	1.1	25.6
2015	5.0	5.6	1.3	22.4	5.4	5.2	1.0	27.6
2016	6.1	4.6	1.2	24.1	5.5	5.1	1.1	25.4
2004–2016:								
CAGR [5] (Pct)	8.5	−7.8	−0.2	0.2	1.2	−1.2	1.3	−1.3
Total growth (Pct)	165.7	−62.4	−2.6	2.6	15.4	−13.3	17.1	−14.6

Source: U.S. International Trade Commission, ''Interactive Tariff and Trade DataWeb,'' accessed February 2–15, 2018.
1. The ITC describes total exports as ''Domestic exports plus foreign exports'' on their website.
2. The ITC website explains that ''General Imports measure the total physical arrivals of merchandise from foreign countries, whether such merchandise enters consumption channels immediately or is entered into bonded warehouses under Customs custody or from Foreign Trade Zones.''
3. The amount of imported wine in containers between 2 and 4 liters in size is negligible and is omitted from the table.
4. The tax as a share of value is approximated by dividing the most common tax rate (28.266 cents per liter) by the average customs value per liter.
5. CAGR is compound annual growth rate.
Note: Wine trade data in the table include Harmonized Tariff Schedule (HTS) 10-digit exports codes 2204214000 and 2204290020. HTS imports codes used include 2204215005, 2204215015, 2204215025, 2204215030, 2204215035, 2204215040, 2204215045, 2204215046, 2204215050, 2204215055, 2204215060, and 2204296000.

III. Explanation of Proposed Regulations

The following proposed regulatory amendments are generally based on 19 U.S.C. 1313, including the new requirements, timeframes, and related operational decisions necessitated by TFTEA. When proposed regulatory language is based, at least in part, on authority other than 19 U.S.C. 1313, these instances are noted below.

A. Proposed New Part 190

CBP based the regulatory structure of the proposed new part 190 on the current part 191 in order to ease the transition for drawback practitioners by attempting to ensure, wherever possible, that the numerical regulations in each part correspond with each other. In some regulations, while the name of a section has changed, the content of the proposed section generally aligns with the content of the corresponding section in part 191. For example, § 191.10, Certificate of delivery, deals with transfers of merchandise and requirements related to certificates of delivery as evidence of the transfers. However, proposed § 190.10, Transfer of merchandise, also deals with transfers of merchandise but it is not called ''certificate of delivery'' because TFTEA eliminated certificates of delivery (as well as certificates of manufacture and delivery). In other instances, it was necessary to reserve a section (*e.g.,* § 190.76, Landing certificate) if the corresponding section in part 191 was no longer required or to add a new section (*e.g.,* § 190.63, Liability for drawback claims) if there was no corresponding section in part 191. However, for the most part, the regulations in proposed part 190 directly correspond with those in part 191. Accordingly, when describing the proposed regulations, comparisons to the corresponding section in part 191 are included to facilitate the transition to TFTEA-Drawback. Generally, these comparisons will note the major differences between the proposed regulation and the corresponding regulation in part 191 (such as in regulations dealing with substitution which is now generally based on the HTSUS), or, in many cases, will indicate that there are no differences (other than the references being to sections in part 191) or that the differences are minor. These minor differences will usually include grammatical or stylistic edits (for example, changing ''shall'' to ''will'' or ''must'') or nomenclature changes (for example, changing ''Customs'' to ''CBP'' such as in ''CBP custody'' or ''CBP supervision'').

New part 190 is drafted with a scope section and a section regarding claims filed under NAFTA followed by 19 subparts: General Provisions; Manufacturing Drawback; Unused Merchandise Drawback; Rejected Merchandise; Completion of Drawback Claims; Verification of Claims; Exportation and Destruction; Liquidation and Protest of Drawback Entries; Waiver of Prior Notice of Intent to Export; Accelerated Payment of Drawback; Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol; Supplies for Certain Vessels and Aircraft; Meats Cured With Imported Salt; Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account; Foreign-Built Jet Aircraft Engines Processed in the United States; Merchandise Exported From Continuous CBP Custody; Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications; Substitution of Finished Petroleum Derivatives; Merchandise Transferred to a Foreign Trade Zone From CBP Custody; Drawback Compliance Program.

Section 190.0 briefly describes the scope of the new proposed part 190 dealing with drawback as amended by TFTEA.

Section 190.0a states that claims involving NAFTA are provided for in part 181. This section contains only grammatical changes from the corresponding section in part 190.

Subpart A—General Provisions

Section 190.1 briefly describes the authority of the Commissioner of CBP to prescribe, and of the Secretary of the Treasury to approve, rules and regulations regarding drawback. It is proposed to amend the corresponding section in part 191 as well as to identify Treasury Department Order Number 100–16 and DHS Delegation Order 7010.3 as sources of authority. *See* 19 CFR part 0.

Section 190.2 lists definitions used throughout the proposed part 190. This section differs from the corresponding section in part 191 in that the definitions for certificate of delivery, certificate of manufacture and delivery, and commercially interchangeable merchandise have been removed and the definitions for the following terms were added: Bill of materials; document; drawback office; formula; intermediate party; per unit averaging; schedule B; sought chemical element; and wine.

Section 190.3 provides information regarding the duties, taxes, and fees subject or not subject to drawback. This proposed regulation differs from the corresponding regulation in part 191 in that it generally provides for refunds of duties, taxes, and fees based on the changes to 19 U.S.C. 1313(l) stemming from TFTEA. This proposed regulation differs from the current corresponding regulation in part 191 by allowing drawback on the merchandise processing fee (MPF) generally, whereas 19 CFR 191.3(a)(4) limits drawback on MPF to situations only involving claims under 19 U.S.C. 1313(j) and 19 U.S.C. 1313(p)(2)(A)(iii) or (iv). Consistent with the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429), which amended 19 U.S.C. 1313 to allow, inter alia, harbor maintenance taxes (HMT) refunds, this proposed regulation also allows drawback on HMT for claims under the provisions which provide for drawback of tax.[24]

Similarly, but subject to the limitations under 19 U.S.C. 1313 prior to being amended by TFTEA, this document proposes to update 19 CFR 191.3 by creating a new paragraph (a)(5) to allow drawback on HMT, but limited to situations involving only claims under 19 U.S.C. 1313(j) and 19 U.S.C. 1313(p)(2)(A)(iii) or (iv). In addition, 19 CFR 191.3(b)(1) is revised to otherwise prohibit HMT refunds except under the provisions specified in proposed new paragraph (a)(5). Relatedly, section 191.3 is retitled as ''duties, taxes, and fees subject or not subject to drawback'' for clarifying purposes.

Section 190.4 provides information regarding drawback and merchandise in which the U.S. Government has an interest. This section replicates the corresponding section in part 191.

Section 190.5 states that drawback is available on goods shipped to Guantanamo Bay and that drawback under 1313(j)(1) is permitted on merchandise shipped to certain insular possessions and trust territories. This section differs from the corresponding section in the current part 191 because the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429), amended 19 U.S.C. 1313 by adding paragraph (y) to allow drawback under 19 U.S.C. 1313(j)(1) on entries shipped from the customs territory of the United States to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, and Palmyra Island.

[24] Title 19 of the Code of Federal Regulations may also refer to the harbor maintenance tax as the harbor maintenance fee (HMF).

Accordingly, while this 2004 change was not previously made in part 191, this document proposes to clarify this modification in proposed § 190.5 and in existing § 191.5. Further, consistent with proposed § 190.5, it is proposed to amend § 191.5 to clarify that drawback is not allowable on merchandise shipped to Puerto Rico from elsewhere in the customs territory of the United States because Puerto Rico is part of the customs territory of the United States (*see* 19 CFR 101.1).

Section 190.6 specifies who has the authority to sign or electronically certify drawback documents. This section differs from the corresponding section in part 191 in that it provides for electronic signatures, removes references to Certificates of Delivery and Certificates of Manufacture and Delivery, and includes additional references to bill of materials and formulas.

Section 190.7 provides information on general manufacturing drawback rulings, states that the process to modify these rulings is the same as provided for in § 190.8, and also clarifies the longstanding CBP procedures for the modification of these rulings. This section differs from the corresponding section in part 191 in that it makes TFTEA-conforming changes, such as adding the requirement to provide the 8-digit HTSUS number, and it contains grammatical and nomenclature changes.

Section 190.8 provides information on specific manufacturing drawback rulings and establishes a process to modify these rulings to comply with TFTEA-Drawback requirements by providing the ability to annotate the ruling with the 8-digit HTSUS numbers for rulings issued prior to February 24, 2018, if accompanied by the relevant certification. This section differs from the corresponding section in part 191 in that it makes TFTEA-conforming changes, such as adding the requirement to provide the 8-digit HTSUS number, and it contains grammatical and nomenclature changes.

Section 190.9 provides information regarding agency relationships detailing how the owner of the identified merchandise, the designated imported merchandise, and/or the substituted merchandise used to produce an exported article may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b). This section is similar to the corresponding section in part 191; however, it updates the language by removing references to Certificates of Delivery and includes the requirement to provide the 10-digit HTSUS number.

Section 190.10 provides information regarding documenting and maintaining records regarding transfers of merchandise. This section contains significant differences specific to TFTEA-Drawback, from the corresponding section in part 191.

Section 190.11 provides information on the valuation of the designated imported merchandise for drawback claims, as well as for the application of the ''lesser of'' rules for substitution claims (*i.e.,* for exported or destroyed merchandise and articles, as well as substituted merchandise used in manufacturing). The corresponding regulation in part 191 deals with tradeoff, which was provided for in 19 U.S.C. 1313(k) prior to the TFTEA amendments. TFTEA deleted the provision that authorized tradeoff in 19 U.S.C. 1313(k) and replaced it with an unrelated new provision establishing joint and several liability for drawback claims.

Section 190.12 provides information regarding situations when a claimant files under an incorrect provision and this section states that the claim may be deemed filed pursuant to any other provision if it is determined that drawback is allowable under that provision but not under the provision as originally filed. With the exception of cross-references, this section is generally unchanged from the corresponding section in part 191.

Section 190.13 states that drawback is available under 19 U.S.C. 1313(q) on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to certain other provisions. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.14 provides for identification of merchandise or articles through accounting methods in situations not involving substitution, which remain the same as in part 191 and are based on a standard of fungibility. This section differs from the corresponding section in part 191 regarding the five-year time period and generally due to minor clarifying edits as well as grammatical and nomenclature changes.

Section 190.15 provides general information regarding recordkeeping requirements. With the exception of the recordkeeping time period, this section is unchanged from the corresponding section in part 191.

Subpart B Contains Requirements Specific to Manufacturing Drawback Claims

Section 190.21 provides the general rule regarding direct identification manufacturing drawback claims. This section differs from the corresponding regulation in part 191 in that it incorporates changes such as the amount of drawback provided for and the limitation of drawback of duties regarding flour or by-products of imported wheat.

Section 190.22 provides the general rule regarding substitution manufacturing drawback claims. This section differs from the corresponding regulation in part 191 in that it incorporates changes to 19 U.S.C. 1313(b) brought about in Section 906 of TFTEA such as the 8-digit HTSUS substitution standard and provides for the ''lesser of'' rule as it applies to TFTEA-Drawback and also contains grammatical and nomenclature changes. This section also includes language regarding the preclusion of claiming Federal excise taxes discussed in detail in the section titled *Federal Excise Tax and Substitution Drawback Claims.*

Section 190.23 details the methods and requirements for claiming drawback specific to manufacturing claims. This section differs significantly from the corresponding section in part 191 in that it is titled differently, it provides for a different methodology for claiming drawback (relative value) and it is slightly reordered.

Section 190.24 directs parties involved in drawback-related transactions to § 190.10, the general section dealing with transfers of merchandise. This section differs from the corresponding section in part 191 by referencing the appropriate section in the proposed part dealing with transfers of merchandise.

Section 190.25 directs parties involved in the destruction of merchandise for drawback-related transactions to § 190.71, which contains the procedures for destroying merchandise under CBP supervision. This section is nearly identical to the corresponding section in part 191.

Section 190.26 provides information regarding recordkeeping requirements generally and specifically requires documents enabling CBP to trace the articles manufactured or produced from importation, through any transfers, to exportation or destruction. This section is substantially similar to the corresponding section in part 191 but it differs due to certain grammatical and nomenclature changes and it contains TFTEA-based modifications such as requiring the 8-digit HTSUS number rather than referencing same kind and quality.

Section 190.27 provides general information on the time limitations regarding manufacturing drawback. This

section is substantially similar to the corresponding section in part 191 but it differs in that it contains certain grammatical and nomenclature changes and TFTEA-based modifications such as changing the time period to 5 years after importation, from the 3-year time period after date of receipt by the manufacturer or producer at the factory in § 191.27.

Section 190.28 details the parties entitled to file a claim in situations involving manufacturing drawback. This section differs from the corresponding section in part 191 due only to a few grammatical changes.

Section 190.29 requires a claimant filing a manufacturing drawback claim to make certifications regarding the availability of the applicable bill of materials or formula including the HTSUS subheading number(s) and the quantities of merchandise. This regulation is new and does not have a corresponding regulation in part 191; however, the type of documentation covered by this certification has generally been required by CBP as part of a manufacturing drawback claim.

Subpart C Provides Specific Requirements Dealing With Unused Merchandise Drawback

Section 190.31 provides the general rule regarding direct identification unused merchandise drawback claims. This section differs from the corresponding regulation in part 191 in that it incorporates TFTEA-based changes to 19 U.S.C. 1313(j)(1) such as the 5-year period for filing a claim and it contains grammatical and nomenclature changes.

Section 190.32 provides the general rule regarding substitution unused merchandise drawback claims. This section differs from the corresponding regulation in part 191 in that it incorporates TFTEA-based changes to 19 U.S.C. 1313(j)(2) such as the 5-year period for filing a claim and HTSUS-based substitution determinations, provides for the ''lesser of'' rule regarding allowable refunds, and contains grammatical and nomenclature changes. This section also explains the special substitution rule for wine, which is not provided for in the corresponding section of part 191, and includes language regarding the preclusion of claiming Federal excise taxes discussed in detail in the section titled *Federal Excise Tax and Substitution Drawback Claims.* As discussed further below in the section titled *Amendments Regarding Federal Excise Tax and Substitution Drawback Claims,* this preclusion is also proposed as an amendment to § 191.32.

Section 190.33 details the parties entitled to claim in situations regarding unused merchandise drawback. This section differs from the corresponding regulation in part 191 in that it incorporates TFTEA-based changes such as referencing records kept in the normal course of business; it does not reference terms such as commercially interchangeable and certificate of delivery, which were eliminated for TFTEA-Drawback; and it contains grammatical and nomenclature changes.

Section 190.34 directs parties involved in drawback-related transactions to § 190.10, the general section dealing with transfers of merchandise. This section differs from the corresponding section in part 191 in that it merely directs to the general section dealing with transfers of merchandise rather than detailing specifics.

Section 190.35 contains specific instructions regarding the required notice of intent to export, destroy, or return merchandise, and the process regarding CBP's determination to examine merchandise. The process described in this section replicates the process as laid out in the corresponding section in part 191, with only grammatical and nomenclature changes.

Section 190.36 contains information regarding obtaining a one-time waiver of the requirement to provide notice of intent to export. The process described in this section replicates the process as laid out in the corresponding section in part 191.

Section 190.37 directs parties involved in the destruction of merchandise for drawback claims to § 190.71, which contains the procedures for destroying merchandise under CBP supervision. The process described in this section replicates the process as laid out in the corresponding section in part 191 and contains only one nomenclature change.

Section 190.38 provides information regarding recordkeeping requirements generally and specifically requires documents enabling CBP to trace the merchandise from importation, through any transfers, to exportation or destruction. This section is substantially similar to the process as laid out in the corresponding section in part 191 and contains grammatical and nomenclature changes.

Subpart D Provides Specific Requirements Regarding Rejected Merchandise Drawback Under 19 U.S.C. 1313(c)

Section 190.41 provides for drawback claims under 19 U.S.C. 1313(c) regarding rejected merchandise involving goods that do not conform to sample or specifications, were shipped without consent of the consignee, or determined to be defective at the time of importation. This section differs from the corresponding section in part 191 in that it contains nomenclature changes and includes additional language regarding goods sold at retail and returned, removes certain language regarding satisfactory evidence and includes language regarding the amount of drawback allowable.

Section 190.42 sets forth the general procedures for filing, documenting, and certifying claims under rejected merchandise drawback. This regulation differs from the corresponding regulation in part 191 in that it includes the expanded time frame of 5 years from the date of importation for filing claims and directs claimants to § 190.71 for procedures regarding the destruction of merchandise under CBP supervision. This regulation also differs from the current corresponding regulation in part 191 (at § 191.42(a)), which requires that the merchandise be in CBP custody prior to exportation or destruction. This was rendered obsolete by the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429), which removed the requirement that the merchandise be in CBP custody prior to exportation or destruction. Accordingly, it is proposed to update § 191.42(a) as well.

Section 190.43 informs claimants of the possibility of filing a direct identification unused merchandise claim under 19 U.S.C. 1313(j)(1) in lieu of a rejected merchandise claim, to the extent that the merchandise qualifies. This section replicates the corresponding section in part 191; however, the section title, unused merchandise drawback claim, differs from the corresponding section title in part 191, which is unused merchandise claim.

Section 190.44 is reserved. The corresponding regulation in part 191 directs claimants to § 191.71 for the procedures for destroying merchandise under CBP supervision. This section is unnecessary as a stand-alone regulation because the citation to § 190.71, dealing with destruction under CBP supervision, is included in § 190.42, as discussed above.

Section 190.45 is a new regulation regarding the special rule for substitution for returned retail merchandise, a subset of rejected merchandise provided for in 19 U.S.C. 1313(c). This section includes requirements that have been in effect since 2004, when the Miscellaneous Trade and Technical Corrections Act of

2004 (Pub. L. 108–429), amended 19 U.S.C. 1313(c) regarding drawback on returned items sold at the retail level. Specifically, this regulation provides for a special rule going beyond mere HTSUS interchangeability for substitution involving returned retail merchandise by requiring the specific product identifier to be the same for both the returned retail merchandise and the substituted exported or destroyed merchandise (*e.g.,* SKU or part number). Therefore, it is proposed to add a new § 191.45 as well.

Subpart E Deals With the Completion of Drawback Claims

Section 190.51 provides information regarding what constitutes a complete drawback claim and delineates those supporting documents that must be uploaded to complete a claim. This proposed section explains the requirement that the successful electronic transmission of drawback claims in the CBP-authorized EDI system includes upload of supporting documentation. This section, at 190.51(a)(4), includes the prohibition against designating imported merchandise from a line item on an entry summary as part of a TFTEA-Drawback substitution claim under part 190 if any other merchandise covered on that entry summary has been designated as the basis of a claim under part 191 (and the corresponding regulation in part 191 is similarly amended at 191.51(a)(3)). This section also provides information regarding the official date of filing, calculation of refunds relative to drawback-eligible duties, taxes, and fees, as well as information regarding the reporting of the HTSUS classifications and Department of Commerce Schedule B commodity numbers applicable to imported, substituted, exported, and destroyed merchandise and articles. This section also differs from the corresponding section in part 191 due to corrections of clerical errors in (b)(2)(i) regarding the mathematical calculations included in the example.

Section 190.52 concerns rejecting, perfecting, or amending drawback claims, including the applicable timeframes and limitations. This section differs from the corresponding section in part 191 in that it includes the TFTEA-based 5-year deadline and includes certain grammatical and nomenclature changes.

Section 190.53 details CBP's authority to require claimants to restructure claims if necessary to foster administrative efficiency. This section differs from the corresponding section in part 191 due only to nomenclature changes.

Subpart F Deals With the Verification of Drawback Claims

Section 190.61 provides information regarding the verification of drawback claims, including how verification is done and its impact on liquidation. This section differs from the corresponding section in part 191 slightly due to simplification of the language related to the electronic environment for TFTEA-Drawback claims and grammatical and nomenclature changes.

Section 190.62 provides information regarding criminal and civil penalties related to drawback claims. This section replicates the corresponding section in part 191.

Section 190.63 is a new regulation detailing the joint and several liability of the importer of the merchandise designated as the basis of a drawback claim and the party claiming drawback.

Subpart G Deals With the Exportation and Destruction of Articles Involved in Drawback Claims

Section 190.71 provides procedures and requirements regarding obtaining drawback on articles destroyed under CBP supervision. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.72 provides requirements regarding proof of export in drawback claims. This section differs from the corresponding section in part 191 in that it lists the required summary data for establishing exportation and references certain supporting documents to prove export.

Section 190.73 states that records kept through an electronic export system of the United States Government may be considered as actual proof of exportation only if CBP has officially approved the use of that electronic export system as proof of compliance. The corresponding regulation in part 191 provided information regarding export summary procedures.

Section 190.74 provides information regarding exportation by mail and how to claim drawback. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.75 provides information regarding exportation by the U.S. Government and how to claim drawback. This section differs slightly from the corresponding section in part 191 due to grammatical changes and it does not contain the reference to section 191.73, which in part 191 provided detailed information on export summary procedures (the relevant data elements from the export summary are now incorporated into the drawback entry summary, as provided for in 19 CFR 190.51(a)).

Section 190.76 is reserved as corresponding section 191.76 provides information regarding landing certificates, which are now obsolete.

Subpart H Deals With the Liquidation and Protest of Drawback Entries

Section 190.81 provides information regarding the liquidation of drawback claims. The Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429), amended 19 U.S.C. 1504 to expressly impose limitations on the liquidation of drawback entries. Pursuant to this 2004 amendment, unless a claim for drawback is extended or suspended, an entry or claim for drawback not liquidated within 1 year from the date of entry or claim will be deemed liquidated at the drawback amount asserted at the time of entry or claim. Accordingly, this document in § 190.81 and in § 191.81 proposes to clarify this 2004 modification regarding drawback claims and deemed liquidations.

Section 190.82 specifies who is entitled to claim drawback. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.83 specifies who is entitled to receive drawback payments. This section replicates the corresponding section in part 191.

Section 190.84 provides information regarding protest procedures involving drawback claims. This section differs from the corresponding section in part 191 due only to a grammatical change.

Subpart I Deals With Applications for Privileges Involving Drawback

Section 190.91 provides procedures regarding applying for and obtaining the privilege of waiver of prior notice of intent to export. This section differs from the corresponding section in part 191 in that it references the need to meet the standard for substitution rather than using the term commercially interchangeable, it discusses grandfathering in existing privilege holders relative to TFTEA-based changes, and it contains grammatical and nomenclature changes.

Section 190.92 provides procedures regarding applying for and obtaining the privilege of accelerated payment in which payment of drawback claims may be obtained prior to liquidation. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.93 provides for the combined privileges of waiver of prior notice and accelerated payment and states that applications may be for one privilege, both privileges separately, or both privileges in a combined application. This section replicates the corresponding section in part 191.

Subpart J Deals With Internal Revenue Taxes on Flavoring Extracts and Medicinal or Toilet Preparations.

In addition to the proposed regulations described immediately below in subpart J (§§ 190.101—190.106), the Department of the Treasury and CBP are also considering transferring the administration of drawback refunds provided for in subpart J from CBP to the Alcohol and Tobacco Tax and Trade Bureau (TTB). This part of the law solely involves drawback for the export of domestic products, and such a transfer would place with the agency with responsibility for taxation of domestic products. It would also enable exporters of flavoring extracts and medicinal or toilet preparations to claim the full amount of drawback available at a single agency. CBP and TTB would greatly appreciate comments on this proposal.

Section 190.101 states that 19 U.S.C. 1313(d) provides for drawback for the refund of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.102 provides that provisions relating to direct identification drawback (contained in subpart B of this part) will apply to claims for drawback filed upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes and in paragraph (e), which states that the time period for completing claims is three years from the date of export.

Section 190.103 details additional requirements in situations where a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the regional Director, National Review Center, TTB, is necessary. TTB was previously referred to as the Bureau of Alcohol, Tobacco and Firearms. This regulation has been updated throughout for accuracy, including updating the statutory citations to 26 U.S.C. 5111–5114, dealing with the Internal Revenue Code. This section also differs from the current corresponding section in part 191 due to grammatical and nomenclature changes. For the same reasons detailed here, it is proposed to update § 191.103 as well.

Section 190.104 provides information regarding required certificates involving drawback and TTB. This regulation has been updated for accuracy because, among other things, the relevant TTB Form (5100.4), was updated in November of 2015. This section also differs from the current corresponding section in part 191 due to grammatical and nomenclature changes. It is proposed to update that section, § 191.104, as well.

Section 190.105 provides that the drawback office must ascertain the final amount of drawback due by reference to the specific manufacturing ruling under which drawback was claimed. This section differs from the corresponding section in part 191, which requires that the final amount be made in reference to the certificate of manufacture and delivery, which is no longer required in TFTEA-Drawback.

Section 190.106 provides for the limitation of drawback available in situations in which the declaration required by § 190.103 of this subpart shows that a claim has been or will be filed and it states that drawback may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol). This section also differs from the current corresponding section in part 191 due to grammatical and nomenclature changes regarding TTB. It is proposed to update that section, § 191.106, as well.

Subpart K Deals With Supplies for Certain Vessels and Aircraft

Section 190.111 states that 19 U.S.C. 1309 provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft. This section replicates the corresponding section in part 191.

Section 190.112 provides procedures regarding obtaining drawback in situations involving supplies for certain vessels and aircraft and states that the provisions of this subpart will override other conflicting provisions of this part. This section differs from the corresponding section in part 191 due to TFTEA-based changes, such as the 5-year time period for filing claims, and due to grammatical and nomenclature changes.

Subpart L Deals With Meats Cured With Imported Salt

Section 190.121 states that 19 U.S.C. 1313(f) provides for drawback allowance on meats cured with imported salt. This section replicates the corresponding section in part 191.

Section 190.122 provides procedures regarding obtaining drawback in situations involving meats cured with imported salt. This section differs from the corresponding section in part 191 in that the organizational structure was changed because paragraph (b), regarding modifying a paper form, was removed, and grammatical changes have been made.

Section 190.123 provides that drawback will be refunded in aggregate amounts of not less than $100 and will not be subject to the retention of 1 percent of duties paid for claims involving meats cured with imported salt. This section differs from the corresponding section in part 191 due to grammatical changes.

Subpart M Deals With Materials for Construction and Equipment for Vessels and Aircraft for Foreign Ownership and Account

Section 190.131 states that 19 U.S.C. 1313(g) provides for drawback on materials for construction and equipment for vessels and aircraft for foreign ownership and account. This section replicates the corresponding section in part 191.

Section 190.132 states that other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback filed under 19 U.S.C. 1313(g) and this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.133 provides an explanation of terms specific to this subpart dealing with drawback on materials for construction and equipment for vessels and aircraft for foreign ownership and account. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Subpart N Deals With Foreign-Built Jet Aircraft Engines Processed in the United States

Section 190.141 states that 19 U.S.C. 1313(h) provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt,

or reconditioned in the United States with the use of imported merchandise, including parts. This section replicates the corresponding section in part 191.

Section 190.142 states that other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback filed under 19 U.S.C. 1313(h) and this subpart insofar as applicable to and not inconsistent with the provisions of this subpart. This section differs from the corresponding section in part 191 due to a grammatical change.

Section 190.143 provides specifics relating to the filing of entry and the contents of the entry regarding claims filed under this subpart. This section differs from the corresponding section in part 191 by removing the reference to CBP Form 7551 (as this data will be submitted through ACE) and due to grammatical changes.

Section 190.144 states that drawback under this subpart will be refunded in aggregate amounts of not less than $100 and will not be subject to the deduction of 1 percent of duties paid. This section differs from the corresponding section in part 191 due to grammatical changes.

Subpart O Deals With Merchandise Exported From Continuous CBP Custody

Section 190.151 states that 19 U.S.C. 1557(a) provides for drawback on merchandise upon which duties have been paid and which has remained continuously in bonded warehouse or otherwise in CBP custody for a specified period of time, when exported to certain locations. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.152 provides specified exceptions for when drawback will be allowed on merchandise released from CBP custody. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.153 provides information regarding when merchandise is considered in continuous CBP custody in certain scenarios. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.154 provides information regarding filing a direct export entry or entry for merchandise transported to another port for exportation. This section differs from the corresponding section in part 191 by not requiring the filing of CBP Form 7551 (as the data will be transmitted through ACE) and due to grammatical and nomenclature changes.

Section 190.155 states that the regulations in 19 CFR part 18 will be followed to the extent possible when merchandise is withdrawn from a warehouse for exportation. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.156 provides information regarding the filing of a bill of lading and applicable timeframes. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.157 is reserved as the corresponding section in part 191 directed readers to section 191.76 regarding landing certificates, which are now obsolete.

Section 190.158 provides for procedures of liquidation for a complete drawback claim in accordance with § 190.81. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.159 states that drawback due under this subpart will not be subject to the deduction of 1 percent of duties paid. This section differs from the corresponding section in part 191 due to grammatical changes.

Subpart P Deals With Distilled Spirits, Wines, or Beer Which are Unmerchantable or do not Conform to Sample or Specifications

Section 190.161 provides for the refund, remission, abatement or credit regarding imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to CBP custody. This section differs from the corresponding section in part 191 due to nomenclature changes.

Section 190.162 states that export procedures as provided for at § 190.42 apply, except that the claimant must be the importer. This section differs from the corresponding section in part 191 due to grammatical changes.

Section 190.163 provides for the required documentation in claims setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional evidence that the drawback office requires to establish that the merchandise is unmerchantable. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes.

Section 190.164 states that there is no time limit for the return to CBP custody for merchandise covered under this subpart. This section differs from the corresponding section in part 191 due only to nomenclature changes.

Section 190.165 states that exportations by mail are not permitted for merchandise covered in this subpart. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.166 provides information regarding the destruction of merchandise under this subpart. This section differs from the corresponding section in part 191 due only to grammatical and nomenclature changes.

Section 190.167 states that no deduction of 1 percent of the internal revenue taxes paid or determined will be made in allowing entries under 26 U.S.C. 5062(c), as amended. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.168 is reserved because the 90-day time limit for exportation or destruction from the date of notification of acceptance of the drawback entry it is contrary to the statutory requirement that a claim be filed after exportation or destruction. Accordingly, this section differs from the corresponding section in part 191.

Subpart Q Deals With the Substitution of Finished Petroleum Derivatives

Section 190.171 states that 19 U.S.C. 1313(p) provides for drawback on the basis of qualified articles including petroleum derivatives imported or manufactured or produced in the United States (and qualified under 19 U.S.C. 1313(a) or (b)). TFTEA permits MPF refunds for all claims under 19 U.S.C. 1313(p), therefore there is no limitation on MPF refunds as there was in paragraph (c) in part 191. Additionally, there is a new paragraph (c) that explains the calculation of drawback for claims on petroleum derivatives. This paragraph requires per unit averaging for refunds, but clarifies that the refunds are not subject to the ''lesser of'' rule. Finally, this paragraph includes the preclusion of claiming Federal excise taxes discussed in detail in the section titled *Federal Excise Tax and Substitution Drawback Claims.*

Section 190.172 provides relevant definitions for purposes of this subpart. This section replicates the corresponding section in part 191.

Section 190.173 provides specific requirements for drawback when the basis is 19 U.S.C. 1313(p) with no manufacture. This section replicates the corresponding section in part 191.

Section 190.174 provides specific requirements for drawback when the basis is 19 U.S.C. 1313(p) with a manufacture under 19 U.S.C. 1313(a) or (b). This section replicates the corresponding section in part 191.

Section 190.175 provides specific requirements regarding the identity of drawback claimants and maintenance of

records under this subpart. This section differs from the corresponding section in part 191 due to TFTEA-based changes removing requirements related to certificates of delivery and certificates of manufacture and delivery.

Section 190.176 states that the general procedures for filing claims are applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specified in this section. This section differs from the corresponding section in part 191 due to the timeframe for recordkeeping being changed to 3 years from the date of liquidation (rather than from the date of payment) and due to grammatical and nomenclature changes.

Subpart R Deals With Merchandise Transferred to a Foreign Trade Zone From Customs Territory

Section 190.181 states that drawback is provided under 19 U.S.C. 81c for merchandise transferred to a foreign trade zone for the sole purpose of exportation, storage, or destruction, with certain exceptions. This section replicates the corresponding section in part 191.

Section 190.182 states that merchandise in a foreign trade zone for purposes specified in § 190.181 will be given status as zone-restricted merchandise on proper application as provided for in 19 CFR 146.44. This section differs from the corresponding section in part 191 due only to grammatical changes.

Section 190.183 provides filing procedures for certain articles manufactured or produced in the United States, including transfers to a foreign trade zone. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes, and due to changes related to the electronic filing provisions of section 906 of TFTEA.

Section 190.184 states that the procedure described in subpart O of this part will be followed, as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous CBP custody and provides information on the drawback entry, required certifications, modifications, and endorsement. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes, and due to changes related to the electronic filing environment of TFTEA-Drawback.

Section 190.185 states that the procedure described in subparts C and D of this part will be followed, as applicable, for drawback on merchandise under this subpart and provides information on the drawback entry, required certifications, modifications, and endorsement. This section differs from the corresponding section in part 191 due to grammatical and nomenclature changes, and to the electronic filing environment provisions of section 906 of TFTEA.

Section 190.186 provides information regarding which person may be considered the transferor and states that drawback may be claimed by, and paid to, the transferor. This section differs from the corresponding section in part 191 due only to grammatical changes.

Subpart S Deals With the Drawback Compliance Program

Section 190.191 provides general information regarding the CBP drawback compliance program. This section differs from the corresponding section in part 191 due only to nomenclature changes.

Section 190.192 provides information regarding obtaining certification for the compliance program. This section differs from the corresponding section in part 191 due only to grammatical and nomenclature changes.

Section 190.193 provides the application procedure for the compliance program. This section differs from the corresponding section in part 191 due only to grammatical and nomenclature changes.

Section 190.194 describes the actions taken on the application to participate in the compliance program. This section differs from the corresponding section in part 191 due only to grammatical and nomenclature changes.

Section 190.195 relates to combined applications for certification in the drawback compliance program and privileges regarding the waiver of prior notice and/or accelerated payment of drawback. This section replicates the corresponding section in Part 191.

Appendices A and B Deal With Manufacturing Drawback Rulings

Appendix A to Part 190 sets forth the general manufacturing drawback rulings, accompanied by instructions for how to submit a letter of notification to operate thereunder. This appendix differs from Appendix A to part 191 due to grammatical and nomenclature changes as well as changes to conform to TFTEA-Drawback requirements.

Appendix B to Part 190 provides the sample formats for applications for specific manufacturing drawback rulings. This appendix differs from Appendix B to part 191 due to grammatical and nomenclature changes as well as changes to conform to TFTEA-Drawback requirements.

B. Other Conforming Amendments

NAFTA drawback, which is separately provided for in subpart E of part 181 of the CBP regulations (19 CFR part 181), provides for special provisions in situations where goods were imported into the United States and then subsequently exported to either Canada or Mexico. While TFTEA left NAFTA drawback unchanged, minor conforming edits to part 181 are necessary to correct certain errors or to allow for interaction with both the proposed part 190 and existing part 191 during the transition period. For example, 19 CFR 181.50(a) includes an inaccurate reference to subpart G of part 191, stating that it is for liquidation procedures. However, it is subpart H of part 191 that deals with liquidation (and protest) procedures while subpart G of part 191 deals with exportation and destruction. Accordingly, it is proposed to amend § 181.50(a) to update the reference so it accurately cites to subpart H of part 191 and to include an accompanying reference to subpart H of part 190. Further, § 181.50(c) includes a specific reference to § 191.92 addressing accelerated payment. Accordingly, it is proposed to amend this regulation to also include a reference to the corresponding section of the proposed new part 190, *i.e.,* § 190.92. CBP is amending sections 181.45, 181.46, 181.47, 181.49, and 181.50 to conform with proposed part 190 and existing part 191.

As stated above, the existing regulations in part 191 are mostly unchanged with this rulemaking. However, it is proposed to amend the scope section of part 191, § 191.0, to make reference to the drawback provisions in proposed part 190 and to note that claims cannot be filed under part 191 on or after February 24, 2019. Additionally, as noted above in the section detailing the differences between the sections in part 190 and the corresponding sections in part 191, some sections in part 191 are outdated for reasons other than TFTEA, such as those affected by the Miscellaneous Trade and Technical Corrections Act of 2004. Therefore, as noted above in the section detailing the proposed changes to part 190, where changes were required due to non-TFTEA reasons, it is proposed to amend §§ 191.0, 191.1, 191.3, 191.5, 191.42, 191.51, 191.81, 191.103, 191.104, and 191.106 and new § 191.45 to address returned retail merchandise.

Finally, it is important to note that it is CBP's intention to remove part 191 at a future date, but not until after the completion of the transition period. The

part 191 regulations will continue to be applicable for claims filed under that part before February 24, 2019, but will become increasingly less relevant over time; CBP will assess at what point in time removal will be most appropriate to lessen burdens or confusion. This removal will be announced in the **Federal Register**.

C. Amendments Regarding Federal Excise Tax and Substitution Claims

For the reasons outlined above in the section titled *Federal Excise Tax and Substitution Drawback Claims,* this document proposes to amend: § 191.22 by adding a new last sentence to paragraph (a); § 191.32 by adding a new paragraph (b)(4); and, § 191.171 by adding a new paragraph (d). These amendments preclude drawback of internal revenue tax imposed under the IRC in connection with a substitution drawback claim if no excise tax was paid on the substituted exported merchandise or if that merchandise was subject to a claim for refund or drawback of tax under any provision of the IRC. In addition, this document proposes to amend § 113.62, which sets forth basic importation and entry bond conditions, to add a new condition under which the principal agrees not to file, or transfer the right to file, a substitution drawback claim that would be inconsistent with the terms of new § 191.32(b)(4). The consequences of default specified in newly re-designated paragraph (n) of § 113.62 would apply in the case of a breach of this bond condition.[25]

These changes are intended to preclude the filing of substitution drawback claims under 19 U.S.C. 1313(b), 19 U.S.C. 1313(j)(2), and 19 U.S.C. 1313(p) in circumstances in which internal revenue taxes have not been paid on the substituted domestic product, or where that merchandise is subject to a different claim for refund or drawback of IRC taxes. The proposed amendments still allow for the return of 99 percent of the duties, taxes, and fees paid on the imported merchandise upon export, or when IRC taxes have been paid on substituted domestic product and the substituted merchandise is not the subject of a separate claim for refund or drawback of such taxes.

[25] The amendment referenced here to § 113.62 of this chapter is in addition to the previously discussed proposed amendment to § 113.62, proposing to add a new paragraph (a)(4) regarding the joint and several liability provisions of the importer's bond.

IV. Statutory and Regulatory Requirements

A. Executive Order 13563 (Improving Regulation and Regulatory Review) and Executive Order 12866 (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess 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 is an ''economically significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (''OMB''). CBP and Treasury have prepared an economic analysis of the potential impacts of this rule for public awareness. The analysis can be found in the public docket for this rulemaking at *www.regulations.gov.*

B. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs, and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''[26] These requirements only apply to rules designated as ''significant regulatory actions'' under section 3(f) of Executive Order 12866. OMB's implementation guidance explains that ''Federal spending regulatory actions that cause only income transfers between taxpayers and program beneficiaries . . . . are considered 'transfer rules' and are not covered by E.O. [Executive Order] 13771 . . . However . . . such regulatory actions may impose requirements apart from transfers . . . In those cases, the actions would need to be offset to the extent they impose more than de minimis costs.''[27]

This rule is a significant regulatory action under section 3(f) of Executive Order 12866, and is hence subject to the requirements of Executive Order 13771. Most of the regulatory amendments proposed in this rule are the result of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125), which amended 19 U.S.C. 1313, the statute guiding CBP drawback regulations, and required CBP to promulgate regulations implementing these changes by February 24, 2018. This rule includes both a regulatory action and a deregulatory action that implement TFTEA's requirements. Because these actions are related to drawback, CBP chose to include both actions in this rule instead of promulgating two separate rules. On net, this rule imposes a regulatory burden (and is thus a regulatory action) because its regulatory impacts exceed its deregulatory impacts. This rule's regulatory impacts (*i.e.,* costs) would measure $8.3 million on an annualized basis, while its deregulatory impacts (*i.e.,* cost savings) would measure $1.3 million on an annualized basis (in 2016 U.S. dollars, using a 7 percent discount rate). Together, these impacts would introduce an annualized net regulatory cost of $7.0 million.

[26] *See* 82 FR 9339 (February 3, 2017).

[27] *See* OMB's memorandum titled, ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs' '' (April 5, 2017).

C. Regulatory Flexibility Act

This section examines the impact of this proposed rule on small entities per the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*)(RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Under the RFA and SBREFA, if an agency can certify (typically through a screening analysis) that a rule will not have a ''significant economic impact on a substantial number of small entities,'' a detailed assessment of the rule's impact on small entities is not required. Otherwise, an agency must complete an initial regulatory flexibility analysis (IRFA) exploring the impact of the proposed rulemaking on small entities.

Screening Analysis

The proposed Modernized Drawback rule would fundamentally change the drawback process and consequently affect all trade members eligible for drawback (*i.e.,* drawback claimants).[28]

[28] For more detailed information on the impacts of this rule, see CBP and Treasury's economic

Continued

These trade members can include importers, exporters, manufacturers, producers, and intermediate parties representing a diverse array of industries. CBP does not assess the rule's impact on customs brokers who file claims for trade members eligible for drawback in this RFA analysis because they would presumably charge their clients a fee for any costs introduced with the rule (and thus not be affected themselves).

Because the Small Business Administration's (SBA) guidelines on small entities under the RFA do not explicitly define small entity standards for the importers, exporters, manufacturers, producers, and intermediate parties potentially affected by the rule, CBP used data on the industries in which these parties operate to determine the number of small entities potentially affected by this rule. CBP began by compiling a list of all 9,017 unique drawback claimants who filed claims between 2007 and 2016 and matching the claimant identification number (''claimant ID'') to the operator/owner name and address listed in internal CBP databases. Next, CBP assigned a random number to each of the claimants in that list and sorted the data in ascending order by the random number assigned. Using public and proprietary databases, CBP then pulled information like the entity type (subsidiary or parent company), primary line of business, employee size, and revenue on the claimants in ascending order until the agency had market data for 100 unique entities.[29] [30]

Table 1 shows the industries, according to their North American Industrial Classification System (NAICS) code, in the sample of entities affected by this rule and the SBA's small entity size standards for these industries. For the most part, the SBA's size standards are the average annual receipts or the average employment of a firm.[31] As shown, CBP finds that 69 percent (69) of the drawback claimants sampled are considered ''small'' according to the SBA's size standards, including one non-profit organization. CBP did not identify any small governmental jurisdictions affected by the proposed rule in this sample. According to these findings, CBP assumes that the proposed rule would affect a substantial number of small entities. CBP recognizes that this screening analysis may have excluded some less established, potentially small entities due to market data availability. To the extent that those excluded are small, the portion of small entities affected by the rule would be higher than estimated.

Of the small drawback claimants sampled and included in Table 1, the average number of employees at these entities ranged from 1 to 1,000 and their annual revenue measured from less than $0.5 million to $391.0 million (see Table 2 and Table 3). Table 2 compares the low range average number of employees at the small entities sampled and the overall average for the corresponding NAICS industry. Table 3 shows the average annual revenue of the small entities sampled by NAICS industry using the low range of annual revenue data available as well as the average annual revenue for all U.S. entities in each industry.

TABLE 1—SUMMARY STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
311211	Flour Milling	1	1	1,000 Employees	1	1
311421	Fruit and Vegetable Canning	1	1	1,000 Employees	1	1
312140	Distilleries	1	1	1,000 Employees	1	1
313210	Broadwoven Fabric Mills	1	1	1,000 Employees	0	0
315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	2	2	750 Employees	2	2
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	1	1	750 Employees	1	1
321911	Wood Window and Door Manufacturing.	1	1	1,000 Employees	1	1
325180	Other Basic Inorganic Chemical Manufacturing.	2	2	1,000 Employees	2	2
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.	1	1	1,250 Employees	1	1
325199	All Other Basic Organic Chemical Manufacturing.	1	1	1,250 Employees	0	0
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.	1	1	500 Employees	1	1
326199	All Other Plastics Product Manufacturing.	1	1	750 Employees	1	1
331410	Nonferrous Metal (except Aluminum) Smelting and Refining.	1	1	1,000 Employees	1	1
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	1	750 Employees	1	1
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	1	1	750 Employees	1	1

analysis in the public docket for this rulemaking at *www.regulations.gov.*

[29] Only 13 of the entities researched (12 percent) did not have market data available.

[30] Out of a total population of 9,017 unique drawback claimants who filed claims between 2007 and 2016, CBP used a sample of 100 claimants with market data to inform this screening analysis. This sample size resulted in a statistically significant sample using a 95 percent confidence level with a 10 percent margin of error.

[31] The SBA's calculation methods for average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

TABLE 1—SUMMARY STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	1	1	1,000 Employees	0	0
334310	Audio and Video Equipment Manufacturing.	1	1	750 Employees	1	1
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables.	1	1	750 Employees	0	0
335221	Household Cooking Appliance Manufacturing.	1	1	1,500 Employees	1	1
336612	Boat Building	1	1	1,000 Employees	1	1
336991	Motorcycle, Bicycle, and Parts Manufacturing.	1	1	1,000 Employees	0	0
337920	Blind and Shade Manufacturing	1	1	1,000 Employees	0	0
339112	Surgical and Medical Instrument Manufacturing.	2	2	1,000 Employees	1	1
339920	Sporting and Athletic Goods Manufacturing.	1	1	750 Employees	0	0
339992	Musical Instrument Manufacturing	1	1	1,000 Employees	1	1
339999	All Other Miscellaneous Manufacturing.	1	1	500 Employees	1	1
423210	Furniture Merchant Wholesalers	1	1	100 Employees	1	1
423220	Home Furnishing Merchant Wholesalers.	2	2	100 Employees	1	1
423510	Metal Service Centers and Other Metal Merchant Wholesalers.	2	2	200 Employees	2	2
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	1	1	200 Employees	1	1
423690	Other Electronic Parts and Equipment Merchant Wholesalers.	1	1	250 Employees	0	0
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers.	3	3	100 Employees	3	3
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers.	1	1	150 Employees	1	1
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	3	3	100 Employees	3	3
423990	Other Miscellaneous Durable Goods Merchant Wholesalers.	1	1	100 Employees	1	1
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers.	2	2	100 Employees	2	2
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers.	1	1	100 Employees	0	0
424340	Footwear Merchant Wholesalers	3	3	200 Employees	2	2
424490	Other Grocery and Related Products Merchant Wholesalers.	1	1	250 Employees	1	1
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers.	2	2	150 Employees	2	2
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	1	1	200 Employees	1	1
424910	Farm Supplies Merchant Wholesalers.	3	3	200 Employees	3	3
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers.	1	1	100 Employees	1	1
441120	Used Car Dealers	1	1	$25.0 Million	1	1
448120	Women's Clothing Stores	2	2	$27.5 Million	2	2
448130	Children's and Infants' Clothing Stores.	1	1	$32.5 Million	0	0
448190	Other Clothing Stores	2	2	$20.5 Million	2	2
451110	Sporting Goods Stores	1	1	$15.0 Million	1	1
451130	Sewing, Needlework, and Piece Goods Stores.	1	1	$27.5 Million	1	1
452112	Discount Department Stores	1	1	$29.5 Million	1	1

TABLE 1—SUMMARY STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—Continued

NAICS code	NAICS description	Number of entities in sample	Percent of entities in sample	SBA size standard	Number of small entities in sample	Percent of small entities in sample
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores).	1	1	$7.5 Million	1	1
454113	Mail-Order Houses	1	1	$38.5 Million	0	0
483112	Deep Sea Passenger Transportation	1	1	1,500 Employees	0	0
493110	General Warehousing and Storage	1	1	$27.5 Million	1	1
525990	Other Financial Vehicles	1	1	$32.5 Million	1	1
541380	Testing Laboratories	1	1	$15.0 Million	0	0
541690	Other Scientific and Technical Consulting Services.	1	1	$15.0 Million	0	0
541990	All Other Professional, Scientific, and Technical Services.	1	1	$15.0 Million	1	1
561499	All Other Business Support Services	2	2	$15.0 Million	2	2
561621	Security Systems Services (except Locksmiths).	1	1	$20.5 Million	0	0
561990	All Other Support Services	5	5	$11.0 Million	5	5
624110	Child and Youth Services*	1	1	$11.0 Million	1	1
711510	Independent Artists, Writers, and Performers.	1	1	$7.5 Million	1	1
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	1	1	$7.5 Million	1	1
811490	Other Personal and Household Goods Repair and Maintenance.	1	1	$7.5 Million	1	1
	Foreign Entity	13	13	N/A	N/A	N/A
Total		100	100		69	69

*This sample corresponds to a non-profit organization.

Source of drawback claimants sample: Internal CBP database; gathered through email correspondence with CBP's Office of Trade on March 2, 2017.

Source of descriptive entity information: Hoover's. Online company reports. Available at *http://www.hoovers.com/.* Accessed April 20, 2017 and April 24, 2017; Manta. Online company reports. Available at *http://www.manta.com/.* Accessed April 20, 2017 and April 24, 2017.

Source of SBA size standard information: U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' February 26, 2016. Available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Accessed April 17, 2017.

TABLE 2—EMPLOYMENT STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE AND INDUSTRY AVERAGES

NAICS code	NAICS description	Number of small entities in sample	Average number of employees at small entities in sample-low range value	Average number of employees at all U.S. entities in industry
311211	Flour Milling	1	20	66
311421	Fruit and Vegetable Canning	1	540	74
312140	Distilleries	1	15	30
315220	Men's and Boys' Cut and Sew Apparel Manufacturing	2	40	31
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	1	6	15
321911	Wood Window and Door Manufacturing	1	250	46
325180	Other Basic Inorganic Chemical Manufacturing	2	502	100
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	1	1,000	92
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	1	3	34
326199	All Other Plastics Product Manufacturing	1	2	60
331410	Nonferrous Metal (except Aluminum) Smelting and Refining	1	700	66
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	65	69
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	1	65	20
334310	Audio and Video Equipment Manufacturing	1	350	19
335221	Household Cooking Appliance Manufacturing	1	67	110
336612	Boat Building	1	35	34
339112	Surgical and Medical Instrument Manufacturing	1	52	94
339992	Musical Instrument Manufacturing	1	625	20
339999	All Other Miscellaneous Manufacturing	1	20	10
423210	Furniture Merchant Wholesalers	1	5	12
423220	Home Furnishing Merchant Wholesalers	1	17	14
423510	Metal Service Centers and Other Metal Merchant Wholesalers	2	3	20

TABLE 2—EMPLOYMENT STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE AND INDUSTRY AVERAGES—Continued

NAICS code	NAICS description	Number of small entities in sample	Average number of employees at small entities in sample-low range value	Average number of employees at all U.S. entities in industry
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	1	80	21
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	3	18	11
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	1	12	15
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	3	7	7
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	1	20	10
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	2	2	9
424340	Footwear Merchant Wholesalers	2	17	17
424490	Other Grocery and Related Products Merchant Wholesalers	1	11	28
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	2	14	13
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	1	7	15
424910	Farm Supplies Merchant Wholesalers	3	26	21
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	1	1	7
441120	Used Car Dealers	1	1	6
448120	Women's Clothing Stores	2	12	31
448190	Other Clothing Stores	2	23	14
451110	Sporting Goods Stores	1	1	14
451130	Sewing, Needlework, and Piece Goods Stores	1	7	11
452112	Discount Department Stores	1	20	15,091
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	1	5	6
493110	General Warehousing and Storage	1	20	118
525990	Other Financial Vehicles	1	2	6
541990	All Other Professional, Scientific, and Technical Services	1	2	6
561499	All Other Business Support Services	2	29	17
561990	All Other Support Services	5	3	13
624110	Child and Youth Services*	1	20	21
711510	Independent Artists, Writers, and Performers	1	2	2
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	1	28	10
811490	Other Personal and Household Goods Repair and Maintenance	1	18	3

*This sample corresponds to a non-profit organization.

Source of drawback claimants sample: Internal CBP database; gathered through email correspondence with CBP's Office of Trade on March 2, 2017.

Source of small entity employment information: Hoover's. Online company reports. Available at *http://www.hoovers.com/.* Accessed April 20, 2017 and April 24, 2017; Manta. Online company reports. Available at *http://www.manta.com/.* Accessed April 20, 2017 and April 24, 2017.

Source of industry employment information: U.S. Census Bureau. 2012 SUSB Annual Data Tables by Establishment Industry, "Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Employment Size for the United States, All Industries: 2012." June 22, 2015. Available at *https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.* Accessed May 30, 2018.

TABLE 3—REVENUE STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE AND INDUSTRY AVERAGES

NAICS code	NAICS description	Number of small entities in sample	Average annual revenue of small entities in sample-low range value (in millions)	Average annual revenue of all U.S. entities in industry (in millions)
311211	Flour Milling	1	$5.0	$93.7
311421	Fruit and Vegetable Canning	1	178.1	41.7
312140	Distilleries	1	Unknown	39.6
315220	Men's and Boys' Cut and Sew Apparel Manufacturing	2	6.4	3.8
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing	1	1.1	2.8
321911	Wood Window and Door Manufacturing	1	48.0	9.2
325180	Other Basic Inorganic Chemical Manufacturing	2	90.7	94.2
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing	1	391.0	161.8
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	1	5.0	22.2
326199	All Other Plastics Product Manufacturing	1	0.3	14.7
331410	Nonferrous Metal (except Aluminum) Smelting and Refining	1	228.9	93.2
331491	Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing, and Extruding.	1	17.2	30.9

TABLE 3—REVENUE STATISTICS OF SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE AND INDUSTRY AVERAGES—Continued

NAICS code	NAICS description	Number of small entities in sample	Average annual revenue of small entities in sample-low range value (in millions)	Average annual revenue of all U.S. entities in industry (in millions)
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	1	13.5	4.2
334310	Audio and Video Equipment Manufacturing	1	29.0	6.1
335221	Household Cooking Appliance Manufacturing	1	9.4	47.2
336612	Boat Building	1	5.1	8.4
339112	Surgical and Medical Instrument Manufacturing	1	17.0	35.3
339992	Musical Instrument Manufacturing	1	115.1	3.2
339999	All Other Miscellaneous Manufacturing	1	4.3	2.4
423210	Furniture Merchant Wholesalers	1	1.6	7.4
423220	Home Furnishing Merchant Wholesalers	1	4.2	8.1
423510	Metal Service Centers and Other Metal Merchant Wholesalers	2	0.8	27.8
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	1	23.0	40.2
423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	3	3.2	7.3
423920	Toy and Hobby Goods and Supplies Merchant Wholesalers	1	2.9	11.0
423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers.	3	1.2	8.3
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	1	50.0	5.1
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	2	1.4	5.0
424340	Footwear Merchant Wholesalers	2	8.0	20.3
424490	Other Grocery and Related Products Merchant Wholesalers	1	14.6	28.4
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	2	7.5	17.2
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	1	11.4	289.0
424910	Farm Supplies Merchant Wholesalers	3	49.2	29.2
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers	1	0.1	4.1
441120	Used Car Dealers	1	0.1	3.0
448120	Women's Clothing Stores	2	1.9	3.5
448190	Other Clothing Stores	2	7.3	1.8
451110	Sporting Goods Stores	1	0.6	2.5
451130	Sewing, Needlework, and Piece Goods Stores	1	0.6	1.1
452112	Discount Department Stores	1	2.5	2,899.3
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	1	0.5	1.2
493110	General Warehousing and Storage	1	0.5	6.0
525990	Other Financial Vehicles	1	0.2	2.8
541990	All Other Professional, Scientific, and Technical Services	1	0.2	1.0
561499	All Other Business Support Services	2	2.0	2.8
561990	All Other Support Services	5	0.2	1.9
624110	Child and Youth Services*	1	5.3	1.5
711510	Independent Artists, Writers, and Performers	1	0.3	0.7
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance.	1	7.4	1.7
811490	Other Personal and Household Goods Repair and Maintenance	1	2.0	0.3

*This sample corresponds to a non-profit organization.

Source of drawback claimants sample: Internal CBP database; gathered through email correspondence with CBP's Office of Trade on March 2, 2017.

Source of small entity revenue information: Hoover's. Online company reports. Available at *http://www.hoovers.com/*. Accessed April 20, 2017 and April 24, 2017; Manta. Online company reports. Available at *http://www.manta.com/*. Accessed April 20, 2017 and April 24, 2017.

Source of industry revenue information: U.S. Census Bureau. 2012 SUSB Annual Data Tables by Establishment Industry, "Number of Firms, Number of Establishments, Employment, Annual Payroll, and Estimated Receipts by Enterprise Employment Size for the United States, All Industries: 2012." June 22, 2015. Available at *https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.* Accessed May 30, 2018.

Based on the share of drawback claimants sampled, CBP assumes that 69 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis, or 6,844 claimants, would be small entities. These drawback claimants would incur costs related to ACE system modifications, electronic claim submission requirements, additional full desk reviews, and expanded recordkeeping requirements; however, these costs would differ depending on their filing preferences and claim review.

Each unique drawback claimant would need to either modify its existing drawback system, acquire add-on drawback software, or hire a customs broker to comply with this rule's new drawback regulations outlined in 19 CFR part 190. CBP estimates that approximately 200 small entity drawback claimants (69 percent of the estimated 290 total claimants) would modify their ACE filing systems in 2018 to comply with all of the new drawback regulations outlined in 19 CFR part 190.[32] These claimants could incur an

[32] CBP based the estimate of drawback claimants required to modify their ACE drawback systems consistent with this rule's changes on the projected number of unique drawback claimants with this rule in 2018 (9,919) minus the 4,129 trade members

estimated one-time cost of $90,000 that would translate to $9,000 per year of the analysis.[33] However, because of the high cost of ACE system modifications, these small claimants are more likely to choose a lower-cost option like purchasing add-on drawback software or hiring a customs broker to meet this rule's requirements while lessening its impact on their revenue. CBP projects that an additional 3,795 small drawback claimants (69 percent of the estimated 5,500 total claimants) would acquire add-on drawback software consistent with all of this rule's requirements for a one-time cost of $1,500, or $150 over the 10-year period of analysis. CBP presumes that rather than acquire and learn the software necessary to file a drawback claim electronically and meet the other submission requirements of this rule, an estimated 2,849 small paper-based drawback claimants (69 percent of the estimated 4,129 total claimants) would hire a customs broker to file their claim as a result of the rule. These claimants would likely file an average of three drawback claims per year, at an annual cost of $921 according to the $307 customs broker filing fee.[34]

All drawback claimants must also retain drawback records for an extended period of time with this rule. CBP finds that all 6,844 small drawback claimants would sustain $59.99 in expenses between 2021 and 2027, or approximately $4 each year over the 10-year period of analysis, to electronically store drawback claim documentation.[35] In addition to these requirements, some drawback claimants may be subject to this rule's additional full desk reviews. CBP estimates that this rule would affect an estimated 355 small drawback claimants (69 percent of the estimated 515 total claimants) over the 10-year period of analysis, introducing an average cost of $18 per year to these claimants. CBP assumes that these 355 claimants would each complete one full desk review over the 10-year period, at a cost of $181 per review (or $18 over 10 years). Besides these monetized costs, this rule would introduce non-monetized, non-quantified costs to trade members, including the possibility of decreased use of the United States as a home base for a distribution facility when coupled with other considerations, less third-party drawback, and less time to file drawback claims as compared to the current process.

Table 4 outlines the rule's different costs to small entities, while Table 5 shows this rule's potential range of costs to small entities. As shown, small entities could incur undiscounted annual costs from this rule as low as $154 if a small claimant only incurs an added recordkeeping cost and add-on drawback software cost and up to $9,022 if a small claimant experiences the rule's high ACE drawback system modification cost, full desk review cost (once over the 10-year analysis), and added recordkeeping cost. About 97 percent of small drawback claimants would likely sustain a cost of $943 (Cost C + Cost D + Cost E in Table 5) or less per year from this rule, while the remaining 3 percent could incur higher annual cost measuring up to $9,022.

TABLE 4—COST OF RULE TO SMALL ENTITIES

[Undiscounted 2016 U.S. dollars]

	Cost category	Number of small entities affected	Share of small entities affected	Annual cost per claimant (undiscounted)
A	ACE Drawback System Modification	200	3	9,000
B	Add-On Drawback Software	3,795	55	150
C	Customs Broker Claim Filing	2,849	42	921
D	Added Recordkeeping	6,844	100	4
E	Full Desk Review	355	5	18

Note: Estimates may not sum to total due to rounding.

TABLE 5—RANGE OF ANNUAL COSTS OF RULE TO SMALL ENTITIES

[Undiscounted 2016 U.S. dollars]

Cost per claimant by category

Cost range	ACE drawback system modification [A]	Add-on drawback software [B]	Customs broker claim filing [C]	Added recordkeeping [D]	Full desk review [E]	Total
Low		$150		$4		$154
Medium			921	4	18	943

estimated to file by paper under the current 19 CFR part 191 regulations in 2018 (and thus exempt from an ACE drawback system modification cost), multiplied by the 5 percent share of claimants anticipated to modify their ACE drawback systems consistent with this rule's changes: (9,919 unique drawback claimants in 2018—4,129 paper-based filers in 2018) x 5 percent anticipated to modify their ACE drawback systems = 290 (rounded) trade members.

[33] Such regulatory changes would include providing line-item drawback claim data at the 10-digit HTSUS subheading level; consistent units of measurement for claimed imports, exports, and destructions; exported, destroyed, or substituted merchandise values for substitution claims filed under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2); accounting methodologies used for direct identification drawback claims (if applicable); unique identifiers linking imports to exports or destructions on each drawback claim; per-unit averages for substitution claims; and ''lesser of'' rule calculations for substitution claims.

[34] From 2018 to 2027, CBP projects under its primary estimation method that 4,129 unique trade members would file 101,642 drawback claims electronically instead of by paper as a result of this rule, averaging about 3 claims per unique trade member each year over the 10-year period: 101,642 drawback claims filed electronically instead of by paper over 10-year period/4,129 unique trade members = 25 (rounded) claims per unique trade member over the 10-year period; 25 claims over 10-year period/10 years = 3 (rounded) claims per unique trade member each year.

[35] $59.99 electronic recordkeeping cost per year × 7-year period of recordkeeping = $419 (rounded) total electronic recordkeeping cost over 7-year period; $419 storage cost over 7-year period of recordkeeping/10-year period of analysis = $42 (rounded) electronic recordkeeping cost per year of the 10-year period of analysis; $42 (rounded) storage cost per year × 10 percent of unique claimants incurring electronic recordkeeping cost per year = $4 (rounded) electronic recordkeeping cost per unique trade member each year.

TABLE 5—RANGE OF ANNUAL COSTS OF RULE TO SMALL ENTITIES—Continued

[Undiscounted 2016 U.S. dollars]

Cost per claimant by category

Cost range	ACE drawback system modification [A]	Add-on drawback software [B]	Customs broker claim filing [C]	Added recordkeeping [D]	Full desk review [E]	Total
High	9,000			4	18	9,022

Note: Estimates may not sum to total due to rounding.

CBP compares the rule's low ($154), medium ($943), and high ($9,022) range of monetized costs per year to the annual revenue of the small drawback claimants sampled. At the low range, this rule's $154 monetized cost would represent less than 1 percent of annual revenue for 100 percent (68) of the small entities sampled with revenue data available,[36] as shown in Table 6. At the medium range, this rule's $943 monetized cost would represent less than 1 percent of annual revenue for 97 percent (66) of the small entities sampled with revenue data available. This rule's $943 monetized cost would represent between 1 percent and 3 percent of annual revenue for the remaining 3 percent (2) of the small entities, as Table 7 illustrates. Finally, at the high range, this rule's $9,022 monetized cost would represent less than 1 percent of the annual revenue for 66 percent (45) of the small entities sampled with revenue data available (see Table 8). The share of this rule's $9,022 monetized cost on annual revenue would measure between: 1 percent and 3 percent for about 16 percent (11) of the remaining small entities, 3 percent and 5 percent for 4 percent (3) of the small entities sampled, 5 percent and 10 percent for 10 percent (7) percent of small entities sampled, and 10 percent or more for 3 percent (2) of the small entities sampled (see Table 8). Note that because of the high cost of ACE system modifications included in the high range cost estimate, only a nominal number of small claimants would likely incur this rule's high annual cost of $9,022. Instead, most claimants would probably choose lower-cost options like purchasing add-on drawback software or hiring a customs broker to meet this rule's requirements that would have minimal impacts on their annual revenue, as assumed under the low- and medium-cost scenarios shown in Table 6 and Table 7.

Under all three ranges, the share of this rule's costs on the annual revenue of small entities is less than 1 percent for the vast majority of entities sampled. Small entities would experience an impact of 3 percent or more only under the high cost range of $9,022. Assuming that the share of this rule's total annualized cost to small entities is equal to the estimated share of drawback claimants affected by this rule over the 2018 to 2027 period of analysis (69 percent), the total annualized cost of this rule to all small entities would equal $5.0 million under the primary estimation method.

TABLE 6—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE—ASSUMING ANNUAL COST OF $154 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	68	100%
1% ≤ Impact < 3%	0	0
3% ≤ Impact < 5%	0	0
5% ≤ Impact < 10%	0	0
10% or More	0	0
Total	68	100

Note: Estimates may not sum to total due to rounding.

TABLE 7—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE- ASSUMING ANNUALIZED COST OF $943 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	66	97%
1% ≤ Impact < 3%	2	3
3% ≤ Impact < 5%	0	0
5% ≤ Impact < 10%	0	0
10% or More	0	0

[36] One of the small entities sampled did not have revenue data available, so CBP excluded this entity from the revenue impact calculation.

TABLE 7—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE- ASSUMING ANNUALIZED COST OF $943 PER UNIQUE DRAWBACK CLAIMANT—Continued

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
Total	68	100

Note: Estimates may not sum to total due to rounding.

TABLE 8—COST IMPACTS AS A SHARE OF REVENUE FOR SMALL ENTITIES AFFECTED BY RULE FROM THE RANDOM SAMPLE- ASSUMING ANNUALIZED COST OF $9,022 PER UNIQUE DRAWBACK CLAIMANT

Cost as a share of revenue range	Number of small entities affected	Percent of small entities affected
0% ≤ Impact < 1%	45	66
1% ≤ Impact < 3%	11	16
3% ≤ Impact < 5%	3	4
5% ≤ Impact < 10%	7	10
10% or More	2	3
Total	68	100

Note: Estimates may not sum to total due to rounding.

This rule would also result in benefits as well as net monetary transfers to drawback claimants. This rule would provide time and resource savings from forgone paper-based drawback claims, form submissions, and ruling and predetermination requests that offset some of the rule's costs to small entities. CBP estimates that 2,849 small paper-based drawback claimants (69 percent of the estimated 4,129 total claimants) would enjoy $8 in cost savings for each paper claim avoided. These claimants would likely file an average of three drawback claims per year, at an annual cost saving of $24.[37] CBP finds that all 6,844 small drawback claimants would save $17 in printing and mailing costs related to forgone CBP Form 7552 submissions beginning in 2019. Before 2019, the estimated 2,849 small paper-based claimants would not gain this benefit because they would still submit paper CBP Form 7552s. Based on the total number of CBP Form 7552s avoided over the period of analysis and the total number of unique drawback claimants, CBP estimates that each claimant would forgo about four CBP Form 7552 submissions each year of the analysis, saving a total of $68 per year.[38] Lastly, only a small number of claimants would sustain benefits from forgone ruling and predetermination requests. CBP estimates that 645 requests would be avoided during the period of analysis due to the rule and assumes that each forgone request corresponds to a unique drawback claimant. By applying the previously discussed assumption that 69 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis are small entities, CBP finds that 445 small drawback claimants would each save $189 in costs related to ruling and predeterminations requests. This would translate to about $19 per year over the 10-year period of analysis.

This rule's share of net monetary transfers to small entities is unknown. This rule would introduce $35.3 million to $42.4 million in annualized net transfers from the U.S. Government to drawback claimants (using a 7 percent discount rate). These transfers would average between $3,600 and $4,300 per claimant based on the projected 9,919 unique drawback claimants affected by this rule. Some small entities may receive more or less than this average, and potentially even negative net transfers if they make net payments to the U.S. Government.

According to the results from this screening analysis, CBP believes that a substantial number of trade members who could be considered ''small'' may be affected by this proposed rule.[39] CBP cannot determine whether the economic impact on these entities may be considered significant under the RFA. For these reasons, CBP cannot currently certify that the rule will not have a significant economic impact on a substantial number of small entities. CBP has prepared the following IRFA assessing the rule's potential effect on small entities. CBP welcomes public comments on the data and findings included in this RFA analysis. Comments that will provide the most assistance to CBP will reference a specific portion of the RFA analysis, explain the reason for any recommended change, and include data, information, or authority that supports a recommended change.

Initial Regulatory Flexibility Analysis

This IRFA includes the following:

1. A description of the reasons why the action by the agency is being considered;

2. A succinct statement of the objectives of, and legal basis for, the proposed rule;

[37] From 2018 to 2027, CBP projects under its primary estimation method that 4,129 unique trade members would file 101,642 drawback claims electronically instead of by paper as a result of this rule, averaging about 3 claims per unique trade member each year over the 10-year period: 101,642 drawback claims filed electronically instead of by paper over 10-year period/4,129 unique trade members = 25 (rounded) claims per unique trade member over the 10-year period; 25 claims over 10-year period/10 years = 3 (rounded) claims per unique trade member each year.

[38] From 2018 to 2027, CBP projects under its primary estimation method that 9,919 unique trade members would forgo 392,000 CBP Form 7552 submissions as a result of this rule, averaging about 4 forms per unique trade member each year over the 10-year period: 392,000 CBP Form 7552 submissions forgone over 10-year period/9,919 unique trade members = 40 (rounded) forms per unique trade member over the 10-year period; 40 claims over 10-year period/10 years = 4 (rounded) forms per unique trade member each year.

[39] SBA publishes small business size standards for a variety of, though not all, economic activities and industries. SBA does not explicitly define size standards for the importers, exporters, manufacturers, producers, and intermediate parties potentially affected by this rule. *See* 13 CFR 121.101–13 CFR 121.201 for information on SBA's size standards.

3. A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule would apply;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the requirement and the types of professional skills necessary for preparation of the report or record;

5. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and

6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. A description of the reasons why the action by the agency is being considered.

Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125) (TFTEA), signed into law on February 24, 2016, seeks to simplify and modernize the current drawback procedures through amendments to 19 U.S.C. 1313, the statute guiding CBP drawback regulations. Section 906(q) of TFTEA requires CBP to promulgate regulations implementing these changes and allows for a one-year transition period (February 24, 2018–February 23, 2019) in which trade members can follow either the old drawback statute and corresponding regulations as written prior to TFTEA or the amended statute.

To fulfill TFTEA's requirements, CBP, through this rulemaking, proposes to add an entirely new part of drawback regulations in proposed 19 CFR part 190 that would replace the current drawback regulations contained in 19 CFR part 191. Proposed 19 CFR part 190 would directly reflect the following major amendments made by TFTEA, as well as another amendment required to protect U.S. Government revenue: (1) Require the electronic filing of drawback claims; (2) liberalize the standard for substituting merchandise for drawback; (3) generally require per-unit averaging calculation for substitution drawback; (4) generally require substitution drawback claims to be calculated on a ''lesser of'' basis; (5) expand the scope of drawback refunds; (6) establish joint and several liability for drawback claims; (7) modify the rulings process; (8) standardize the timeframe for eligibility to claim drawback; (9) modify recordkeeping requirements; and (10) eliminate ''double drawback'' of excise taxes. The proposed rule would also make minor amendments to the drawback regulations in accordance with TFTEA.

2. A succinct statement of the objectives of, and legal basis for, the proposed rule.

TFTEA requires CBP to prescribe drawback regulations in accordance with the new statute and allows for a one-year transition period in which trade members can follow either the old drawback statute and corresponding regulations as written prior to TFTEA or the amended statute until February 23, 2019. CBP proposes to implement new drawback regulations consistent with TFTEA in 2018. These new regulations aim to modernize the current drawback process.

3. A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule would apply.

As discussed in the screening analysis above, the proposed Modernized Drawback rule would fundamentally change the drawback process and consequently affect all trade members eligible for drawback (*i.e.,* drawback claimants). These trade members can include importers, exporters, manufacturers, producers, and intermediate parties representing a diverse array of industries. CBP estimates that 69 percent of drawback claimants affected by this rule over the 2018 to 2027 period of analysis, or 6,844 claimants, would be small entities.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

This rule proposes several new reporting, recordkeeping, and other compliance requirements for all drawback claimants, including those considered small. Among these changes, CBP proposes to require drawback claimants filing under the new drawback regulations outlined in 19 CFR part 190 to:

- Submit new data elements with their claims, including Form 7551: Drawback Entry summary data at the line, rather than header, level; claimed merchandise data at the 10-digit HTSUS subheading level; line designations; and consistent units of measurement for claimed import, export, or destruction data beginning in 2018.
- File their complete drawback claims electronically using ACE and DIS, thus not allowing for manual, paper-based claims.[40]
- Submit additional data, including exported, destroyed, or substituted merchandise values for substitution claims filed under 19 U.S.C. 1313(b) and 19 U.S.C. 1313(j)(2); accounting methodologies used for direct identification drawback claims (if applicable); unique identifiers linking imports to exports or destructions; per-unit averages for substitution claims; and ''lesser of'' rule calculations for substitution claims.

Along with these reporting requirements, CBP would change the recordkeeping standards for all drawback claimants filing under the new regulations in 19 CFR part 190. Consistent with TFTEA, this rule would change the drawback recordkeeping timeframe for all drawback claimants from three years from CBP's date of payment of the drawback claim to three years from the liquidation of the claim. CBP estimates that drawback claimants would generally have to retain records for one extra year with this rule's new recordkeeping requirement than under the current three-year recordkeeping period, though some trade members may need to retain records for up to four more years under this rule.[41]

This rule would also require parties that split entry summary line items when transferring merchandise (transferors) to provide notification to the recipients (transferees) as to whether that merchandise is eligible for substitution or direct identification drawback. Notification of this designation from the transferor to the transferee must be documented in records, which may include records kept in the normal course of business.

Furthermore, this rule would require all drawback claimants filing manufacturing drawback claims under the new regulations in 19 CFR part 190 (which would account for about 20 percent of all claims filed with this rule) to maintain applicable BOMs and/or formula records[42] identifying the imported and/or substituted merchandise and the exported or destroyed article(s) in their normal course of business. When filing a manufacturing drawback claim, trade members must also certify that they have these BOMs and/or formula

[40] Some drawback documentation constituting a complete drawback claim, such as privilege and ruling applications, would remain paper-based.

[41] Based on input from CBP and trade community representative. Sources: Email correspondence with CBP's Office of Field Operations on April 5, 2017 and email correspondence with trade community representative on February 22, 2017.

[42] *See* 19 CFR 190.2.

records by checking a box on their electronic drawback claim, and provide the documentation to CBP upon request.

5. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

CBP does not believe that any federal rule duplicates, overlaps, or conflicts with the proposed rule.

6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

CBP considered two other alternatives in addition to the proposed rule.

a. Alternative 1

The first regulatory alternative CBP considered would implement all of the proposed rule's changes in 2018 rather than in 2019, offering no transition period. With this alternative, paper-based filers must begin filing their drawback claims electronically in 2018, but they would receive the benefits of drawback modernization in 2018 and beyond. With this alternative, paper-based filers, including those considered small, would begin to incur electronic filing costs in 2018 rather than 2019 like under the rule. This alternative would also lead to relatively more full desk reviews for claimants, including those considering small, than under the rule. Drawback claimants, including those considered small, would sustain an annualized cost of $8.0 million from this alternative under the primary estimation method, which is slightly higher than the proposed rule's $7.6 million annualized cost to trade members (using a 7 percent discount rate). On a per-claimant basis, Alternative 1 would cost $810 annually over the period of analysis compared to the rule's nearly $770 cost per unique claimant.[43] Alternative 1 would also result in an annualized net transfer measuring between $42.8 million and $49.9 million from the U.S. Government to drawback claimants, which would average from $4,300 to $5,000 per unique claimant based on the 9,919 unique drawback claimants projected under this alternative (using a 7 percent discount rate). Like the proposed rule, Alternative 1 would introduce benefits to drawback claimants. These benefits to claimants, including those considered small, would be greater than the rule's cost savings due to the relatively higher number of CBP Form 7552s (and corresponding time, printing, and mailing costs) avoided. CBP did not choose Alternative 1 because TFTEA statutorily allows a one-year transition period (February 24, 2018–February 23, 2019) in which drawback claimants can follow either the old drawback statute and corresponding regulations in 19 CFR part 191 as written prior to TFTEA or the amended statute.[44]

b. Alternative 2

The second regulatory alternative CBP considered would implement all of the proposed rule's changes, except it would not change the current regulatory standard for substituting merchandise for drawback (*i.e.,* no implementation of Major Amendment 2). Under this alternative, CBP estimates that the number of substitution drawback claim submissions and the number of drawback claimants would be lower than under the proposed rule over the period of analysis because this alternative would offer relatively fewer new opportunities to claim drawback. In fact, drawback claims would measure about 548,000 from 2018 to 2027 under Alternative 2's primary estimation method and the number of unique drawback claimants would equal approximately 9,017. Because of its narrower scope, Alternative 2 would introduce slightly lower costs to drawback claimants, including those considered small, than the proposed rule's cost. In particular, claimants would incur relatively fewer full desk reviews and associated costs with this alternative. Drawback claimants, including those considered small, would incur an annualized cost of $7.6 million from this alternative under the primary estimation method, compared to the proposed rule's annualized cost of $7.6 million (using a 7 percent discount rate). On a per-claimant basis, Alternative 2 would cost nearly $840 annually over the period of analysis, while the proposed rule would introduce an average cost of almost $770 cost per unique claimant.[45] Alternative 2 would also result in annualized net transfers between $56.3 million and $63.4 million from drawback claimants to the U.S. Government, which would average $6,200 to $7,000 per unique claimant based on the 9,017 unique drawback claimants projected under this alternative (using a 7 percent discount rate). Like the proposed rule, Alternative 2 would introduce benefits to drawback claimants. These benefits would be slightly lower than the rule's benefits because drawback claimants would continue to submit ruling and predeterminations requests for substitution drawback claims with this alternative. CBP did not choose this Alternative 2 because TFTEA statutorily requires CBP to liberalize the standard for substituting merchandise for drawback by generally basing it on goods classifiable under the same 8-digit HTSUS (or Schedule B) subheading.[46]

Conclusion

In conclusion, because the proposed Modernized Drawback rule would presumably affect all drawback claimants, it would likely impact a substantial number of small entities in each industry submitting such claims. CBP cannot certify whether the rule's (negative) impact on these small entities would be significant. CBP welcomes public comments on the data and findings included in this RFA analysis. Comments that will provide the most assistance to CBP will reference a specific portion of the RFA analysis, explain the reason for any recommended change, and include data, information, or authority that supports a recommended change. If CBP does not receive comments contradicting the RFA analysis findings, CBP may certify that this rule would not have a significant economic impact on a substantial number of small entities at the final rule stage.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information for this notice of proposed rulemaking are included in an existing collection for CBP Forms 7551, 7552, and 7553 (OMB control number 1651–0075).

This rule proposes, among other things, to eliminate the submission requirement for CBP Form 7552 for drawback claimants who file electronically under the new, proposed drawback regulations in 19 CFR part 190. Drawback claimants filing by paper under the current drawback regulations in 19 CFR part 191 would still be required to submit the paper CBP Form 7552 until this rule's requirements become mandatory in 2019. Based on this change, CBP estimates a decrease in

[43] $8,000,000/9,919 unique drawback claimants = $810 (rounded); $7,600,000/9,919 unique drawback claimants = $770 (rounded).

[44] *See* Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125).

[45] $7,600,000/9,017 unique drawback claimants = $840 (rounded); $7,600,000/9,919 unique drawback claimants = $770 (rounded).

[46] *See* Section 906 of the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114–125).

CBP Form 7552 responses and burden hours. Additionally, CBP Form 7551 has a decrease in burden hours based on changes in the agency estimate. CBP will submit to OMB for review the following adjustments to the previously approved Information Collection under OMB control number 1651–0075 to account for the changes proposed in this rule. Furthermore, CBP expects to submit a request to eliminate CBP Form 7552 to OMB in 2019 prior to this rule's mandatory requirement date.

CBP Form 7551, Drawback Entry (reduction in burden hours due to change in agency estimate)

Estimated Number of Respondents: 2,516

Estimated Number of Responses per Respondent: 22.2

Estimated Number of Total Annual Responses: 55,772

Estimated Time per Response: 35 minutes

Estimated Total Annual Burden Hours: 32,532

CBP Form 7552, Delivery Certificate for Drawback (reduction in burden hours due to regulation)

Estimated Number of Respondents: 400

Estimated Number of Responses per Respondent: 20

Estimated Number of Total Annual Responses: 8,000

Estimated Time per Response: 33 minutes

Estimated Total Annual Burden Hours: 4,400

CBP Form 7553, Notice of Intent to Export, Destroy or Return Merchandise for Purposes of Drawback (no change)

Estimated Number of Respondents: 150

Estimated Number of Responses per Respondent: 20

Estimated Number of Total Annual Responses: 3,000

Estimated Time per Response: 33 minutes

Estimated Total Annual Burden Hours: 1,650

V. Proposed Effective/Applicability Dates

To allow stakeholders immediate benefit from these proposed regulations (*see* 5 U.S.C. 553(d) and 808), they are proposed to be effective upon publication of a rule adopting them as final, except that the regulations proposed in §§ 190.22(a)(1)(C), 190.32(b)(3), 191.22(a), 191.32(b)(4), and 191.171(d) regarding the drawback of excise taxes are proposed to become applicable for drawback claims filed on or after 60 days from the date of publication of the final rule.

CBP and Treasury invite interested members of the public to comment on these proposed effective and applicability dates.

VI. Signing Authority

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

List of Subjects

19 CFR Part 113

Bonds, Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures.

19 CFR Part 181

Administrative practice and procedure, Canada, Customs duties and inspection, Exports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 190

Alcohol and alcoholic beverages, Claims, Customs duties and inspection, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 191

Alcohol and alcoholic beverages, Claims, Customs duties and inspection, Exports, Foreign trade zones, Guantanamo Bay Naval Station, Cuba, Packaging and containers, Reporting and recordkeeping requirements, Trade agreements.

Proposed Amendments to the Regulations

For the reasons given above, it is proposed to amend 19 CFR chapter I as set forth below:

PART 113—CUSTOMS BONDS

■ 1. The general authority citations for part 113 continue and the specific authority for § 113.62 is added in numerical order to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

Section 113.62 is also issued under 19 U.S.C. 1313(k).

* * * * *

■ 2. In § 113.62, redesignate paragraphs (m) and (n) as paragraphs (o) and (p) and add paragraphs (a)(4) and (m) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(a) * * *

(4) If a person who is not the principal makes a drawback claim with respect to merchandise imported by the principal (see part 190 of this chapter), the principal and surety (jointly and severally) agree to pay, as demanded by CBP, any erroneous drawback payment in an amount not to exceed the lesser of:

(i) The amount of duties, taxes, and fees that the person claimed with respect to the imported merchandise; or

(ii) The amount of duties, taxes, and fees that the importer authorized the other person to claim with respect to the imported merchandise.

(iii) The amount of the erroneous drawback payment.

* * * * *

(m) *Agreement to comply with CBP regulations applicable to substitution drawback claims.* In the case of imported merchandise that is subject to internal revenue tax imposed under the Internal Revenue Code of 1986, as amended (IRC), the principal agrees not to file, or to transfer to a successor the right to file, a substitution drawback claim involving such tax if the substituted merchandise has been, or will be, the subject of a removal from bonded premises without payment of tax, or the subject of a claim for refund or drawback of tax, under any provision of the IRC.

* * * * *

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 3. The general authority citations for part 181 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

* * * * *

§§ 181.45, 181.46, 181.47, 181.49, and 181.50 [Amended]

■ 4. In the table below, for each section indicated in the left column, remove the words indicated in the middle column, and add, in their place, the words indicated in the right column.

Section	Remove	Add
181.45(b)(2)(i)(B)	§ 191.14 of this chapter, as provided therein	§§ 190.14 or 191.14 of this chapter, as appropriate.
181.45(c)	Such a good must be returned to Customs custody for exportation under Customs supervision within three years after the release from Customs custody.	Such a good must be exported or destroyed within the statutory 5-year time period and in compliance with the requirements set forth in subpart D of part 190 of this chapter or within the 3-year time period and in compliance with the requirements set forth in subpart D of part 191 of this chapter, as applicable.
181.46(b)	(*see* § 191.141(b)(3) (ii) and (iii) of this chapter)	(*see* §§ 190.35 or 191.35 of this chapter, as appropriate).
181.47(a)	part 191 of this chapter;	part 190 or 191 of this chapter, as appropriate
181.49	(*see* § 191.15 (*see* also §§ 191.26(f), 191.38, 191.175(c)) of this chapter).	(*see* § 190.15 (*see* also §§ 190.26(f), 190.38, 190.175(c)) or § 191.15 (*see* also §§ 191.26(f), 191.38, 191.175(c)) of this chapter, as appropriate)
181.50(a)	subpart G of part 190 of this chapter	subpart H of part 190 or subpart H of part 191 of this chapter, as appropriate
181.50(c)	§ 191.92 of this chapter	§§ 190.92 or 191.92 of this chapter, as appropriate.

■ 5. Add part 190 to read as follows:

PART 190—MODERNIZED DRAWBACK

Sec.
190.0 Scope.
190.0a Claims filed under NAFTA.

Subpart A—General Provisions

190.1 Authority of the Commissioner of CBP.
190.2 Definitions.
190.3 Duties, taxes, and fees subject or not subject to drawback.
190.4 Merchandise in which a U.S. Government interest exists.
190.5 Guantanamo Bay, insular possessions, trust territories.
190.6 Authority to sign drawback documents.
190.7 General manufacturing drawback ruling.
190.8 Specific manufacturing drawback ruling.
190.9 Agency.
190.10 Transfer of merchandise.
190.11 Valuation of merchandise.
190.12 Claim filed under incorrect provision.
190.13 Packaging materials.
190.14 Identification of merchandise or articles by accounting method.
190.15 Recordkeeping.

Subpart B—Manufacturing Drawback

190.21 Direct identification drawback.
190.22 Substitution drawback.
190.23 Methods and requirements for claiming drawback.
190.24 Transfer of merchandise.
190.25 Destruction under CBP supervision.
190.26 Recordkeeping for manufacturing drawback.
190.27 Time limitations.
190.28 Person entitled to claim manufacturing drawback.

Subpart C—Unused Merchandise Drawback

190.31 Direct identification drawback.
190.32 Substitution unused merchandise drawback.
190.33 Person entitled to claim unused merchandise drawback.
190.34 Transfer of merchandise.
190.35 Notice of intent to export; examination of merchandise.
190.36 Failure to file Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.
190.37 Destruction under CBP supervision.
190.38 Recordkeeping for unused merchandise drawback.

Subpart D—Rejected Merchandise

190.41 Rejected merchandise drawback.
190.42 Procedures and supporting documentation.
190.43 Unused merchandise claim.
190.44 [Reserved]
190.45 Returned retail merchandise.

Subpart E—Completion of Drawback Claims

190.51 Completion of drawback claims.
190.52 Rejecting, perfecting or amending claims.
190.53 Restructuring of claims.

Subpart F—Verification of Claims

190.61 Verification of drawback claims.
190.62 Penalties.
190.63 Liability for drawback claims.

Subpart G—Exportation and Destruction

190.71 Drawback on articles destroyed under CBP supervision.
190.72 Exportation procedures.
190.73 Electronic proof of exportation.
190.74 Exportation by mail.
190.75 Exportation by the Government.
190.76 [Reserved]

Subpart H—Liquidation and Protest of Drawback Entries

190.81 Liquidation.
190.82 Person entitled to claim drawback.
190.83 Person entitled to receive payment.
190.84 Protests.

Subpart I—Waiver of Prior Notice of Intent To Export; Accelerated Payment of Drawback

190.91 Waiver of prior notice of intent to export.
190.92 Accelerated payment.
190.93 Combined applications.

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

190.101 Drawback allowance.
190.102 Procedure.
190.103 Additional requirements.
190.104 Alcohol and Tobacco Tax and Trade Bureau certificates.
190.105 Liquidation.
190.106 Amount of drawback.

Subpart K—Supplies for Certain Vessels and Aircraft

190.111 Drawback allowance.
190.112 Procedure.

Subpart L—Meats Cured With Imported Salt

190.121 Drawback allowance.
190.122 Procedure.
190.123 Refund of duties.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

190.131 Drawback allowance.
190.132 Procedure.
190.133 Explanation of terms.

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

190.141 Drawback allowance.
190.142 Procedure.
190.143 Drawback entry.
190.144 Refund of duties.

Subpart O—Merchandise Exported From Continuous CBP Custody

190.151 Drawback allowance.
190.152 Merchandise released from CBP custody.
190.153 Continuous CBP custody.
190.154 Filing the entry.
190.155 Merchandise withdrawn from warehouse for exportation.
190.156 Bill of lading.
190.157 [Reserved]
190.158 Procedures.
190.159 Amount of drawback.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

190.161 Refund of taxes.
190.162 Procedure.
190.163 Documentation.
190.164 Return to CBP custody.
190.165 No exportation by mail.
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190.167 Liquidation.
190.168 [Reserved]

Subpart Q—Substitution of Finished Petroleum Derivatives

190.171 General; drawback allowance.
190.172 Definitions.
190.173 Imported duty-paid derivatives (no manufacture).
190.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).
190.175 Drawback claimant; maintenance of records.
190.176 Procedures for claims filed under 19 U.S.C. 1313(p).

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

190.181 Drawback allowance.
190.182 Zone-restricted merchandise.
190.183 Articles manufactured or produced in the United States.
190.184 Merchandise transferred from continuous CBP custody.
190.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, found to be defective as of the time of importation, or returned after retail sale.
190.186 Person entitled to claim drawback.

Subpart S—Drawback Compliance Program

190.191 Purpose.
190.192 Certification for compliance program.
190.193 Application procedure for compliance program.
190.194 Action on application to participate in compliance program.
190.195 Combined application for certification in drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback.
Appendix A to Part 190—General Manufacturing Drawback Rulings
Appendix B to Part 190—Sample Formats For Applications For Specific Manufacturing Drawback Rulings

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624; §§ 190.2, 190.10, 190.15, 190.23, 190.38, 190.51 issued under 19 U.S.C. 1508; § 190.84 also issued under 19 U.S.C. 1514; §§ 190.111, 190.112 also issued under 19 U.S.C. 1309; §§ 190.151(a)(1), 190.153, 190.157, 190.159 also issued under 19 U.S.C. 1557; §§ 190.182–190.186 also issued under 19 U.S.C. 81c; §§ 190.191–190.195 also issued under 19 U.S.C. 1593a.

§ 190.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, as amended. For drawback claims and specialized provisions applicable to specific types of drawback claims filed pursuant to 19 U.S.C. 1313, as it was in effect on or before February 24, 2016, please see part 191 of this title. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

§ 190.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter must be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§ 190.1 Authority of the Commissioner of CBP.

Pursuant to DHS Delegation number 7010.3, the Commissioner of CBP has the authority to prescribe, and pursuant to Treasury Order No. 100–16 (set forth in the appendix to part 0 of this chapter), the Secretary of the Treasury has the sole authority to approve, rules and regulations regarding drawback.

§ 190.2 Definitions.

For the purposes of this part:

Abstract. Abstract means the summary of the actual production records of the manufacturer.

Act. Act, unless indicated otherwise, means the Tariff Act of 1930, as amended.

Bill of materials. Bill of materials refers to a record that identifies each component incorporated into a manufactured or produced article. This may include a record kept in the normal course of business.

Designated merchandise. Designated merchandise means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

Destruction. Destruction means the destruction of articles or merchandise to the extent that they have no commercial value. For purposes of 19 U.S.C. 1313(a), (b), (c), and (j), *destruction* also includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise, as provided for in 19 U.S.C. 1313(x).

Direct identification drawback. Direct identification drawback includes drawback authorized pursuant to section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under CBP supervision, without having been used in the United States (*see* also sections 313(c), (e), (f), (g), (h), and (q)). Direct identification is involved in manufacturing drawback pursuant to section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed. Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in § 190.14.

Document. In this part, *document* has its normal meaning and includes information input to and contained within an electronic data field, and electronic versions of hard-copy documents.

Drawback. Drawback, as authorized under 19 U.S.C. 1313, means the refund or remission, in whole or in part, of the duties, taxes, and/or fees paid on merchandise which were imposed under Federal law. It includes drawback paid upon the entry or importation of the imported merchandise and the refund or remission of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d) (*see* also § 190.3).

Drawback claim. Drawback claim means the drawback entry and related documents required by regulation which together constitute the request for drawback payment. All drawback claims must be filed electronically through a CBP-authorized EDI system.

Drawback entry. Drawback entry means the document containing a description of, and other required information concerning, the exported or destroyed article upon which a drawback claim is based and the designated imported merchandise for which drawback of the duties, taxes, and fees paid upon importation is claimed. Drawback entries must be filed electronically.

Drawback office. Drawback office means any of the locations where drawback claims and related applications or requests may be submitted. CBP may, in its discretion, transfer or share work between the different drawback offices even though that the submission may have been to a particular office.

Drawback product. A *drawback product* means a finished or partially finished product manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or

destroyed under CBP supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback may be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become ''drawback products'' when applicable substitution requirements of the Act are met. For purposes of section 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (*see* 19 U.S.C. 1313(b)). For a drawback product to be designated as the basis for a drawback claim, any transfer of the product must be properly documented (*see* § 190.24).

Exportation. Exportation means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are laden upon qualifying aircraft or vessels as aircraft or vessel supplies in accordance with section 309(b) of the Act, as amended (19 U.S.C. 1309(b)) (*see* §§ 10.59 through 10.65 of this chapter).

Exporter. Exporter means that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. In the case of ''deemed exportations'' (*see* definition of *exportation* in this section), *exporter* means that person who, as the principal party in interest in the transaction deemed to be an exportation, has the power and responsibility for determining and controlling the transaction. In the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), *exporter* means the party who has the power and responsibility for lading supplies on the qualifying aircraft or vessel.

Filing. Filing means the electronic delivery to CBP of any document or documentation, as provided for in this part.

Formula. Formula refers to records that identify the quantity of each element, material, chemical, mixture, or other substance incorporated into a manufactured article. This includes records kept in the normal course of business.

Fungible merchandise or articles. Fungible merchandise or articles means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

General manufacturing drawback ruling. A *general manufacturing drawback ruling* means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation (*see* § 190.7).

Intermediate party. Intermediate party means any party in the chain of commerce leading to the exporter from the importer and who has acquired, purchased, or possessed the imported merchandise (or any intermediate or finished article, in the case of manufacturing drawback) as allowed under the applicable regulations for the type of drawback claimed, which authorize the transfer of the imported or other drawback eligible merchandise by that intermediate party to another party.

Manufacture or production. Manufacture or production means a process, including, but not limited to, an assembly, by which merchandise is either made into a new and different article having a distinctive name, character or use; or is made fit for a particular use even though it is not made into a new and different article.

Multiple products. Multiple products mean two or more products produced concurrently by a manufacture or production operation or operations.

Per unit averaging. Per unit averaging means the equal apportionment of the amount of duties, taxes, and fees eligible for drawback for all units covered by a single line item on an entry summary to each unit of merchandise (and is required for certain substitution drawback claims) (*see* § 190.51(b)). The value of the imported merchandise for which a claim is approved may not exceed the total value of the exported merchandise which forms the basis for the claim (''lesser of'' rule) (*see* § 190.22(a)(1)(ii) and 190.32(b)).

Possession. Possession, for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

Records. Records include, but are not limited to, written or electronic business records, statements, declarations, documents and electronically generated or machine readable data which pertain to a drawback claim or to the information contained in the records required by Chapter 4 of Title 19, United States Code, in connection with the filing of a drawback claim and which may include records normally kept in the ordinary course of business (*see* 19 U.S.C. 1508).

Relative value. Relative value means, except for purposes of § 190.51(b), the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by CBP, of each such product determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback must be apportioned to each such product based on its relative value at the time of separation.

Schedule. A *schedule* means a document filed by a drawback claimant, under section 313(a) or (b), as amended (19 U.S.C. 1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed that justifies a claim for drawback.

Schedule B. Schedule B means the Department of Commerce Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States.

Sought chemical element. A *sought chemical element,* under section 313(b), means an element listed in the Periodic Table of Elements that is imported into the United States or a chemical compound (a distinct substance formed by a chemical union of two or more elements in definite proportion by weight) consisting of those elements, either separately in elemental form or contained in source material.

Specific manufacturing drawback ruling. A *specific manufacturing drawback ruling* means a letter of approval (or its electronic equivalent) issued by CBP Headquarters in response to an application filed by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format in Appendix B of this part. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis being published under an identifying CBP Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

Substituted merchandise or articles. Substituted merchandise or articles

means merchandise or articles that may be substituted as follows:

(1) For manufacturing drawback pursuant to section 1313(b), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the imported designated merchandise;

(2) For direct identification drawback pursuant to section 1313(c)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number and have the same specific product identifier (such as part number, SKU, or product code) as the imported designated merchandise;

(3) For direct identification drawback pursuant to section 1313(j)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the imported designated merchandise except for wine which may also qualify pursuant to § 190.32(d), but when the 8-digit HTSUS subheading number under which the imported merchandise is classified begins with the term ''other,'' then the other merchandise may be substituted for imported merchandise for drawback purposes if the other merchandise and such imported merchandise are classifiable under the same 10-digit HTSUS statistical reporting number and the article description for that 10-digit HTSUS statistical reporting number does not begin with the term ''other''; and

(4) For substitution drawback of finished petroleum derivatives pursuant to section 1313(p), a substituted article must be of the same kind and quality as the qualified article for which it is substituted, that is, the articles must be commercially interchangeable or described in the same 8-digit HTSUS subheading number (*see* § 190.172(b)).

Verification. Verification means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate CBP officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

Wine. Wine, for purposes of substitution unused merchandise drawback under 19 U.S.C. 1313(j)(2) and pursuant to the alternative standard for substitution (*see* 19 CFR 190.32(d)), refers to table wine. Consistent with Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations, table wine is a ''Class 1 grape wine'' that satisfies the requirements of 27 CFR 4.21(a)(1) and having an alcoholic content not in excess of 14 percent by volume pursuant to 27 CFR 4.21(a)(2)).

§ 190.3 Duties, taxes, and fees subject or not subject to drawback.

(a) Drawback is allowable pursuant to 19 U.S.C. 1313 of on duties, taxes, and fees paid on imported merchandise which were imposed under Federal law upon entry or importation, including:

(1) Ordinary customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final, subject to the conditions and requirements of § 190.81(b); and

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 190.81(c), including:

(A) Voluntary tenders (for purposes of this section, a ''voluntary tender'' is a payment of duties on imported merchandise in excess of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions of this section and § 190.81 are met);

(B) Tenders of duties in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4); and

(C) Duties restored under 19 U.S.C. 1592(d).

(2) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c));

(3) Internal revenue taxes which attach upon importation (*see* § 101.1 of this chapter);

(4) Merchandise processing fees (*see* § 24.23 of this chapter); and

(5) Harbor maintenance taxes (*see* § 24.24 of this chapter).

(b) Drawback is not allowable on antidumping and countervailing duties which were imposed on any merchandise entered, or withdrawn from warehouse, for consumption (*see* 19 U.S.C. 1677h).

(c) Drawback is not allowed when the identified merchandise, the designated imported merchandise, or the substituted merchandise (when applicable), consists of an agricultural product which is duty-paid at the over-quota rate of duty established under a tariff-rate quota, except that:

(1) Agricultural products as described in this paragraph are eligible for drawback under 19 U.S.C. 1313(j)(1); and

(2) Tobacco otherwise meeting the description of agricultural products in this paragraph is eligible for drawback under 19 U.S.C. 1313(j)(1) or 19 U.S.C. 1313(a).

§ 190.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government.* A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section.

(b) *Allowance of drawback.* If the merchandise is sold to the U.S. Government, drawback will be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 190.82, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency, or instrumentality.

(c) *Bond.* No bond will be required when a U.S. Government entity claims drawback.

§ 190.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station is considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there from the customs territory of the United States. Drawback is not allowed, except on claims made under 19 U.S.C. 1313(j)(1), on articles shipped from the customs territory of the United States to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island. *See* 19 U.S.C. 1313(y). Puerto Rico, which is part of the customs territory of the United States, is not considered foreign territory for drawback purposes and, accordingly, drawback may not be permitted on articles shipped there from elsewhere in the customs territory of the United States. For refunds of duties, taxes, or fees paid on merchandise imported into Puerto Rico and exported outside of the customs territory of the United States, claims must be filed separately from other claims filed under the provisions of this part.

§ 190.6 Authority to sign or electronically certify drawback documents.

(a) Documents listed in paragraph (b) of this section must be signed or electronically certified only by one of the following:

(1) The president, a vice president, secretary, treasurer, or any other employee legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of the business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed customs broker with a power of attorney to sign the applicable drawback document.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback;

(3) Certifications of exporters on bills of lading or evidence of exportation (*see* §§ 190.28 and 190.82); and

(4) Abstracts, schedules and extracts from monthly abstracts, and bills of materials and formulas, if not included as part of a drawback claim.

(c) The following documents (*see* also part 177 of this chapter) may be executed by one of the persons described in paragraph (a) of this section or by any other individual legally authorized to bind the person (or entity) for whom the document is executed:

(1) A letter of notification of intent to operate under a general manufacturing drawback ruling under § 190.7;

(2) An application for a specific manufacturing drawback ruling under § 190.8;

(3) An application for waiver of prior notice under § 190.91;

(4) An application for approval of accelerated payment of drawback under § 190.92; and

(5) An application for certification in the Drawback Compliance Program under § 190.193.

§ 190.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility.* General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (*see* § 190.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures*—(1) *Publication.* General manufacturing drawback rulings are contained in Appendix A to this part. As deemed necessary by CBP, new general manufacturing drawback rulings will be issued as CBP Decisions and added to the appendix thereafter.

(2) *Submission.* Letters of notification of intent to operate under a general manufacturing drawback ruling must be submitted to any drawback office where drawback entries will be filed, concurrent with or prior to filing a claim, provided that the general manufacturing drawback ruling will be followed without variation. If there is any variation from the general manufacturing drawback ruling, the manufacturer or producer must apply for a specific manufacturing drawback ruling under § 190.8.

(3) *Information required.* Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of manufacturer or producer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in § 190.6(a)(1) through (6) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Identity (by T.D. or CBP Decision number and title) of the general manufacturing drawback ruling under which the manufacturer or producer will operate;

(v) Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling, and the applicable 8-digit HTSUS subheading number(s);

(vi) Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling;

(vii) Basis of claim used for calculating drawback; and

(viii) IRS (Internal Revenue Service) number (with suffix) of the manufacturer or producer.

(c) *Review and action by CBP.* The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted will review the letter of notification of intent.

(1) *Acknowledgment.* The drawback office will promptly issue a letter acknowledging receipt of the letter of intent and authorizing the person to operate under the identified general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations, to the person who submitted the letter of notification if:

(i) The letter of notification is complete (*i.e.,* contains the information required in paragraph (b)(3) of this section);

(ii) The general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process;

(iii) The general manufacturing drawback ruling identified by the manufacturer or producer will be followed without variation; and

(iv) The described manufacturing or production process is a manufacture or production as defined in § 190.2 of this subpart.

(2) *Computer-generated number.* With the letter of acknowledgment the drawback office will include the unique computer-generated number assigned to the acknowledgment of the letter of notification of intent to operate. This number must be stated when the person files manufacturing drawback claims with CBP under the general manufacturing drawback ruling.

(3) *Non-conforming letters of notification of intent.* If the letter of notification of intent to operate does not meet the requirements of paragraph (c)(1) of this section in any respect, the drawback office will promptly and in writing specifically advise the person of this fact and why this is so. A letter of notification of intent to operate which is not acknowledged may be resubmitted to the drawback office to which it was initially submitted with modifications and/or explanations addressing the reasons CBP may have given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(d) *Procedure to modify a general manufacturing drawback ruling.*

Modifications are allowed under the same procedure terms as provided for in § 190.8(g) for specific manufacturing drawback rulings.

(e) *Duration.* Acknowledged letters of notification under this section will remain in effect under the same terms as provided for in § 190.8(h) for specific manufacturing drawback rulings.

§ 190.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (*see* § 190.7), each manufacturer or producer of articles intended to be claimed for drawback must apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in Appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer must include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number (with suffix) of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise is used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in § 190.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications and applicable 8-digit HTSUS subheading(s);

(7) Description of the exported article and applicable 8-digit HTSUS subheadings;

(8) How manufacturing drawback is calculated;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission of Application.* An application for a specific manufacturing drawback ruling must be submitted to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade). Applications may be physically delivered (in triplicate) or submitted via email. Claimants must indicate if drawback claims are to be filed under the ruling at more than one drawback office.

(e) *Review and action by CBP.* CBP Headquarters will review each application for a specific manufacturing drawback ruling.

(1) *Approval.* If the application is consistent with the drawback law and regulations, CBP Headquarters will issue a letter of approval to the applicant and will forward 1 copy of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Each specific manufacturing drawback ruling will be assigned a unique manufacturing number which will be included in the letter of approval to the applicant from CBP Headquarters, which must be used when filing manufacturing drawback claims.

(2) *Disapproval.* If the application is not consistent with the drawback law and regulations, CBP Headquarters will promptly and in writing inform the applicant that the application cannot be approved and will specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, a disapproval may be appealed to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule, as defined in 190.2, filed by the manufacturer or producer, the schedule will be reviewed by CBP Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling*—(1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling may submit a supplemental application for such modification to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade). Such a supplemental application may, at the discretion of the manufacturer or producer, be in the form of the original application, or it may identify the specific manufacturing drawback ruling to be modified (by T.D. or CBP Decision number, if applicable, and unique computer-generated number) and include only those paragraphs of the application that are to be modified, with a statement that all other paragraphs are unchanged and are incorporated by reference in the supplemental application.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling must be submitted to the drawback office where the original claims was filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity;

(E) A change in the basis of claim used for calculating drawback;

(F) A change in the decision to use or not to use an agent under § 190.9 of this chapter, or a change in the identity of an agent under that section;

(G) A change in the drawback office where claims will be filed under the ruling (*see* paragraph (g)(2)(iii) of this section);

(H) An authorization to continue operating under a ruling approved under 19 CFR part 191 (*see* paragraph (g)(2)(iv) of this section); or

(I) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph (g)(2), must contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person. To effect a limited modification, the manufacturer or producer must file with the drawback office(s) where claims were originally filed a letter stating the modifications to be made. The drawback office will promptly acknowledge acceptance of the limited modifications.

(iii) To transfer a claim to another drawback office, the manufacturer or producer must file with the second drawback office where claims will be

filed, a written application to file claims at that office, with a copy of the application and approval letter under which claims are currently filed. The manufacturer or producer must provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(iv) To file a claim under this part based on a ruling approved under 19 CFR part 191, the manufacturer or producer must file a supplemental application for a limited modification no later than February 23, 2019, which provides the following:

(A) Revised parallel columns with the required annotations for the applicable 8-digit HTSUS subheading number(s);

(B) Revised bill of materials or formula with the required annotations for the applicable 8-digit HTSUS subheading number(s); and

(C) A certification of continued compliance, which states: ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies its continuing eligibility for operating under the manufacturing drawback ruling in compliance therewith.''

(h) *Duration.* Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific manufacturing drawback ruling under this section will remain in effect indefinitely unless:

(1) No drawback claim is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

§ 190.9 Agency.

(a) *General.* An owner of the identified merchandise, the designated imported merchandise and/or the substituted merchandise that is used to produce the exported articles may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b) and as defined in § 190.2 of this subpart. For purposes of this section, such owner is the principal and such other person is the agent. Under 19 U.S.C. 1313(b), the principal will be treated as the manufacturer or producer of merchandise used in manufacture or production by the agent. The principal must be able to establish by its manufacturing records, the manufacturing records of its agent(s), or the manufacturing records of both (or all) parties, compliance with all requirements of this part (*see,* in particular, § 190.26).

(b) *Requirements*—(1) *Contract.* The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise, or both, for the principal. The contract must include:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal.* The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest under this section.

(3) *Sales prohibited.* The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to establish existence of a principal-agency relationship under this section.

(c) *Specific manufacturing drawback rulings; general manufacturing drawback rulings*—(1) *Owner.* An owner who intends to operate under the principal-agent procedures of this section must state that intent in any letter of notification of intent to operate under a general manufacturing drawback ruling filed under § 190.7 or in any application for a specific manufacturing drawback ruling filed under § 190.8.

(2) *Agent.* Each agent operating under this section must have filed a letter of notification of intent to operate under a general manufacturing drawback ruling (*see* § 190.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (*see* § 190.8), as appropriate.

(d) *Certificate*—(1) *Contents of certificate.* The principal for whom processing is conducted under this section must file, with any drawback claim, a certificate, subject to the recordkeeping requirements of §§ 190.15 and 190.26, certifying that upon request by CBP it can establish the following:

(i) Quantity of merchandise transferred from the principal to the agent;

(ii) Date of transfer of the merchandise from the principal to the agent;

(iii) Date of manufacturing or production operations performed by the agent;

(iv) Total quantity, description, and 10-digit HTSUS classification of merchandise appearing in or used in manufacturing or production operations performed by the agent;

(v) Total quantity, description, and 10-digit HTSUS classification of articles produced in manufacturing or production operations performed by the agent;

(vi) Quantity and 10-digit HTSUS classification of articles transferred from the agent to the principal; and

(vii) Date of transfer of the articles from the agent to the principal.

(2) *Blanket certificate.* The certificate required under paragraph (d)(1) of this section may be a blanket certificate for a stated period.

§ 190.10 Transfer of merchandise.

(a) *Ability to transfer merchandise.* (1) A party may transfer drawback eligible merchandise or articles to another party, provided that the transferring party:

(i) Imports and pays duties, taxes, and/or fees on such imported merchandise;

(ii) Receives such imported merchandise;

(iii) In the case of 19 U.S.C. 1313(j)(2), receives such imported merchandise, substituted merchandise, or any combination of such imported and substituted merchandise; or

(iv) Receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b).

(2) The transferring party must maintain records that:

(i) Document the transfer of that merchandise or article;

(ii) Identify such merchandise or article as being that to which a potential right to drawback exists; and

(iii) Assign such right to the transferee (*see* § 190.82).

(b) *Required records.* The records that support the transfer must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of physical delivery;

(3) Import entry number and entry line item number;

(4) Quantity delivered and, for substitution claims, total quantity attributable to the relevant import entry line item number;

(5) Total duties, taxes, and fees paid on, or attributable to, the delivered merchandise, and, for substitution claims, total duties, taxes, and fees paid on, or attributable to, the relevant import entry line item number;

(6) Date of importation;

(7) Port where import entry filed;

(8) Person from whom received;

(9) Description of the merchandise delivered;

(10) The 10-digit HTSUS classification for the designated imported merchandise (such HTSUS number must be from the entry summary line item and other entry documentation for the merchandise); and

(11) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the 10-digit HTSUS classification of the substituted merchandise (as if it had been imported).

(c) *Transferor notification for line item designation.* (1) Pursuant to § 190.51(a)(3) and for transfers that do not cover the entire quantity of the merchandise reported on a specific line item from an entry summary, the transferring party (transferor) must provide notice to the transferee(s) of the following:

(i) Whether the transferor has claimed or will claim drawback relating to any merchandise reported on the entry summary line item (specifying either direct identification or substitution as the basis for the claim);

(ii) Whether the transferor has previously transferred any merchandise reported on the entry summary line item and whether the transferor has knowledge regarding a drawback claim being filed relating that transferred merchandise (specifying either direct identification or substitution); and

(iii) Whether the transferor has not previously transferred any merchandise reported on the entry summary line item.

(2) Notification of this designation from the transferor to the transferee(s) must be documented in records.

(3) Notwithstanding the designation made, the basis for the first-filed claim relating to merchandise reported on that entry summary line item (either direct identification or substitution) will be the exclusive basis for any subsequent claims for any other merchandise reported on that same entry summary line item.

(d) *Retention period.* The records listed in paragraph (b) of this section must be retained by the issuing party for 3 years from the date of liquidation of the related claim or longer period if required by law (*see* 19 U.S.C. 1508(c)(3)).

(e) *Submission to CBP.* If the records required under paragraph (b) of this section or additional records requested by CBP are not provided by the claimant, the part of the drawback claim dependent on those records will be denied.

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse will be considered the importer for drawback purposes. No records are required to document prior transfers of merchandise while in a bonded warehouse.

§ 190.11 Valuation of merchandise.

The values declared to CBP as part of a complete drawback claim pursuant to § 190.51 must be established as provided below. If the drawback eligible merchandise or articles are destroyed, then the value of the imported merchandise and any substituted merchandise must be reduced by the value of materials recovered during destruction in accordance with 19 U.S.C. 1313(x).

(a) *Designated imported merchandise.* The value of the imported merchandise is determined as follows:

(1) *Direct identification claims.* The value of the imported merchandise is the customs value of the imported merchandise upon entry into the United States (see subpart E of part 152 of this chapter); or, if the merchandise is identified pursuant to an approved accounting method, then the value of the imported merchandise is the customs value that is properly attributable to the imported merchandise as identified by the appropriate recordkeeping (see § 190.14, varies by accounting method).

(2) *Substitution claims.* The value of the designated imported merchandise is the per unit average value, which is the entered value for the applicable entry summary line item apportioned equally over each unit covered by the line item.

(b) *Exported merchandise or articles.* The value of the exported merchandise or articles eligible for drawback is the selling price as declared for the Electronic Export Information (EEI), including any adjustments and exclusions required by 15 CFR 30.6(a)). If there is no selling price for the EEI, then the value is the other value as declared for the EEI including any adjustments and exclusions required by 15 CFR 30.6(a) (*e.g.,* the market price, if the goods are shipped on consignment). (For special types of transactions where certain unusual conditions are involved, the value for the EEI is determined pursuant to 15 CFR part 30 subpart C.) If no EEI is required (*see,* 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the value that would have been set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

(c) *Destroyed merchandise or articles.* The value of the destroyed merchandise or articles eligible for drawback is the value at the time of destruction, determined as if the merchandise had been exported in its condition at the time of its destruction and an EEI had been required.

(d) *Substituted merchandise for manufacturing drawback claims.* The value of the substituted merchandise for manufacturing drawback claims pursuant to 19 U.S.C. 1313(b) is the cost of acquisition or production for the manufacturer or producer who used the substituted merchandise in manufacturing or production.

§ 190.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of section 313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such provision. The claimant may raise alternative provisions prior to liquidation and by protest (*see* part 174 of this chapter).

§ 190.13 Packaging materials.

(a) *Imported packaging material.* Drawback of duties is provided in section 313(q)(1) of the Act, as amended (19 U.S.C. 1313(q)(1)), on imported packaging material used to package or repackage merchandise or articles exported or destroyed pursuant to section 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). The amount of drawback payable on the packaging material is determined pursuant to the particular drawback provision to which the packaged goods themselves are subject. The packaging material must be separately identified on the claim, and all other information

and documents required for the particular drawback provision under which the claim is made must be provided for the packaging material.

(b) *Packaging material manufactured in United States from imported materials.* Drawback of duties is provided in section 313(q)(2) of the Act, as amended (19 U.S.C. 1313(q)(2)), on packaging material that is manufactured or produced in the United States from imported materials and used to package or repackage articles that are exported or destroyed under section 313(a) or (b) of the Act, as amended (19 U.S.C. 1313(a) or (b)). The amount of drawback payable on the packaging material is determined pursuant to the particular manufacturing drawback provision to which the packaged articles themselves are subject, either 19 U.S.C. 1313(a) or (b), as applicable. The packaging material and the imported merchandise used in the manufacture or production of the packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made must be provided for the packaging material as well as the imported merchandise used in its manufacture or production, for purposes of determining the applicable drawback payable.

§ 190.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture or production, as defined in § 190.2. This section is not applicable to situations in which the drawback law authorizes substitution (substitution is allowed in specified situations under 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p); this section does apply to situations in these subsections in which substitution is not allowed, as well as to the subsections of the drawback law under which no substitution is allowed). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution.

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible as defined in § 190.2;

(2) The person using the identification method must be able to establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section or specifically approved by CBP (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by CBP (*see* § 190.61). If CBP requests such verification, the person using the identification method must be able to demonstrate how, under Generally Accepted Accounting Procedures (GAAP), the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used exclusively, without using other methods for a period of at least one year, unless approval is given by CBP for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section. If a claim is eligible for the use of any accounting method, the claimant must indicate on the drawback entry whether an accounting method was used, and if so, which accounting method was used, to identify the merchandise as part of the complete claim (see § 190.51).

(1) *First-in, first-out (FIFO)*—(i) *General.* The FIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* If the beginning inventory is zero, 100 units with $1 drawback attributable per unit are received in inventory on the 2nd of the month, 50 units with no drawback attributable per unit are received into inventory on the 5th of the month, 75 units are withdrawn for domestic (non-export) shipment on the 10th of the month, 75 units with $2 drawback attributable per unit are received in inventory on the 15th of the month, 100 units are withdrawn for export on the 20th of the month, and no other receipts or withdrawals occurred in the month, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $75 (25 units from the receipt on the 2nd with $1 drawback attributable per unit, 50 units from the receipt on the 5th with no drawback attributable per unit, and 25 units from the receipt on the 15th with $2 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units ($1 drawback/unit) results in a balance of 75 units (25 with $1 drawback/unit and 50 with $0 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (25

with $1 drawback/unit, 50 with $0 drawback/unit, and 25 with $2 drawback unit) results in a balance of 50 units (all 50 with $2 drawback/unit).

(2) *Last-in, first out (LIFO)*—(i) *General.* The LIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $175 (75 units from the receipt on the 15th with $2 drawback attributable per unit and 25 units from the receipt on the 2nd with $1 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $0 drawback/unit and 25 with $1 drawback/unit) results in a balance of 75 units (all with $1 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (75 with $1 drawback/unit and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (75 with $2 drawback/unit and 25 with $1 drawback/unit) results in a balance of 50 units (all 50 with $1 drawback/unit).

(3) *Low-to-high*—(i) *General.* The low-to-high method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles in inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then those with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years before the claimed export, no drawback could be granted).

(ii) *Ordinary Low–to-High*—(A) *Method.* Under the ordinary low-to-high method, all receipts into and all withdrawals from the inventory are recorded in the accounting record and accounted for so that each withdrawal, whether for export or domestic shipment, is identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles available in the inventory.

(B) *Example. (1)* In this example, the beginning inventory is zero, and receipts into and withdrawals from the inventory are as follows:

Date	Receipt ($ per unit)	Withdrawals
Jan. 2	100 (zero).	
Jan. 5	50 ($1.00).	
Jan. 15 ...	.....	50 (export).
Jan. 20 ...	50 ($1.01).	
Jan. 25 ...	50 ($1.02).	
Jan. 28 ...	.....	50 (domestic).
Jan. 31 ...	50 ($1.03).	
Feb. 5	.....	100 (export).
Feb. 10 ...	50 ($.95).	
Feb. 15 ...	.....	50 (export).
Feb. 20 ...	50 (zero).	
Feb. 23 ...	.....	50 (domestic).
Feb. 25 ...	50 ($1.05).	
Feb. 28 ...	.....	100 (export).
Mar. 5	50 ($1.06).	
Mar. 10 ...	50 ($.85).	
Mar. 15 ...	.....	50 (export).
Mar. 21 ...	.....	50 (domestic).
Mar. 20 ...	50 ($1.08).	
Mar. 25 ...	50 ($.90).	
Mar. 31 ...	.....	100 (export).

(2) The drawback attributable to the January 15 withdrawal for export is zero (the available receipt with the lowest drawback amount per unit is the January 2 receipt), the drawback attributable to the January 28 withdrawal for domestic shipment (no drawback) is zero (the remainder of the January 2 receipt), the drawback attributable to the February 5 withdrawal for export is $100.50 (the January 5 and January 20 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 23 withdrawal for domestic shipment (no drawback) is zero (the February 20 receipt), the drawback attributable to the February 28 withdrawal for export is $102.50 (the January 25 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), the drawback attributable to the March 21 withdrawal for domestic shipment (no drawback) is $52.50 (the February 25 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). Remaining in inventory is the March 20 receipt of 50 units ($1.08 drawback/unit). Total drawback attributable to withdrawals for export in this example would be $391.00.

(iii) *Low-to-high method with established average inventory turn-over period*—(A) *Method.* Under the low-to-high method with established average inventory turn-over period, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into the inventory in the established average inventory turn-over period preceding the withdrawal.

(B) *Accounting for withdrawals* (*for domestic shipments and for export).* Under the low to-high method with established average inventory turn-over period, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Establishment of inventory turn-over period.* For purposes of the low to-high method with established average inventory turn-over period, the average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn based on that rate. To establish an average of this time, at least 1 year, or 3 turn-over periods (if inventory turns over fewer than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used (instead of using a different inventory turn-over period for each kind of merchandise or article).

(D) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section

(but, as required for this method, without accounting for domestic withdrawals, and with an established average inventory turn-over period of 30 days), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the preceding 30 days with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $101.50 (the January 20 and January 25 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $51.50 (the February 20 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). No drawback may be claimed on the basis of the January 5 receipt or the February 25 receipt because in the case of each, there were insufficient withdrawals for export within the established average inventory turn-over period; the 50 units remaining from the January 2 receipt after the January 15 withdrawal are not identified for a withdrawal for export because there is no other withdrawal for export (other than the January 15 withdrawal) within the established average inventory turn-over period; the March 20 receipt (50 units at $1.08) is not yet attributed to withdrawals for export. Total drawback attributable to withdrawals for export in this example would be $341.00.

(iv) *Low-to-high blanket method*—(A) *Method.* Under the low-to-high blanket method, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for. Each withdrawal is identified on the basis of the lowest drawback amount per available unit of the merchandise or articles received into inventory in the applicable statutory period for export preceding the withdrawal (*e.g.,* 180 days under 19 U.S.C. 1313(p) and 5 years for other types of drawback claims pursuant to 19 U.S.C. 1313(r)). Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, no drawback could be granted generally if the merchandise or articles identified were attributable to an import made more than 5 years before the claimed export; and, for claims pursuant to 19 U.S.C. 1313(p), no drawback could be granted if the merchandise or articles identified were attributable to an import that was entered more than 180 days after the date of the claimed export or if the claimed export was more than 180 days after the close of the manufacturing period attributable to an import).

(B) *Accounting for withdrawals* (*for domestic shipments and for export).* Under the low-to-high blanket method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the inventory with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $50.00 (the remainder of the January 2 receipt and the January 5 receipt), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $50.50 (the February 20 and January 20 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $96.00 (the March 25 and January 25 receipts). Receipts not attributed to withdrawals for export are the January 31 (50 units at $1.03), February 25 (50 units at $1.05), March 5 (50 units at $1.06), and March 20 (50 units at $1.08) receipts. Total drawback attributable to withdrawals for export in this example would be $286.50.

(4) *Average*—(i) *General.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation by recordkeeping of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. In this method, the ratio of:

(A) The total units of a particular receipt of the fungible merchandise in the inventory at the time of a withdrawal to;

(B) The total units of all receipts of the fungible merchandise (including each receipt into inventory) at the time of the withdrawal;

(C) Is applied to the withdrawal, so that the withdrawal consists of a proportionate quantity of units from each particular receipt and each receipt is correspondingly decreased. Withdrawals and corresponding decreases to receipts are rounded to the nearest whole number.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $133 (50 units from the receipt on the 15th with $2 drawback attributable per unit, 33 units from the receipt on the 2nd with $1 drawback attributable per unit, and 17 units from the receipt on the 5th with $0 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $1 drawback/unit (applying the ratio of 100 units from the receipt on the 2nd to the total of 150 units at the time of withdrawal) and 25 with $0 drawback/unit (applying the ratio of 50 units from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 75 units (with 50 with $1 drawback/unit and 25 with $0 drawback/unit, on the basis of the same ratios); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (50 with $1 drawback/unit, 25 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (50 with $2 drawback/unit (applying the ratio of the 75 units from the receipt on the 15th to the total of 150 units at the time of withdrawal), 33 with $1 drawback/unit (applying the ratio of the 50 units remaining from the receipt on the 2nd to the total of 150 units at the time of withdrawal, and 17 with $0 drawback/unit (applying the ratio of the 25 units remaining from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 50 units (25 with $2 drawback/unit, 17 with $1 drawback/unit, and 8 with $0 drawback/unit, on the basis of the same ratios).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(iii)(C) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the

imported designated merchandise and other (substituted) merchandise (*see* 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the exported or destroyed articles (*see* 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods.* (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (*see* paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by CBP of the proposed accounting method under the provisions for obtaining an administrative ruling (*see* part 177 of this chapter). The conditions applied and the criteria used by CBP in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by CBP for purposes of this section, it must meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by CBP.

§ 190.15 Recordkeeping.

Pursuant to 19 U.S.C. 1508(c)(3), all records which pertain to the filing of a drawback claim or to the information contained in the records required by 19 U.S.C. 1313 in connection with the filing of a drawback claim must be retained for 3 years after liquidation of such claims or longer period if required by law (under 19 U.S.C. 1508, the same records may be subject to a different period for different purposes).

Subpart B—Manufacturing Drawback

§ 190.21 Direct identification manufacturing drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under CBP supervision, of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used in the United States prior to such exportation or destruction. The amount of drawback allowable shall not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise. However, duties may not be refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result, drawback must be distributed among the products in accordance with their relative values, as defined in § 190.2, at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in § 190.14.

§ 190.22 Substitution manufacturing drawback.

(a)(1) *General*—(i) *Substitution standard.* If imported, duty-paid merchandise or merchandise classifiable under the same 8-digit HTSUS subheading number as the imported merchandise is used in the manufacture or production of articles within a period not to exceed 5 years from the date of importation of such imported merchandise, then upon the exportation, or destruction under CBP supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in section 313(b) of the Act, as amended (19 U.S.C. 1313(b)). Drawback is allowable even though none of the imported, duty-paid merchandise may actually have been used in the manufacture or production of the exported or destroyed articles.

(ii) *Allowable refund*—(A) *Exportation.* In the case of an article that is exported, the amount of drawback allowable will not exceed 99 percent of the lesser of:

(*1*) The amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(*2*) The amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported.

(B) *Destruction.* In the case of an article that is destroyed, the amount of drawback allowable will not exceed 99 percent of the lesser of:

(*1*) The amount of duties, taxes, and fees paid with respect to the imported merchandise (reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)); or

(*2*) The amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported (reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)).

(C) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(2) *Special rule for sought chemical elements*—(i) *Substitution standard.* A sought chemical element, as defined in § 190.2, may be considered imported merchandise, or merchandise classifiable under the same 8-digit HTSUS subheading number as such imported merchandise, used in the manufacture or production of an article as described in paragraph (a)(1)(i) of this section, and it may be substituted for source material containing that sought chemical element, without regard to whether the sought chemical element and the source material are classifiable under the same 8-digit HTSUS subheading number, and apportioned quantitatively, as appropriate (*see* § 190.26(b)(4)).

(ii) *Allowable refund.* The amount of drawback allowable will be determined in accordance with paragraph (a)(1)(ii) of this section. The value of the substituted source material must be determined based on the quantity of the sought chemical element present in the source material, as calculated per § 190.26(b)(4).

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 5 years after the date on which the material was imported may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor*—(1) *General rule.* Upon compliance with the requirements in this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A ''drawback successor'' is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by CBP.* The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3)(i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of liquidation of the related claim and are subject to review by CBP upon request.

(e) *Multiple products*—(1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback will be distributed to each product in accordance with its relative value (*see* § 190.2) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (as provided for in the definition of relative value in § 190.2). Manufacturing periods in excess of one month may not be used without specific approval of CBP.

(3) *Recordkeeping.* Records must be maintained showing the relative value of each product at the time of separation.

§ 190.23 Methods and requirements for claiming drawback.

Claims must be based on one or more of the methods specified in paragraph (a) of this section and comply with all other requirements specified in this section.

(a) *Method of claiming drawback.*—(1) *Used in.* Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (*see* paragraph (a)(2) of this section).

(2) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(3) *Relative value.* Drawback is also allowable under this method when two or more products result from manufacturing or production. The relative value method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and drawback must be distributed among the products in accordance with their relative values (as defined in § 190.2) at the time of separation.

(4) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. The appearing in method may not be used if there are multiple products also necessarily and concurrently resulting from the manufacturing process.

(b) *Abstract or schedule.* A drawback claimant may use either the abstract or schedule method to show the quantity of material used or appearing in the exported or destroyed article. An abstract is the summary of records which shows the total quantity used in or appearing in all articles produced during the period covered by the abstract. A schedule shows the quantity of material actually used in producing, or appearing in, each unit of product. Manufacturers or producers submitting letters of notification of intent to operate under a general manufacturing drawback ruling (*see* § 190.7) and applicants for approval of specific manufacturing drawback rulings (*see* § 190.8) must state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(c) *Claim for waste.*—(1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer must keep records to show the market value of the merchandise or drawback products used to manufacture or produce the exported or destroyed articles, as well as the market value of the resulting waste, under the used in less valuable waste method (as provided for in the definition of relative value in § 190.2).

(2) *If claim for waste is waived.* If claim for waste is waived, only the ''appearing in'' basis may be used (*see* paragraph (a)(4) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

§ 190.24 Transfer of merchandise.

Evidence of any transfers of merchandise (*see* § 190.10) must be evidenced by records, as defined in § 190.2.

§ 190.25 Destruction under CBP supervision.

A claimant may destroy merchandise and obtain drawback by complying with the procedures set forth in § 190.71 relating to destruction.

§ 190.26 Recordkeeping.

(a) *Direct identification.* (1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) must keep records to allow the verifying CBP official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through manufacture or production, to exportation or destruction. To this end, these records must specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity, identity, and 8-digit HTSUS subheading number(s) of the imported duty-paid merchandise or drawback products used in or appearing in (*see* § 190.23) the articles manufactured or produced;

(iii) The quantity, if any, of the non-drawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the articles were commingled after manufacture or production, their identity may be maintained in the manner prescribed in § 190.14.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed will be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the CBP official to verify, the applicable import entry and any transfers of the merchandise associated with the claim; and

(ii) To identify with respect to that import entry, and any transfers of the merchandise, the imported merchandise or drawback products used in manufacture or production.

(b) *Substitution.* The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) must establish the facts in paragraph (a)(1)(i), (iv) through (vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of the substituted merchandise before its use to manufacture or produce (or appearing in) the exported or destroyed articles;

(3) That, within 5 years after the date of importation of the imported duty-paid merchandise, the manufacturer or producer used the designated merchandise in manufacturing or production and that during the same 5-year period it manufactured or produced the exported or destroyed articles; and

(4) If the designated merchandise is a sought chemical element, as defined in § 190.2, that was contained in imported material and a substitution drawback claim is made based on that chemical element:

(i) The duty paid on the imported material must be apportioned among its constituent components. The claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that element on a unit-for-unit attribution using the unit of measure set forth in the HTSUS that is applicable to the imported material. If the material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements and converting to the decimal equivalent of their respective percentages and multiplying that decimal equivalent against the above-determined amount of pure compound.

(ii) The amount claimed as drawback based on the sought chemical element must be deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Example to paragraph (b)(4): Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% ad valorem duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per unit duty paid on the synthetic rutile is calculated by dividing the duty paid ($600) by the amount of imported synthetic rutile (30,000 pounds), the per unit duty is two cents of duty per pound of the imported synthetic rutile ($600 ÷ 30,000 = $0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound (16,486.7 × $0.02 = $329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($329.73 × .99 = $326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound ($0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.02 × 16,000 = $320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% (.99 × $320.00 = $316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer must keep records to show the market value of the merchandise used to manufacture or produce the exported or destroyed article, as well as the quantity and market value of the waste incurred (as provided for in the definition of relative value in § 190.2). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, must be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles. The waste replacement reduction will be determined by reducing from the quantity of merchandise actually used by the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured or produced articles for exportation.* Where the claimant purchases articles from the manufacturer or producer and exports them, the claimant must

maintain records to document the manufacture or production and transfer of those articles (*see* § 190.51(a)(1)).

(e) *Multiple claimants*—(1) *General.* Multiple claimants may file for drawback with respect to the same export (for example, if an automobile is exported, where different parts of the automobile have been produced by different manufacturers under drawback conditions and the exporter waives the right to claim drawback and assigns such right to the manufacturers under § 190.82).

(2) *Procedures*—(i) *Submission of letter.* Each drawback claimant must file a separate letter, as part of the claim, describing the component article on the export bill of lading to which each claim will relate. Each letter must show the name of the claimant and bear a statement that the claim will be limited to its respective component article. The exporter must endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket waivers and assignments of drawback rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(f) *Retention of records.* Pursuant to 19 U.S.C. 1508(c)(3), all records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant with respect to drawback claims must be retained for 3 years after the date of liquidation of the related claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

§ 190.27 Time limitations for manufacturing drawback.

(a) *Direct identification.* Drawback will be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under CBP supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution.* Drawback will be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 5 years after importation;

(2) Within the 5-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under CBP supervision within 5 years of the date of importation of the designated merchandise, or within 5 years of the earliest date of importation associated with a drawback product.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 190.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 190.8), but no drawback will be paid until such acknowledgement or approval, as appropriate.

§ 190.28 Person entitled to claim manufacturing drawback.

The exporter (or destroyer) will be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification must also affirm that the exporter (or destroyer) has not and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for under this section may be a blanket certification for a stated period. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (or destroyer).

§ 190.29 Certification of bill of materials or formula.

At the time of filing a claim under 19 U.S.C. 1313(a) or (b), the claimant must certify the following:

(a) The claimant is in possession of the applicable bill of materials or formula for the exported or destroyed article(s), which will be promptly provided upon request;

(b) The bill of materials or formula identifies the imported and/or substituted merchandise and the exported or destroyed article(s) by their 8-digit HTSUS subheading numbers; and

(c) The bill of materials or formula identifies the manufactured quantities of the imported and/or substituted merchandise and the exported or destroyed article(s).

Subpart C—Unused Merchandise Drawback

§ 190.31 Direct identification unused merchandise drawback.

(a) *General.* Section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law upon entry or importation, if the merchandise has not been used within the United States before such exportation or destruction. The total amount of drawback allowable will not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise.

(b) *Time of exportation or destruction.* Drawback will be allowable on imported merchandise if, before the close of the 5-year period beginning on the date of importation and before the drawback claim is filed, the merchandise is exported from the United States or destroyed under CBP supervision.

(c) *Operations performed on imported merchandise.* The performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law as provided for in 19 U.S.C. 1313(j)(3)(A), on imported merchandise is not a use of that merchandise for purposes of this section.

§ 190.32 Substitution unused merchandise drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback of duties, taxes, and fees paid on imported merchandise based on the export or destruction under CBP supervision of substituted merchandise (as defined in § 190.2, pursuant to 19 U.S.C. 1313(j)(2)), before the close of the 5-year period beginning on the date of importation of the imported merchandise and before the drawback claim is filed, and before such exportation or destruction the substituted merchandise is not used in the United States (*see* paragraph (e) of this section) and is in the possession of the party claiming drawback.

(b) *Allowable refund.* (1) *Exportation.* In the case of an article that is exported, subject to paragraph (3) below, the total amount of drawback allowable will not exceed 99 percent of the lesser of:

(i) The amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(ii) The amount of duties, taxes, and fees that would apply to the exported

article if the exported article were imported.

(2) *Destruction.* In the case of an article that is destroyed, subject to paragraph (3) below, the total amount of drawback allowable will not exceed 99 percent of the lesser of:

(i) The amount of duties, taxes, and fees paid with respect to the imported merchandise (reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)); or

(ii) The amount of duties, taxes, and fees that would apply to the destroyed article if the destroyed article had been imported (reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)).

(3) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(c) *Determination of HTSUS classification for substituted merchandise.* Requests for binding rulings on the classification of imported, substituted, or exported merchandise may be submitted to CBP pursuant to the procedures set forth in part 177.

(d) *Claims for wine.* (1) *Alternative substitution standard.* In addition to 8-digit HTSUS substitution standard in § 190.2, drawback of duties, taxes, and fees, paid on imported wine as defined in § 190.2 may be allowable under 19 U.S.C. 1313(j)(2) with respect to wine if the imported wine and the exported wine are of the same color and the price variation between the imported wine and the exported wine does not exceed 50 percent.

(2) *Allowable refund.* For any drawback claim for wine (as defined in § 190.2) based on subsection (j)(2), the total amount of drawback allowable will be equal to 99 percent of the duties, taxes, and fees paid with respect to the imported merchandise, without regard to the limitations in paragraph (b).

(3) *Required certification.* When the basis for substitution for wine drawback claims under 19 U.S.C. 1313(j)(2) is the alternative substitution standard rule set forth in (d)(1), claims under this subpart may be paid and liquidated if:

(i) The claimant specifies on the drawback entry that the basis for substitution is the alternative substitution standard for wine; and

(ii) The claimant provides a certification, as part of the complete claim (see 190.51(a)), stating that:

(A) The imported wine and the exported wine are a Class 1 grape wine (as defined in 27 CFR 4.21(a)(1)) of the same color (*i.e.,* red, white, or rosé);

(B) The imported wine and the exported wine are table wines (as defined in 27 CFR 4.21(a)(2)) and the alcoholic content does not exceed 14 percent by volume; and

(C) The price variation between the imported wine and the exported wine does not exceed 50 percent.

(e) *Operations performed on substituted merchandise.* The performing of any operation or combination of operations, not amounting to manufacture or production as provided for in 19 U.S.C. 1313(j)(3)(B), on the substituted merchandise is not a use of that merchandise for purposes of this section.

(f) *Designation by successor; 19 U.S.C. 1313(s).* (1) *General rule.* Upon compliance with the requirements of this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or substituted merchandise that was transferred to the predecessor from the person who imported and paid duty on the imported merchandise.

(2) *Drawback successor.* A ''drawback successor'' is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify in an attachment to the drawback claim that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or substituted merchandise.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the drawback claim, that the predecessor has not and will not designate, nor enable any other person to designate, the imported and/or substituted merchandise as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by CBP.* The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in paragraph (f)(3)(i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of liquidation of the related claim and are subject to review by CBP upon request.

§ 190.33 Person entitled to claim unused merchandise drawback.

(a) *Direct identification.* (1) Under 19 U.S.C. 1313(j)(1), as amended, the exporter or destroyer will be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer must secure and retain a certification signed by the exporter or destroyer waiving the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (*see* § 190.82 of this part). The certification provided for under this section may be a blanket certification for a stated period. The claimant must file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

(b) *Substitution.* (1) Under 19 U.S.C. 1313(j)(2), as amended, the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party will be entitled to claim drawback.

(ii) In situations where the person who imported and paid the duty on the imported merchandise transfers the imported merchandise, substituted merchandise, or any combination of imported and substituted merchandise to the person who exports or destroys that merchandise, the exporter or destroyer will be entitled to claim drawback. (Any such transferred

merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under 19 U.S.C. 1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) must be documented by records, including records kept in the normal course of business, and the exporter or destroyer will be entitled to claim drawback (multiple substitutions are not permitted).

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer must secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (*see* § 190.82). The certification provided for under this section may be a blanket certification for a stated period. The claimant must file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

§ 190.34 Transfer of merchandise.

Any transfer of merchandise (*see* § 190.10) must be recorded in records, which may include records kept in the normal course of business, as defined in § 190.2.

§ 190.35 Notice of intent to export; examination of merchandise.

(a) *Notice.* A notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of intended examination a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 2 working days prior to the date of intended exportation unless CBP approves another filing period or the claimant has been granted a waiver of prior notice (*see* § 190.91).

(b) *Required information.* The notice must certify that the merchandise has not been used in the United States before exportation. In addition, the notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(c) *Decision to examine or to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (*see* paragraph (a) of this section), CBP will notify the party designated on the Notice in writing of CBP's decision to either examine the merchandise to be exported, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (d) of this section), but the merchandise is exported without having been presented to CBP for examination, any drawback claim, or part thereof, based on the Notice will be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination has not been received, the merchandise may be exported without delay.

(d) *Time and place of examination.* If CBP gives timely notice of its decision to examine the export merchandise, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported without examination if CBP fails to timely examine the merchandise after presentation to CBP. If the examination is completed at a port other than the port of actual exportation, the merchandise must be transported in-bond to the port of exportation.

(e) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

§ 190.36 Failure to file Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(a) *General; application.* Merchandise which has been exported without complying with the requirements of § 190.35(a) or § 190.91 may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) subject to the following conditions:

(1) *Application.* The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application must include the following:

(i) Required information.

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and IRS number(s) (with suffix(es)) of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application (and the applicable HTSUS numbers);

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) Estimated number of drawback claims and estimated time of filing those claims to be covered in this application;

(H) The port(s) of exportation;

(I) Estimated dollar value of potential drawback claims to be covered in this application;

(J) The relationship between the parties involved in the import and export transactions; and

(K) Provision(s) of drawback covered under the application;

(ii) Written declarations regarding:

(A) The reason(s) that CBP was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for CBP to review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and satisfied the requirements for substitution with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(*1*) Records;

(*2*) Any laboratory records prepared in the ordinary course of business; and/or

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-Time Use.* The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application.* Drawback claims may be

filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by CBP.

(b) *CBP action.* In order for CBP to evaluate the application under this section, CBP may request, and the applicant must provide, any of the information listed in paragraph (a)(1)(iii)(A)(1) through (3) of this section. In making its decision to approve or deny the application under this section, CBP will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraphs (a)(1)(iii)(A)(1) through (3) of this section and requested by CBP under paragraph (b); and

(3) The applicant's prior record with CBP.

(c) *Time for CBP action.* CBP will notify the applicant in writing within 90 days after receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny or act on the application and the reason therefor.

(d) *Appeal of denial of application.* If CBP denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the date of denial. If CBP denies this initial appeal, the applicant may file a further written appeal with CBP Headquarters, Office of Trade, Trade Policy and Programs, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. CBP may extend the 30-day period for appeal to the drawback office or to CBP Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30-day period above.

(e) *Future intent to export unused merchandise.* If an applicant states it will have future exportations on which unused merchandise drawback may be claimed (*see* paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (*see* § 190.91). If the applicant seeks waiver of prior notice under § 190.91, any documentation submitted to CBP to comply with this section will be included in the request under § 190.91. An applicant that states that it will have future exportations on which unused merchandise drawback may be claimed (*see* paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice must notify CBP of its intent to export prior to each such exportation, in accordance with § 190.35.

§ 190.37 Destruction under CBP supervision.

A claimant may destroy merchandise and obtain unused merchandise drawback by complying with the procedures set forth in § 190.71 relating to destruction.

§ 190.38 Recordkeeping.

(a) *Maintained by claimant; by others.* Pursuant to 19 U.S.C. 1508(c)(3), all records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313(j)(1) or (j)(2), as applicable, and this part with respect to drawback claims, must be retained for 3 years after liquidation of such claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313(j)(1) and (j)(2) must be accounted for in a manner which will enable the claimant:

(1) To determine, and CBP to verify, the applicable import entry or transfer(s) of drawback-eligible merchandise;

(2) To determine, and CBP to verify, the applicable exportation or destruction; and

(3) To identify, with respect to the import entry or any transfer(s) of drawback-eligible merchandise, the imported merchandise designated as the basis for the drawback claim.

Subpart D—Rejected Merchandise

§ 190.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid, and which: Does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation; or ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer. The total amount of drawback allowable will be 99 percent of the amount of duties paid with respect to the imported, duty-paid merchandise. See subpart P for drawback of internal revenue taxes for unmerchantable or nonconforming distilled spirits, wines, or beer.

§ 190.42 Procedures and supporting documentation.

(a) *Time limit for exportation or destruction.* Drawback will be denied on merchandise that is exported or destroyed after the statutory 5-year time period.

(b) *Required documentation.* The claimant must submit documentation to CBP as part of the complete drawback claim (*see* § 190.51) to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation (*see* § 190.45 for additional requirements for claims made on rejected retail merchandise under 19 U.S.C. 1313(c)(1)(C)(ii)). If the claimant was not the importer, the claimant must also:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods, that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter (for destruction under CBP supervision, see § 190.71), must file at the port of intended redelivery to CBP custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended return to CBP custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (*see* § 190.91) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required information.* The notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (*see* paragraph (c) of this section), CBP will notify, in writing, the party designated on the Notice of CBP's decision to either examine the merchandise to be exported or

destroyed, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (f) of this section), but the merchandise is exported or destroyed without having been presented to CBP for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, must be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and will be deemed to have been returned to CBP custody.

(f) *Time and place of examination.* If CBP gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if CBP fails to timely examine the merchandise after presentation to CBP, and in such case the merchandise will be deemed to have been returned to CBP custody. If the examination is completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (*see* § 190.51(b)). The procedures for restructuring a claim (*see* § 190.53) apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* Claimants must provide documentary evidence of exportation (*see* subpart G of this part). The claimant may establish exportation by mail as set out in § 190.74o.

§ 190.43 Unused merchandise drawback claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

§ 190.44 [Reserved]

§ 190.45 Returned retail merchandise.

(a) *Special rule for substitution.* Section 313(c)(1)(C)(ii) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(c)(1)(C)(ii)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid and ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer.

(b) *Eligibility requirements.* (1) Drawback is allowable pursuant to compliance with all requirements set forth in this subpart; and

(2) The claimant must also show by evidence satisfactory to CBP that drawback may be claimed by—

(i) Designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (a) under CBP supervision.

(ii) Certifying that the same 8-digit HTSUS subheading number and specific product identifier (such as part number, SKU, or product code) apply to both the merchandise designated for drawback (in the import documentation) and the returned merchandise.

(c) *Allowable refund.* The total amount of drawback allowable will not exceed 99 percent of the amount of duties paid with respect to the imported merchandise.

(d) *Denial of claims.* No drawback will be refunded if CBP is not satisfied that the claimant has provided, upon request, the documentation necessary to support the certification required in paragraph (b)(2)(ii).

Subpart E—Completion of Drawback Claims

§ 190.51 Completion of drawback claims.

(a) *General*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part will consist of the successful electronic transmission to CBP of the drawback entry (as described in subparagraph (2)), applicable Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553, applicable import entry data, and evidence of exportation or destruction as provided for under subpart G of this part.

(2) *Drawback entry.* The drawback entry is to be filed through a CBP-authorized electronic system and must include the following:

(i) Claimant identification number, name, and address;

(ii) Broker identification number, name, and address (if applicable);

(iii) Surety code, bond type, and amount of bond;

(iv) Port code for the drawback office that will review the claim;

(v) Drawback entry number and provision(s) under which drawback is claimed;

(vi) Statement of eligibility for applicable privileges (as provided for in subpart I of this part);

(vii) Amount of refund claimed for each of relevant duties, taxes, and fees (calculated to two decimal places);

(viii) For each designated import entry line item, the entry number and the line item number designating the merchandise, a description of the merchandise, a unique import tracing identification number(s) (ITIN) (used to associate the imported merchandise and any substituted merchandise with any intermediate products (if applicable) and the drawback-eligible exported or destroyed merchandise or finished article(s)), as well as the following information for the merchandise designated as the basis for the drawback claim: The 10-digit HTSUS classification and associated duty rate(s), amount of duties paid, applicable entered value (*see* 19 CFR 190.11(a)), quantity and unit of measure (using the unit(s) of measure required under the HTSUS, if applicable), as well as the types, rates, and amounts of any other duties, taxes, or fees for which a refund is requested;

(ix) For manufacturing claims under 19 U.S.C. 1313(a) or (b), the basis of the claim (as provided for in § 190.23), the ruling number, the factory location, the date(s) of use of the imported and/or substituted merchandise in manufacturing/processing, the 10-digit HTSUS classification for the imported merchandise and/or which would have been applicable to the substituted merchandise had it been imported, the quantity and unit of measure (using the unit(s) of measure required under the HTSUS, if applicable) of the imported and/or substituted merchandise in manufacturing/processing, unique manufacture tracing identification number(s) (MTIN) (used to associate the manufactured merchandise, including any intermediate products, with the drawback-eligible exported or destroyed finished article(s)), and a certification from the claimant that provides as follows: ''The article(s) described above were manufactured or produced and disposed of as stated herein in

accordance with the drawback ruling on file with CBP and in compliance with applicable laws and regulations.'';

(x) Indicate whether the designated imported merchandise, other substituted merchandise, or finished article (for manufacturing claims) was transferred to the drawback claimant prior to the exportation or destruction of the eligible merchandise, and for unused merchandise drawback claims under 19 U.S.C. 1313(j), provide a certification from the client that provides as follows: ''The undersigned hereby certifies that the merchandise herein described is unused in the United States and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.'';

(xi) Indicate whether the eligible merchandise was exported or destroyed and provide the applicable 10-digit HTSUS or Department of Commerce Schedule B classification, quantity, and unit of measure (the unit of measure specified must be the same as that which was required under the HTSUS for the designated imported merchandise) and, for claims under 19 U.S.C. 1313(c), specify the basis as one of the following:

(A) Merchandise does not conform to sample or specifications;

(B) Merchandise was defective at time of importation;

(C) Merchandise was shipped without consent of the consignee; or

(D) Merchandise sold at retail and returned to the importer or the person who received the merchandise from the importer;

(xii) For eligible merchandise that was exported, the unique export identifier (the number used to associate the export transaction with the appropriate documentary evidence of exportation), bill of lading number, export destination, name of exporter, the applicable comparative value pursuant to 19 CFR 190.11(b) (*see* § 190.22(a)(1)(ii), § 190.22(a)(2)(ii), or § 190.32(b)) for substitution claims, and a certification from the claimant that provides as follows: ''I declare, to the best of my knowledge and belief, that all of the statements in this document are correct and that the exported article is not to be relanded in the United States or any of its possessions without paying duty.'';

(xiii) For eligible merchandise that was destroyed, the name of the destroyer and, if substituted, the applicable comparative value pursuant to 19 CFR 190.11(c) (*see* § 190.22(a)(1)(ii), § 190.22(a)(2)(ii), or § 190.32(b)), and a certification from the claimant, if applicable, that provides as follows: ''The undersigned hereby certifies that, for the destroyed merchandise herein described, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant has been deducted from the value of the imported (or substituted) merchandise designated by the claimant, in accordance with 19 U.S.C. 1313(x).'';

(xiv) For substitution unused merchandise drawback claims under 19 U.S.C. 1313(j)(2), a certification from the claimant that provides as follows: ''The undersigned hereby certifies that the substituted merchandise is unused in the United States and that the substituted merchandise was in our possession prior to exportation or destruction.'';

(xv) For NAFTA drawback claims provided for in subpart E of part 181, the foreign entry number and date of entry, the HTSUS classification for the foreign entry, the amount of duties paid for the foreign entry and the applicable exchange rate, and, if applicable, a certification from the claimant that provides as follows: ''Same condition to NAFTA countries—The undersigned certifies that the merchandise herein described is in the same condition as when it was imported under the above import entry(s) and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.''; and

(xvi) All certifications required in this part and as otherwise deemed necessary by CBP to establish compliance with the applicable laws and regulations, as well as the following declaration: ''The undersigned acknowledges statutory requirements that all records supporting the information on this document are to be retained by the issuing party for a period of 3 years from the date of liquidation of the drawback claim. All required documentation that must be uploaded in accordance with 19 CFR 190.51 will be provided to CBP within 24 hours of the filing of the drawback claim. The undersigned acknowledges that a false certification of the foregoing renders the drawback claim incomplete and subject to denial. The undersigned is fully aware of the sanctions provided in 18 U.S.C. 1001, and 18 U.S.C. 550, and 19 U.S.C. 1593a.''

(3) *Election of line item designation for imported merchandise.* Merchandise on a specific line on an entry summary may be designated for either direct identification or substitution claims but a single line on an entry summary may not be split for purposes of claiming drawback under both direct identification and substitution claims. The first complete drawback claim accepted by CBP which designates merchandise on a line on an entry summary establishes this designation for any remaining merchandise on that same line. For claims involving transferred merchandise, please see § 190.10(c) regarding required notifications concerning whether the merchandise should be eligible for direct identification or substitution claims.

(4) *Limitation on line item eligibility for imported merchandise.* Claimants are prohibited from filing substitution drawback claims under part 190 for imported merchandise associated with a line item on an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a claim under part 191.

(b) *Drawback due*—(1) *Claimant required to calculate drawback.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the duties, taxes, and fees eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990.) Claims exceeding 99 percent (or 100% when 100% of the duty is available for drawback) will not be paid until the calculations have been corrected by the claimant. Claims for less than 99 percent (or 100% when 100% of the duty is available for drawback) will be paid as filed, unless the claimant amends the claim in accordance with § 190.52(c). The amount of duties, taxes, and fees eligible for drawback is determined by whether a claim is based upon direct identification or substitution, as provided for below:

(i) *Direct identification.* The amounts eligible for drawback for a unit of merchandise consists of those duties, taxes, and fees that were paid for that unit of the designated imported merchandise. This may be the amount of duties, taxes, and fees actually tendered on that unit or those attributable to that unit, if identified pursuant to an approved accounting method (*see* 19 CFR 190.14).

(ii) *Substitution.* The amount of duties, taxes, and fees eligible for drawback pursuant to 19 U.S.C. 1313(b) or 19 U.S.C. 1313(j)(2) is determined by per unit averaging, as defined in 19 CFR 190.2. The amount that may be refunded is also subject to the limitations set forth

in 19 CFR 190.22(a)(1)(ii) (manufacturing claims) and 19 CFR 190.32(b) (unused merchandise claims), as applicable.

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant requests a refund of a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that imported merchandise for which drawback is claimed when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

(i) Relative value ratio for each line item. The value of each line item of entered merchandise subject to a merchandise processing fee is calculated (to four decimal places) by dividing the value of the line item subject to the fee by the total value of entered merchandise subject to the fee. The result is the relative value ratio.

(ii) Merchandise processing fee apportioned to each line item. To apportion the merchandise processing fee to each line item, the relative value ratio for each line item is multiplied by the merchandise processing fee paid.

(iii) Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to each line item that is eligible for drawback.

(iv) Amount of merchandise processing fee eligible for drawback per unit of merchandise. To calculate the amount of a merchandise processing fee eligible for drawback per unit of merchandise, the line item amount that is eligible for drawback is divided by the number of units covered by that line item (to two decimal places).

(v) Limitation on amount of merchandise processing fee eligible for drawback for substitution claims. The amount of a merchandise processing fee eligible for drawback per unit of merchandise for drawback claims based upon substitution is subject to the limitations set forth in §§ 190.22(a)(1)(ii) (manufacturing claims) and 190.32(b) (unused merchandise claims), as applicable.

(vi)(A) *Example 1:*

(1) Line item 1—5,000 articles valued at $10 each total $50,000

(2) Line item 2—6,000 articles valued at $15 each total $90,000

(3) Line item 3—10,000 articles valued at $20 each total $200,000

(4) Total units = 21,000

(5) Total value = $340,000

(6) Merchandise processing fee = $485 (for purposes of this example, the fee cap of $485 is assumed; see 19 CFR 24.23 for the current amount consistent with 19 U.S.C. 58c(a)(9)(B)(i))

(i) Line item relative value ratios. The relative value ratio for line item 1 is calculated by dividing the value of that line item by the total value ($50,000 ÷ 340,000 = .1471). The relative value ratio for line item 2 is .2647. The relative value ratio for line item 3 is .5882.

(ii) Merchandise processing fee apportioned to each line item. The amount of fee attributable to each line item is calculated by multiplying $485 by the applicable relative value ratio. The amount of the $485 fee attributable to line item 1 is $71.3435 (.1471 × $485 = $71.3435). The amount of the fee attributable to line item 2 is $128.3795 (.2647 × $485 = $128.3795). The amount of the fee attributable to line item 3 is $285.2770 (.5882 × $485 = $285.2770).

(iii) Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee eligible for drawback for line item 1 is $70.6301 (.99 × $71.3435). The amount of fee eligible for drawback for line item 2 is $127.0957 (.99 × $128.3795). The amount of fee eligible for drawback for line item 3 is $282.4242 (.99 × $285.2770).

(iv) Amount of merchandise processing fee eligible for drawback per unit of merchandise. The amount of merchandise processing fee eligible for drawback per unit of merchandise is calculated by dividing the amount of fee eligible for drawback for the line item by the number of units in the line item. For line item 1, the amount of merchandise processing fee eligible for drawback per unit is $.0141 ($70.6301 ÷ 5,000 = $.0141). If 1,000 widgets form the basis of a claim for drawback under 19 U.S.C. 1313(j), the total amount of drawback attributable to the merchandise processing fee is $14.10 (1,000 × .0141 = $14.10). For line item 2, the amount of fee eligible for drawback per unit is $.0212 ($127.0957 ÷ 6,000 = $.0212). For line item 3, the amount of fee eligible for drawback per unit is $.0282 ($282.4242 ÷ 10,000 = $.0282).

(B) *Example 2.* This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

(1)(i) Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)

(ii) Line item 2—15,000 articles valued at $100 each (total value $1,500,000)

(iii) Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

(iv) The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

(2)*(i)* Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).

(ii) Line item 3—500,000 ÷ 2,000,000 = .25.

(iii) If the total merchandise processing fee paid was $485, the amount of the fee attributable to line item 2 is $363.75 (.75 × $485 = $363.75). The amount of the fee attributable to line item 3 is $121.25 (.25 × $485 = $121.25).

(iv) The amount of merchandise processing fee eligible for drawback for line item 2 is $360.1125 (.99 × $363.75). The amount of fee eligible for line item 3 is $120.0375 (.99 × $121.25).

(v) The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is $.0240 ($360.1125 ÷ 15,000 = $.0240). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is $.0120 ($120.0375 ÷ 10,000 = $.0120).

(vi) If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is $24.00 ($.0240 × 1,000 = $24.00).

(3) *Calculations for all other duties, taxes, and fees.*

(i) *General.* Where a drawback claimant requests a refund of any other duties, taxes, and fees allowable in accordance with § 190.3, the claimant is required to accurately calculate (including apportionment using per unit averaging or inventory management methods, as appropriate) the duties, taxes, and fees attributable to the designated imported merchandise for which drawback is being claimed when calculating the amount of drawback requested on the drawback entry (generally 99% of the duties, taxes, and fees paid on the imported merchandise).

(ii) Examples. As illustrated in the examples in this paragraph, in the case of customs duties, the type of calculation required to determine the amount of duties available for refund (generally 99% of the duties paid on the imported merchandise) will vary depending on whether the duty involved is ad valorem, specific, or compound.

(1) Example 1: Ad valorem duty rate. Apportionment of the duties paid (and available for refund) will be based on the application of the duty rates to the per unit values of the imported merchandise. The per unit values are based on the invoice values unless the method of refund calculation is per unit averaging, which would require equal apportionment of the duties paid over the quantity of imported merchandise covered by the line item upon which the imported merchandise was reported on the import entry summary. As a result, the amount of duties available for refund will vary depending on the method used to calculate refunds.

(2) Example 2: Specific duty rate. No apportionment of the duties paid is required to determine the amount available for refund. A fixed duty rate is applicable to each unit of the imported merchandise based on quantity. This fixed rate will not vary based on the per unit values of the imported merchandise and, as a result, there is no impact on the amount of duties available for refunds (regardless of whether the refunds are calculated based on invoice values or per unit averaging).

(3) Example 3: Compound duty rate. A compound duty rate is a combination of an ad valorem duty rate and a specific duty rate, with both rates applied to the same imported merchandise. As a result, a combination of the calculations discussed in paragraphs (a) and (b) of this section will apply when calculating the amount of duties paid that are available for refund.

(b) *Limitation.* The amount of duties, taxes, and fees eligible for drawback per unit of merchandise for drawback claims based upon substituted merchandise is subject to the limitations set forth in 19 CFR 190.22(a)(1)(ii) (manufacturing claims) and 19 CFR 190.32(b) (unused merchandise claims), as applicable.

(c) *HTSUS classification or Schedule B commodity number(s)*—(1) *General.* Drawback claimants are required to provide, on all drawback claims they submit, the 10-digit HTSUS classification or the Schedule B commodity number(s), for the following:

(i) *Designated imported merchandise.* For imported merchandise designated on drawback claims, the HTSUS classification applicable at the time of entry (*e.g.,* as required to be reported on the applicable entry summary(s) and other entry documentation).

(ii) *Substituted merchandise on manufacturing claims.* For merchandise substituted on manufacturing drawback claims, the HTSUS classification numbers provided must be the same as either—

(A) if the substituted merchandise was imported, the HTSUS classification applicable at the time of entry (*e.g.,* as required to be reported on the applicable entry summary(s) and other entry documentation); or,

(B) if the substituted merchandise was not imported, the HTSUS classification that would have been reported to CBP for the applicable entry summary(s) and other entry documentation, for the domestically produced substituted merchandise, at the time of entry of the designated imported merchandise.

(iii) *Exported merchandise or articles.* For exported merchandise or articles, the HTSUS classification or Schedule B commodity number(s) must be from the Electronic Export Information (EEI), when required. If no EEI is required (*see,* 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

(iv) *Destroyed merchandise or articles.* For destroyed merchandise or articles, the HTSUS classification or Schedule B commodity number(s) must be reported, subject to the following:

(A) if the HTSUS classification is reported, then it must be the HTSUS classification that would have been applicable to the destroyed merchandise or articles if they had been entered for consumption at the time of destruction; or

(B) if the Schedule B commodity number is reported, then it must be the Schedule B commodity number that would have been reported for the destroyed merchandise or articles if the EEI had been required for an exportation at the time of destruction.

(2) *Changes to classification.* If the 10-digit HTSUS classification or the Schedule B commodity number(s) reported to CBP for the drawback claim are determined to be incorrect or otherwise in controversy after the filing of the drawback entry, then the claimant must notify the drawback office where the drawback claim was filed of the correct HTSUS classification or Schedule B commodity number or the nature of the controversy before the liquidation of the drawback entry.

(d) *Method of filing.* All drawback claims must be submitted through a CBP-authorized system.

(e) *Time of filing*—(1) *General.* A complete drawback claim is timely filed if it is successfully transmitted not later than 5 years after the date on which the merchandise designated as the basis for the drawback claim was imported and in compliance with all other applicable deadlines under this part.

(i) *Official date of filing.* The official date of filing is the date upon which CBP receives a complete claim, as provided in paragraph (a) of this section, via transmission through a CBP-authorized system, including the uploading of all required supporting documentation.

(ii) *Abandonment.* Claims not completed within the 5-year period after the date on which the merchandise designated as the basis for the drawback claim was imported will be considered abandoned. Except as provided in paragraph (e)(2) of this section, no extension will be granted unless it is established that CBP was responsible for the untimely filing; and

(iii) *Special timeframes.* For substitution claims, the exportation or destruction of merchandise shall not have preceded the date of importation of the designated imported merchandise, and/or the exportation or destruction of merchandise shall not otherwise be outside of the timeframes specified in 19 U.S.C. 1313(c)(2)(C) and 19 U.S.C. 1313(p)(2), if applicable.

(2) *Major disaster.* The 5-year period for filing a complete drawback claim provided for in paragraph (e)(1) of this section may be extended for a period not to exceed 18 months if:

(i) The claimant establishes to the satisfaction of CBP that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster, within the meaning given to that term in 42 U.S.C. 5122(2), on or after January 1, 1994; and

(ii) The claimant files a request for such extension with CBP no later than 1 year from the last day of the 5-year period referred to in paragraph (e)(1) of this section.

(3) *Record retention.* If an extension is granted with respect to a request filed under paragraph (e)(2)(ii) of this section, the periods of time for retaining records under 19 U.S.C. 1508(c)(3) will be extended for an additional 18 months.

§ 190.52 Rejecting, perfecting or amending claims.

(a) *Rejecting the claim.* Upon review of a drawback claim, if the claim is determined to be incomplete (*see* § 190.51(a)(1)) or untimely (*see* § 190.51(e)), the claim will be rejected and CBP will notify the filer. The filer will then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 5 years of the date of importation

of the merchandise designated as the basis for the drawback claim.

(b) *Perfecting the claim; additional evidence required.* If CBP determines that the claim is complete according to the requirements of § 190.51(a)(1), but that additional evidence or information is required, CBP will notify the filer. The claimant must furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by CBP. CBP may extend this 30-day period if the claimant files a written request for such extension within the 30-day period and provides good cause. The evidence or information required under this paragraph may be filed more than 5 years after the date of importation of the merchandise designated as the basis for the drawback claim. Such additional evidence or information may include, but is not limited to:

(1) Records or other documentary evidence of exportation, as provided for in § 190.72, which shows that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from exporter which must be attached to such bill of lading, showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant must have on file and make available to CBP upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated;

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed; and

(4) Records documenting the transfer of the merchandise including records kept in the normal course of business upon which the claim is based (*see* § 190.10).

(c) *Amending the claim; supplemental filing.* Amendments to claims for which the drawback entries have not been liquidated must be made within 5 years of the date of importation of the merchandise designated as the basis for the drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in § 190.84 and part 174 of this chapter.

§ 190.53 Restructuring of claims.

(a) *General.* CBP may require claimants to restructure their drawback claims in such a manner as to foster administrative efficiency. In making this determination, CBP will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback ruling or the specific manufacturing drawback ruling.

(b) *Exemption from restructuring; criteria.* In order to be exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by CBP and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory records (for example, records maintained—financial or accounting—are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

Subpart F—Verification of Claims

§ 190.61 Verification of drawback claims.

(a) *Authority.* All claims are subject to verification by CBP.

(b) *Method.* CBP personnel will verify compliance with the law and this part, the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling (as applicable), and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) *Liquidation.* When a claim has been selected for verification, liquidation will be postponed only on the drawback entry for the claim selected for verification. Postponement will continue in effect until the verification has been completed and a report is issued, subject to the limitation in 19 CFR 159.12(f). In the event that a substantial error is revealed during the verification, CBP may postpone liquidation of all related product line claims, or, in CBP's discretion, all claims made by that claimant.

(d) *Errors in specific or general manufacturing drawback rulings*—(1) *Specific manufacturing drawback ruling; action by CBP.* If verification of a drawback claim filed under a specific manufacturing drawback ruling (*see* § 190.8) reveals errors or deficiencies in the drawback ruling or application therefor, the verifying CBP official will promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(2) *General manufacturing drawback ruling.* If verification of a drawback claim filed under a general manufacturing drawback ruling (*see* § 190.7) reveals errors or deficiencies in a general manufacturing drawback ruling, the letter of notification of intent to operate under the general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, the verifying CBP official will promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(3) *Action by CBP Headquarters.* CBP Headquarters will review the stated errors or deficiencies and take appropriate action (*see* 19 U.S.C. 1625; 19 CFR part 177).

§ 190.62 Penalties.

(a) *Criminal penalty.* Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation or destruction of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation or destruction of merchandise greater than that legally due, will be subject to the criminal provisions of 18 U.S.C. 550, 1001, or any other appropriate criminal sanctions.

(b) *Civil penalty.* Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

§ 190.63 Liability for drawback claims.

(a) *Liability of claimants.* Any person making a claim for drawback will be liable for the full amount of the drawback claimed.

(b) *Liability of importers.* An importer will be liable for any drawback claim made by another person with respect to

merchandise imported by the importer in an amount equal to the lesser of:

(1) The amount of duties, taxes, and fees that the person claimed with respect to the imported merchandise; or

(2) The amount of duties, taxes, and fees that the importer authorized the other person to claim with respect to the imported merchandise.

(c) *Joint and several liability.* Persons described in paragraphs (a) and (b) will be jointly and severally liable for the amount described in paragraph (b).

Subpart G—Exportation and Destruction

§ 190.71 Drawback on articles destroyed under CBP supervision.

(a) *Procedure.* At least 7 working days before the intended date of destruction of merchandise or articles upon which drawback is intended to be claimed, a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 must be filed by the claimant with the CBP port where the destruction is to take place, giving notification of the date and specific location where the destruction is to occur. Within 4 working days after receipt of the CBP Form 7553, CBP will advise the filer in writing of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed without delay and will be deemed to have been destroyed under CBP supervision. Unless CBP determines to witness the destruction, the destruction of the articles following timely notification on CBP Form 7553 will be deemed to have occurred under CBP supervision. If CBP attends the destruction, CBP will certify on CBP Form 7553.

(b) *Evidence of destruction.* When CBP does not attend the destruction, the claimant must submit evidence that destruction took place in accordance with the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of ''destruction'' in § 190.2.

(c) *Completion of drawback entry.* After destruction, the claimant must provide CBP Form 7553, certified by the CBP official witnessing the destruction in accordance with paragraph (a) of this section, to CBP as part of the completed drawback claim based on the destruction (*see* § 190.51(a)). If CBP has not attended the destruction, the claimant must provide the evidence that destruction took place in accordance with the approved CBP Form 7553, as provided for in paragraph (b) of this section, as part of the completed drawback claim based on the destruction (*see* § 190.51(a)).

§ 190.72 Proof of Exportation.

(a) *Required export data.* Proof of exportation of articles for drawback purposes must establish fully the date and fact of exportation and the identity of the exporter by providing the following summary data as part of a complete claim (*see* § 190.51) (in addition to providing prior notice of intent to export if applicable (*see* §§ 190.35, 190.36, 190.42, and 190.91)):

(1) Date of export;

(2) Name of exporter;

(3) Description of the goods;

(4) Quantity and unit of measure;

(5) Schedule B number or HTSUS number; and

(6) Country of ultimate destination.

(b) *Supporting documentary evidence.* Exportation may be established by providing the following:

(1) Records or other documentary evidence of exportation (originals or copies) issued by the exporting carrier, such as a bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest;

(2) Records from a CBP-approved electronic export system of the United States Government (§ 190.73);

(3) Official postal records (originals or copies) which evidence exportation by mail (§ 190.74);

(4) Notice of lading for supplies on certain vessels or aircraft (§ 190.112); or

(5) Notice of transfer for articles manufactured or produced in the United States which are transferred to a foreign trade zone (§ 190.183).

§ 190.73 Electronic proof of exportation.

Records kept through an electronic export system of the United States Government may be considered as actual proof of exportation only if CBP has officially approved the use of that electronic export system as proof of compliance for drawback claims. Official approval will be published as a general notice in the Customs Bulletin.

§ 190.74 Exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records (original or copies) which describe the mail shipment will be sufficient to prove exportation. The postal record must be identified on the drawback entry, and must be retained by the claimant and submitted as part of the drawback claim (*see* § 190.51(a)).

§ 190.75 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, agency, or instrumentality of the U.S. Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in § 190.72 of this subpart (*see* § 190.4).

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 190.82 claims drawback, exportation must be established under § 190.72 of this subpart.

§ 190.76 [Reserved]

Subpart H—Liquidation and Protest of Drawback Entries

§ 190.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the designated import entry or entries becomes final pursuant to paragraph (e); or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the designated import entry or entries.

(b) *Claims based on estimated duties.* (1) Drawback may be paid upon liquidation of a claim based on estimated duties if one or more of the designated import entries have not been liquidated, or the liquidation has not become final (because of a protest being filed) (*see* also § 173.4(c) of this chapter), only if the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant must, to the best of its knowledge, identify each import entry that has been protested and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties pursuant to paragraph (e)(2), will not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, except in those cases when drawback is 100% of the duty, the party responsible

for the payment of liquidated duties, as applicable, will:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to have been paid as estimated duties on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *General.* Subject to the requirements in paragraph (2) of this section, drawback may be paid upon liquidation of a claim based on voluntary tenders of the unpaid amount of lawful ordinary customs duties or any other payment of lawful ordinary customs duties for an entry, or withdrawal from warehouse, for consumption (*see* § 190.3(a)(1)(iii)), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback will be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* (1) *General.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the merchandise or articles has been established, CBP will determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3).

(2) *Liquidation by operation of law.* (i) *Liquidated import entries.* A drawback claim that satisfies the requirements of paragraph (d) that is not liquidated within one year from the date of the drawback claim (*see* § 190.51(e)(1)(i)) will be deemed liquidated for the purpose of the drawback claim at the drawback amount asserted by the claimant or claim, unless the time for liquidation is extended in accordance with § 159.12 or if liquidation is suspended as required by statute or court order.

(ii) *Unliquidated import entries.* A drawback claim that satisfies the requirements of paragraphs (b) or (c) of this section will be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise (*see* § 190.81(b)).

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback will be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Values.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions must be the market value (as provided for in the definition of relative value in § 190.2), unless other values are approved by CBP.

(g) *Payment.* CBP will authorize the amount of the refund due as drawback to the claimant.

§ 190.82 Person entitled to claim drawback.

Unless otherwise provided in this part (*see* §§ 190.42(b), 190.162, 190.175(a), 190.186), the exporter (or destroyer) will be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1) and (2), see § 190.33(a) and (b)). Such certification must also affirm that the exporter (or destroyer) has not and will not assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for in this section may be a blanket certification for a stated period.

§ 190.83 Person entitled to receive payment.

Drawback is paid to the claimant (*see* § 190.82).

§ 190.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry must be in accordance with part 174 of this chapter (19 CFR part 174).

Subpart I—Waiver of Prior Notice of Intent to Export; Accelerated Payment of Drawback

§ 190.91 Waiver of prior notice of intent to export.

(a) *General*—(1) *Scope.* The requirement in § 190.35 for prior notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim under § 313(j) of the Act, as amended (19 U.S.C. 1313(j)), may be waived under the provisions of this section.

(2) *Effective date for claimants with existing approval.* For claimants approved for waiver of prior notice before February 24, 2019, and under 19 CFR 191, such approval of waiver of prior notice will remain in effect, but only if the claimant provides the following certification as part of each complete claim filed on or after that date, pursuant to 19 CFR 190.51(a)(2)(xvi): ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies continuing eligibility for the waiver of prior notice (granted prior to February 24, 2019) in compliance therewith.'' This certification may only be made for waiver of prior notice for the specific type of drawback claim for which the application was previously approved under 19 CFR 191, except that applications approved under 19 U.S.C. 1313(j)(1) will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

(3) *Limited successorship for waiver of prior notice.* When a claimant (predecessor) is approved for waiver of prior notice under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of waiver of prior notice will remain in

effect for a period of 1 year after such transfer. The approval of waiver of prior notice will terminate at the end of such 1-year period unless the successor applies for waiver of prior notice under this section. If such successor applies for waiver of prior notice under this section within such 1-year period, the successor may continue to operate under the predecessor's waiver of prior notice until CBP approves or denies the successor's application for waiver of prior notice under this section, subject to the provisions in this section (*see,* in particular, paragraphs (d) and (e) of this section).

(b) *Application*—(1) *Who may apply.* A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) may apply for a waiver of prior notice of intent to export merchandise under this section.

(2) *Contents of application.* An applicant for a waiver of prior notice under this section must file a written application (which may be physically delivered or delivered via email) with the drawback office where the claims will be filed. Such application must include the following:

(i) Required information:

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number (with suffix) of current exporter(s) (if more than 3 exporters, such information is required only for the 3 most frequently used exporters), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions during the next calendar year covered by this application;

(G) Port(s) of exportation to be used during the next calendar year covered by this application;

(H) Estimated dollar value of potential drawback during the next calendar year covered by this application;

(I) The relationship between the parties involved in the import and export transactions; and

(J) Provision(s) of drawback covered by the application.

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office, and whether the applicant has previously requested a 1-time waiver of prior notice under § 190.36, and whether such request was approved or denied; and

(iii) A certification that the following documentary evidence will be made available for CBP review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and satisfies the requirements for substitution with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(1) Records;

(2) Laboratory records prepared in the ordinary course of business; and/or

(3) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Any other evidence establishing compliance with other applicable drawback requirements, upon CBP's request under paragraph (b)(2)(iii) of this section.

(3) *Samples of records to accompany application.* To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of import document (for example, CBP Form 7501, or its electronic equivalent), sample of export document (for example, bill of lading), and samples of business, laboratory, and inventory records certified, under paragraph (b)(2)(iii)(A)(1) through (3) of this section, to be available to CBP upon request).

(c) *Action on application*—(1) *CBP review.* The drawback office will review and verify the information submitted on and with the application. CBP will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny, or act on the application and the reason therefor. In order for CBP to evaluate the application, CBP may request any of the information listed in paragraph (b)(2)(iii)(A)(1) through (3) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP include, but are not limited to:

(i) The presence or absence of unresolved CBP charges (duties, taxes, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to CBP for examination after CBP had timely notified the party filing a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 of CBP's intent to examine the merchandise (*see* § 190.35).

(2) *Approval.* The approval of an application for waiver of prior notice of intent to export, under this section, will operate prospectively, applying only to those export shipments occurring after the date of the waiver. It will be subject to a stay, as provided in paragraph (d) of this section.

(3) *Denial.* If an application for waiver of prior notice of intent to export, under this section, is denied, the applicant will be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) *Stay.* An approval of waiver of prior notice may be stayed, for a specified reasonable period, should CBP desire for any reason to examine the merchandise being exported with drawback prior to its exportation for purposes of verification. CBP will provide written notice, by registered or certified mail, of such a stay to the person for whom waiver of prior notice was approved. CBP will specify the reason(s) for the stay in such written notice. The stay will take effect 2 working days after the date the person signs the return post office receipt for the registered or certified mail. The stay will remain in effect for the period specified in the written notice, or until such earlier date as CBP notifies the person for whom waiver of prior notice was approved in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the waiver of prior notice procedure may resume for exports on or after the date the stay is lifted.

(e) *Proposed revocation.* CBP may propose to revoke the approval of an application for waiver of prior notice of intent to export, under this section, for good cause (such as, noncompliance with the drawback law and/or regulations). CBP will give written

notice of the proposed revocation of a waiver of prior notice of intent to export. The notice will specify the reasons for CBP's proposed action and provide information regarding the procedures for challenging CBP's proposed revocation action as prescribed in paragraph (g) of this section. The written notice of proposed revocation may be included with a notice of stay of approval of waiver of prior notice as provided under paragraph (d) of this section. The revocation of the approval of waiver of prior notice will take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (g) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (g) of this section unless the challenge is successful.

(f) *Action by drawback office controlling.* Action by the drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export, unless reversed by CBP Headquarters, will govern the applicant's eligibility for this procedure in all CBP drawback offices. If the application for waiver of prior notice of intent to export is approved, the claimant must refer to such approval in the first drawback claim filed after such approval in the drawback office approving waiver of prior notice and must submit a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, when the export upon which the claim is based was without prior notice, under this section.

(g) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to CBP Headquarters, Office of Trade, Trade Policy and Programs, and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to CBP Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

§ 190.92 Accelerated payment.

(a) *General*—(1) *Scope.* Accelerated payment of drawback is available under this section on drawback claims under this part, unless specifically excepted from such accelerated payment. Accelerated payment of drawback consists of the payment of estimated drawback before liquidation of the drawback entry. Accelerated payment of drawback is only available when CBP's review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with the requirements of the drawback law and part 190 (*see,* especially, subpart E of this part). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(2) *Effective date for claimants with existing approval.* For claimants approved for accelerated payment of drawback before February 24, 2019, and under 19 CFR part 191, such approval of accelerated payment will remain in effect, but only if the claimant provides the following certification as part of each complete claim filed after that date, pursuant to 19 CFR 190.51(a)(2)(xvi): ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies continuing eligibility for accelerated payment (granted prior to February 24, 2019) in compliance therewith.'' This certification may only be made for accelerated payment for the specific type of drawback claim for which the application was previously approved under 19 CFR 191, except that applications approved under 19 U.S.C. 1313(j)(1) will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

(3) *Limited successorship for approval of accelerated payment.* When a claimant (predecessor) is approved for accelerated payment of drawback under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of accelerated payment will remain in effect for a period of 1 year after such transfer. The approval of accelerated payment of drawback will terminate at the end of such 1-year period unless the successor applies for accelerated payment of drawback under this section. If such successor applies for accelerated payment of drawback under this section within such 1-year period, the successor may continue to operate under the predecessor's approval of accelerated payment until CBP approves or denies the successor's application for accelerated payment under this section, subject to the provisions in this section (*see,* in particular, paragraph (f) of this section).

(b) *Application for approval; contents.* A person who wishes to apply for accelerated payment of drawback must file a written application (which may be physically delivered or delivered via email) with the drawback office where claims will be filed.

(1) *Required information.* The application must contain:

(i) Company name and address;

(ii) Internal Revenue Service (IRS) number (with suffix);

(iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;

(iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (*see* paragraph (d) of this section), including:

(A) Identity of the surety to be used;

(B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and

(C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);

(v) Description of merchandise and/or articles covered by the application;

(vi) Provision(s) of drawback covered by the application; and

(vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) *Previous applications.* In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or had an approval of such an application revoked by any drawback office.

(3) *Certification of compliance.* In or with the application, the applicant must also submit a certification, signed by the applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) *Description of claimant's drawback program.* With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and

shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback recordkeeping program, including the retention period and method (for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify CBP of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that CBP is notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, will provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) *Bond required.* If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) *Action on application*—(1) *CBP review.* The drawback office will review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP include, but are not limited to (as applicable):

(i) The presence or absence of unresolved CBP charges (duties, taxes, fees, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(2) *Notification to applicant.* CBP will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny, or act on the application and the reason therefor.

(3) *Approval.* The approval of an application for accelerated payment, under this section, will be effective as of the date of CBP's written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback will be available under this section to unliquidated drawback claims filed before and after such date. For claims filed before such date, accelerated payment of drawback will be paid only if the claimant furnishes a properly executed single transaction bond covering the claim, in an amount sufficient to cover the amount of accelerated drawback to be paid on the claim.

(4) *Denial.* If an application for accelerated payment of drawback under this section is denied, the applicant will be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) *Revocation.* CBP may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (such as, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, CBP will give written notice, by registered or certified mail, of the proposed revocation of the approval of accelerated payment. The notice will specify the reasons for CBP's proposed action and the procedures for challenging CBP's proposed revocation action as prescribed in paragraph (h) of this section. The revocation will take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (h) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (h) of this section unless the challenge is successful.

(g) *Action by drawback office controlling.* Action by the drawback office to approve, deny, or revoke accelerated payment of drawback will govern the applicant's eligibility for this procedure in all CBP drawback offices. If the application for accelerated payment of drawback is approved, the claimant must refer to such approval in the first drawback claim filed after such approval in the drawback office approving accelerated payment of drawback and must submit a copy of the approval letter with the first drawback claim filed in a drawback office other than the approving office.

(h) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to CBP Headquarters, Office of Trade, Trade Policy and Programs, and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to CBP Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

(i) *Payment.* The drawback office approving a drawback claim in which accelerated payment of drawback was requested will certify the drawback claim for payment. After liquidation, the drawback office will certify the claim for payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not repaid to CBP within 30 days after the date of liquidation of the related drawback entry will be considered delinquent (*see* §§ 24.3a and 113.65(b) of this chapter).

§ 190.93 Combined applications.

An applicant for the procedures provided for in §§ 190.91 and 190.92 of this subpart may apply for only one procedure, both procedures separately, or both procedures in one application package (*see* also § 190.195 regarding

combined applications for certification in the drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback). In the latter instance, the intent to apply for both procedures must be clearly stated. In all instances, all of the requirements for the procedure(s) applied for must be met (for example, in a combined application for both procedures, all of the information required for each procedure, all required sample documents for each procedure, and all required certifications must be included in and with the application).

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

§ 190.101 Drawback allowance.

(a) *Drawback.* Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic tax-paid alcohol.

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa will be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 190.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (*see* subpart B of this part) will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed will record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records must be available at all times for inspection by CBP officers.

(c) *Additional information required on the manufacturer's application for a specific manufacturing drawback ruling.* The manufacturer's application for a specific manufacturing drawback ruling, under § 190.8, must state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in an exported medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer must apply for a new specific manufacturing drawback ruling pursuant to § 190.8. If the variation differs from a previously filed schedule, the manufacturer must file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product must be reported to the drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from CBP Headquarters.

(e) *Time period for completing claims.* Drawback claims under this subpart must be completed within 3 years after the date of exportation of the articles upon which drawback is claimed.

(f) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant must file one set of entries for drawback of customs duty and another set for drawback of internal revenue tax.

(g) *Description of the alcohol.* The description of the alcohol that is the subject of the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 190.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant must file with the drawback entry, a declaration of the manufacturer stating whether a claim has been or will be filed by the manufacturer with the Alcohol and Tobacco Tax and Trade Bureau (TTB) for domestic drawback on alcohol under §§ 5111, 5112, 5113, and 5114, Internal Revenue Code, as amended (26 U.S.C. 5111, 5112, 5113, and 5114).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with TTB for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer must submit a statement, in duplicate, setting forth that fact to the Director, National Revenue Center, TTB.

(2) *Contents of the statement.* The statement must show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the distilled spirits plant from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the applicable record of tax determination (*see* 27 CFR 17.163(a) and 27 CFR 19.626(c)(7); and

(vi) Drawback office where the claim will be filed.

(3) *Verification of receipt of the statement.* The Director, National Revenue Center, TTB, will verify receipt of this statement, and transmit a verification of receipt of the statement with a copy of that document to the drawback office designated.

§ 190.104 Alcohol and Tobacco Tax and Trade Bureau (TTB) certificates.

(a) *Request.* The drawback claimant or manufacturer must request the Director, National Revenue Center, TTB, to provide the CBP office where the drawback claim will be processed with a tax-paid certificate on TTB Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request must state the:

(1) Quantity of alcohol in proof gallons;

(2) Serial number of each package;

(3) Amount of tax paid on the alcohol;

(4) Name, registry number, and location of the distilled spirits plant;

(5) Date of withdrawal;

(6) Name of the manufacturer using the alcohol in producing the exported articles;

(7) Address of the manufacturer and its manufacturing plant; and

(8) Customs drawback office where the drawback claim will be processed.

(c) *Extract of TTB certificate.* If a certification of any portion of the alcohol described in the TTB Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, will transmit a copy of the extract from the certificate for use at that drawback office. The drawback office will note that the copy of the extract was prepared and transmitted.

§ 190.105 Liquidation.

The drawback office will ascertain the final amount of drawback due by reference to the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 190.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 190.103(a) of this subpart shows that a claim has been or will be filed with TTB for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), will be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with TTB.* If the declaration and statement required by § 190.103(a) and (b) show that no claim has been or will be filed by the manufacturer with TTB for domestic drawback, the drawback will be the full amount of the tax on the alcohol used. Drawback under this provision may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol) indicating that taxes have been paid on the exported product for which drawback is claimed.

(c) *No deduction of 1 percent.* No deduction of 1 percent may be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due will be paid in accordance with § 190.81(f).

Subpart K—Supplies for Certain Vessels and Aircraft

§ 190.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

§ 190.112 Procedure.

(a) *General.* The provisions of this subpart will override conflicting provisions of this part, such as the export procedures in § 190.72.

(b) *Notice of lading.* The drawback claimant must file with the drawback office a notice of lading.

(c) *Time of filing notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the notice of lading must be filed within 5 years after the date of importation of the imported merchandise.

(d) *Contents of notice.* The notice of lading must show:

(1) The name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) *Declaration of Master or other officer*—(1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts must provide the following declaration on the notice of lading ''I declare that the information given above is true and correct to the best of my knowledge and belief; that I have knowledge of the facts set forth herein; that the articles described in this notice of lading were received in the quantities stated, from the person, and on the date, indicated above; that said articles were laden on the vessel (or aircraft) named above for use on said vessel (or aircraft) as supplies (or equipment), except as noted below; and that at the time of lading of the articles, the said vessel (or aircraft) was engaged in the business or trade checked below: (It is not necessary for a foreign vessel to show its class of trade.).''

(2) *Filing.* The drawback claimant must file with the drawback office both the drawback entry and the notice of lading or separate document containing the declaration of the master or other officer or representative.

(f) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(g) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The drawback office where the drawback claim is filed will require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(h) *Fuel laden on vessels or aircraft as supplies*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading for each calendar month. The composite notice of lading must describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous United States and Hawaii, Alaska, or any U.S. possessions (*see* § 10.59 of this chapter).

(2) *Contents of composite notice.* Composite notice must show for each voyage or flight:

(i) The identity of the vessel or aircraft;

(ii) A description of the fuel supplies laden;

(iii) The quantity laden; and

(iv) The date of lading.

(3) *Declaration of owner or operator.* An authorized vessel or airline representative having knowledge of the facts must complete the ''Declaration of Master or other officer''(see paragraph (e) of this section).

(i) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading must apply for a permit to land those articles under CBP supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, will be considered imported merchandise for the purpose of § 309(c) of the Act, as amended (19 U.S.C. 1309(c)).

Subpart L—Meats Cured With Imported Salt

§ 190.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

§ 190.122 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.123 Refund of duties.

Drawback allowed under this subpart will be refunded in aggregate amounts of not less than $100 and will not be subject to the retention of 1 percent of duties paid.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Account and Ownership

§ 190.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

§ 190.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.133 Explanation of terms.

(a) *Materials.* Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft, or to materials used in a ''major conversion,'' as defined in this section, of a vessel or aircraft. Section 313(g) does not apply to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in § 313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, will be owned and operated under the flag of a foreign country.

(c) *Major conversion.* For purposes of this subpart, a ''major conversion'' means a conversion that substantially changes the dimensions or carrying capacity of the vessel or aircraft, changes the type of the vessel or aircraft, substantially prolongs the life of the vessel or aircraft, or otherwise so changes the vessel or aircraft that it is essentially a new vessel or aircraft, as determined by CBP (*see* 46 U.S.C. 2101(14a)).

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 190.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

§ 190.142 Procedure.

Other provisions of this part will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.143 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines must show that the entry covers jet aircraft engines processed under § 313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) *Contents of entry.* The drawback entry must indicate the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 190.144 Refund of duties.

Drawback allowed under this subpart will be refunded in aggregate amounts of not less than $100, and will not be subject to the deduction of 1 percent of duties paid.

Subpart O—Merchandise Exported From Continuous CBP Custody

§ 190.151 Drawback allowance.

(a) *Eligibility of entered or withdrawn merchandise*—(1) *Under 19 U.S.C. 1557(a).* Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in CBP custody for a period not to exceed 5 years from the date of importation.

(2) *Under 19 U.S.C. 1313.* Imported merchandise that has not been regularly entered or withdrawn for consumption, will not satisfy any requirement for use, importation, exportation or destruction, and will not be available for drawback, under § 313 of the Act, as amended (19 U.S.C. 1313) (*see* 19 U.S.C. 1313(u)).

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station will be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in CBP custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 190.152 Merchandise released from CBP custody.

No remission, refund, abatement, or drawback of duty will be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in 19 U.S.C. 1557(c), or destroyed within the bonded period by death, accidental fire, or other casualty, and satisfactory evidence of destruction is furnished to CBP (*see* § 190.71), in which case any accrued duties will be remitted or refunded and any condition in the bond that the articles must be exported will be deemed satisfied (*see* 19 U.S.C. 1558).

§ 190.153 Continuous CBP custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate CBP office will not be deemed to be in the continuous custody of CBP officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States* (*HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), will not be deemed to be in the continuous custody of CBP officers.

(c) *Merchandise released from warehouse.* For the purpose of this subpart, in the case of merchandise entered for warehouse, CBP custody will be deemed to cease when estimated duty has been deposited and the appropriate CBP office has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, will be considered released from CBP custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate CBP office will be considered to be in CBP custody, but this custody will be deemed to cease when the CBP officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 190.154 Filing the entry.

(a) *Direct export.* At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent

designated by him or her in writing must file a direct export drawback entry.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation must file an entry naming the transporting conveyance, route, and port of exit. The drawback office will certify one copy and forward it to the CBP office at the port of exit. A bonded carrier must transport the merchandise in accordance with the applicable regulations. Manifests must be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 190.155 Merchandise withdrawn from warehouse for exportation.

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty will be followed to the extent applicable.

§ 190.156 Bill of lading.

(a) *Filing.* In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback entry must be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading must either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of that person's right to make the drawback entry as may be available. The request will be granted if the drawback office is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office will transmit the request and its accompanying evidence to the Office of Trade, CBP Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 190.157 [Reserved]

§ 190.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the drawback office will verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries will be liquidated in accordance with the provisions of § 190.81.

§ 190.159 Amount of drawback.

Drawback due under this subpart will not be subject to the deduction of 1 percent.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 190.161 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal revenue taxes paid or determined incident to importation, upon the exportation, or destruction under CBP supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to CBP custody.

§ 190.162 Procedure.

The export procedure will be the same as that provided in § 190.42 for rejected merchandise, except that the claimant must be the importer and must comply with all other provisions in this subpart.

§ 190.163 Documentation.

(a) *Entry.* A drawback entry must be filed to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise must be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional evidence that the drawback office requires to establish that the merchandise is unmerchantable.

§ 190.164 Return to CBP custody.

There is no time limit for the return to CBP custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart. The claimant must return the merchandise to CBP custody prior to exportation or destruction and claims are subject to the filing deadline set forth in 19 U.S.C. 1313(r)(1).

§ 190.165 No exportation by mail.

Merchandise covered by this subpart must not be exported by mail.

§ 190.166 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer must state that fact on the drawback entry.

(b) *Action by CBP.* Distilled spirits, wine, or beer returned to CBP custody at the place approved by the drawback office where the drawback entry was filed must be destroyed under the supervision of the CBP officer who will certify the destruction on CBP Form 7553.

§ 190.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined will be made in allowing entries under § 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 190.168 [Reserved]

Subpart Q—Substitution of Finished Petroleum Derivatives

§ 190.171 General; drawback allowance.

(a) *General.* Section 313(p) of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback for duties, taxes, and fees paid on qualified articles (see definition below) which consist of either petroleum derivatives that are imported, duty-paid, and qualified for drawback under the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), or petroleum derivatives that are manufactured or produced in the United States, and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)).

(b) *Allowance of drawback.* Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon

exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

(c) *Calculation of drawback.* For drawback of finished petroleum derivatives pursuant to § 1313(p), the claimant is required to calculate the total amount of drawback due, for purposes of 190.51(b), which will not exceed 99 percent of the allowable duties, taxes, and fees, subject to the following:

(1) *Per unit averaging calculation.* The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in 19 CFR 190.2, for any drawback claim based on 19 U.S.C. 1313(p) pursuant to the standards set forth in 19 CFR 190.172(b) and without respect to the limitations set forth in subparagraphs (B) and (C) of 19 U.S.C. 1313(l).

(2) *Limitations.* The amount of duties, taxes, and fees eligible for drawback is not subject to the limitations set out in 19 U.S.C. 1313(p)(4) for unused merchandise claims (no manufacture) and manufacturing claims (see 190.173(e) and 190.174(f)).

(3) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32 and 38 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

§ 190.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article. Qualified article* means an article described in headings 2707, 2708, 2710 through 2715, 2901, 2902, 2909.19.14, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of an article described in headings 3901 through 3914, the definition covers the article in its primary forms as provided in Note 6 to chapter 39 of the HTSUS.

(b) *Same kind and quality article. Same kind and quality article* means an article which is referred to under the same 8-digit classification of the HTSUS as the article to which it is compared.

(c) *Exported article. Exported article* means an article which has been exported and is a qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

§ 190.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Imported duty-paid merchandise.* The imported duty-paid merchandise designated for drawback must be a ''qualified article'' as defined in § 190.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export.* The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article under 19 U.S.C. 1313(j)(1) which serves as the basis for drawback.

§ 190.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).

When the exported article which is the basis for a drawback claim under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Merchandise.* The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C. 1313(a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a ''qualified article'' as defined in § 190.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313(a) or (b) the qualified article in at least the quantity of the exported article;

(d) *Manufacture in specific facility.* The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) *Time of export.* The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (*see* § 190.8) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback.

§ 190.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant.* A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of either the qualified article or the exported article. Any of these persons may designate another person to file the drawback claim.

(b) *Transfer of merchandise*—(1) *General.* A drawback claimant under 19 U.S.C. 1313(p) must maintain records (which may be records kept in the normal cause of business) to support the receipt of transferred merchandise and the party transferring the merchandise must maintain records to demonstrate the transfer.

(2) *Article substituted for the qualified article.* (i) Subject to paragraph (b)(2)(iii) of this section, the manufacturer, producer, or importer of a qualified article may transfer to the exporter an article of the same kind and quality as the qualified article in a quantity not greater than the quantity of the qualified article.

(ii) Subject to paragraph (b)(2)(iii) of this section, any intermediate party in the chain of commerce leading to the exporter from the manufacturer, producer, or importer of a qualified article may also transfer to the exporter or to another intermediate party an article of the same kind and quality as the article purchased or exchanged from the prior transferor (whether the manufacturer, producer, importer, or another intermediate transferor) in a quantity not greater than the quantity of the article purchased or exchanged.

(iii) Under either paragraph (b)(2)(i) or (b)(2)(ii) of this section, the article transferred, regardless of its origin (imported, manufactured, substituted, or any combination thereof), will be the

qualified article eligible for drawback for purposes of section 1313(p).

(c) *Maintenance of records.* The manufacturer, producer, importer, transferor, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

§ 190.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability.* The general procedures for filing drawback claims will be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) *Administrative efficiency, frequency of claims, and restructuring of claims.* The procedures regarding administrative efficiency, frequency of claims, and restructuring of claims (as applicable, see § 190.53) will apply to claims filed under this subpart.

(c) *Imported duty-paid derivatives* (*no manufacture).* When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313(a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on the drawback entry; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS subheading number;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after liquidation of the claim; and

(v) Such evidence will be available for verification by CBP.

(d) *Derivatives manufactured under 19 U.S.C. 1313*(*a) or* (*b).* When the basis for a claim for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C. 1313(a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on the drawback entry;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313(a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are classifiable under the same 8-digit HTSUS subheading number;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after liquidation of the claim; and

(v) Such evidence will be available for verification by CBP.

Subpart R—Merchandise Transferred to a Foreign Trade Zone from Customs Territory

§ 190.181 Drawback allowance.

The fourth proviso of § 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides that merchandise transferred to a foreign trade zone for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), will be considered to be exported for the purpose of drawback, provided there is compliance with the regulations of this subpart.

§ 190.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 190.181 will be given status as zone-restricted merchandise on proper application (*see* § 146.44 of this chapter).

§ 190.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except as otherwise provided, the drawback procedures prescribed in this part must be followed when claiming drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer*—(1) *Evidence of export.* The notice of zone transfer on CBP Form 214 (Application for Foreign-Trade Zone Admission and/or Status Designation) or its electronic equivalent will be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer (CBP Form 214) will be filed not later than 3 years after the transfer of the articles to the zone. A notice filed after the transfer will state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer must show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator must certify on a copy of the notice of transfer (CBP Form 214) the receipt of the articles (*see* § 190.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor must verify that the notice has been certified before filing it with the drawback claim.

(d) *Drawback entries.* Drawback entries must indicate that the merchandise was transferred to a foreign trade zone. The ''Declaration of Exportation'' must be modified as follows:

Declaration of Transfer to a Foreign Trade Zone

I, _____ (member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption.

Dated: _____

_____

Transferor or agent

§ 190.184 Merchandise transferred from continuous CBP custody.

(a) *Procedure for filing claims.* The procedure described in subpart O of this

part will be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous CBP custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous CBP custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose must file with the drawback office a direct export drawback entry. CBP will notify the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator must certify the receipt of the merchandise (*see* paragraph (d)(2) of this section) and notify the transferor or the person designated by the transferor. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor must resubmit the drawback entry to the drawback office in place of the bill of lading required by § 190.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* The drawback entry must include a certification to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor and the foreign trade zone operator must certify transfer to the foreign trade zone, with respect to the drawback entry, as follows:

Certification by Foreign Trade Zone Operator

The merchandise described in the entry was received from _____ on _____; 20___; in Foreign Trade Zone No. ____, (City and State)

Exceptions _____

(Name and title)

By _____

(Name of operator)

(3) *Transferor's declaration.* The transferor must declare, with respect to the drawback entry, as follows:

Transferor's Declaration

I, _____ of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____

Transferor

§ 190.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, found to be defective as of the time of importation, or returned after retail sale.

(a) *Procedure for filing claims.* The procedures described in subpart C of this part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, must be followed with respect to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the time of importation.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose must file the drawback entry. CBP will notify the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone must certify, with respect to the drawback entry, the receipt of the merchandise and notify the transferor or the person designated by the transferor. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor must resubmit the drawback entry in place of the bill of lading required by § 190.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* The drawback entry must indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor and the foreign trade zone operator must certify transfer to the foreign trade zone, with respect to the drawback entry, as follows:

Certification by Foreign Trade Zone Operator

The merchandise described in this entry was received from _____on _____, 20 ____, in Foreign Trade Zone No. ____, _____(City and State).

Exceptions: _____

_____

(Name of operator)

By _____

(Name and title)

(3) *Transferor's declaration.* The transferor must certify, with respect to the drawback entry, as follows:

Transferor's Declaration

I, _____ of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ____, located at _____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____

Transferor

§ 190.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, will be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S—Drawback Compliance Program

§ 190.191 Purpose.

This subpart sets forth the requirements for the drawback compliance program in which claimants and other parties in interest, including customs brokers, may participate after being certified by CBP. Participation in the program is voluntary. Under the program, CBP is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

§ 190.192 Certification for compliance program.

(a) *General.* A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance

program suited to the needs of both the party and CBP. Certification requirements will take into account the size and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed. Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) *Core requirements of program.* In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the CBP requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to CBP;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by CBP regarding original records, or if approved by CBP, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying CBP of variances in, or violations of, the drawback compliance program or other alternative negotiated drawback compliance program, and for taking corrective action when notified by CBP of violations and problems regarding such program.

(c) *Broker certification.* A customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (*see* § 190.194(b)). To do so, a customs broker who assists a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the drawback compliance program as set forth in paragraph (b) of this section. The broker must ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

§ 190.193 Application procedure for compliance program.

(a) *Who may apply.* Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) *Place of filing.* An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section may be submitted to any drawback office.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program must file with the drawback office a written application, signed by an authorized individual (*see* § 190.6(c) of this part). The detail required in the application must take into account the size and nature of the applicant's drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the application must contain at least the following information:

(1) Name of applicant, address, IRS number (with suffix), and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (destroyer)); and

(3) Size of applicant's drawback program. For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be claimed annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis, as established by the certificates of manufacture and delivery they have executed.

(d) *Application package.* Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the applicant's organization who is responsible for oversight of the applicant's drawback program, and the name and title, with mailing address and, if available, fax number and email address, of the person(s) in the applicant's organization responsible for the actual maintenance of the applicant's drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling (*see* §§ 190.7 and 190.8), as appropriate;

(3) A description of the applicant's drawback record-keeping program, including the retention period and method (for example, paper, and electronic.);

(4) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying CBP of variances in, or violations of, its drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by CBP of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that CBP is notified of any modifications from the procedures described in this application.

§ 190.194 Action on application to participate in compliance program.

(a) *Review by drawback office*—(1) *General.* It is the responsibility of the drawback office to coordinate its decision making on the package with CBP Headquarters and other CBP offices as appropriate. CBP processing of the package will consist of the review of the information contained therein as well as any additional information requested (*see* paragraph (a)(2) of this section).

(2) *Criteria for CBP review.* The drawback office will review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP may request additional information (including additional sample documents) and/or explanations of any of the information provided for in § 190.193(c) and (d) of this subpart. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP will include (as applicable):

(i) The presence or absence of unresolved customs charges (duties, taxes, fees, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(b) *Approval.* Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A customs broker obtaining certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) *Benefits of participation in program.* When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (*see* § 190.62(b)), CBP will, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under § 1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a customs broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to CBP, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied, the applicant will be given written notice by the drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the drawback office that issued the notice of denial and then appealed to CBP Headquarters.

(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the customs laws and CBP regulations, including the requirements set forth in § 190.192;

(iii) The program participant has repeatedly filed false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If CBP determines that the certification of a program participant should be removed, the drawback office will send the program participant a written notice of the removal. Such notice will inform the program participant of the grounds for the removal and will advise the program participant of its right to file an appeal of the removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification will be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification will be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of Trade, within 30 days after issuance of the drawback office's appeal decision. This office will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the officewill advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a CBP notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of Trade, within 30 days after issuance of the drawback office's appeal decision. This office will consider the allegations upon which the removal was based and the responses made to those allegations by the appellant and will render a written decision on the appeal within 30 days after receipt of the appeal.

§ 190.195 Combined application for certification in drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback.

An applicant for certification in the drawback compliance program may also, in the same application, apply for waiver of prior notice of intent to export and accelerated payment of drawback, under subpart I of this part. Alternatively, an applicant may separately apply for certification in the drawback compliance program and either or both waiver of prior notice and accelerated payment of drawback. In the

former instance, the intent to apply for certification and waiver of prior notice and/or approval of accelerated payment of drawback must be clearly stated. In all instances, all of the requirements for certification and the procedure applied for must be met (for example, in a combined application for certification in the drawback compliance program and both procedures, all of the information required for certification and each procedure, all required sample documents for certification and each procedure, and all required certifications must be included with the application).

Appendix A to Part 190—General Manufacturing Drawback Rulings

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I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person that can comply with the conditions of any one of these rulings may notify a CBP drawback office in writing of its intention to operate under the ruling (*see* § 190.7). Such a letter of notification must include the following information:

1. Name and address of manufacturer or producer;

2. IRS (Internal Revenue Service) number (with suffix) of manufacturer or producer;

3. Location[s] of factory[ies] which will operate under the general ruling;

4. If a business entity, names of persons who will sign drawback documents (*see* § 190.6);

5. Identity (by T.D. number and title, as stated in this Appendix) of general manufacturing drawback ruling under which the manufacturer or producer intends to operate;

6. Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling, and 8-digit HTSUS subheading number, and the quantity of the merchandise;

7. Only for General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, the name of each article to be exported or, if the identity of the product is not clearly evident by its name, what the product is, and the abstract period to be used for each refinery (monthly or other specified period (not to exceed 1 year)), subject to the conditions in the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, I. Procedures and Records Maintained, 4(a) or (b);

8. Basis of claim used for calculating drawback; and

9. Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling.

For the General Manufacturing Drawback Ruling under § 1313(a), the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts, and the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents, if the drawback office has doubts as to whether there is a manufacture or production, as defined in § 190.2, the manufacturer or producer will be asked to provide details of the operation purported to be a manufacture or production.

10. For the General Manufacturing Drawback Ruling where substituted merchandise will be used, the bill of materials and/or formulas annotated with the 8-digit HTSUS classifications.

B. These general manufacturing drawback rulings supersede general ''contracts'' previously published under the following Treasury Decisions (T.D.s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–53, 83–59, 83–73, 83–77, 83–80, 83–84, 83–123, 84–49, and 85–110. Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous ''contract''.

II. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) (T.D. 81–234; T.D. 83–123)

A. Imported Merchandise or Drawback Products[1] *Used*

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

1. Relative Values

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records, which may include records kept in the normal course of business, will be maintained of the market value of each product at the time it is first separated in the manufacturing process.

2. Appearing-in Method

The appearing-in basis may not be used if multiple products are produced.

F. Loss or Gain

Records, which may include records kept in the normal course of business, will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. [Reserved]

H. Stock in Process

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

I. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

J. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise [2] used in producing the exported articles. (To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements must be available for audit by CBP during business hours. Drawback is not payable without proof of compliance).

K. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

L. Basis of Claim for Drawback

Drawback will be claimed on the full quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. A drawback claim may be based on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

M. General Requirements

The manufacturer or producer must:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

III. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents (T.D. 81–181)

Manufacturers or producers operating under this general manufacturing drawback ruling must comply with T.D.s 55027(2) and 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 190 (*see* particularly, § 190.9).

A. Name and Address of Principal

B. Process of Manufacture or Production

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture or produce articles in accordance with § 190.2.

C. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. Quantity, kind, quality, and 8-digit HTSUS subheading number of merchandise transferred from the principal to the agent;

2. Date of transfer of the merchandise from the principal to the agent;

3. Date of manufacturing or production operations performed by the agent;

4. Total quantity and description of merchandise (including 8-digit HTSUS subheading number) appearing in or used in manufacturing or production operations performed by the agent;

5. Total quantity and description of articles (including 8-digit HTSUS subheading number) produced in manufacturing or production operations performed by the agent;

6. Quantity, kind, quality, and 8-digit HTSUS subheading number of articles transferred from the agent to the principal; and

7. Date of transfer of the articles from the agent to the principal.

D. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of the principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to help ensure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

IV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Burlap or Other Textile Material (T.D. 83–53)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bags or meat wrappers manufactured with the use of imported burlap or other textile material, subject to the following special requirements:

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products (burlap or other textile material) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another, or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Not applicable.

F. Loss or Gain

Not applicable.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

2. The quantity of imported merchandise [2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish compliance with those legal requirements, drawback cannot be paid. Each lot of imported material received by a manufacturer or producer must be given a lot number and kept separate from other lots until used. The records of the manufacturer or producer must show, as to each manufacturing lot or period of manufacture, the 8-digit HTSUS classification, the quantity of material used from each imported lot and the number of each kind and size of bags or meat wrappers obtained.

All bags or meat wrappers manufactured or produced for the account of the same exporter during a specified period may be designated as one manufacturing lot. All exported bags or meat wrappers must be identified by the exporter.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer must:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to help ensure proper compliance with 19, United States Code, § 1313, part 190 of the CBP Regulations and this general ruling.

V. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts (T.D. 81–300)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products
Component parts identified by individual part numbers and 8-digit HTSUS subheading number.	Component parts classifiable under the same 8-digit HTSUS subheading number and identified with the same individual part numbers as those in the column immediately to the left hereof.

The designated components will have been manufactured in accordance with the same specifications and from the same materials, and identified by the same 8-digit HTSUS classification, and part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for CBP officers. Fluctuations in market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using components described in the parallel columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The components described in the parallel columns will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. [Reserved]

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [3] the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appear in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

VI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Flaxseed (T.D. 83–80)

Drawback may be allowed under the provision of 19 U.S.C. 1313(a) upon the exportation of linseed oil, linseed oil cake, and linseed oil meal, manufactured or produced with the use of imported flaxseed, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] *Used*

Imported merchandise or drawback products (flaxseed) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process (when a claim covers a manufacturing period, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (*see* §§ 190.2, 190.22(e)). The ''appearing in'' basis may not be used if multiple products are produced.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and
2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The inventory records of the manufacturer or producer will show the inclusive dates of manufacture; the quantity, identity, value, and 8-digit HTSUS classification of the imported flaxseed or screenings, scalpings, chaff, or scourings used; the quantity by actual weight and value, if any, of the material removed from the foregoing by screening prior to crushing; the quantity and kind of domestic merchandise added, if any; the quantity by actual weight or gauge and value of the oil, cake, and meal obtained; and the quantity and value, if any, of the waste incurred. The quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used or of material removed will not be estimated nor computed on the basis of the quantity of finished products obtained, but will be determined by actually weighing the said flaxseed, screenings, scalpings, chaff, scourings, or other material; or, at the option of the crusher, the quantities of imported materials used may be determined from CBP weights, as shown by the import entry covering such imported materials, and the Government weight certificate of analysis issued at the time of entry. The entire period covered by an abstract will be deemed the time of separation of the oil and cake covered thereby.

If the records of the manufacturer or producer do not show the quantity of oil cake used in the manufacture or production of the exported oil meal and the quantity of oil meal obtained, the net weight of the oil meal exported will be regarded as the weight of the oil cake used in the manufacture thereof.

If various tanks are used for the storage of imported flaxseed, the mill records must establish the tank or tanks in which each lot or cargo is stored. If raw or processed oil manufactured or produced during different periods of manufacture is intermixed in storage, a record must be maintained showing the quantity, identity, kind, and 8-digit HTSUS classification of oil so intermixed. Identity of merchandise or articles in either instance must be in accordance with § 190.14.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation.
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 190 of the CBP Regulations and this general ruling.

VII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Fur Skins or Fur Skin Articles (T.D. 83–77)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of dressed, redressed, dyed, redyed, bleached, blended, or striped fur skins or fur skin articles manufactured or produced by any one or a combination of the foregoing processes with the use of fur skins or fur skin articles, such as plates, mats, sacs, strips, and crosses, imported in a raw, dressed, or dyed condition, subject to the following special requirements:

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products (fur skins or fur skin articles) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

Drawback will not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and
2. The quantity of imported merchandise [2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The records of the manufacturer or producer must show, as to each lot of fur skins and/or fur skin articles used in the manufacture or production of articles for exportation with benefit of drawback, the lot number and date or inclusive dates of manufacture or production, the quantity, identity, description, and 8-digit HTSUS classification of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity, description, and 8-digit HTSUS classification of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If rejects and/or spoilage are incurred, the quantity of imported merchandise used will be determined by deducting from the quantity of fur skins or fur skin articles put into manufacture or production the quantity of such rejects and/or spoilage.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation.
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with 19, United States Code,

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

§ 1313, part 190 of the CBP Regulations and this general ruling.

VIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Orange Juice (T.D. 85–110)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products
Concentrated orange juice for manufacturing (of not less than 55° Brix) as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53) which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV).	Concentrated orange juice for manufacturing as described in the left-hand parallel column.

The imported merchandise designated on drawback claims must be classifiable under the same 8-digit HTSUS classification as the merchandise used in producing the exported articles on which drawback is claimed. Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

1. Orange juice from concentrate (reconstituted juice).
2. Frozen concentrated orange juice.
3. Bulk concentrated orange juice.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils, flavoring components, and water; or

iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.

2. Frozen concentrated orange juice. Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less than 41.8° Brix by the following optional blending processes:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils and flavoring components and water.

3. Bulk concentrated orange juice. Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. Multiple Products, Waste, Loss or Gain

Not applicable.

F. [Reserved]

G. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The 8-digit HTSUS classification, identity, and specifications of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the designated merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [3] the exported articles.

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements must be available for audit by CBP during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained'', and will show what components were blended with the concentrated orange juice for manufacturing. If those records do not establish satisfaction of those legal requirements drawback cannot be paid.

I. Basis of Claim for Drawback

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when fresh orange juice is used as ''cutback'', it will not be included in the ''pound solids'' when computing the drawback due.

J. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

IX. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives (T.D. 84–49)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.

B. Exported Articles Produced From Fractionation

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquified Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

C. Exported Articles on Which Drawback Will Be Claimed

See the General Instructions, I.A.7., for this general drawback ruling. Each article to be exported must be named. When the identity of the product is not clearly evident by its name, there must be a statement as to what the product is, *e.g.,* a herbicide.

D. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

E. Process of Manufacture or Production

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

F. Multiple Products

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, the manufacturer or producer agrees to record the relative values at the time of separation. The entire period covered by an abstract is to be treated as the time of separation. The value per unit of each product will be the average market value for the abstract period.

2. Producibility

The manufacturer or producer can vary the proportionate quantity of each product. The manufacturer or producer understands that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. The records of the manufacturer or producer must show that all of the products exported for which drawback will be claimed under this general manufacturing drawback ruling could have been produced concurrently on a practical operating basis from the designated merchandise.

The manufacturer or producer agrees to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66–16.[2]

There are no valuable wastes as a result of the processing.

G. Loss or Gain

Because the manufacturer or producer keeps records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

H. Exchange

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise.

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the merchandise designated;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise used to produce the exported articles.

3. That, within 5 years after importation, the manufacturer or producer used the designated merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced the exported articles.

4(a). The manufacturer or producer agrees to use a 28–31 day period (monthly) abstract period for each refinery covered by this general manufacturing drawback ruling, or

(b). The manufacturer or producer agrees to use an abstract period (not to exceed 1 year) for each refinery covered by this general manufacturing drawback ruling. The manufacturer or producer certifies that if it were to file abstracts covering each manufacturing period of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed the material introduced into the manufacturing process during that monthly period. (Select (a) or (b), and state which is selected in the application, and, if (b) is selected, specify the length of the particular abstract period chosen (not to exceed 1 year (*see* General Instruction I.A.7.)).)

5. On each abstract of production the manufacturer or producer agrees to show the value per barrel to five decimal places.

6. The manufacturer or producer agrees to file claims in the format set forth in exhibits A through F which are attached to this general manufacturing drawback ruling. The manufacturer or producer realizes that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. It is understood that drawback is not payable without proof of compliance. Records will be kept in accordance with T.D. 84–49, as amended by T.D. 95–61.

J. Residual Rights

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed and rights thereto are expressly reserved on Exhibit E, such residual rights will be deemed waived. The procedure the manufacturer or producer must follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E–1. It is understood that claims involving residual rights must be filed only at the port where the Exhibit E reserving such right was filed.

K. Inventory Procedures

The manufacturer or producer realizes that inventory control is of major importance. In

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] A manufacturer who proposes to use standards other than those in T.D. 66–16 must state the proposed standards and provide sufficient information to CBP in order for those proposed standards to be verified in accordance with T.D. 84–49.

accordance with the normal accounting procedures of the manufacturer or producer, each refinery prepares a monthly stock and yield report, which accounts for inventories, production and disposals from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to the drawback claims of the manufacturer or producer and will support adherence with the requirements discussed under the heading PROCEDURES AND RECORDS MAINTAINED.

L. Basis of Claim for Drawback

The amount of raw material on which drawback may be based will be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry must not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material which would be required to produce the exported products in the quantities exported.

M. Agreements

The manufacturer or producer specifically agrees that it will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;
4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

Exhibit A

ABSTRACT OF MANUFACTURING RECORDS
ABC OIL CO. – BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Material Used (in Bbls. At 60°)

		CRUDES				DERIVATIVES	
	TOTALS	CLASS I	CLASS II	CLASS III	CLASS IV	CRUDE TOPS CLASS IV	UNFINISHED NAPHTHA CLASS IV
1) Opening Inventory	4,007,438						
2) Material Introduced*	7,450,732	- 0 -	619,473	6,367,991	- 0 -	101,224	362,044
3) Closing Inventory	3,671,005						
4) Total Consumption	7,787,165						

Line (1) – Stock in process at beginning of manufacturing period.

Line (2) – Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84-49.

Line (3) - Stock in process at end of period.

Line (4) - Total Consumed, namely, line 1 plus line 2 less line 3.

*All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B
ABSTRACT OF PRODUCTION
ABC OIL CO., INC. – BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

(5) Product	(6) Quantity in Bbls.	(7) Value per Bbl.	(8) Value of Product	(9) Drawback Factor per Bbl.
1. Motor Gasoline	2,699,934	$6.14333	$16,586,586	1.06678
2. Aviation Gasoline	108,269	5.83363	631,601	1.01300
3. Special Naphthas	372,676	8.06356	3,005,095	1.40023
4. Jet Fuel	249,386	3.95698	986,815	0.68712
5. Kerosine and Range Oil	321,263	4.69857	1,509,477	0.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	0.77398
7. Residual Oils	308,002	2.51322	774,077	0.43642
8. Lubricating Oils	292,492	26.72296	7,816,252	4.64041
9. Paraffin Wax	19,063	10.49642	200,093	1.82269
10. Petroleum Coke	122,353	1.24291	152,074	0.21583
11. Asphalt	75,231	3.59105	270,158	0.62358
12. Road Oil	- 0 -	- 0 -	- 0 -	- 0 -
13. Still Gas	245,784	1.00530	247,087	0.17457
14. Liquified Refinery Gas	524,423	2.23013	1,169,531	0.38726
15. Petrochemical Synthetic Rubber	- 0 -	- 0 -	- 0 -	- 0 -
16. Petrochemical Plastics & Resins	- 0 -	- 0 -	- 0 -	- 0 -
17. All Other Petrochemical Products	7,996	6.21343	49,683	1.07895
Loss (or Gain)	(127,682)			
Total	7,787,165		$44,844,327	

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.

Col. (7) Weighted average realization for the period covered.

Col. (8) Column 6 multiplied by column 7.

Col. (9) Quantity of raw materials allowable per barrel of products. (Formula for obtaining drawback factors: $44,844,327 ÷ 7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C—INVENTORY CONTROL SHEET: ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

[All quantities exclude non-petroleum additives]

	Aviation gasoline		Residual oils		Lubricating oils		Petrochemicals, all other	
	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor
(10) Opening Inventory	11,218	1.00126	21,221	.45962	9,242	4.52178	891	1.00244
(11) Production	108,269	1.01300	308,002	.43642	292,492	4.64041	7,996	1.07895
(11–A) Receipts	.....	.....	.....	.....	.....	.....	.....	.....
(12) Exports	11,218	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
(13) Drawback Deliveries	.....	.....	.....	.....	.....	.....	696	1.00244
							319	1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
					278,286	4.64041		
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (*see* column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.
Line (15)—Balance on hand.

EXHIBIT D
RECAPITULATION OF DRAWBACK ENTRY
ABC OIL CO., INC - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

(16)	(17)	(18)	(19)	(20)	(20a)
Product	Quantity in Bbls. Exported	Quantity in Bbls. In the Terms of the Abstract	Drawback Factor per Bbl.	Crude Allowed for Drawback in Bbls.	Crude to be Allowed for Drawback Deliveries in Bbls.
Aviation Gasoline	11,410	11,216	1.00126	11,232	
		176	1.01300	176	
Residual Oils	125,618	21,221	0.45962	9,754	
		104,397	0.43642	45,561	
Lubricating Oils	8,875	8,774	4.52178	36,674	
Petrochemicals – Other	195	696	1.00244	195	698
		319	1.07895		344
		195	1.00244		
Total	146,098	146,996		106,594	1,042

Duty paid on raw material selected for designation - $.1050 per bbl. (class III crude)

Amount of drawback claimed - gross - 106,594 x .1050 =	$11,192
Less 1%	- 112
Amount of drawback claimed - net	$11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col (20) Raw material (crude or derivatives) allowable, determined by multiplying column 18 by 19.
Col (20a) Raw material (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E
PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC - BEAUMONT, TEXAS REFINERY PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Type and Class of Raw Material Designated - Crude, Class III

(21)	(22)	(23)	(24)
Product	Quantity in Barrels	Industry Standard	Quantity of Raw Material of Type and Class Designated Needed to Produce Product
Aviation Gasoline	11,394	40%	28,485
Residual Oils	125,618	83%	151,347
Lubricating Oils	8,774	50%	17,548
Petrochemicals, other	(195)		
Petrochemicals, other (drawback deliveries)	(1,015)		
Petrochemicals, other (Total)	1,210	29%	4,172
Total	146,996		

A - Crude allowed (column 20: 106,594 plus column 20a: 1,042	107,636 bbls.
B - Total Quantity exported (including drawback deliveries (column 22):	146,996 "
C - Largest quantity of raw material needed to produce an individual exported product (see column 24):	151,347 "
D - The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered).	NONE
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):	151,347 "

I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 2019 to January 31, 2019 could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E-1
PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED
ABC OIL CO., INC - TULSA, OKLAHOMA REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Type and Class of Raw Material Designated - Crude, Class III

(21)	(22)	(23)	(24)			(19)	(20)
Product	Quantity in Barrels	Industry Standard	Quantity of Raw Material of Type & Class Designated Needed to Produce Product		Covered by: 1. Period 2. Refinery	Drawback Factor per Barrel	Crude allowed for drawback
			Separate	Combined			
Aviation Gasoline	11,394	40%	28,485	29,125		1.00126	11,232
						1.01300	178
Residual Oils	125,618	83%	151,347	151,347	1. Jan. 2019	0.45962	9,754
						0.43642	45,561
Lubricating Oils	8,774	50%	17,548	17,932	2. Beaumont	4.52178	39,674
Petrochemicals, other	(195)					1.00244	195
Petrochemicals, other (drawback deliveries)	(1,015)						
Petrochemicals, other (Total)	1,210	29%	4,172	4,503			
(Residual Rights)							
Aviation Gasoline	256	40%	640	29,125		1.01265	259
Lubricating Oils	192	50%	384	17,932	1. Jan. 2019	4.59006	881
Petrochemicals, other	96	29%	331	4,503	2. Tulsa	1.12412108	108
Distillate Oils	3,807	89%	4,278	4,278		0.76624	2917
	151,347					Subtotal	4165
						Total	110759

A - Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042)	111,801 bbls.	Drawback Computation
B - Total quantity exported (including drawback deliveries (column 22):	151,347 **	4,165* bbls. @ 10% = $437.33
C - Largest quantity of raw material needed to produce an individual exported product (see col. 24):	151,347	Less 1% 4.37
D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within		Amount of Drawback
$432.96		
the domestic industry, the exported articles (including drawback deliveries) in the quantities exported or delivered):		Claim - Net
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):		See subtotal, col. 20, for Residual Rights above 151,347

Certificate

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc. during the period from January 1, 2019 to January 31, 2019 could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 2019 to January 31, 2019, filed by the Beaumont, Texas refinery from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E (COMBINATION)—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

[Type and Class of Raw Material Designated—Crude, Class III]

Product (21)	Quantity in barrels (22)	Industry standard (%) (23)	Quantity of raw material of type and class designated needed to produce product per barrel (24)	Drawback factor (19)	Crude allowed for drawback (20)
Aviation Gasoline [1]	[1] 11,218	40	28,045	1.00126	11,232
	[1] 176	40	440	1.01300	178
Residual Oils [1]	[1] 21,221	83	25,567	.45962	9,754
	[1] 104,397	83	125,780	.43642	45,561
Lubricating Oils [1]	[1] 8,774	50	17,548	4.52178	39,674
Petrochemicals, Other [1]	[1] 195	29	672	1.00244	195
Petrochemicals, Other [2]	[2] 696	29	2,400	1.00244	698
Petrochemicals, Other [2]	[2] *319*	29	1,100	1.07895	344
Total	146,996				107,636

[1] Exports.

[2] Drawback deliveries.

A—Crude allowed (column 20: 107,636 bbls. (106,594 for export, plus 1,042 for drawback deliveries)).

B—Total quantity exported (including drawback deliveries) (column 22): 146,996.

C—Largest quantity of raw material needed to produce an individual exported product (*see* column 24): 151,347.

D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.

E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbs.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claimed- gross: 81,638 x .1050=$8,571.99
24,956 x .0525= $1,310.19
$9,882.18
(Rounded Off) 9,882
Less 1% -99

Amount of drawback claimed- net: $9,783

EXHIBIT F—DESIGNATIONS FOR DRAWBACK CLAIM, ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY

[Period From January 1, 2019 to January 31, 2019]

Entry No.	Date of importation	Kind of materials	Quantity of materials in barrels	Date received	Date consumed	Rate of duty
26192	04/13/17	Class III Crude	75,125	04/13/17	May 2017	$.1050
23990	08/04/18	.....do	37,240	08/04/18	Oct. 2018	.1050
22517	10/05/18	.....do	38,982	10/05/18	Nov. 2018	.1050

X. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Piece Goods (T.D. 83–73)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products
Piece goods.	Piece goods.

The piece goods used in manufacture will be classifiable under the same 8-digit HTSUS classification as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products (including, if applicable, multiple products), or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods classifiable under the same 8-digit HTSUS classification as follows:

1. A 4% weight tolerance so that the piece goods used in manufacture will be not more than 4% lighter or heavier than the imported piece goods which will be designated;
2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, *i.e.,* print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, etc. The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices. Differences in value resulting from factors other than quality, as for example, price fluctuations, will not preclude an allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s. 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,
5. A combination of the above, or
6. Any additional finishing processes.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the quantity of rag waste, if any, and its value. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the piece goods put into the finishing processes. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records must also be kept.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain and spoilage will also be kept.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;
2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;
3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Raw Sugar (T.D. 83–59)

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

A. The drawback allowance must not exceed an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury, of the duties, taxes, and fees paid on a quantity of raw sugar designated by the refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups must have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 5 years after the date of importation, and must have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5 [degrees] and over will be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5 [degrees] will be deemed soft refined sugar. All ''blackstrap,'' ''unfiltered sirup,'' and ''final molasses'' will be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) must be classifiable under the same 8-digit HTSUS classification as that used in the manufacture of the exported refined sugar or sirup and must have been used within 5 years after the date of importation. Duty-paid sugar which has been used at a plant of a refiner within 5 years after the date on which it was imported by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative values must be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract will be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, will be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by the abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, will be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records must show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, the settlement polarization, and the 8-digit HTSUS classification. Such records covering imported sugar must show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records must show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

J. There must be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records must show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records must show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each must be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, must be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback will be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers must be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking must be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records must show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period will have been authorized, must be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract must be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract must consist of: (1) A raw stock record (accounting for Refiner's raw lot No., Import entry No., Packages No. and kind, Pounds, Polarization, By whom imported or withdrawn, Date of importation, Date of receipt by refiner, Date of melt, Importing carrier, Country of origin); (2) A melt record [number of pounds in each lot melted] (accounting for Lot No. Pounds, and Polarization degrees and pounds sucrose); (3) Sirup stock records (accounting for Date of boiling, Refinery serial manufacture No., Quantity of sirup in gallons, and Pounds sucrose contained therein); (4) Refined sugar stock record (accounting for Refinery serial production No., Date of manufacture, Hard or soft refined, Polarization and No., Net weight in pounds); (5) Recapitulation (consisting of (in pounds): (a) Sucrose in process at beginning of period, (b) sucrose melted during period, (c) sucrose in process at end of period, (d) sucrose used in manufacture, and (e) sucrose contained in manufacture, in which item (a) plus item (b), minus item (c), should equal item (d)); and (6) A statement as follows:

I, _____, the _____ refiner at the _____ refinery of _____, located at _____, do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief and can be verified by the refinery records, which have been kept in accordance with Treasury Decision 83–59 and Appendix A of 19 CFR part 190 and which are at all times open to the inspection of CBP.

Date _____

Signature _____

O. The refiner must file with each abstract a statement, showing the average market values of the products specified in the abstract and including a statement as follows:

I, _____, (Official capacity) of the _____ (Refinery), do solemnly and truly declare that the values shown above are true

to the best of my knowledge and belief, and can be verified by our records.

Date _____

Signature _____

P. At the end of each calendar month the refiner must furnish to the drawback office a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract and statement provided for in this general ruling will be in accordance with the example set forth in Treasury Decision 83–59.

R. [Reserved.]

S. Drawback entries under this general ruling must state the polarization in degrees and the sucrose in pounds for the designated imported sugar. Drawback claims under this general ruling must include a statement as follows:

I, _____, the _____ of _____, located at _____ declare that the sugar (or sirup) described in this entry, was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. ____, filed at the port of ____; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by CBP. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on __ and was used in the manufacture of sugar and sirup during the period covered by abstract No. ____, CBP No. ____, on file with the port director at _____.

I further declare that the sugar or sirup specified therein was exported as stated in the entry.

Date _____

Signature _____

T. General Statement. The refiner manufactures or produces for its own account. The refiner may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based on the ''appearing in'' method, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. [Reserved]

X. Procedures and Records Maintained.

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [1] used to produce the exported articles; and

3. That, within 5 years of the date of importation of the designated merchandise, the refiner used the designated merchandise to produce articles. During the same 5-year period, the refiner produced [2] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Steel (T.D. 81–74)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Steel of one general class, *e.g.,* an ingot, falling within on SAE, AISI, or ASTM [2] specification and, if the specification contains one or more grades, falling within one grade of the specification.	Steel of the same general class, specification, and grade as the steel in the column immediately to the left hereof.

1. The duty-paid, duty-free, or domestic steel used instead of the imported, duty-paid steel (or drawback products) will be interchangeable for manufacturing purposes with the duty-paid steel. To be interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel (or drawback products) that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (*e.g.,* chrome content). If such variances occur, designation will be by ''price extra'', and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 4, infra, insofar as the coating or plating is concerned.

3. Any fluctuation in market value caused by a factor other than quality does not affect drawback.

4. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the parallel columns, the base-metal coating or plating on the duty-paid, duty-free, or domestic steel used in place of the duty-paid steel (or drawback products) will have the same composition and thickness as the coating or plating on the duty-paid steel. If the coated or plated duty-paid steel is within an SAE, AISI, ASTM specification, then any duty-paid, duty-free, or domestic coated or plated steel must be covered by the same specification and grade (if two or more grades are in the specification).

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[2] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using steels described in the parallel columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account.

The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The steel described in the parallel columns will be used to manufacture or produce articles in accordance with § 190.2.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;
2. The quantity of merchandise of the designated merchandise [3] used to produce the exported articles;
3. That, within 5 years of the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [4] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XIII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Sugar (T.D. 81–92)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products
1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.	1. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.	2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be classifiable under the same 8-digit HTSUS classification. Differences in value resulting from factors other than quality, such as market fluctuation, will not affect the allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,
2. Cooking with other substances,
3. Boiling with other substances,

[3] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[4] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

4. Baking with other substances,
5. Additional similar processes.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

H. [Reserved]

I. Procedures And Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, specifications, and 8-digit HTSUS classification of the designated merchandise;
2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise [2] used to produce the exported articles;
3. That, within 5 years of the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced [3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer, will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XIV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Woven Piece Goods (T.D. 83–84)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bleached, mercerized, printed, dyed, or redyed piece goods manufactured or produced by any one or a combination of the foregoing processes with the use of imported woven piece goods, subject to the following special requirements:

A. Imported Merchandise or Drawback Products [1] Used

Imported merchandise or drawback products (woven piece goods) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* § 190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with § 190.2.

The piece goods used in manufacture or production under this general manufacturing drawback ruling may also be subjected to one or more finishing processes. Drawback will not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the quantity of rag waste, if any, its value, and its disposition. If no waste results, records will be maintained to establish that fact. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the woven piece goods put into process. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records will also be kept.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain, and spoilage will also be kept.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and
2. The quantity of imported merchandise [2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The records of the manufacturer or producer must show, as to each lot of piece goods manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, value, and 8-digit HTSUS classification of the imported (or drawback product) piece goods used, the condition in which imported or received (whether in the gray, bleached, dyed, or mercerized), the working allowance specified in the contract under which they are received, the process or processes applied thereto, and the quantity and description of the piece goods obtained. The records must also show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If remnants and/or spoilage occur during manufacture or production, the quantity of imported merchandise used will be determined by deducting from the quantity of piece goods received and put into manufacture or production the quantity of such remnants and/or spoilage. The remaining quantity will be reduced by the quantity thereof which the value of the rag waste, if any, would replace.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 10) or the corporate name or corporate organization by succession or reincorporation.
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with 19, United States Code, § 1313, part 190 of the CBP Regulations and this general ruling.

Appendix B to Part 190—Sample Formats for Applications for Specific Manufacturing Drawback Rulings

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I. General

Applications for specific manufacturing drawback rulings using these sample formats must be submitted to and reviewed and approved by CBP Headquarters. *See* 19 CFR 190.8. A specific manufacturing drawback ruling consists of the letter of approval that CBP issues to the applicant. In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.

II. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) and 1313(b) (Combination)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, *e.g.,* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, §§ 1313 (a) & (b), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to Names of Partners or Proprietor in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; Chicago, IL; San Francisco, CA.)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to maintain records to support the transfer under § 190.10, and its liability under § 190.63?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1) and § 190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* § 190.7 and Appendix A) or an application for a specific manufacturing drawback ruling (*see* § 190.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 190.82).)

PROCEDURES UNDER SECTION 1313(b) (PARALLEL COLUMNS—''SAME 8-DIGIT CLASSIFICATION'')

Imported merchandise or drawback products [1] to be designated as the basis for drawback on the exported products	Duty-paid, duty-free or domestic merchandise of the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products
1.	1.
2.	2.
3.	3.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the same 8-digit HTSUS classification of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate in our claims will be classifiable under the same 8-digit HTSUS classification as the merchandise used in producing the exported articles on which we claim drawback.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is ''classifiable under the same 8-digit HTSUS classification''. In order to enable CBP to rule on ''the same 8-digit HTSUS classification'', the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles, as well as provide the Bill of Materials and/or formulas annotated with the HTSUS classifications.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the ''the same 8-digit HTSUS classification'' statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, *e.g.,* ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to CBP on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the ''same 8-digit HTSUS subheading number'' determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, *e.g.,* CAS number; Color Index Number, etc.) (In order to expedite the specific manufacturing drawback ruling process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the ''the same 8-digit HTSUS subheading number'' merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name, specifications, and 8-digit HTSUS subheading number for the duty-paid, duty-free or domestic merchandise under the heading set forth above. Amendments to rulings will be required if any changes to the HTSUS classifications occur.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.,* a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE OR PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in § 190.2. In order to obtain drawback under § 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a manufacture or production has occurred. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not allowable on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.) (The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''not applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; *e.g.,* trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity, specifications, and 8-digit HTSUS subheading number of the merchandise we designate;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS subheading number as the designated merchandise [2] we used to produce the exported articles;

3. That, within 5 years after the date of importation, we used the designated merchandise to produce articles. During the same 5-year period, we produced [3] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME 8-DIGIT HTSUS SUBHEADING NUMBER WITHIN 5 YEARS AFTER THE DATE OF IMPORTATION

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, *e.g.,* within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is best to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.) (If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgment as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below. (Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise. (Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

PROCEDURES UNDER SECTION 1313(a)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED UNDER 1313(a)

(List the imported merchandise or drawback products.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.,* a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

(If the merchandise used under § 1313(a) is not also used under § 1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under § 1313(a). However, if the merchandise used under § 1313(a) is also used under § 1313(b) these sections need not be repeated unless they differ in some way from the § 1313(b) descriptions.)

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise [4] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(This section must be completed separately from that set forth under the § 1313(b) portion of your application. The legal requirements under § 1313(a) differ from those under § 1313(b).)

(Describe your inventory procedures and state how you will identify the imported merchandise from date of importation until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

BASIS OF CLAIM FOR DRAWBACK

(*See* section with this title for procedures under § 1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under § 1313(a).)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 190.9 or the identity of an agent under that section, or the corporate organization by succession or reincorporation;

[4] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles we produce.''

5. Keep this application current by reporting promptly to CBP Headquarters all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of _____ 20__, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [5] _____

(Signature and Title)

_____

(Print Name)

III. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, *e.g.,* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback will apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; Chicago, IL; San Francisco, CA.)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to maintain records to support the transfer under § 190.10, and its liability under § 190.63?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and § 190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 190.82).)

PARALLEL COLUMNS—''SAME 8-DIGIT HTSUS CLASSIFICATION'')

Imported Merchandise or Drawback Products [1] to be Designated as the Basis for Drawback on the Exported Products	Duty-Paid, Duty-Free or Domestic Merchandise of the Same 8-Digit HTSUS Subheading Number as that Designated Which Will be Used in the Production of the Exported Products
1.	1.
2.	2.
3.	3.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the ''same 8-digit HTSUS subheading number'' of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be classifiable under the same 8-digit HTSUS subheading number as to the merchandise used in producing the exported articles on which we claim drawback, such that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is ''classifiable under the same 8-digit HTSUS subheading number''. In order to enable CBP to rule on ''same 8-digit HTSUS subheading number'', the application must include a detailed description of the designated imported merchandise and of the

[5] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the CBP port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed customs broker with a customs power of attorney. You should state in which CBP port your customs power(s) of attorney is/are filed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles, as well as provide the Bill of Materials and/or formulas annotated with the HTSUS classification.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the ''same 8-digit HTSUS subheading number'' statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, *e.g.,* ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to CBP on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the ''same 8-digit HTSUS subheading number'' determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, *e.g.,* CAS number; Color Index Number, etc.)

(In order to expedite the specific manufacturing drawback ruling review process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the ''same 8-digit HTSUS subheading number'' merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name, specifications, and 8-digit HTSUS subheading number for the duty-paid, duty-free or domestic merchandise under the heading set forth above. Amendments to rulings will be required if any changes to the HTSUS classifications occur.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, *e.g.,* a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in § 190.2. In order to obtain drawback under § 1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a manufacture or production has occurred. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $ 5, $ 10, and $ 50 respectively. The relative value of product A is $ 300 divided by $ 1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not allowable on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as waste. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles less valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; *e.g.,* trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity, specifications, and 8-digit HTSUS subheading number of the merchandise we designate;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS subheading number as the designated merchandise [2] we used to produce the exported articles;

3. That, within 5 years after the date of importation, we used the designated merchandise to produce articles. During the same 5-year period, we produced [3] the exported articles;

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME 8-DIGIT HTSUS SUBHEADING WITHIN 5 YEARS AFTER IMPORTATION OF THE DESIGNATED MERCHANDISE

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, *e.g.,* within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is better to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application, a judgment as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $ 5.00, would be equivalent

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 190.9 or the identity of an agent under that section, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of ____ 20__, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [4] _____

(Signature and Title)

_____

(Print Name)

IV. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(d)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, *e.g.,* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; Chicago, IL; San Francisco, CA.)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The exact material placed under this heading in individual cases will vary, but it should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for its own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of its

[4] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the CBP port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed customs broker with a customs power of attorney. You should state in which CBP port your customs power(s) of attorney is/are filed.

products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and § 190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 and this Appendix B).)

(Regarding drawback operations conducted under § 1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)

TAX-PAID MATERIAL USED UNDER SECTION 1313(d)

(Describe or list the tax-paid material)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under § 1313(d) is not allowable except where a manufacture or production exists. ''Manufacture or production'' is defined, for drawback purposes, in § 190.2. In order to obtain drawback under § 1313(d), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; *e.g.,* trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol[1] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(d) and part 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

MANUFACTURING RECORDS

FINISHED STOCK STORAGE RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).)

(For example, if 100 gallons of alcohol, valued at $ 1.00 per gallon, were used in manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10 gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, reduced by the quantity of such alcohol which the value of the waste would replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of $.50 per gallon, then the 10 gallons of waste, having a total value of $ 5.00, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons ''used in'' or the 90 gallons ''appearing in'' as set forth in the above examples.) (Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 190.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this __ day of _____ 20 __, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [2] _____

(Signature and Title)

_____

(Print Name)

V. Format for Application for Specific Manufacturing Drawback Ruling Under 19 U.S.C. 1313(g).

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, *e.g.,* Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under § 190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* § 190.8(a).)

LOCATION OF FACTORY OR SHIPYARD

(Give the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. If the factory or shipyard is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY;

[2] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the CBP port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed customs broker with a customs power of attorney. You should state in which CBP port your customs power(s) of attorney is/are filed.

Houston, TX; Chicago, IL; San Francisco, CA.)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:

1. Who will be the importer of the merchandise? (If the applicant will not always be the importer, does the applicant understand its obligations to maintain records to support the transfer under 19 CFR 190.10, and its liability under 19 CFR 190.63?)

2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and § 190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* § 190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* § 190.8 and this Appendix B).)

3. Will the applicant be the drawback claimant?

(State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?)

(There must be included under this heading the following statement:

We are particularly aware of the terms of § 190.76(a)(1) of and subpart M of part 190 of the CBP Regulations, and will comply with these sections where appropriate.)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED

(Describe the imported merchandise or drawback products.)

ARTICLES CONSTRUCTED AND EQUIPPED FOR EXPORT

(Name the vessel or vessels to be made with imported merchandise or drawback products.)

PROCESS OF CONSTRUCTION AND EQUIPMENT

(What is required here is a clear, concise description of the process of construction and equipment involved. The description should also trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported merchandise or drawback products and of the articles resulting from the processing.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and

2. The quantity of imported merchandise [1] we used in producing the exported article.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

CONSTRUCTION AND EQUIPMENT RECORDS

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees paid on the quantity of imported material used to construct and equip the exported article.)

(For example, if 100 pounds of material, valued at $ 1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees paid on the quantity of imported material which appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees paid on the quantity of imported material used to construct and equip the exported product, reduced by the quantity of such material which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees paid on the 95 pounds of imported material rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under § 190.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to help ensure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of _____ 20 __, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [2] _____

(Signature and Title)

[2] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the CBP port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed customs broker with a customs power of attorney. You should state in which CBP port your customs power(s) of attorney is/are filed.

PART 191—DRAWBACK

■ 6. The general authority citations for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

* * * * *

■ 7. Revise § 191.0 to read as follows:

§ 191.0 Scope.

This part sets forth general provisions applicable to drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, prior to the February 24, 2016, amendments to the U.S. drawback law. Drawback claims may not be filed under this part after February 23, 2019. For drawback claims filed under 19 U.S.C. 1313, as amended, see part 190. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

■ 8. Revise § 191.1 to read as follows:

§ 191.1 Authority of the Commissioner of CBP.

Pursuant to DHS Delegation number 7010.3, the Commissioner of CBP has the authority to prescribe, and pursuant to Treasury Department Order No. 100–16 (set forth in the appendix to part 0 of this chapter), the Secretary of the Treasury has the sole authority to approve, rules and regulations regarding drawback.

■ 9. In § 191.3:

■ a. Revise the section heading;

■ b. Amend paragraph (a)(3) by removing the word ''and'' at the end of the paragraph;

■ c. Amend paragraph (a)(4) by removing the ''(iv).'' and adding in its place the words ''(iv); and'';

■ d. Add paragraph (a)(5).

■ e. Revise paragraph (b).

The revisions and additions read as follows:

§ 191.3 Duties, taxes, and fees subject or not subject to drawback.

(a) * * *

(5) Harbor maintenance taxes (*see* § 24.24 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j), and drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance taxes (see § 24.24 of this chapter) except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed;

(2) Merchandise processing fees (see § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

* * * * *

■ 10. Section 191.5 is revised to read as follows:

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station is considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Drawback is not allowed, except on claims made under 19 U.S.C. 1313(j)(1), on articles shipped to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island. Puerto Rico is not considered foreign territory for drawback purposes and, accordingly, drawback may not be permitted on articles shipped there from elsewhere in the customs territory of the United States.

■ 11. In § 191.22, paragraph (a) is amended by adding a new sentence to the end of the paragraph to read as follows:

§ 191.22 Substitution drawback.

(a) * * * For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

* * * * *

■ 12. In § 191.32:

■ a. Remove the word ''and'' at the end of paragraph (b)(2);

■ b. Remove ''.'' and adding, in its place, ''; and''; at the end of paragraph (b)(3) and;

■ c. Add paragraph (b)(4) to read as follows:

§ 191.32 Substitution drawback.

* * * * *

(b) * * *

(4) For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

* * * * *

■ 13. Section 191.42 is revised to read as follows:

§ 191.42 Procedures and supporting documentation.

(a) *Time limit for exportation or destruction.* Drawback will be denied on merchandise that is exported or destroyed after the statutory 3-year time period.

(b) *Required documentation.* The claimant must submit documentation to CBP as part of the complete drawback claim (*see* § 191.51) to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation (*see* § 191.45 for additional requirements for claims made with respect to rejected retail merchandise under 19 U.S.C. 1313(c)(1)(C)(ii)). If the claimant was not the importer, the claimant must also:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter (for destruction under CBP supervision, see § 191.71), must file at the port of intended redelivery to CBP custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended return to CBP custody. Waiver of prior notice for exportations under 19 U.S.C. 1313(j) (*see* § 191.91) is inapplicable to exportations under 19 U.S.C. 1313(c).

(d) *Required information.* The notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (*see* paragraph (c) of this section), CBP will notify, in writing, the party designated on the Notice of CBP's decision to either examine the merchandise to be exported or destroyed, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (f) of this section), but the merchandise is exported or destroyed without having been presented to CBP for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, must be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and will be deemed to have been returned to CBP custody.

(f) *Time and place of examination.* If CBP gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if CBP fails to timely examine the merchandise after presentation to CBP, and in such case the merchandise will be deemed to have been returned to CBP custody. If the examination is completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (*see* § 191.51(b)). The procedures for restructuring a claim (*see* § 191.53) apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* Claimants must provide documentary evidence of exportation (*see* subpart G of this part). The claimant may establish exportation by mail as set out in § 191.74 of this part.

■ 14. Section 191.45 is added to read as follows:

§ 191.45 Returned retail merchandise.

(a) *Special rule for substitution.* Section 313(c)(1)(C)(ii) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(c)(1)(C)(ii)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid and ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer.

(b) *Eligibility requirements.* (1) Drawback is allowable, subject to compliance with all requirements set forth in this subpart; and

(2) The claimant must also show by evidence satisfactory to CBP that drawback may be claimed by—

(i) Designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (a) of this section under CBP supervision.

(ii) Certifying that the same 8-digit HTSUS subheading number and specific product identifier (such as part number, SKU, or product code) apply to both the merchandise designated for drawback (in the import documentation) and the returned merchandise.

(c) *Allowable refund.* The amount of drawback allowable will be equal to 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise.

(d) *Denial of claims.* No drawback will be refunded if CBP is not satisfied that the claimant has provided, upon request, the documentation necessary to support the certification required in paragraph (b)(2)(ii) of this section.

■ 15. Amend § 191.51 by adding a new paragraph (a)(3) to read as follows:

§ 191.51 Completion of drawback claims.

(a) * * *

(3) *Limitation on eligibility for imported merchandise.* Claimants are prohibited from filing any drawback claims under part 191 for imported merchandise associated with an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a drawback substitution claim under part 190.

* * * * *

■ 16. Section 191.81 is revised to read as follows:

§ 191.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the designated import entry or entries becomes final pursuant to paragraph (e) of this section; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the designated import entry or entries.

(b) *Claims based on estimated duties.* (1) Drawback may be paid upon liquidation of a claim based on estimated duties if one or more of the designated import entries have not been liquidated, or the liquidation has not become final (because of a protest being filed) (*see* also § 173.4(c) of this chapter), only if the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant must, to the best of its knowledge, identify each import entry that has been protested and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties pursuant to paragraph (e)(2), will not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, except in those cases when drawback is 100% of the duty, the party responsible for the payment of liquidated duties, as applicable, will:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to have been paid as estimated duties on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *General.* Subject to the requirements in paragraph (c)(2) of this section, drawback may be paid upon liquidation of a claim based on voluntary tenders of the unpaid amount of lawful ordinary customs duties or any other payment of lawful ordinary customs duties for an entry, or withdrawal from warehouse, for consumption (*see* § 191.3(a)(1)(iii)), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback will be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* (1) *General.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the merchandise or articles has been established, CBP will determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3).

(2) *Liquidation by operation of law.* (i) *Liquidated import entries.* A drawback claim that satisfies the requirements of

paragraph (d) that is not liquidated within one year from the date of the drawback claim (*see* § 190.51(e)(1)(i)) will be deemed liquidated for the purposes of the drawback claim at the drawback amount asserted by the claimant or claim, unless the time for liquidation is extended in accordance with § 159.12 or if liquidation is suspended as required by statute or court order.

(ii) *Unliquidated import entries.* A drawback claim that satisfies the requirements of paragraphs (b) or (c) of this section will be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise (*see* § 191.81(b)).

(iii) *Applicability.* The provisions of paragraphs (e)(2)(i) of this section will apply to drawback entries made on or after December 3, 2004. An entry or claim for drawback filed before December 3, 2004, the liquidation of which was not final as of December 3, 2004, will be deemed liquidated on the date that is 1 year after December 3, 2004, at the drawback amount asserted by the claimant at the time of the entry or claim.

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback will be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Values.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions must be the market value (as provided for in the definition of relative value in § 191.2(u)), unless other values are approved by CBP.

(g) *Payment.* CBP will authorize payment of the amount of the refund due as drawback to the claimant.

■ 17. Section 191.103 is revised to read as follows:

§ 191.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant must file with the drawback entry, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the Alcohol and Tobacco Tax and Trade Bureau (TTB) for domestic drawback on alcohol under §§ 5111, 5112, 5113, and 5114, Internal Revenue Code, as amended (26 U.S.C. 5111, 5112, 5113, and 5114).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with TTB for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer must submit a statement setting forth that fact to the Director, National Revenue Center, TTB.

(2) *Contents of the statement.* The statement must show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the distilled spirits plant from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the applicable record of tax determination (*see* 27 CFR 17.163(a) and 27 CFR 19.626(c)(7); and

(vi) CBP office where the claim will be filed.

(3) *Verification of the statement.* The Director, National Revenue Center, TTB, will verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

■ 18. Section 191.104 is revised to read as follows:

§ 191.104 Alcohol and Tobacco Tax and Trade Bureau (TTB) certificates.

(a) *Request.* The drawback claimant or manufacturer must request the Director, National Revenue Center, TTB, provide the CBP office where the drawback claim will be processed with a tax-paid certificate on TTB Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request must state the:

(1) Quantity of alcohol in proof gallons;

(2) Serial number of each package;

(3) Amount of tax paid on the alcohol;

(4) Name, registry number, and location of the distilled spirits plant;

(5) Date of withdrawal;

(6) Name of the manufacturer using the alcohol in producing the exported articles;

(7) Address of the manufacturer and its manufacturing plant; and

(8) CBP drawback office where the drawback claim will be processed.

(c) *Extract of TTB certificate.* If a certification of any portion of the alcohol described in the TTB Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, will transmit a copy of the extract from the certificate for use at that drawback office. The drawback office will note that the copy of the extract was prepared and transmitted.

■ 19. Section 191.103 is revised to read as follows:

§ 191.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 191.103 of this subpart shows that a claim has been or will be filed with TTB for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), will be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with TTB.* If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with TTB for domestic drawback, the drawback will be the full amount of the tax on the alcohol used. Drawback under this provision may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol) indicating that taxes have been paid on the exported product for which drawback is claimed.

(c) *No deduction of 1 percent.* No deduction of 1 percent will be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due will be paid in accordance with § 191.81(f).

■ 20. In § 191.171, add paragraph (d) to read as follows:

§ 191.171 General; drawback allowance.

* * * * *

(d) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32 and 38 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

Kevin K. McAleenan,

Commissioner, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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Part III

The President

Proclamation 9771—To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 9771 of July 30, 2018

To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Proclamation 7350 of October 2, 2000, the President designated the Republic of Rwanda (''Rwanda'') as a beneficiary sub-Saharan African country for purposes of section 506A(a)(1) of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (the ''AGOA'').

2. Sections 506A(d)(4)(C) (19 U.S.C. 2466a(d)(4)(C)) and 506A(c)(1) (19 U.S.C. 2466a(c)(1)) of the 1974 Act authorize the President to suspend the application of duty-free treatment provided for any article described in section 506A(b)(1) of the 1974 Act (19 U.S.C. 2466a(b)(1)) or section 112 of the AGOA (19 U.S.C. 3721) with respect to a beneficiary sub-Saharan African country if the President determines that the beneficiary country is not meeting the requirements described in section 506A(a)(1) of the 1974 Act, and that suspending such duty-free treatment would be more effective in promoting compliance by the country with those requirements than terminating the designation of the country as a beneficiary sub-Saharan African country for purposes of section 506A of the 1974 Act.

3. Pursuant to section 506A(c)(1) of the 1974 Act, I have determined that Rwanda is not meeting the requirements described in section 506A(a)(1) of the 1974 Act and that suspending the application of duty-free treatment to certain goods would be more effective in promoting compliance by Rwanda with such requirements than terminating the designation of Rwanda as a beneficiary sub-Saharan African country. Accordingly, I have decided to suspend the application of duty-free treatment for all AGOA-eligible goods in the apparel sector from Rwanda for purposes of section 506A of the 1974 Act.

4. Proclamation 8039 of July 27, 2006, implemented the United States-Bahrain Free Trade Agreement (''USBFTA'') with respect to the United States and, pursuant to section 101(a) of the United States-Bahrain Free Trade Agreement Implementation Act (the ''USBFTA Implementation Act'') (19 U.S.C. 3805 note), incorporated in the Harmonized Tariff Schedule of the United States (HTS) the rules of origin necessary or appropriate to carry out the USBFTA.

5. Section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS based on the recommendations of the United States International Trade Commission (the ''Commission'') under section 1205 of the 1988 Act (19 U.S.C. 3005) if he determines that the modifications are in conformity with United States obligations under the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'') and do not run counter to the national economic interest of the United States.

6. In Proclamation 9549 of December 1, 2016, pursuant to the authority provided in section 1206(a) of the 1988 Act, the President modified the HTS to reflect amendments to the Convention. Bahrain is a party to the

Convention and likewise implemented the amendments to the Convention in its tariff schedule.

7. Because of these changes in the national tariff schedules of the parties to the USBFTA, the rules of origin set out in Annexes 3–A and 4–A of the USBFTA must be changed to ensure that the tariff and certain other treatment accorded under the USBFTA to originating goods will continue to be provided under the tariff categories that were modified in Proclamation 9549. The USBFTA parties have agreed to make these changes in a protocol to the USBFTA that went into effect on November 30, 2017.

8. Section 202 of the USBFTA Implementation Act provides certain rules for determining whether a good is an originating good for purposes of implementing tariff treatment under the USBFTA. Section 202(j)(1) of the USBFTA Implementation Act authorizes the President to proclaim the rules of origin set out in the USBFTA and any subordinate categories necessary to carry out the USBFTA, subject to certain exceptions set out in section 202(j)(2)(A).

9. I have determined that modifications to the HTS proclaimed pursuant to section 1206(a) of the 1988 Act are necessary or appropriate to ensure the continuation of treatment accorded originating goods under tariff categories modified in Proclamation 9549.

10. Following the amendments to the Convention reflected by the modifications to the HTS made in Proclamation 9549, the World Customs Organization issued a small number of conforming amendments to the Convention that should have been included in the amendments that were implemented on January 1, 2017, pursuant to Proclamation 9549. The Commission then recommended additional modifications to the HTS pursuant to section 1205 of the 1988 Act to conform the HTS to these most recent amendments to the Convention. I have determined that these recommended modifications to the HTS proclaimed in this proclamation pursuant to section 1206(a) of the 1988 Act are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States.

11. Proclamation 9693 of January 23, 2018, implemented action in the form of a safeguard measure under section 203 of the 1974 Act (19 U.S.C. 2253) with respect to certain crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products (such as modules).

12. The safeguard measure imposed a tariff-rate quota, for a period of 4 years, on imports of solar cells that are not partially or fully assembled into other products, and an increase in duties on imports of modules, as defined by Note 18(g) in subchapter III of chapter 99 of the HTS, also for a period of 4 years.

13. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

14. Proclamation 9693 modified chapter 99 of the HTS to implement the safeguard measure described in paragraphs 11 and 12 of this proclamation. Those modifications included certain technical errors, and I have determined, pursuant to section 604 of the 1974 Act, that modifications to the HTS are necessary to correct them.

15. Section 1206(c) of the 1988 Act provides that modifications proclaimed by the President under section 1206(a) may not take effect before the thirtieth day after the date on which the text of the proclamation is published in the *Federal Register*.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited

to sections 506A(d)(4)(C) and 506A(c)(1) of the 1974 Act; section 1206(a) of the 1988 Act; and sections 203 and 604 of the 1974 Act, do proclaim that:

(1) The application of duty-free treatment for all AGOA-eligible goods in the apparel sector from Rwanda is suspended for purposes of section 506A of the 1974 Act, effective July 31, 2018.

(2) In order to reflect in the HTS that, beginning on July 31, 2018, the application of duty-free treatment for all AGOA-eligible goods in the apparel sector from Rwanda shall be suspended, the HTS is modified as set forth in Annex I to this proclamation.

(3) In order to reflect in the HTS the modifications to the rules of origin under the USBFTA, general note 30 to the HTS is modified as provided in Annex II to this proclamation.

(4) The modifications to the HTS set forth in Annex II shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after the date that is 30 days after the date of publication of this proclamation in the *Federal Register*.

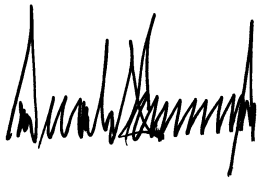
(5) In order to conform the HTS to the most recent amendments to the Convention, the HTS is modified as set forth in Annex III to this proclamation.

(6) The modifications to the HTS set forth in Annex III shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after the later of (i) the date that is 30 days after the date of publication of this proclamation in the *Federal Register*, or (ii) the first day of the month that follows after such thirtieth day.

(7) In order to correct technical errors in the annex to Proclamation 9693, Note 18(c)(iii) in subchapter III of chapter 99 of the HTS is modified by deleting the phrase ''Subheadings 9903.45.21 and 9903.45.22 shall likewise'' and by inserting in lieu thereof the phrase ''Subheading 9903.45.25 shall''; and Note 18(g) is modified by deleting ''For purposes of'' and by inserting in lieu thereof ''Subject to the provisions of subdivision (c)(iii) of this note, for purposes of''.

(8) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of July, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-third.



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ANNEX I

TO MODIFY PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 31, 2018, subchapter XIX of chapter 98 of the Harmonized Tariff Schedule of the United States is modified as follows:

1. U.S. note 2(d) to subchapter XIX of chapter 98 is modified by deleting "Republic of Rwanda".

2. The article descriptions of subheadings 9819.11.03 through 9819.11.24, inclusive, and subheading 9819.11.30 are each modified by inserting after the first or the sole appearance (as the case may be) of the word "countries" the expression "(except the Republic of Rwanda)".

3. The article description of subheading 9819.11.27 is modified by inserting after the word "articles" the expression "(except apparel articles the product of the Republic of Rwanda)".

4. The superior text to subheadings 9819.15.10 through 9819.15.42 is modified by inserting after the word "countries" the expression "(except the Republic of Rwanda)".

ANNEX II

TO MODIFY PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods of Bahrain, under the terms of general note 30 to the Harmonized Tariff Schedule (HTS) of the United States, that are entered for consumption, or withdrawn from warehouse for consumption, on or after the date that is thirty days after the date of publication of this proclamation in the Federal Register, subdivision (h) of such general note 30 is hereby modified as follows:

1. Chapter rule 1 for chapter 61 is deleted and the following new chapter rule is inserted in lieu thereof:

"**Chapter Rule 1:** Except for fabrics classified in tariff items 5408.22.10, 5408.23.11, 5408.23.21 and 5408.24.10, the fabrics identified in the following subheadings and headings, when used as visible lining material in certain men's and women's suits, suit-type jackets, skirts, overcoats, carcoats, anoraks, windbreakers and similar articles, must be both formed from yarn and finished in the territory of Bahrain or of the United States:

> 5111 through 5112, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.61, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24, 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6005.35 through 6005.44 or 6006.10 through 6006.44."

2. Chapter rule 1 for chapter 62 is deleted and the following new chapter rule is inserted in lieu thereof:

"**Chapter Rule 1:** Except for fabrics classified in tariff items 5408.22.10, 5408.23.11, 5408.23.21 and 5408.24.10, the fabrics identified in the following subheadings and headings, when used as visible lining material in certain men's and women's suits, suit-type jackets, skirts, overcoats, carcoats, anoraks, windbreakers and similar articles, must be both formed from yarn

and finished in the territory of Bahrain or of the United States:

5111 through 5112, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.61, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24, 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6005.35 through 6005.44 or 6006.10 through 6006.44."

3. Tariff classification rule (TCR) 1 for chapter 21 is deleted and the following new TCR is inserted in lieu thereof:

"1. A change to concentrated juice of any single fruit or vegetable fortified with vitamins or minerals of subheading 2106.90 from any other chapter, except from heading 0805, subheadings 2009.11 through 2009.39, subheading 2202.91 or subheading 2202.99."

4. Following the TCR for chapter 94, a new designation for chapter 96 and accompanying heading rule and TCR are inserted as follows:

"Chapter 96

Heading Rule: For purposes of determining whether a good of this heading other than of textile wadding is originating, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good and such component must satisfy the tariff change requirements set out in the rule for that good.

1. (A) A change to sanitary towels (pads) and tampons and similar articles of textile wadding of heading 9619 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311 or chapters 54 through 55; or

(B) A change to a good of textile materials other than of wadding, knitted or crocheted, of heading 9619 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311,

chapter 54 or headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain or of the United States, or both; or

(C) A change to a good of textile materials other than of wadding, not knitted or crocheted, of heading 9619 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Bahrain or of the United States; or both."

ANNEX III

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after the later of (1) the date that is thirty days after the date of publication of this proclamation in the Federal Register, or (2) the first day of the month that follows after such thirtieth day, chapters 44 and 63 of the Harmonized Tariff Schedule (HTS) of the United States are modified as set forth herein, with the material inserted in the HTS in the respective columns shown in each table below:

1. (a) Additional U.S. note 3 to chapter 44 is redesignated as note 4.

   (b) Additional U.S. note 4 to chapter 44 is redesignated as note 5.

   (c) New additional U.S. note 3 to chapter 44 is inserted as follows:

   "3. Subheadings 4407.19.05 and 4407.19.06 cover combinations of the named species whose proportions are not readily identifiable."

2. Subheading 4401.10.00 is deleted and the following new subheadings and superior text are inserted in lieu thereof:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; ...:]			
	"Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms:			
4401.11.00	Coniferous	Free		20%
4401.12.00	Nonconiferous	Free		20%".

3. (a) The superior text immediately preceding subheading 4401.31.00 is deleted and the following new superior text is inserted in lieu thereof:

"Sawdust and wood waste and scrap, agglomerated in logs, briquettes, pellets or similar forms:".

(b) Subheading 4401.39.40 is redesignated as subheading 4401.39.41.

4. New subheading 4401.40.00 is inserted in numerical sequence:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; ...:]			
"4401.40.00	Sawdust and wood waste and scrap, not agglomerated	Free		Free

5. Subheadings 4403.10.00 and 4403.20.00 are deleted and the following new subheadings and superior texts are inserted in lieu thereof:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared:]			
	"Treated with paint, stain, creosote or other preservatives:			
4403.11.00	Coniferous	Free		Free
4403.12.00	Nonconiferous	Free		Free
	Other, coniferous:			
4403.21.00	Of pine (Pinus spp.), of which any cross-sectional dimension is 15 cm or more	Free		Free
4403.22.00	Of pine (Pinus spp.), other	Free		Free
4403.23.00	Of fir (Abies spp.) and spruce (Picea spp.), of which any cross-sectional dimension is 15 cm or more	Free		Free
4403.24.00	Of fir (Abies spp.) and spruce (Picea spp.), other	Free		Free
4403.25.00	Other, of which any cross-sectional dimension is 15 cm or more	Free		Free
4403.26.00	Other	Free		Free" .

6. (a) Subheading 4403.92.00 is deleted and the following new subheadings are inserted in lieu thereof:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared: Other:]			
"4403.93.00	Of beech (Fagus spp.), of which any cross-sectional dimension is 15 cm or more	Free		Free
4403.94.00	Of beech (Fagus spp.), other	Free		Free
4403.95.00	Of birch (Betula spp.), of which any cross-sectional dimension is 15 cm or more	Free		Free
4403.96.00	Of birch (Betula spp.), other	Free		Free
4403.97.00	Of poplar and aspen (Populus spp.)	Free		Free
4403.98.00	Of eucalyptus (Eucalyptus spp.)	Free		Free ".

(b) Subheading 4403.99.00 is redesignated as subheading 4403.99.01.

7. Subheadings 4406.10.00 and 4406.90.00 are deleted and the following new subheadings and superior texts are inserted in lieu thereof:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4406	Railway or tramway sleepers (cross-ties) of wood:]			
	"Not impregnated:			
4406.11.00	Coniferous	Free		Free
4406.12.00	Nonconiferous	Free		Free
	Other:			
4406.91.00	Coniferous	Free		Free
4406.92.00	Nonconiferous	Free		Free ".

8. Subheading 4407.10.01 is deleted and the following new subheadings and superior texts are inserted in lieu thereof:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm:]			
	"Coniferous:			
4407.11.00	Of pine (Pinus spp.)	Free		$1.70/m³
4407.12.00	Of fir (Abies spp.) and spruce (Picea spp.)	Free		$1.70/m³
4407.19.00	Other:			
4407.19.05	Mixtures of spruce, pine and fir ("S-P-F"), not treated with paint, stain, creosote or other preservative	Free		$1.70/m³
4407.19.06	Mixtures of western hemlock and amabilis fir ("hem-fir"), not treated with paint, stain, creosote or other preservative	Free		$1.70/m³
4407.19.10	Other	Free		$1.70/m³"

9. (a) New subheadings 4407.96.00 and 4407.97.00 are inserted in numerical order:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm:			
	Other:]			
"4407.96.00	Of birch (Betula spp.)	Free		$1.27/m³
	.....			
4407.97.00	Of poplar and aspen (Populus spp.)	Free		$1.27/m³ ".
	.....			

(b) Subheading 4407.99.01 is redesignated as subheading 4407.99.02.

10. (a) Subheadings 4412.32 through 4412.32.57 are deleted and the following new subheadings and superior texts are inserted in lieu thereof:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4412	Plywood, veneered panels and similar laminated wood:			
	Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness:			
4412.33	Other, with at least one outer ply of nonconiferous wood of the species alder (Alnus spp.), ash (Fraxinus spp.), beech (Fagus spp.), birch (Betula spp.), cherry (Prunus spp.), chestnut (Castanea spp.), elm (Ulmus spp.), eucalyptus (Eucalyptus spp.), hickory (Carya spp.), horse chestnut (Aesculus spp.), lime (Tilia spp.), maple (Acer spp.), oak (Quercus spp.), plane tree (Platanus spp.), poplar and aspen (Populus spp.),			

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
	robinia (Robinia spp.), tulipwood (Liriodendron spp.) or walnut (Juglans spp.):			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.33.06	With a face ply of birch (Betula spp.)	Free		50%"
[4412	Plywood, veneered panels and similar laminated wood: Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness:]			
"4412.33	Other, with at least one outer ply of nonconiferous wood of the species alder (Alnus spp.), ash (Fraxinus spp.), beech (Fagus spp.), birch (Betula spp.), cherry (Prunus spp.), chestnut (Castanea spp.), elm (Ulmus spp.), eucalyptus (Eucalyptus spp.), hickory (Carya spp.), horse chestnut (Aesculus spp.), lime (Tilia spp.), maple (Acer spp.), oak (Quercus spp.), plane tree (Platanus spp.), poplar and aspen (Populus spp.), robinia (Robinia spp.), tulipwood (Liriodendron spp.) or walnut (Juglans spp.):			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:]			

4412.33.26	With a face ply of walnut (Juglans spp.)	5.1%	Free (A*,AU,BH, CA,CL,CO,D,E,IL, JO,MA,MX,OM, P,PA,PE, SG) 1.5% (KR)	40%
4412.33.32	Other	8%	Free (A*,AU,BH, CA,CL,CO,D,E,IL, JO,MA,MX,OM, P,PA,PE, SG) 2.4% (KR)	40%
4412.33.57	Other	8%	Free (A*,AU,BH, CA,CL,CO,D,E,IL, JO,MA,MX,OM, P,PA,PE, SG) 2.4% (KR)	40%"
[4412	Plywood, veneered panels and similar laminated wood: Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness:]			
"4412.34	Other, with at least one outer ply of nonconiferous wood not specified under subheading 4412.33: Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
4412.34.26	With a face ply of Spanish cedar	5.1%		40%

	(Cedrela spp.)		Free (A*,AU,BH, CA,CL,CO,D,E,IL, JO,MA,MX,OM, P,PA,PE, SG) 1.5% (KR)	
4412.34.32	Other	8%	Free (A*,AU,BH, CA,CL,CO,D,E,IL, JO,MA,MX,OM, P,PA,PE, SG) 2.4% (KR)	40%
4412.34.57	Other	8%	Free (A*,AU,BH, CA,CL,CO,D,E,IL, JO,MA,MX,OM, P,PA,PE, SG) 2.4% (KR)	40%".

(b) General note 4(d) to the HTS is modified by -

(i) deleting the following subheadings and the country set out opposite such subheadings:

4412.32.26	Brazil
4412.32.32	Brazil
4412.32.57	Brazil

(ii) adding, in numerical sequence, the following subheadings and the country set out opposite such subheadings:

4412.33.26	Brazil
4412.33.32	Brazil
4412.33.57	Brazil
4412.34.26	Brazil
4412.34.32	Brazil
4412.34.57	Brazil

11. New subheading note 1 to chapter 63 and a subheading note title are inserted after the chapter notes.

"Subheading Note

1. Subheading 6304.20 covers articles made from warp knit fabrics, impregnated or coated with alpha-cypermethrin (ISO), chlorfenapyr (ISO), deltamethrin (INN, ISO), lambda-cyhalothrin (ISO), permethrin (ISO) or pirimiphosmethyl (ISO).".

12. (a) New subheading 6304.20.00 is inserted in numerical order:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[6304	Other furnishing articles, excluding those of heading 9404:]			
"6304.20.00	Bed nets specified in subheading note 1 to this chapter	5.8%	Free (AU, BH, CA, CL, CO, E*, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	90%".

(b) Subheading 6304.91.00 is redesignated as subheading 6304.91.01.

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