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FEDERAL REGISTER

Vol. 85 Tuesday,
No. 42 March 3, 2020

Pages 12431–12714

OFFICE OF THE FEDERAL REGISTER

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1630, 1632 and 1650

Cost-of-Living Adjustments and Identity Verification

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is amending its regulations to change the cost-of-living adjustment rate used to calculate the annual increase for annuities with an increasing payment option and to clarify its requirements regarding identification verification and availability of announcements of meetings open to public observation.

DATES: This rule is effective March 1, 2020.

FOR FURTHER INFORMATION CONTACT: Austen Townsend, (202) 864–8647.

SUPPLEMENTARY INFORMATION: The FRTIB administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On December 17, 2019, the FRTIB published a proposed rule with request for comments in the **Federal Register** (84 FR 68815) and, for the reasons described below, is publishing the proposed rule as final without change. The proposed rule amended 5 CFR 1650.14(g) to provide for a fixed cost-of-living adjustment (COLA) rate of 2 percent for annuities with an increasing payment option. Several commentators expressed concern that a fixed rate of 2 percent would not provide adequate inflation protection for participants over the long term and was a cost-saving measure for FRTIB. As noted in the preamble to the proposed rule, the FRTIB will regularly review the COLA to ensure that it continues to be beneficial for TSP participants. Moreover, all TSP assets are held in trust and any savings that result from the COLA change will be passed along to participants, not the FRTIB.

The proposed rule also amended (1) 5 CFR 1630.4(a) and 1630.7(c) to clarify that TSP participants may be required to provide identifying particulars to access their account information; and (2) 5 CFR 1632.4(c) to reflect the FRTIB's existing practice of maintaining the annual Board meeting schedule online at *frtib.gov* and publishing announcements of meetings open to public observation in the **Federal Register**. The FRTIB received no comments on these changes.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the TSP, and beneficiary participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 2 U.S.C. 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1630

Privacy.

5 CFR Part 1632

Sunshine Act.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB amends 5 CFR Chapter VI as follows:

PART 1630—PRIVACY ACT REGULATIONS

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

Authority: 5 U.S.C. 552a.

■ 2. Amend § 1630.4 by revising paragraph (a)(2) to read as follows:

§ 1630.4 Request for notification and access.

(a) * * *

(2) Participants may also inquire whether this system contains records about them and access certain records through the account access section of the TSP website and the ThriftLine (the TSP's automated telephone system). The TSP website is *www.tsp.gov.* To use the TSP ThriftLine, the participant must have a touch-tone telephone and call (877) 968–3778. Information such as account balance and transaction status is available on the TSP website and the ThriftLine. To access these features, the participant may be required to verify his or her identity by providing identifying particulars.

* * * * *

■ 3. Amend § 1630.7 by revising paragraph (c)(3) to read as follows:

§ 1630.7 Identification requirements.

* * * * *

(c) * * *

(3) A participant may also access the TSP website or call the TSP ThriftLine to obtain account information. These systems may require identity and account verification information and

may require the participant to verify his or her identity by providing identifying particulars.

PART 1632—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

■ 4. The authority for this citation continues to read as follows:

Authority: 5 U.S.C. 552b and 8474.

■ 5. Amend § 1632.4 by revising paragraph (c) to read as follows:

§ 1632.4 Meetings open to public observation.

* * * * *

(c) The annual Board meeting schedule will be maintained on *frtib.gov.* In addition, agency announcements of meetings open to public observation will be published in the **Federal Register**. Requests for announcements may be made by telephoning or by writing to the Office of External Affairs, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 6. The authority citation continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8433, 8434, 8435, 8474(b)(5) and 8474(c)(1).

■ 7. Amend § 1650.14 by revising paragraph (g)(4) to read as follows:

§ 1650.14 Annuities.

* * * * *

(g) * * *

(4) *Either a single life or joint (with spouse) life annuity with increasing payments.* This annuity provides monthly payments to the participant only, or to the participant and spouse, as applicable. The monthly payments are increased once each year on the anniversary of the first payment by a fixed rate of 2 percent. If the participant chooses a joint life annuity, the annual 2 percent increase also applies to benefits received by the survivor.

* * * * *

[FR Doc. 2020–03553 Filed 2–28–20; 12:00 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0761; Airspace Docket No. 19–ANM–18]

RIN 2120–AA66

Amendment of Class E Airspace; Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace designated as an extension to a Class D or Class E surface area at the Missoula International Airport, Missoula, MT. This action also amends the Class E airspace extending upward from 700 above the surface at the airport. Additionally, the action amends the Class E airspace extending upward from 1,200 above the surface at the airport. Further, this action removes the Missoula VORTAC from the legal description. Lastly, the action makes administrative updates to the Class D and Class E2 legal descriptions.

DATES: Effective 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 D and Class E airspace at Missoula International Airport, Missoula, MT, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 54792; October 11, 2019) for Docket No. FAA–2019–0761 to amend Class E airspace at Missoula International Airport, Missoula, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. The FAA received one non-substantive comment discussing the potential impact on property values in the area. Though the comment isn't substantive, this action reduces the lateral boundaries for most of the Class E airspace established for the Missoula International Airport. The radius of the Class E airspace designated as a surface area will not change. The lateral boundaries of one area to the southeast of the airport will increase slightly.

Subsequent to the publication of the NPRM, the FAA determined that a minor modification to one Class E airspace area, designated as an extension to a Class D or Class E surface area, would be beneficial. The NPRM defined this area as; within 0.7 miles each side of the 142° bearing extending from the 4.4-mile radius to 5.6 miles southeast of the airport. The NPRM definition created a small space or gap between this area and a nearby area of similar airspace. Additionally, the minimum distance authorized for the width of controlled airspace along a bearing is 1.0 mile. To remove this gap, enhance aeronautical charting and meet the minimum requirement for airspace widths, the area will be defined as; within 1.0 miles northeast and 1.2 miles southwest of the 142° bearing from the airport, extending from the 4.4-mile radius to 5.6 miles southeast of the airport.

Class D, Class E2, Class E4, and Class E5 airspace designations are published in paragraphs 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2018, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace designated as an extension to Class D or Class E surface areas at Missoula International Airport as follows: That airspace extending upward from the surface within 1.2 miles each side of the 310° bearing from the airport, extending from the 4.4-mile radius to 10.8 miles northwest of the airport, and within 1.3 miles each side of the 295° bearing from the airport, extending from the 4.4-mile radius to 5.6 miles northwest of the airport, and within 1.0 mile northeast and 1.2 miles southwest of the 142° bearing from the airport, extending from the 4.4-mile radius to 5.6 miles southeast of the airport, and within 1.5 miles each side of the 171° bearing from the airport, extending from the 4.4-mile radius to 10.6 miles south of the Missoula International Airport.

This action also modifies Class E airspace extending upward from 700 feet above the surface as follows: That airspace extending upward from the surface within 3.5 miles each side of the 311° bearing from the airport, extending from the 4.4-mile radius to 22.3 miles northwest of the airport, and within 1.6 miles west and 4.3 miles east of the 179° bearing from the airport, extending from the 4.4-mile radius to 15.2 miles south of the Missoula International Airport.

Additionally, this action amends Class E airspace extending upward from 1,200 feet above the surface as follows: That airspace extending upward from 1,200 feet above the surface within a 35-mile radius of the Missoula International Airport.

Further, this action removes the Missoula VORTAC from the legal description.

Lastly, this action applies an administrative update to the Class D and Class E2 legal descriptions, replacing the term ''Airport/Facility Directory'' with ''Chart Supplement.''

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM MT D Missoula, MT [Amended]

Missoula International Airport, MT
(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from the surface to and including 5,700 feet MSL within a 4.4-mile radius of the Missoula International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM MT E2 Missoula, MT [Amended]

Missoula International Airport, MT
(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from the surface within a 4.4-mile radius of the Missoula International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM MT E4 Missoula, MT [Amended]

Missoula International Airport, MT
(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from the surface within 1.2 miles each side of the 310° bearing from the airport, extending from the 4.4-mile radius to 10.8 miles northwest of the airport, and within 1.3 miles each side of the 295° bearing from the airport, extending from the 4.4-mile radius to 5.6 miles northwest of the airport, and within 1.0 mile northeast and 1.2 miles southwest of the 142° bearing from the airport, extending from the 4.4-mile radius to 5.6 miles southeast of the airport, and within 1.5 miles each side of the Missoula 171° bearing from the airport, extending from the 4.4-mile radius of the airport to 10.6 miles south of the Missoula International Airport.

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

* * * * *

ANM MT E5 Missoula, MT [Amended]

Missoula International Airport, MT

(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from 700 feet above the surface within 3.5 miles each side of the 311° bearing from the airport, extending from the 4.4-mile radius to 22.3 miles northwest of the airport, and within 1.6 miles west and 4.3 miles east of the 179° bearing from the airport, extending from the 4.4-mile radius to 15.2 miles south of the airport, and that airspace extending upward from 1,200 feet above the surface within a 35-mile radius of the Missoula International Airport.

Issued in Seattle, Washington, on February 26, 2020.

Shawn M. Kozica,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–04260 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0328; Airspace Docket No. 18–ANM–5]

RIN 2120–AA66

Amendment of Class E Airspace; Rifle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Rifle Garfield County Airport, Rifle, CO. The action increases the circular radius of the Class E airspace, designated as a surface area, to the west and northwest of the airport. Also, this action amends the Class E airspace by adding an airspace area, designated as an extension to a Class D or Class E surface area, to the east of the airport. Additionally, this action amends the Class E airspace extending upward from 700 feet above the surface by increasing the radius of the airspace around most of the airport and reducing the radius to the north and northeast of the airport. This action also removes the extensions from this airspace area. Lastly, this action makes several administrative corrections to the airspace legal descriptions for the airport.

DATES: Effective 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 at Rifle Garfield County Airport, Rifle, CO, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 69346; December 18, 2019) for Docket No. FAA–2019–0328 to amend Class E airspace at Rifle Garfield County Airport, Rifle, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E2, E4, and E5 airspace designations are published in paragraph 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at the Rifle Garfield County Airport, Rifle, CO. The action amends the Class E airspace, designated as a surface area, by increasing the circular radius in the west and northwest of the airport to contain IFR arrivals descending below 1,000 above the surface. The airspace is described as follows: That airspace extending upward from the surface within a 4.1-mile radius of the airport beginning at the 339° bearing from the airport, clockwise to the 243° bearing from the airport, thence along the 243° bearing to a 5.2-mile radius of the airport, clockwise to the 339° bearing from the airport, thence along 339° bearing back to the 4.1-mile radius of the Rifle Garfield County Airport.

Also, this action amends the Class E airspace by adding an area designated as an extension to Class D and Class E2 surface areas. This area is described as follows: That airspace extending upward from the surface within 1 mile north and 2.5 miles south of the 078° bearing from the airport, extending from the 4.1-mile radius to 8.5 miles east of the Rifle Garfield County Airport.

Additionally, this action amends the Class E airspace extending upward from 700 feet above the surface by increasing the radius of the airspace around the most of the airport and reducing it to the north and northwest of the airport. This action also removes the extensions from this airspace area. This area is described as follows: That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the airport beginning at the 336° bearing from the airport, clockwise to the 065° bearing from the airport, thence along the 065° bearing to an 11-mile radius of the airport, clockwise to the 336° bearing from the airport, thence along the 336° bearing back to the 5.5-mile radius of the Rifle Garfield County Airport.

Lastly, the action makes several administrative corrections to the airspace's legal description. The geographic coordinates are updated to lat. 39°31′36″ N, long. 107°43′41″ W to match the FAA's aeronautical database. The airport name is updated to ''Rifle Garfield County Airport, Rifle, CO'', to match the FAA's aeronautical database. The Class E2 surface airspace is full time; the following two sentences do not accurately represent the time of use for the Class E2 airspace and are removed from the legal description: ''This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM CO E2 Rifle, CO [Amended]

Rifle Garfield County Airport, Rifle, CO
(Lat. 39°31′36″ N, long. 107°43′41″ W)

That airspace extending upward from the surface within a 4.1-mile radius of airport beginning at the 339° bearing from the airport, clockwise to the 243° bearing from the airport, thence along the 243° bearing to a 5.2-mile radius of the airport, clockwise to the 339° bearing from the airport, thence along 339° bearing back to the 4.1-mile radius of the Rifle Garfield County Airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM CO E4 Rifle, CO [New]

Rifle Garfield County Airport, Rifle, CO
(Lat. 39°31′36″ N, long. 107°43′41″ W)

That airspace extending upward from the surface within 1 mile north and 2.5 miles south of the 078° bearing from the airport extending from the 4.1-mile radius to 8.5 miles east of the Rifle Garfield County Airport.

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

* * * * *

ANM CO E5 Rifle, CO [Amended]

Rifle Garfield County Airport, Rifle, CO
(Lat. 39°31′36″ N, long. 107°43′41″ W)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the airport beginning at the 336° bearing from the airport, clockwise to the 065° bearing from the airport, thence along the 065° bearing to an 11-mile radius of the airport, clockwise to the 336° bearing from the airport, thence along the 336° bearing back to the 5.5-mile radius of the Rifle Garfield County Airport.

Issued in Seattle, Washington, on February 26, 2020.

Shawn M. Kozica,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–04262 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0315; Airspace Docket No. 18–ANM–3]

RIN 2120–AA66

Amendment of Class E Airspace; Astoria, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Astoria Regional Airport, Astoria, OR. The Class E Surface area will be reduced to contain published IFR departure and arrival procedures. This action also adds two Class E airspace areas, designated as an extension to a Class D or Class E surface area. Additionally, this action amends the Class E airspace extending upward from 700 or more above the surface by reducing dimensions of the airspace. The airspace reduction will properly size the airspace to contain IFR arrivals descending below 1,500 feet above the surface and IFR departures until reaching 1,200 feet above the surface. Further, this action makes several administrative corrections to the airport's legal description.

DATES: Effective 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email

fedreg.legal@nara.gov or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 at Astoria Regional Airport, Astoria, OR, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 68827; December 17, 2019) for Docket No. FAA–2019–0315 to amend Class E airspace at Astoria Regional Airport, Astoria, OR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E2, E4 and E5 airspace designations are published in paragraph 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace, designated as a surface area, at Astoria Regional Airport, Astoria, OR, to properly contain IFR aircraft as follows: That airspace extending upward from the surface within a 4-mile radius of the airport beginning at the 350° bearing from the airport, clockwise to the 239° bearing from the airport, thence along the 239° bearing to a 5-miles radius, clockwise to the 350° bearing from the airport, thence along the 350° bearing to the 4-miles radius of the Astoria Regional Airport, excluding that airspace within a 1-mile radius of the Camp Rilea Army Heliport.

Also, this action amends the Class E airspace by adding two Class E airspace areas, designated as an extension to a Class D or Class E surface area. These areas would properly contain IFR arrivals descending below 1,000 feet above the surface of the earth as follows; That airspace extending upward from the surface within 1.1 miles each side of the 095° bearing from the airport, extending from the 4-mile radius to 9.3 miles east of the airport, and within 2.4 miles each side of the 267° bearing from the airport, extending from the 5-mile radius to 7.1 miles west of the Astoria Regional Airport.

Additionally, this action amends the Class E airspace areas extending upward from 700 feet or more above the surface of the earth at the airport. The action reduces the overall dimensions of the area and properly sizes it to contain IFR departures and arrivals as follows; That airspace extending from 700 feet above the surface within an 8-mile radius of the airport, and within 4 miles each side of the 095° bearing from the airport, extending from the 8-mile radius to 18.8 miles east of the airport, and 4.3 miles north and 7.8 miles south of the 265° bearing from the airport, extending from the 8-mile radius to 16.1 miles west of the Astoria Regional Airport.

Further, this action makes administrative corrections to the airport's Class E2 and Class E5 legal descriptions. The Class E2 airspace should be full time; the following two sentences do not accurately represent the time of use for the Class E2 airspace and are removed from the legal description: ''This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

The action also removes the Seaside Municipal Airport from the Class E5 legal description because the Class E5 700 foot airspace no longer overlies the Seaside Municipal Airport.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM OR E2 Astoria, OR [Amended]

Astoria Regional Airport, Astoria, OR
(Lat. 46°09′29″ N, long. 123°52′43″ W)
Camp Rilea Army Heliport
(Lat. 46°06′59″ N, long. 123°55′54″ W)

That airspace extending upward from the surface within a 4-mile radius of the airport beginning at the 350° bearing from the airport, clockwise to the 239° bearing from the airport, thence along the 239° bearing to a 5-miles radius, clockwise to the 350° bearing from the airport, thence along the 350° bearing to the 4-miles radius of the Astoria Regional Airport, excluding that airspace within a 1-mile radius of the Camp Rilea Army Heliport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM OR E4 Astoria, OR [New]

Astoria Regional Airport, Astoria, OR
(Lat. 46°09′29″ N, long. 123°52′43″ W)

That airspace extending upward from the surface within 1.1 miles each side of the 095° bearing from the airport, extending from the 4-mile radius to 9.3 miles east of the airport, and within 2.4 miles each side of the 267° bearing from the airport, extending from the 5-mile radius to 7.1 miles west of the Astoria Regional Airport.

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

* * * * *

ANM OR E5 Astoria, OR [Amended]

Astoria Regional Airport, Astoria, OR
(Lat. 46°09′29″ N, long. 123°52′43″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the airport, and within 4 miles each side of the 095° bearing from the airport, extending from the 8-mile radius to 18.8 miles east of the airport, and 4.3 miles north and 7.8 miles south of the 265° bearing from the airport, extending from the 8-mile radius to 16.1 miles west of the Astoria Regional Airport.

Issued in Seattle, Washington, on February 26, 2020.

Shawn M. Kozica,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–04258 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0341; Airspace Docket No. 18–ANM–4]

RIN 2120–AA66

Amendment of Class E Airspace; Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Gunnison-Crested Butte Regional Airport, Gunnison, CO. The action increases the circular radius of the Class E airspace designated as a surface area and adds an extension to the west of the airport. Also, this action amends the Class E airspace by adding an airspace area, designated as an extension to a Class D or Class E surface area, to the southwest of the airport. Additionally, this action amends the Class E airspace extending upward from 700 feet above the surface by significantly reducing the area around the airport, except to the west and southwest of the airport. Furthermore, this action amends the Class E airspace extending upward from 1,200 feet above the surface by removing this area. This area is wholly contained within the Denver Class E6 en route airspace area and duplication is not necessary. Lastly, this action makes several administrative corrections to the airspace legal descriptions for the airport.

DATES: Effective 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 at Gunnison-Crested Butte Regional Airport, Gunnison, CO, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 68381; December 16, 2019) for Docket No. FAA–2019–0341 to amend Class E airspace at Gunnison-Crested Butte Regional Airport, Gunnison, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received.

The commenter stated ''that the Final Rule should state that the Class E Surface Area hours of operation are continuous''. This topic was addressed in the NPRM and the Final Rule removes the part time language from the legal description.

Class E2, E4 and E5 airspace designations are published in paragraph 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as

listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at the Gunnison-Crested Butte Regional Airport, Gunnison, CO. The action amends the Class E airspace, designated as a surface area, by increasing the circular radius and adds an extension to the west of the airport. The airspace area is defined as follows: That airspace extending upward from the surface within a 4.8-mile radius of the airport and within 1 mile each side of the 256° bearing from the airport, extending from the 4.8-mile radius to 5.7 miles west of the Gunnison-Crested Butte Regional Airport.

Also, this action amends Class E airspace by adding an area designated an extension to Class D and Class E2 surface areas. This airspace area is defined as follows: That airspace extending upward from the surface within 1.4 miles each side of the 225° bearing, extending from the 4.8-mile radius to 14.1 miles southwest of the Gunnison-Crested Butte Regional Airport.

Additionally, this action amends the Class E airspace extending upward from 700 feet above the surface. The action removes most of the area extending upward from 700 feet above the surface, from the northwest of the airport clockwise to the south of the airport. A small area would remain east of the airport and two larger areas would remain to the southwest and west of the airport. This airspace area is defined as follows: That airspace extending upward from 700 feet above the surface, extending from the 4.8-mile radius to a 7-mile radius along the 052° bearing from the airport, clockwise to the 107° bearing from the airport, thence along the 107° bearing back to the 4.8-mile radius, and within 2.5 miles each side of the 254° bearing from the airport, extending from the 4.8-mile radius to 9.6 miles west of the airport, and within 8.1 miles north and 3.9 miles south of the 225° bearing from the airport, extending from 7.1 miles to 23.1 miles southwest of the Gunnison-Crested Butte Regional Airport.

Furthermore, this action removes the Class E airspace extending upward from 1,200 feet above the surface. This airspace area is wholly contained within the Denver Class E6 en route airspace area and duplication is not necessary.

Lastly, the action makes several administrative corrections to the airspaces legal descriptions. The geographic coordinates need to be updated to (lat. 38°32′04″ N, long. 106°55′54″ W) to match the FAA's aeronautical database. The Class E surface airspace is full time; the following two sentences do not accurately represent the time of use for this airspace area are removed from the legal description: ''This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM CO E2 Gunnison, CO [AMENDED]

Gunnison-Crested Butte Regional Airport, CO (Lat. 38°32′04″ N, long. 106°55′54″ W)

That airspace extending upward from the surface within a 4.8-mile radius of the airport, and within 1 mile each side of the 256° bearing from the airport, extending from the 4.8-mile radius to 5.7 miles west of the Gunnison-Crested Butte Regional Airport.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM CO E4 Gunnison, CO [NEW]

Gunnison-Crested Butte Regional Airport, CO (Lat. 38°32′04″ N, long. 106°55′54″ W)

That airspace extending upward from the surface within 1.4 miles each side of the 225° bearing from the airport, extending from the 4.8-mile radius to 14.1 miles southwest of the Gunnison-Crested Butte Regional Airport.

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

* * * * *

ANM CO E5 Gunnison, CO [AMENDED]

Gunnison-Crested Butte Regional Airport, CO (Lat. 38°32′04″ N, long. 106°55′54″ W)

That airspace extending upward from 700 feet above the surface extending from the 4.8-mile radius to a 7-mile radius along the 052° bearing from the airport, clockwise to the 107° bearing from the airport, thence along the 107° bearing back to the 4.8-mile radius, and within 2.5 each side of the 254° bearing from the airport, extending from the 4.8-mile radius to 9.6 miles west of the airport, and within 8.1 miles north and 3.9 miles south of the 225° bearing from the airport, extending from 7.1 miles to 23.1 miles southwest of the Gunnison-Crested Butte Regional Airport.

Issued in Seattle, Washington, on February 26, 2020.

Shawn M. Kozica,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–04259 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0057]

RIN 1625–AA00

Safety Zone; Monongahela River Mile 28.0 to Mile 30.0, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for mile 28.0 to mile 30.0 of the Monongahela River. This action is necessary to provide for the safety of life on these navigable waters near Mitchell Power Plant, Pittsburgh, PA, during an electrical conducter pull from March 2, 2020 through March 20, 2020. This rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Pittsburgh or a designated representative.

DATES: This rule is effective without actual notice from March 3, 2020 through March 20, 2020. For the purposes of enforcement, actual notice will be used from March 2, 2020 until March 3, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0057 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Trevor Vannatta, Waterways Management U.S. Coast Guard; telephone 412–221–0807, email *Trevor.J.Vannata@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On November 12, 2019, the Duquesne Light Company notified the Coast Guard that it will be conducting an electrical conducter pull on March 2, 2020, in order to replace an existing electrical conductor with a new higher ampacity electrical conductor. In response, on February 3, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Monongahela River Mile 28.0 to Mile 30.0, Pittsburgh, PA'', (85 FR 5911, Feb. 3, 2020). That NPRM comment period does not close until March 4, 2020. The Coast Guard is unable to delay implementing this final rule to await the close of the comment period becuase the start date of the electrical conductor pull is March 2, 2020.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to mitigate potential safety hazards associated with the process of pulling the new cables across the Monongahela River. It is impracticable to publish an NPRM and consider the comments before issuing this final rule because we must establish this safety zone by March 2, 2020, when the electrical pulling is scheduled to start.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to protect vessels and persons during the replacement of old powerlines crossing the Monongahela River beginning on March 2, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Pittsburgh (COTP) has determined that potential hazards associated with the replacement of powerlines between March 2, 2020 through March 20, 2020 will be a safety concern for anyone between Mile 28.0–30.0 on the Monongahela River. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled work.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes a safety zone from March 2, 2020 through March 20, 2020. The safety zone will cover all navigable waters from mile 28.0 to mile 30.0 on the Monongahela River near Pittsburgh, PA. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after a scheduled maintenance activity. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone will impact a 2-mile stretch of the Monongahela River for 19 days, and vessel traffic would be able to safely transit around this safety zone. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The

term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, thisrule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting from March 2, 2020 through March 20, 2020 from mile 28.0 to mile 30.0 on the Monongahela River near Pittsburgh, PA. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0057 to read as follows:

§ 165.T08–0057 Safety Zone; Monongahela, Mile 28.0 to Mile 30.0, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Monongahela River from mile 28.0 to mile 30.0.

(b) *Effective period.* This section is effective from March 2, 2020 through March 20, 2020.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry of persons and vessels into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the COTP or a designated representative. The COTP's representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the COTP or a designated representative. Designated COTP representatives include United States Coast Guard commissioned, warrant, and petty officer.

(d) *Information broadcasts.* The Captain COTP or a designated representative will inform the public through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: February 27, 2020.

A.W. Demo,

Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.

[FR Doc. 2020–04387 Filed 3–2–20; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 85, No. 42
Tuesday, March 3, 2020

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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2019–0015]

Importation of Phalaenopsis Spp. Orchid Plants for Planting in Approved Growing Media From the Republic of Costa Rica Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are proposing to authorize the importation of *Phalaenopsis* spp. orchid plants from the Republic of Costa Rica in approved growing media into the United States, including territories. As a condition of entry, *Phalaenopsis* spp. orchid plants in approved growing media from the Republic of Costa Rica would have to meet all relevant requirements included in the U.S. Department of Agriculture Plants for Planting Manual and detailed in a bilateral workplan. This proposed action would allow for the importation of *Phalaenopsis* spp. orchid plants for planting from the Republic of Costa Rica in approved growing media while providing protection against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before May 4, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0015.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0015, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0015* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Lydia E. Colón, Senior Regulatory Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2302; *Lydia.e.colon@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart H—Plants for Planting'' (7 CFR 319.37–1 through 319.37–23, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of plants for planting (including living plants, plant parts, seeds, and plant cuttings) to prevent the introduction of quarantine pests into the United States.

Section 319.37–10 restricts the importation of plants for planting in approved growing media, with exceptions. Paragraph (d) of § 319.37–10 states that certain types of plants for planting, as listed in the USDA Plants for Planting Manual, may be imported when they are established in a growing medium approved by the Administrator and produced in accordance with additional requirements specified in the manual.

Section 319.37–20 contains provisions for making changes to the list of plants for planting that may be imported in approved growing media, as well as restrictions for the importation of those types of plants for planting beyond the general restrictions in §§ 319.37–5 through 319.37–11. To initiate a change to the list, APHIS will publish in the **Federal Register** a notice for public comment announcing our proposal to add, change, or remove restrictions on the importation of a specific type of plants for planting. After close of the comment period, we will review comments and issue a second notice announcing the specific restrictions, if any, that APHIS has determined to be necessary to mitigate pest risk. Any changes to the list of types of plants for planting whose importation is subject to additional restrictions, and the specific restrictions applicable to them, will be made to the USDA Plants for Planting Manual.

Currently, the entry of *Phalaenopsis* spp. orchid plants in approved growing media from the Republic of Costa Rica into the United States is not authorized. The Republic of Costa Rica has requested that importation into the United States of *Phalaenopsis* spp. orchid plants in approved growing media be allowed pursuant to § 319.37–10(d).

To be eligible for importation, plants for planting in approved growing media must be of approved plant taxa and come from a facility that is part of an approved growing media program approved by APHIS. Basic requirements [1] applicable to all plant taxa in approved growing media are listed in Chapter 7 of the USDA Plants for Planting Manual. Among these basic requirements, taxa imported in approved growing media from approved facilities must:

- Be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of the country in which the plants were grown;
- Be only in approved growing media;
- Be grown in compliance with a written agreement (bilateral work plan);
- Be developed from mother stock that was inspected and found free from evidence of quarantine pests;
- Be grown solely in a greenhouse in which sanitary procedures adequate to exclude quarantine pests are always employed;
- Be rooted and grown in an active state of foliar growth for at least four consecutive months immediately prior to importation into the United States;
- Be grown from seeds germinated in the greenhouse unit; or descended from a mother plant that was grown for at least 9 months in the exporting country prior to importation into the United States of the descendant plants;
- Be watered only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water;

[1] The basic requirements are listed in full under ''Plants in Growing Media Program'' in Chapter 7 of the Plants for Planting Manual: *https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/plants_for_planting.pdf.*

- Be rooted and grown in approved growing media;
- Be stored and packaged only in areas free of sand, soil, earth, and quarantine pests; and
- Be inspected in the greenhouse and found free from evidence of quarantine pests by an APHIS inspector or an inspector of the NPPO of the exporting country.

In addition, the grower is required to comply with the provisions of the program and to allow inspectors, and representatives of the NPPO of the exporting country, access to where the plants are grown. These requirements have been used successfully to mitigate the risk of pest introduction associated with the importation into the United States of approved plants established in approved growing media.

Beyond the basic requirements for import eligibility applicable to all taxa in approved growing media, the Plants for Planting Manual contains approved growing media program requirements specific to plant taxa and the country in which they are grown. Programs for importation of *Phalaenopsis* spp. orchid plants in approved growing media from approved facilities have been established for three countries: China, South Korea, and Taiwan.

In response to the request by the Republic of Costa Rica, we conducted a pest risk assessment to evaluate the risk to the United States, including territories, of importation of *Phalaenopsis* spp. orchid plants in approved growing media from the Republic of Costa Rica. After a review of the scientific literature, port-of-entry pest interception data, and information from the NPPO of the Republic of Costa Rica, we conducted a pest risk assessment listing all potential pests with actionable regulatory status for the United States and its territories that occur in the Republic of Costa Rica and are associated with *Phalaenopsis* spp. orchid plants anywhere in the world. We analyzed the pest risk potential of these organisms and determined that only one, *Pseudococcus cryptus* Hempel, a mealybug, is a candidate for risk management measures because it meets the threshold to likely cause unacceptable consequences if introduced into the United States.

Based on the findings in the pest risk assessment, we prepared a risk management document (RMD) [2] to determine mitigations that will adequately prevent the introduction of *Pseudococcus cryptus* Hempel into the United States via *Phalaenopsis* spp. orchid plants in approved growing media from Republic of Costa Rica. In order for *Phalaenopsis* spp. orchid plants to be safely imported into the United States from the Republic of Costa Rica, the RMD specifies that the plants must be grown in approved growing media and meet the requirements outlined in the USDA Plants for Planting Manual. These requirements are detailed in a written agreement between APHIS and the Republic of Costa Rica regarding risk management measures to prevent the entry of quarantine plant pests.

We have determined that these requirements will be sufficient to prevent the introduction of quarantine pests into the United States, including territories, via importation of *Phalaenopsis* spp. orchid plants in approved growing media from the Republic of Costa Rica. Therefore, we propose to amend the import requirements in the USDA Plants for Planting Manual by adding *Phalaenopsis* spp. orchid plants from the Republic of Costa Rica to the approved list of plant taxa established in approved growing media.

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

Done in Washington, DC, this 25th day of February 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–04282 Filed 3–2–20; 8:45 am]

BILLING CODE 3410–34–P

[2] The RMD can be viewed on the *Regulations.gov* website (see the link under **ADDRESSES**) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–114; NRC–2016–0204]

Power Reactors in Extended Shutdowns

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking dated September 1, 2016, submitted by Mr. David Lochbaum on behalf of the Union of Concerned Scientists and two co-petitioners (the petitioners). The petition was docketed by the NRC on September 14, 2016, and was assigned Docket No. PRM–50–114. The petitioners requested that the NRC amend its regulations to ''promulgate regulations applicable to nuclear power reactors with operating licenses issued by the NRC but in an extended outage.'' The NRC is denying the petition because the NRC already has regulatory processes in place to address the issues identified in the petition.

DATES: The docket for the petition for rulemaking, PRM–50–114, is closed on March 3, 2020.

ADDRESSES: Please refer to Docket ID NRC–2016–0204, when contacting the NRC about the availability of information regarding this petition. You may obtain publicly-available information related to this petition by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2016–0204. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select Begin Web-based ADAMS Search. For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Dennis Andrukat, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3561; email: *Dennis.Andrukat@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents:

I. The Petition
II. Public Comments on the Petition
III. Reasons for Denial
IV. Availability of Documents
V. Conclusion

I. The Petition

Section 2.802 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Petition for rulemaking—requirements for filing,'' provides an opportunity for any person to petition the Commission to issue, amend, or rescind any regulation. On September 1, 2016, Mr. David Lochbaum, on behalf of the Union of Concerned Scientists and co-petitioners Greenpeace and Natural Resources Defense Council (petitioners), submitted a petition for rulemaking (PRM) to the NRC. The NRC docketed this petition and assigned it Docket No. PRM–50–114. The petitioners requested that the NRC amend 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' to ''promulgate regulations applicable to nuclear power reactors with operating licenses issued by the NRC but in an extended outage.''

The petitioners described a scenario in which an operating commercial nuclear power plant (facility) could voluntarily be in an extended shutdown with no immediate plans to decommission. The petitioners stated that there are no regulations to prevent a licensee from changing its decision to cease operations by retracting its certification to do so, and that the current regulations were developed for operating reactor facilities and for reactor facilities in decommissioning, not for facilities ''in limbo that will at some unspecified later date return to the operating reactor world or join the decommissioning community.'' The petitioners stated that the current regulations are not intended, as written, for an operating facility in an ''extended shutdown.'' [1] The petitioners also stated that a licensee can place a facility in an extended shutdown without public participation or the NRC's review and approval. The petitioners contended that in the current economic climate, licensees may choose to place a facility in an extended shutdown until the marketplace becomes more favorable or the decision to proceed with decommissioning is made. The petitioners cited the Browns Ferry Nuclear Plant, Unit 1, as an example of a facility in an extended shutdown. In 1985, Tennessee Valley Authority voluntarily shut down Unit 1 and did not restart it until 2007. Ultimately, the petitioners asserted that the current regulatory framework does not manage the risk of a facility in an extended shutdown that a licensee may someday seek to restart.

The NRC identified four main issues in the petition, as follows:

(1) Define ''extended shutdown'' for power reactors.

(2) Establish requirements during an extended shutdown period, including the petitioners' proposed ''Reactor Extended Shutdown Activities Report'' (RESAR).

(3) Establish requirements to exit and restart from an extended shutdown.

(4) Conduct a decommissioning funding review(s) during an extended shutdown and establish requirements to prevent the retraction of any letter of permanent cessation of operations certification.

II. Public Comments on the Petition

The NRC published a notice of docketing and request for comment in the **Federal Register** on December 9, 2016. The NRC also sought public comment on six specific questions. The public comment period closed on February 22, 2017. The NRC received two public comment submissions during the 75-day public comment period; both submissions, which were from industry representatives, were in favor of denying the petition and provided a basis for that position. The two comment submissions, from the Nuclear Energy Institute (NEI) and Entergy Nuclear Operations, Inc. (Entergy), raised five comments in total. Only NEI addressed the specific questions that were included in the **Federal Register** notice that requested public comments. The ADAMS Accession Nos. for the comment submissions can be found in the ''Availability of Documents'' section of this document.

Public Comments

The NRC has considered the public comments received on the petition for rulemaking. The NRC response follows a short summary of each comment submission.

Comment Submission 1

NEI recommended that the NRC deny the petition because the petition has not demonstrated that the existing regulations require rulemaking based on the criteria in § 2.802(c)(1)(iii). The commenter stated that PRM–50–114 should be denied because: (Comment 1) ''the petition incorrectly asserts that the Commission's existing regulations are inadequate as applied to operating reactors that have entered an extended shutdown,'' (Comment 2) ''the petition provides no basis for requesting that the NRC establish new requirements that must be satisfied for a reactor to restart after an extended shutdown,'' and (Comment 3) ''the petition provides no basis for suggesting that the NRC should explicitly prohibit withdrawal of the certification of the permanent cessation of operations submitted pursuant to § 50.82(a)(1)(i).'' The commenter noted that a facility in extended shutdown must continue to comply with its operating license and NRC regulations applicable to operating nuclear power plants. This contrasts with the petitioners' assertions that the Commission's existing regulations are inadequate as applied to operating reactors that have entered an extended shutdown. The commenter noted that a licensee would still meet all applicable safety and security requirements even if it defers a generic communication action during an extended shutdown scenario. This is because generic communications do not impose new or changed regulatory requirements on licensees.

The commenter further noted that the petition does not provide a basis to change the regulations to require licensees to submit preliminary decommissioning cost estimates every 5 years during an extended shutdown. Once a licensee permanently ceases operations, then the licensee would be required to submit site-specific cost estimates under § 50.82, ''Termination of license.'' The commenter noted that PRM–50–114 acknowledges that current regulations already require 10 CFR part 50 power reactor licensees to report decommissioning funding status every 2 years. The commenter stated that

> . . . many NRC regulations applicable to operating nuclear power plants continue to apply even after a nuclear power reactor has permanently ceased operation and defueled. This includes several regulations that seem to be of specific concern to the petitioners (*e.g.,* emergency planning and physical security).

The commenter asserted that the petitioners provide no basis for requesting that the NRC establish new requirements that must be satisfied for a reactor to restart after an extended shutdown.

In response to the petitioners' requested new regulations for reactors that are in an extended shutdown and not actively pursuing restart to be evaluated under a formal process such as Inspection Manual Chapter (IMC) 0350, ''Oversight of Reactor Facilities in a Shutdown Condition Due to Significant Performance and/or Operational Concerns,'' the commenter noted that existing NRC procedures in IMC 0375, ''Implementation of the Reactor Oversight Process at Reactor Facilities in an Extended Shutdown

[1] The petition describes an ''extended shutdown'' as either an operating reactor that has been shut down for 2 years or more and is not actively pursuing restart under a formal NRC process or when a licensee has voluntarily notified the NRC of its intent to place the facility in an ''extended shutdown'' condition.

Condition for Reasons Other Than Performance,'' would achieve the petitioners' objective. This Inspection Manual Chapter is the NRC's guidance for implementation of the reactor oversight process for plants in an extended shutdown condition for reasons not related to performance. The commenter argues that IMC 0375 ensures that the NRC ''communicates unified and consistent oversight in a clear and predictable manner to the licensee, the public, and other stakeholders'' and also addresses the documentation of the required regulatory and licensee actions taken; the resolved technical issues leading to approval for restart, if required; and the eventual return of the plant to the routine reactor oversight process. The commenter asserted that IMC 0375 will provide assurance that the plant will be operated in a manner that provides adequate protection of public health and safety following restart. The commenter stated that ''the NRC oversight requested in the petition already exists'' under the reactor oversight process. The commenter further stated that the resulting regulations sought in this petition would not result in significant improvements to reactor safety or security and would not improve regulatory efficiency.

NRC Response: The NRC generally agrees with the comments that were relayed in Comment Submission 1. Specifically, the NRC agrees that the Commission's existing regulations adequately address facilities that enter potential extended shutdown periods.

Comment Submission 2

Entergy recommended that the NRC deny the petition. The commenter endorsed (Comment 4) the comments provided in NEI's letter. In addition, the commenter stated that (Comment 5) making a § 50.82(a)(1)(i) certification irrevocable is directly contrary to the assumptions and conditions of a recent settlement agreement entered into by Entergy, the State of New York (among other related New York governmental entities), and Riverkeeper, Inc., regarding the continued operation of Indian Point Units 2 and 3. The commenter stated that making a § 50.82(a)(1)(i) certification irrevocable would nullify key terms of this important agreement.

NRC Response: With respect to Entergy's endorsement of the NEI comments as reflected in Comment Submission 1, the NRC's response is provided in response to Comment Submission 1. With respect to Entergy's Comment 5, the issue raised is outside the scope of the PRM.

Specific Questions

The NRC has considered the responses received to the specific questions. Only NEI provided responses to the six specific questions on which the NRC sought comment. A summary of the responses provided in NEI's submission follows.

Question 1: The petition outlines a scenario where a reactor is in an extended shutdown condition due to economic or other reasons and would at some unspecified later date return to operation. The petition uses the Browns Ferry Nuclear Plant as an example, where the Tennessee Valley Authority voluntarily shut down one unit from 1985 to 2007. Are there any facilities or licensees who may be likely to use the petitioners' extended shutdown scenario in the future? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

Comment: The commenter responded that it is not aware of a commercial power reactor likely to use the extended shutdown scenario. The commenter stated that a licensee is not prohibited from entering into an extended shutdown voluntarily and references the NRC's response to a letter from David A. Kraft of Nuclear Energy Information Service dated June 16, 2016.

NRC's Response: The NRC agrees with the comment and notes the NRC's August 4, 2016 response to the David A. Kraft letter states that NRC regulations do not prohibit a licensee from voluntarily placing its facilities in an extended shutdown, while continuing to meet all safety and security requirements as outlined in the facility's operating license, without terminating the operating license.

Question 2: The petitioners contend that the NRC's existing regulations were promulgated for operating reactors, and that specific regulations are needed to address non-operating reactors in an ''extended shutdown.'' Assuming the extended shutdown scenario is credible, in what specific ways are the existing regulations identified in the PRM insufficient to address the scenario described by the petitioners? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

Comment: The commenter responded that the regulations are sufficient to address the extended shutdown scenario and therefore no changes to the NRC's regulations are necessary to ensure adequate protection of public health and safety or security.

NRC's Response: The NRC agrees with the comment.

Question 3: Assuming that the existing regulations identified in the PRM are insufficient to address the extended shutdown scenario, what specific changes to those regulations are needed to facilitate the requested rulemaking? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

Comment: The commenter responded that the regulations are sufficient to address the extended shutdown scenario, and therefore no changes to the NRC's regulations are necessary to ensure adequate protection of public health and safety or security.

NRC's Response: The NRC agrees with the comment.

Question 4: The petition describes a plant in an ''extended shutdown,'' and proposes two criteria to enter into this non-operating state (submission of § 50.82(a)(1)(i) and § 50.4(b)(8) notifications; and a shutdown period of 2 years). Should the term ''extended shutdown'' be defined in § 50.2, ''Definitions,'' and should the regulations specify the timeframe for this scenario? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

Comment: The commenter responded that ''extended shutdown'' does not require a definition in the federal regulations because the regulations are sufficient to address the extended shutdown scenario.

NRC's Response: The NRC agrees with the comment.

Question 5: Given the NRC's long-standing, well-understood Reactor Oversight Program, what potential changes would need to be considered to ensure adequate oversight of a reactor during an extended shutdown? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

Comment: The commenter responded that the regulations are sufficient to address the extended shutdown scenario, and therefore no changes to the NRC's regulations are necessary to ensure adequate protection of public health and safety or security.

NRC's Response: The NRC agrees with the comment.

Question 6: What additional reporting to the NRC should be required for a reactor in an extended shutdown, and with what level of detail and frequency (*e.g.,* the potential changes to the submission of the decommissioning trust fund reports)? Please provide technical, scientific, or other data or information demonstrating the basis for your position.

Comment: The commenter responded that the regulations are sufficient to address the extended shutdown scenario, and therefore no changes to the NRC's regulations are necessary to ensure adequate protection of public health and safety or security. The commenter does not agree that additional reporting requirements are warranted because the petitioners have not ''demonstrated the need for any changes to the reporting requirements applicable to a reactor'' in an extended shutdown. The commenter adds that both a facility that is actively operating and a facility that is in an extended shutdown would be restricted to using only 3 percent of the decommissioning trust funds for pre-planning activities, consistent with the regulations in § 50.82.

NRC's Response: The NRC agrees with the comment.

III. Reasons for Denial

The NRC is denying the petition because the petitioners did not present any significant new information or arguments that would support the requested changes for extended shutdown conditions. Furthermore, the NRC has determined that the issues raised by the petitioners are adequately addressed by existing NRC regulations and no amendments to the NRC's regulations are necessary.

Issue No. 1: Define ''Extended Shutdown'' for Power Reactors

The NRC is denying requested change No. 1 because there is no need to define ''extended shutdown'' in the regulations. The holder of an operating license is required to maintain the facility and all of its security and operational programs in accordance with the conditions of its operating license. This remains true whether the facility is operating or shut down for any period, including extended shutdowns. As discussed further under Issue Nos. 2, 3, and 4, the licensee must maintain programs in effect to ensure the continued safety and security of the facility regardless of the mode of operation. Therefore, the issues raised by the petitioners associated with what could be defined as an extended shutdown are currently and adequately covered by the existing regulations and NRC processes.

Issue No. 2: Establish Requirements During an Extended Shutdown Period, Including the Petitioners' Proposed ''Reactor Extended Shutdown Activities Report'' (RESAR)

The NRC is denying requested change No. 2 because there is no need to require the licensee to submit a RESAR prior to entering an extended shutdown condition. This proposed report, as sought by the petitioners, would be similar to the post-shutdown decommissioning activities report required by § 50.82(a)(4)(i) and would describe how certain activities are handled during an extended shutdown. The petitioners identified topics they believe should be addressed in the proposed report. Those items are listed below followed by the staff's evaluation of each item:

Operator License
Aging Management
Technical Specifications
Inservice Inspections (and Inservice Testing)
Quality Assurance
Irradiated Fuel Protection
Fitness for Duty

Operator License

An operator's license is not automatically terminated based solely on an extended plant shutdown. Under § 55.55, ''Expiration,'' an operator's license expires 6 years after the date of issuance, upon termination of employment, or upon determination by the facility licensee that the license is no longer needed. An operator's license can be renewed if the requirements of § 55.57, ''Renewal of licenses,'' are met. Whether the facility is operating or is in extended shutdown, licensed operators and senior operators, as defined in § 55.4, ''Definitions,'' are required to successfully complete requalification requirements established by § 55.59, ''Requalification,'' to maintain their licenses. Further, licensed operators and senior operators are required to meet proficiency requirements established by § 55.53(e) to maintain an active status. Active status under § 55.53(e) is maintained by performing the functions of an operator or a senior operator, as defined in the facility's technical specifications, for a specified number of shifts per calendar quarter. For an operator or senior operator who does not meet the § 55.53(e) requirements resulting in an inactive status on his or her license, the requirements of § 55.53(f) apply to ensure proficiency before an operator can legally perform licensed duties. To maintain or restore active status on an operator's license, the facility would need to remain in a mode of operation that requires operators to actively perform the functions of an operator or senior operator, as defined by § 55.4. However, if the facility is in a mode of operation that does not allow for licensed duties to be performed, this may result in a licensed operator(s) becoming inactive. The licensee may find it appropriate to have a reduced number of active licensed operators during an extended shutdown. Before restarting, however (as discussed in Section III, ''Reasons for Denial,'' Issue No. 3, ''Establish requirements to exit and restart from extended shutdown,'' of this document), the licensee would need to have the required number of licensed operators in place under its licensing basis and the existing 10 CFR part 55 requirements.

Aging Management

A licensee with a facility in an extended shutdown must still perform the activities specified in its NRC-reviewed aging management programs if its current licensing basis includes such programs. Any adjustments to aging management programs are considered changes to the facility's licensing basis and are controlled through current regulations under § 50.59, ''Changes, tests, and experiments.''

The scope of aging management activities does not change during an extended shutdown. Current regulations in 10 CFR part 54 establish the scope of aging management programs that are only for passive components, based on whether they perform a prescribed intended function ''without moving parts or without a change in configuration or properties.'' The determination of whether a component is classified as either passive or active is not based on frequency of either operation or surveillance testing. The assurance of proper function for active components during an extended shutdown would not fall within established aging management activities. Active components are included in the surveillance requirements that are part of the technical specifications in the license, as well as inservice testing programs required by regulation.

Technical Specifications

Under § 50.36, ''Technical specifications,'' each operating license under 10 CFR part 50 for a power reactor must include technical specifications. These technical specifications include limiting conditions for operation, as described in § 50.36(c)(2), that represent the lowest functional capability or performance levels of equipment required for safe operation of the facility. These technical specifications also include surveillance requirements, as described in § 50.36(c)(3), that are requirements relating to test, calibration or inspection to assure that the necessary quality of systems and components is maintained

and that the limiting conditions for operation will be met.

The usage rules contained in technical specifications are structured to provide reasonable assurance of continued adequate protection of public health and safety regardless of the amount of time a facility has been shut down. The requirements for performing and meeting the surveillance requirements in technical specifications are independent of the amount of time a facility has been shut down. Rather, requirements for performing surveillances and meeting surveillance requirements are dependent on the mode the facility is in, as defined in the technical specifications, or on other specified conditions in the applicability of a limiting condition for operation.

Before a licensee changes the mode a facility is in (for example from a cold shutdown to hot shutdown or from startup to power operation), any structures, systems, and components necessary for safe operation of the facility in the new mode must be operable and the applicable surveillances must have been met as required by the facility's technical specifications. No additional ''lay-up'' program or testing/inspection is required.

The usage rules of technical specifications are independent of the amount of time a facility has been in a shutdown condition and a noncompliance with the usage rules is a noncompliance with the operating license requirements subject to enforcement action. Therefore, the NRC does not agree that a new regulation is needed to require a licensee to explain whether testing and inspections per the technical specifications will be continued during an extended shutdown period.

The technical specifications set out different requirements for different modes of operation. The NRC agrees that fewer requirements within the technical specifications are applicable when a reactor is in cold shutdown, refueling or defueled. However, the technical specifications still provide reasonable assurance of adequate protection of public health and safety. The reason that fewer requirements within the technical specifications apply in cold shutdown, refueling, or defueled conditions is that there are fewer credible scenarios that could impact public health and safety when plants are in those conditions. Nonetheless, the licensee must evaluate the impact of degradation of required structures, systems, and components on the operability of those structures, systems, and components. If a licensee determines that a required system is inoperable, then the licensee must comply with the required actions in the technical specifications. Furthermore, the design features of the technical specifications apply at all times, regardless of mode or time since shutdown. For example, the design features typically contain requirements for fuel storage that, if altered or not met, could have a significant impact on safety.

Inservice Inspection and Inservice Testing

Under § 50.55a(g), Section XI of the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* provides the requirements for inservice inspection of nuclear power plants. Section XI requires examinations to be scheduled in 10-year inspection intervals. Section XI has provisions that allow a licensee to shorten or lengthen inspection intervals to conform to a facility's outage schedule. Section XI, IWA–2430(d) provides allowances for extended outages. It states, in part, that:

> . . . for plants that are out of service continuously for 6 months or more, the inspection interval during which the outage occurred may be extended for a period equivalent to the outage and the original pattern of intervals extended accordingly for successive intervals.

Under § 50.55a(f), the ASME *Operation and Maintenance* of Nuclear Power Plants (OM Code) provides requirements for inservice testing of pumps and valves in nuclear power facilities. The OM Code requires testing to be scheduled periodically within the 10-year inservice testing program intervals. Licensees may extend the 10-year inservice testing program intervals for plants with extended outages, as discussed above for inservice inspection. Under the OM Code, licensees of plants that are continuously out-of-service are not required to follow the test schedule for pumps and valves and do not need to submit relief requests, which would otherwise be necessary. The OM Code requires that, within the 3 months before a plant is placed in operation, the pumps must be tested and the valves must be exercised.

Additionally, Section 06.02 of IMC 0375 directs inspectors to verify that the licensee has considered the latest vendor bulletins and other important information related to safety-related equipment, consistent with licensee procedures.

Quality Assurance

There is no relaxation of the requirements of appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR part 50 (appendix B) for an operating facility that is in an extended outage. Appendix B establishes quality assurance requirements for the design, manufacture, construction, and operation of certain structures, systems, and components. The pertinent requirements of this appendix apply to all licensee activities affecting the safety-related functions of these structures, systems, and components, regardless of whether the facility is producing power or in a shutdown condition. Such activities include designing, purchasing, fabricating, handling, shipping, storing, cleaning, erecting, installing, inspecting, testing, operating, maintaining, repairing, refueling, and modifying these structures, systems, and components. Criterion II, ''Quality Assurance Program,'' of appendix B, requires that the quality assurance program, be documented by written policies, procedures, or instructions and be carried out throughout the life of the facility. Appendix B requires compliance with the applicable portions of the regulations for covered activities regardless of whether or how long the facility has been in a shutdown period. Licensed operators and other licensee staff would still be required to be trained to perform activities affecting quality; to follow written procedures or instructions (where applicable); and to document, evaluate, and resolve issues through the implementation of the non-conformance and corrective action programs. In addition, Criterion XVIII, ''Audits,'' of appendix B, requires licensee staff to continue to evaluate programs and processes through periodic auditing throughout the life of the facility and is applicable to facilities regardless of whether or how long a facility has been in a shutdown condition.

Irradiated Fuel [2]

The petitioners requested that the NRC require licensees to develop and submit a RESAR that includes a discussion of how the facility will ensure that any irradiated fuel will be protected and not be damaged during an extended shutdown period. In addition, the petitioners requested that the RESAR describe how the public and

[2] As part of its review of the petition, the NRC reviewed other existing regulatory requirements. While not specifically mentioned by the petitioners, a discussion of emergency planning requirements and security design basis threats is included in this notice, as both topics relate to protecting the public and plant personnel, should irradiated fuel become damaged.

facility personnel will be protected should irradiated fuel become damaged. The NRC determined that the existing regulations, guidance, and processes already discussed in this notice would prevent and mitigate such damage from a design and safety standpoint. The NRC also reviewed other existing regulatory requirements not specifically mentioned by the petitioners. Specifically, the NRC considered emergency planning requirements and security requirements in making this conclusion.

Irradiated Fuel: Emergency Planning

Emergency planning regulations and required licensee emergency plans are in place to protect workers and the public from damaged irradiated fuel including when the facility is in extended shutdown. Specifically, § 50.54(q)(2) requires that the licensee follow and maintain the effectiveness of an emergency plan that meets the requirements in appendix E to part 50 and, for a nuclear power reactor facility, the planning standards of § 50.47(b). Under § 50.47(b)(14), a licensee must conduct periodic exercises to evaluate major portions of emergency response capabilities, while periodic drills are conducted to develop and maintain key skills. Any deficiencies identified as a result of exercises or drills must be corrected.

Irradiated Fuel: Design Basis Threat

Existing regulations in 10 CFR part 73, ''Physical Protection of Plants and Materials,'' require security protection when irradiated fuel is onsite and stored inside the protected area, regardless of the reactor's operational mode, or conditions, including an extended shutdown condition.

Under § 73.55, licensees who are authorized to operate nuclear power reactors under 10 CFR part 50 or 52 (after the Commission has made the finding under § 52.103(g)) must establish and maintain a security plan and the associated protective strategy with defined design basis threats, as described in §§ 73.1 and 73.2, to protect against acts of radiological sabotage. The security plan includes a physical security plan, a training and qualification plan, a safeguards contingency plan, and a cyber security plan.

Along with the security plan, § 73.55(k)(8) requires the licensee to establish and implement a protective strategy when irradiated fuel is onsite and stored in the protected area, regardless of the reactor's operational modes, or conditions.

Fitness for Duty

Existing regulations in 10 CFR part 26, ''Fitness for Duty Programs,'' require that all persons who are granted unescorted access to nuclear power reactor protected areas by the licensees be subject to a fitness-for-duty program. Under § 26.3(a), licensees who are authorized to operate a nuclear power reactor facility under 10 CFR part 50 or part 52 (after the Commission has made the finding under § 52.103(g)) must comply with the requirements of 10 CFR part 26, except for subpart K, ''FFD Program for Construction.''

The fitness-for-duty requirements apply regardless of the reactor's operational modes, or conditions, and include drug and alcohol testing, behavioral observation, and determinations of fitness.

Therefore, staff has determined that requested change No. 2, to require a licensee to develop and submit a RESAR, whether prior to or during an extended shutdown, is not necessary because the issues raised by the petitioners are currently and adequately covered by the existing regulations.

Issue No. 3: Establish Requirements To Exit and Restart From Extended Shutdown

The NRC is denying requested change No. 3 because there is no need to amend the regulations to establish criteria for exiting an extended shutdown. The staff determined that existing reactor oversight process guidance provides for appropriate NRC oversight of a plant in an extended shutdown condition. Oversight of reactor facilities in extended shutdown for reasons not related to performance is governed by IMC 0375. One of the purposes of IMC 0375 is to provide assurance that the facility will be operated in a manner that provides adequate protection of public health and safety following restart. Section 06.02 of IMC 0375 discusses the inspection plan and indicates that a focus on operational readiness of the licensee for reactor restart may be necessary. Aspects that may be considered as potential areas for additional NRC inspection include equipment upgrades and maintenance, procedure updates, facilities maintenance, and the status of the corrective action program. Also, licensees must continue to implement the Maintenance Rule in accordance with § 50.65, which mandates (1) an evaluation every 24 months that takes into account, where practical, industry-wide operating experience and (2) performance monitoring, condition monitoring, and preventative maintenance activities for all equipment covered by the rule. In addition, a facility cannot restart without active licensed operators per § 55.53 and as described previously under Issue No. 2.

Before a licensee changes the mode a facility is in, any structures, systems, and components necessary for safe operation of the facility in the new mode must be operable and the applicable surveillances must have been conducted as required by the facility's technical specifications.

David Kraft of the Nuclear Energy Information Service raised many of the same issues in a letter to the agency dated June 16, 2016. By letter dated August 4, 2016, John Giessner from the Division of Nuclear Materials Safety in NRC Region III responded to Mr. Kraft. In this response letter, referenced by the petitioners as ''the Giessner letter,'' the NRC staff answered questions about the requirements for power reactor decommissioning and extended shutdown. The NRC's response letter noted that the regulations do not prohibit a licensee from voluntarily entering the extended shutdown configuration described in the petition and IMC 0375 provides for NRC oversight of a facility exiting from extended shutdown. If a licensee were to place a facility in extended shutdown and later decide to restart, the NRC has sufficient regulations, processes, and procedures in place to ensure that the restart is conducted in a safe manner.

The example cited by the petitioners was the extended shutdown of Browns Ferry Nuclear Plant, Unit 1, which was shut down from March 1985 to June 2007, after operating for 10 years. During the 22-year shutdown, the NRC continued to provide oversight with multiple resident inspectors assigned to the Browns Ferry Nuclear Plants. Further, NRC staff from regional and headquarters offices routinely visited the Browns Ferry Nuclear Plant for oversight of the operating Unit 2 and 3 reactors. As part of the reactor oversight process, the NRC developed an inspection procedure to monitor the restart effort and to ensure that the plant was able to restart and operate in a safe manner. This procedure formed the basis for the current IMC 0375. The NRC used existing regulatory tools (*e.g.,* inspectors, inspection procedures, enforcement of the operating license) during the startup of Browns Ferry Nuclear Plant, Unit 1, in 2007. As shown by the safe startup of Browns Ferry Nuclear Plant, Unit 1, the NRC has the regulatory tools necessary to ensure that the public health and safety and common defense and security continue to be protected in the context of restart

of a power reactor following an extended shutdown.

Other examples of power reactor facilities experiencing extended shutdowns relevant to the petition include: Crystal River Nuclear Generating Plant, Unit 3, which was shut down for an extended period of time before permanent cessation of operations; Kewaunee Power Station, which had permanently shut down and defueled but later considered restarting and relicensing (ultimately the licensee chose not to seek authorization for restart); James A. FitzPatrick Nuclear Power Plant, Davis-Besse Nuclear Power Station, Unit 1, and Perry Nuclear Power Plant, Unit 1, for which the licensees had made a decision to permanently cease operations that was later reversed prior to the cessation of operations. The NRC staff's review of these additional examples found that the existing regulatory tools were effective and sufficient in addressing these different scenarios and ensured that the public health and safety and common defense and security continued to be protected.

Therefore, the NRC finds that the potential safety and security issues associated with exit and restart from extended shutdown are currently and adequately covered by the existing regulations and NRC processes.

Issue No. 4: Conduct a Decommissioning Funding Review(s) During an Extended Shutdown and Establish Requirements To Prevent the Retraction of Any Letter of Permanent Cessation of Operations Certification

The NRC is denying requested change No. 4 because there is no need to prohibit withdrawal of a certification of permanent cessation of operations or to require additional assessments of decommissioning funding during an extended shutdown.

Certifications Under § 50.82, ''Termination of License''

The regulations in § 50.82 do not prohibit a power reactor licensee from voluntarily placing its facilities in an extended shutdown without terminating the operating license. The regulations require a licensee with an operating license for a power reactor in an extended shutdown to continue to meet all safety and security requirements as outlined in the facility's operating license.

The regulations in § 50.82(a)(1) specify two actions that the licensee must take to permanently cease operations of a nuclear power facility. First, when the licensee decides to permanently cease operations, the licensee must submit a certification of this decision to the NRC in writing within 30 days under § 50.82(a)(1)(i). Under § 50.4(b)(8), this certification must contain the date on which the power generation operations have ceased or will cease. As a result, licensees typically submit an initial certification of the intended permanent cessation of operations providing a planned date and a certification of actual cessation of operations providing the actual date. Second, under § 50.82(a)(1)(ii), the licensee must submit to the NRC a certification of permanent removal of fuel from the reactor vessel. Under § 50.82(a)(2), once the NRC dockets the certifications submitted under § 50.82(a)(1), the licensee is no longer authorized to operate the reactor or place or retain fuel into the reactor vessel.

The submittal and docketing of a certification under § 50.82(a)(1)(i) of a determination to permanently cease operations alone is not sufficient to result in removal of a licensee's authority to operate the reactor. No existing regulation would prevent a power reactor licensee from changing its decision to cease operations by retracting its certification under § 50.82(a)(1)(i).

However, the NRC's regulation at § 50.82(a)(6) states that the licensee must not perform any decommissioning activity that: (1) Forecloses release of the site for possible unrestricted use, (2) results in any significant environmental impact not previously reviewed, or (3) results in there no longer being reasonable assurance that adequate funds will be available for decommissioning. If any decommissioning activity could not meet these conditions, the licensee is prohibited from undertaking the activity until it submits, and the NRC approves, a license amendment request that describes the proposed activity and the potential impact associated with that activity.

The petitioners provided no basis for requesting the NRC to prohibit withdrawal of a certification of permanent cessation of operations submitted under § 50.82(a)(1)(i). There is no change in the authority to operate granted by a facility's operating license associated solely with the filing of the § 50.82(a)(1)(i) certification. There is also no change in the regulatory treatment of a commercial nuclear power reactor based solely on the submittal of the certification of permanent cessation of operations required by § 50.82(a)(1)(i). Thus, withdrawal of this certification, in and of itself, regardless of whether the licensee intends to enter an extended shutdown or continue operating the facility, does not affect the status of the facility with respect to the NRC's requirements. Similar regulations are found in § 52.110 for combined licenses.

Therefore, the NRC concludes that prohibiting a licensee from withdrawing a certification of permanent cessation of operations that had been submitted under § 50.82(a)(1)(i) would not address a new safety or security issue that is not currently and adequately covered by the existing regulations.

Decommissioning Funding

The petitioners requested that the amended regulations clearly address whether decommissioning funding may be used for activities during a facility's extended shutdown and include the criteria and conditions governing their use of such funds.

The regulations in § 50.82(a)(8)(ii) limit the use of decommissioning trust funds by licensees prior to the submittal of the certifications required under § 50.82(a)(1) of permanent cessation of operations and permanent removal of fuel from the reactor vessel. These limitations allow the use of only a specified portion of the funds for decommissioning planning and would apply during an extended shutdown as well as during operation. In addition, a licensee in an extended shutdown is not relieved of any existing decommissioning trust fund regulations that are applicable to any facility with an operating license.

The petitioners also requested that the amended regulations require licensees to submit a preliminary decommissioning cost estimate to the NRC at 5-year intervals throughout the period of extended shutdown and inquired whether the decommissioning funding amounts required by § 50.75(c) should be re-assessed during an extended shutdown.

The regulations in §§ 50.75(f)(1) and (f)(2) require licensees to report at least once every 2 years on the status of its decommissioning funding and related factors. In addition to these requirements for biennial reports, § 50.75(f)(3) requires that each power reactor licensee shall, at or about 5 years prior to the projected end of operations,[3] submit a preliminary decommissioning cost estimate that includes an up-to-date assessment of the major factors that could affect the cost to decommission. An extended

[3] The ''end of operations'' in this context refers to when a licensee is no longer authorized to operate the reactor or place or retain fuel into the reactor vessel, under § 50.82(a)(2).

shutdown would have no effect on the license expiration date, and all applicable decommissioning funding regulations remain in effect, including § 50.75.

Therefore, the NRC finds that prohibiting withdrawal of a certification of permanent cessation of operations under § 50.82(a)(1)(i) or requiring additional reassessment of decommissioning funding during an extended shutdown would not address a new safety or security issue that is not currently and adequately covered by the existing regulations.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the methods, as indicated.

Document	ADAMS Accession No./ **Federal Register** citation
Request for Petition for Rulemaking (PRM–50–114), dated September 1, 2016	ML16258A486
Federal Register notice, ''Power Reactors in Extended Shutdowns,'' dated December 9, 2016	81 FR 89011
Comment Submission 1: Rodney McCullum of Nuclear Energy Institute (NEI), dated February 22, 2017	ML17055B792
Comment Submission 2: Paul Bessette of Morgan, Lewis & Bockius, LLP (on behalf of Entergy Nuclear Operations, Inc.), dated February 23, 2017	ML17055B953
IMC 0350, ''Oversight of Reactor Facilities in a Shutdown Condition Due to Significant Performance and/or Operational Concerns,'' dated March 1, 2018	ML17116A273
IMC 0375, ''Implementation of the Reactor Oversight Process at Reactor Facilities in an Extended Shutdown Condition for Reasons Other Than Performance,'' dated November 13, 2015	ML15247A274
Letter from Mr. David A. Kraft of Nuclear Energy Information Service, dated June 16, 2016	ML16175A449
NRC Letter to Mr. David A. Kraft of Nuclear Energy Information Service, dated August 4, 2016	ML16218A266

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2016–0204. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2016–0204); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

V. Conclusion

For these reasons, the NRC is denying PRM–50–114. The NRC has concluded that the issues raised by the petitioners are adequately addressed by existing NRC regulations and no amendments to the NRC's regulations are necessary.

Dated at Rockville, Maryland, this 26th day of February, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2020–04271 Filed 3–2–20; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–1061; Airspace Docket No. 20–AGL–06]

RIN 2120–AA66

Proposed Revocation and Amendment of Class E Airspace; Williston, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke the Class E airspace at Sloulin Field International Airport, Williston, ND, due to the airport's closure. This action also proposes to amend Class E airspace at Williston Basin International Airport, Williston, ND. The action proposes to add an area designated as a surface area. This action also proposes to amend the Class E airspace extending upward from 700 feet above the surface by adding two extensions, one to the southeast and one to the north of the airport. Additionally, this action proposes to add a Class E airspace area extending upward from 1,200 feet above the surface. Lastly, this action proposes an administrative correction to the airspace legal description's text header by updating the airport's geographic coordinate to match the FAA's aeronautical database. These changes are necessary to accommodate airspace redesign for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before April 17, 2020.

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–2019–1061; Airspace Docket No. 20–AGL–06, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.com.*

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 revoke the Class E airspace at Sloulin Field International Airport and amend the Class E airspace at Williston Basin International Airport, Williston, North Dakota to support instrument flight rules (IFR) operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. 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–2019–1061; Airspace Docket No. 20–AGL–06.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the ''**ADDRESSES**'' section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D 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 revoking the Class E airspace at Sloulin Field International Airport at Williston ND, due to the airport's closure.

This action also proposes to amend Class E airspace at Williston Basin International Airport, Williston, ND. The proposal would add a Class E airspace area, designated at a surface area. This area is designed to provide controlled airspace for terminal operations where a control tower is not in operation. This proposed area is described as follows: That airspace extending upward from the surface within a 4.2-mile radius of the airport, and within 1.3 miles each side of the 135° bearing from the airport, extending from the 4.2-mile radius to 4.7 miles southeast of the airport, and within 1.3 miles each side of the 339° bearing from the airport, extending from the 4.2-mile radius to 4.7 miles north of the Williston Basin International Airport.

Additionally, this action proposes to amend the Class E airspace area extending upward from 700 feet above the surface by adding two extensions to the current 6.7-mile radius of the airport. One to the southeast and one to the north of the airport. These areas are designed to accommodate arriving IFR operations when aircraft descend below 1,500 feet above the surface. The proposed area is described as follows: That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport, and within 3.6 miles each side of the 132° bearing from the airport, extending from the 6.7-mile radius to 11.4 miles southeast of the airport, and within 3.6 miles each side of the 340° bearing from the airport, extending from the 6.7-mile radius to 11 miles north of the Williston Basin International Airport.

Further, this action proposes to add a Class E airspace area extending upward from 1,200 feet above the surface. This area is designed to accommodate IFR aircraft while transitioning to/from the en route environment. The proposed area is described as follows: That airspace extending upward from 1,200 feet above the surface within a 41-mile radius of the Williston Basin International Airport.

Lastly, this action proposed an administrative correction to the airspace legal description's text header by updating the airport's geographic coordinate to match the FAA's aeronautical database. The coordinates should read: Lat. 48°15′39″ N, long. 103°45′04″ W. Class E2 and Class E5 airspace designations are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, 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.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL ND E2 Williston, ND [Revoked]

Williston, Sloulin Field International Airport, ND
(Lat. 48°10′41″ N, long. 103°38′32″ W)

AGL ND E2 Williston, ND [New]

Williston Basin International Airport, ND
(Lat. 48°15′39″ N, long. 103°45′04″ W)

That airspace extending upward from the surface within a 4.2-mile radius of the airport, and within 1.3 miles each side of the 135° bearing from the airport, extending from the 4.2-mile radius to 4.7 miles southeast of the airport, and within 1.3 miles each side of the 339° bearing from the airport, extending from the 4.2-mile radius to 4.7 miles north of the Williston Basin International Airport.

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

* * * * *

AGL ND E5 Williston, ND [Revoked]

Sloulin Field International Airport, ND
(Lat. 48°10′41″ N, long. 103°38′32″ W)

AGL ND E5 Williston, ND [Amended]

Williston Basin International Airport, ND
(Lat. 48°15′39″ N, long. 103°45′04″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the airport, and within 3.6 miles each side of the 132° bearing from the airport, extending from the 6.7-mile radius to 11.4 miles southeast of the airport, and within 3.6 miles each side of the 340° bearing from the airport, extending from the 6.7-mile radius to 11 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within a 41-mile radius of the Williston Basin International Airport.

Issued in Seattle, Washington, on February 26, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–04257 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 127

[Docket Number USCG–2020–0102]

Waterway Suitability Assessment for Operations of Liquefied Hazardous Gas Terminal; Beaumont, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of inquiry; request for comments.

SUMMARY: We are requesting your comments on a Letter of Intent and Preliminary Waterway Suitability Assessment (WSA) we received from Martin Midstream Partners proposing to modify its existing Neches Terminal in Beaumont, Texas to handle additional liquefied hazardous gas (LHG). The terminal currently handles Ammonia which is classified as a LHG and the projects currently being evaluated would modify existing operations at the terminal by adding additional LHG products and increasing the number of LHG vessels from 24 ships per year to up to 350 LHG barge and ship visits per year. The additional LHG products include butane, propane, ethane, ethylene and propylene. The Coast Guard is notifying the public of this proposed increase in LHG marine traffic on the Sabine-Neches Waterway and is soliciting comments relevant to the Coast Guard's preparation of a Letter of Recommendation (LOR) for issuance to the federal, state, or local agency with jurisdiction over the proposed facility.

DATES: Your comments and related material must reach the Coast Guard on or before April 2, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0102 using the Federal portal at *https://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 notice of inquiry, call or email Mr. Scott K. Whalen, Vessel Traffic Service Director, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email *Scott.K.Whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Marine Safety Unit Port Arthur
DHS Department of Homeland Security
LNG Liquefied natural gas
LOI Letter of Intent
LOR Letter of Recommendation
NVIC Navigation and Vessel Inspection Circular
U.S.C. United States Code
WSA Waterway Suitability Assessment

II. Background and Purpose

Under 33 CFR 127.007(a), an owner or operator planning to build a new facility handling LHG, or an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LHG marine traffic on the waterway associated with the proposed facility or modification to an existing facility, must submit a Letter of Intent (LOI) to the Captain of the Port of the zone in which the facility is or will be located. Under 33 CFR 127.007(e), an owner or operator planning such new construction or expansion of an existing facility must also file or update a WSA that addresses the proposed increase in LHG marine traffic in the associated waterway.

Under 33 CFR 127.009, after receiving an LOI, the Captain of the Port issues a LOR as to the suitability of the waterway for LHG marine traffic to the appropriate jurisdictional authorities. The LOR is based on a series of factors listed in 33 CFR 127.009 that relate to the physical nature of the affected waterway and issues of safety and security associated with LHG marine traffic on the affected waterway.

III. Information Requested

On September 16, 2019, Martin Midstream Partners submitted an LOI and Preliminary WSA. The company's proposed plans include the addition of LHGs to its operations at the facility and an increase in the estimated annual LHG barge and ship visits to the facility. The

purpose of this notice is to solicit public comments on the proposed increase in LHG marine traffic on the Sabine-Neches Waterway. The Coast Guard believes that public input may be useful to the Captain of the Port Marine Safety Unit Port Arthur with respect to validating the information provided in Martin Midstream Partner's LOI and WSA and the development of the Coast Guard's LOR. A brief summary of Martin Midstream Partner's proposal is available in the docket where indicated under **ADDRESSES**.

On January 24, 2011, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 01–2011, titled ''Guidance Related to Waterfront Liquefied Natural Gas (LNG) Facilities.'' NVIC 01–2011 provides guidance for owners and operators seeking approval to build and operate LNG facilities. The Coast Guard will refer to NVIC 01–2011 for process information and guidance in evaluating Martin Midstream Partner's Preliminary WSA. NVIC 01–2011 is available in the docket where indicated under **ADDRESSES** and also on the Coast Guard's website at *https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/5ps/NVIC/2011/NVIC%2001-2011%20Final.pdf.*

IV. Public Participation and Request for Comments

We encourage you to submit comments through the Federal portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. In your submission, please include the docket number for this notice of inquiry and provide a reason for each suggestion or recommendation.

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

Documents mentioned in this notice of inquiry as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions.

This document is issued under authority of 5 U.S.C. 552(a).

Dated: February 26, 2020.

Jacqueline Twomey,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2020–04310 Filed 3–2–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0112]

RIN 1625–AA00

Safety Zone for Fireworks Display; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of the Anacostia River in Washington, DC, on April 11, 2020 (with alternate date of April 12, 2020). This action is necessary to provide for the safety of life on these waters during a fireworks display. This rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region 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 April 2, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0112 using the Federal eRulemaking Portal at *https://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 MST3 Courtney Perry, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone (410) 576–2674, email *Courtney.E.Perry@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

National Cherry Blossom Festival, Inc., notified the Coast Guard that it will be conducting a fireworks display on April 11, 2020, from 8:30 p.m. to 8:45 p.m. in conjunction with the National Cherry Blossom Festival. In the event of inclement weather, the event will be held those same hours on April 12, 2020. The fireworks will be launched from a barge located in the Anacostia River across from Yards Park in Washington, DC. Hazards from the firework display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP Maryland-National Capital Region has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone in the Anacostia River near the fireworks barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within 400 feet of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone to be enforced from 7:30 p.m. to 9:45 p.m. on April 11, 2020 (or alternatively, in case of rain, from 7:30 p.m. to 9:45 p.m. on April 12, 2020). The safety zone would cover all navigable waters of the Anacostia River within 400 feet of the fireworks barge, in approximate position latitude 38°52′16.3″ N, longitude 077°00′09.7 W, located at Washington, DC. The duration and enforcement of the safety zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks display. No vessel or person would be permitted to enter the safety zone without first obtaining permission from the COTP or a designated representative. 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 size, duration, time-of-day and time-of-year of the safety zone. Although this safety zone would restrict access to certain parts of the waterway, it would only impact a small designated area for a short period of time. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard 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 safety zone 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.

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 call or email 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 call or email 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, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have 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 a safety zone that would be enforced for less than 2.5 hours that would prohibit entry within 400 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

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 *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email 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 *https://www.regulations.gov* and will include any personal information you have

provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://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 is proposing 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: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0112 to read as follows:

§ 165.T05–0112 Safety Zone for Fireworks Display; Anacostia River, Washington, DC.

(a) *Location.* The following area is a safety zone: All navigable waters of the Anacostia River within 400 feet of the fireworks barge, in approximate position latitude 38°52′16.3″ N, longitude 077°00′09.7 W, located at Washington, DC. These coordinates are based on datum NAD 1983.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Maryland-National Capital Region to assist in enforcing the security zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 7:30 p.m. to 9:45 p.m. on April 11, 2020. Or alternatively, if necessary due to inclement weather it will be enforced from 7:30 p.m. to 9:45 p.m. on April 12, 2020.

Dated: February 26, 2020.

Mathew S. Fine,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Maryland-NCR.

[FR Doc. 2020–04302 Filed 3–2–20; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0053; FRL–10005–58]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (January 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 2, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at

http://www.epa.gov/dockets/comments.html.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 and/or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Amended Tolerances for Non-Inerts

1. *PP 9F8761.* (EPA–HQ–OPP–2020–0046). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to amend the tolerances in 40 CFR 180.662 for residues of the herbicide trinexapac-ethyl in or on Sugarcane, cane at 1.5 parts per million (ppm) and Sugarcane, molasses at 5.0 ppm. The method for determining the residues in crops, expressed as major metabolite CGA–179500 is LC–MS–MS and is used to measure and evaluate the chemical trinexapac-ethyl. *Contact:* RD.

2. *PP 9F8764.* (EPA–HQ–OPP–2020–0047). Syngenta Crop Protection, LLC. P.O. Box 18300, Greensboro, NC 27419, requests to amend the tolerances in 40 CFR 180.368 for residues of the herbicide S-metolachlor in or on soybeans at 1.0 ppm and grain, aspirated fractions at 2.0 ppm. The analytical method of gas chromatography-nitrogen phosphorus detection (GC/NPD) is used to measure and evaluate the chemical S-metolachlor. *Contact:* RD.

B. New Tolerances for Non-Inerts

1. *PP 9F8753.* (EPA–HQ–OPP–2020–0010). Valent BioSciences LLC, 870 Technology Way, Libertyville, IL 60048, requests to establish a tolerance in 40 CFR part 180 for residues of the plant regulator, Aminoethoxyvinylglycine in or on apple and pear at 0.065 ppm. The high-performance liquid chromatography analytical method is used to measure and evaluate the chemical Aminoethoxyvinylglycine. *Contact:* BPPD.

Commodity	Level
Apple	0.065
Pear	0.065

2. *PP 9F8776.* EPA–HQ–OPP–2019–0580. Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, Delaware 19808, requests to amend the tolerances in 40 CFR part 180 for residues of the herbicide, orthosulfamuron, in or on almonds hulls at 0.03 ppm; small fruit vine climbing subgroup, except fuzzy kiwifruits (crop subgroup 13–07F) at 0.01 ppm; and tree nuts (crop group 14–12) at 0.01 ppm. An independently validated analytical method was used to measure and evaluate the chemical orthosulfamuron. *Contact:* RD.

3. *PP 9F8777.* EPA–HQ–OPP–2019–0542. Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, bicyclopyrone, in or on lemongrass, dried at 0.5 ppm; lemongrass, fresh at 0.3 ppm; rosemary, dried at 0.3 ppm; rosemary, fresh at 0.3 ppm; wormwood, dried at 0.09 ppm; and wormwood, fresh at 05 ppm. Analytical methods: GRM030.05A, GRM030.05B, and GRM030.08A were used to measure and evaluate the chemical bicyclopyrone. *Contact:* RD.

4. *PP* 9F8804. (EPA–HQ–OPP–2020–0022). Clarke Mosquito Control Products, Inc., 675 Sidwell Court, St. Charles, IL 60174, requests to establish tolerances in 40 CFR part 180 for the combined residues of the insecticide spinetoram, expressed as a combination of XDE-175-J: 1-*H*-as-indaceno[3,2-d] oxacyclododecin-7,15-dione, 2-[6-deoxy-3-O-ethyl-2,4-di-O-methyl-α-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5-(dimethylamino)tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9ethyl-2,3, 3a,4,5,5a,5b,6,9,10,11,12,13,14,16a,16b-hexadecahydro 14-methyl-, (2*R*,3a*R*, 5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*R*); XDE-175-L: 1*H*-as-indaceno[3,2-d]oxacyclododecin-7,15-dione, 2-[(6deoxy-3-O-ethyl-2,4-di-O-methyl-α-*L*-mannopyranosyl)oxy]-13-[[(2*R*,5*S*,6*R*)-5(dimethylamino)tetrahydro-6-methyl-2 *H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a, 5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-(2*S*,3a*R*, 5a*S*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b*S*); ND-J: (2*R*,3a*R*,5a*R*,5b*S*,9*S*,13*S*,14*R*,16a*S*,16b *R*)-9-ethyl-14-methyl-13[[(2*S*,5*S*,6*R*)-6-methyl-5-(methylamino)tetrahydro-2*H*-pyran-2-yl]oxy]-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12, 13,14,15,16a,16b-octadecahydro-1*H*-as-indaceno[3,2-d]oxacyclododecin-2-yl6-deoxy-3-O-ethyl-2,4-di-O-methyl-α-*L*-mannopyranoside; and NF-J: (2*R*,3*S*,6*S*)-6-([(2*R*,3a*R*,5a*R*,5b*S*,9*S*, 13*S*,14*R*,16a*S*,16b*R*)-2-[(6-deoxy-3-O-ethyl-2,4-di-O-methyl-α-L-mannopyranosyl)oxy]-9-ethyl-14-methyl-7,15-dioxo-2,3,3a,4,5,5a,5b,6,7,9,10,11,12,13,14, 15,16a,16b-octadecahydro-1*H*-as-indaceno[3,2-d]oxacyclododecin-13-yl]oxy)-2-methyltetrahydro-2*H*-pyran-3-yl(methyl)formamide in or on fish at 4.0 ppm; fish-shellfish, crustacean at 4.0 ppm; fish-shellfish, mollusc at 4.0 ppm; grass, forage, fodder, and hay, group 17 forage at 10.0 ppm; grass, forage, fodder, and hay, group 17 hay at 5.0 ppm; animal feed, nongrass, group 18, forage at 35.0 ppm; and animal feed, nongrass, group 18, hay at 30.0 ppm. The EPA has determined adequate tolerance enforcement methods are available for spinetoram residues in a variety of plant and animal matrices including a number of high-performance liquid chromatography (HPLC)/Mass Spectrometry (MS)/MS methods. Additional details on the analytical

methods can be found in the supporting documentation in Docket ID: EPA–HQ–OPP–2011–0666–0025. *Contact:* RD.

5. *PP* 9F8809. (EPA–HQ–OPP–2020–0004). Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, DE 19808, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide, pyraclonil in or on tice at 0.01 ppm. An independently validated analytical method is used to measure and evaluate the chemical pyraclonil. *Contact:* RD

Authority: 21 U.S.C. 346a.

Dated: February 19, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–04265 Filed 3–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2019–0173; FRL–10005–81–OLEM]

RIN 2050–AH11

Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 17, 2015, the Environmental Protection Agency (EPA or the Agency) promulgated national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments pursuant to the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. In this action, EPA is proposing procedures to allow facilities to request approval to operate with an alternate liner for existing CCR surface impoundments, two co-proposed options to allow the use of CCR during unit closure, an additional closure option for CCR units being closed by removal of CCR, and requirements for annual closure progress reports. Regarding the options to allow the use of CCR during unit closure, this action serves as a supplemental proposal to a proposed rule issued on March 15, 2018. In that March 2018 proposal, the Agency proposed to allow the continued placement of CCR in units triggered for closure to construct final cover systems provided certain conditions were met.

DATES: *Comments.* Comments must be received on or before April 17, 2020. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before April 2, 2020. *Public Hearing.* EPA will hold a public hearing on April 9, 2020. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: You may send comments, identified by Docket ID. No. EPA–HQ–OLEM–2019–0173, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OLEM–2019–0173, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

EPA will hold a virtual public hearing. EPA will announce further details on the public hearing website (*https://www.epa.gov/coalash*) in advance of the hearing. The hearing will convene at 9:00 a.m. (EST) and conclude at 6:00 p.m. (EST). If necessary, the hearing may go later to accommodate all those wishing to speak. For additional information on the public hearing see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Please note that if this hearing is held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. For purposes of the REAL ID Act, EPA will accept government-issued IDs, including drivers' licenses, from the District of Columbia and all states and territories except from American Samoa. If your identification is issued by American Samoa, you must present an additional form of identification to enter the federal building where the public hearing will be held. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. For additional information for the status of your state regarding REAL ID, go to: *https://www.dhs.gov/real-id-enforcement-brieffrequently-asked-questions.* Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: For questions concerning this proposed rule, contact Jesse Miller, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (703) 308–1180; email address: *Miller.Jesse@epa.gov.* For more information on this rulemaking please visit *https://www.epa.gov/coalash.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Public Hearing

The EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the hearing, please use the online registration form available on EPA's CCR website (*https://www.epa.gov/coalash*) or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to register to speak at the hearing. The last day to pre-register to speak at the hearing will be April 7, 2020. On April 6, 2020, the EPA will post a general agenda for the hearing on EPA's CCR website (*https://www.epa.gov/coalash*).

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule. Additionally, requests to

speak will be taken the day of the hearing according to the procedures specified on EPA's CCR website (*https://www.epa.gov/coalash*) for this hearing. The Agency will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. If EPA is anticipating a high attendance, the time allotment per testimony may be shortened to no shorter than 3 minutes per person to accommodate all those wishing to provide testimony and have pre-registered. While EPA will make every effort to accommodate all speakers who do not preregister, opportunities to speak may be limited based upon the number of preregistered speakers. Therefore, EPA strongly encourages anyone wishing to speak to preregister. Participation in the virtual public hearing does not preclude any entity or individual from submitting a written comment.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing is posted online on EPA's CCR website at *https://www.epa.gov/coalash.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the service of a translator, please pre-register for the hearing and describe your needs by March 26, 2020. If you require special accommodations such as audio description or closed captioning, please pre-register for the hearing and describe your needs by April 2, 2020. We may not be able to arrange accommodations without advanced notice. Registrants should notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section and indicate on the registration form of any such needs when they pre-register to speak.

B. Docket

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2019–0173. The EPA has previously established a docket for the April 17, 2015, CCR final rule (80 FR 21302) under Docket ID No. EPA–HQ–RCRA–2009–0640, and a docket for proposed amendments to the 2015 CCR rule (also known as the Phase One proposed rule) under Docket ID No. EPA–HQ–OLEM–2017–0286. All documents in the docket are listed in the *https://www.regulations.gov* index. Publicly available docket materials are available either electronically at *https://www.regulations.gov* or in hard copy at the EPA Docket Center. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

C. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2019–0173, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

D. Submitting CBI

Do not submit information that you consider to be CBI electronically through *https://www.regulations.gov* or email. Send or deliver information identified as CBI to only the following address: ORCR Document Control Officer, Mail Code 5305–P, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; Attn: Docket ID No. EPA–HQ–OLEM–2019–0173.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD–ROM or disk that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

II. General Information

A. Does this action apply to me?

This rule applies to all CCR generated by electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112 and may affect the following entities: electric utility facilities and independent power producers that fall under the NAICS code 221112. This discussion is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 257.50 of title 40 of the Code of Federal Regulations. If you have 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 proposing to amend the regulations governing the disposal of CCR in landfills and surface impoundments finalized in the April 15, 2015 publication of the CCR rule (2015 CCR rule). Specifically, the Agency is proposing revisions to the 2015 CCR rule, including: procedures to allow facilities to request approval to use an

alternate liner for CCR surface impoundments; two co-proposed options to allow the use of CCR during unit closure; an additional closure option for CCR units being closed by removal of CCR; and requirements for annual closure progress reports.

In this proposal, EPA is not reconsidering, proposing to reopen, or otherwise soliciting comment on any other provisions of the final CCR rule beyond those specifically identified in this proposal. The EPA will not respond to comments submitted on any issues other than those specifically identified in this proposal and they will not be considered part of the rulemaking record.

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

These regulations are established under the authority of sections 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, and 6945(a) and (d).

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

This action is expected to result in net cost savings amounting to between $ 41 million and $ 138 million per year when discounting at 7%. Further information on the economic effects of this action can be found in Unit V of this preamble.

III. Background

On April 17, 2015, EPA finalized national minimum criteria for the disposal of CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA) in a final rule entitled ''Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' (80 FR 21302) (2015 CCR rule). The 2015 CCR rule regulates existing and new CCR landfills and existing and new CCR surface impoundments and all lateral expansions of CCR units. It is codified in subpart D of part 257 of Title 40 of the Code of Federal Regulations. The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and record keeping, notification and internet posting requirements. The 2015 CCR rule also required any existing unlined CCR surface impoundment that is contaminating groundwater above a regulated constituent's groundwater protection standard to stop receiving wastes and either close or retrofit, except in certain circumstances. This closure requirement applied only to ''unlined'' CCR surface impoundments, while units with either a composite liner, an alternative composite liner, or a compacted soil liner (typically a clay liner) that met the requirements of § 257.71(a) were allowed to operate indefinitely.

The rule was challenged by several parties, including a coalition of regulated entities and a coalition of environmental organizations (''Environmental Petitioners''). Environmental Petitioners raised one challenge that is relevant to this proposed rule: They challenged the provision that allowed existing, unlined surface impoundments to continue to operate until they exceeded the groundwater protection standard. 40 CFR 257.101(a)(1). They contended that EPA failed to show how continued operation of unlined impoundments met RCRA's baseline requirement that any solid waste disposal site pose ''no reasonable probability of adverse effects on health or the environment.'' 42 U.S.C. 6944(a).

The U.S. Court of Appeals for the D.C. Circuit issued its decision on August 21, 2018. The Court upheld most of the rule but ruled for the environmental petitioners on this claim. The court held that EPA acted ''arbitrarily and capriciously and contrary to RCRA'' in failing to require the closure of unlined surface impoundments and in classifying so-called ''clay-lined'' impoundments as lined. The court ordered that these provisions be vacated and remanded back to the Agency. *Utility Solid Waste Activities Group, et al.* v. *EPA,* 901 F.3d 414, 449 (D.C. Cir. 2018). This decision is referred to as the '*USWAG* decision' in this proposal.

IV. What is EPA proposing to amend?

This action proposes to create a process for EPA or the Participating State Director to approve an alternate liner for CCR surface impoundments, to allow the use of CCR during closure of a CCR unit, to establish an additional closure option for CCR units being closed by removal of CCR, and to establish requirements for annual closure progress reports.

A. Alternate Liner Demonstration

The 2015 CCR rule required that all existing unlined CCR surface impoundments that caused groundwater concentrations to exceed associated groundwater protection standards (GWPS) must stop receiving waste and either retrofit or close. In the 2015 CCR rule, the term ''unlined'' CCR surface impoundment included any unit not constructed with one of the following types of liners: (1) Composite liner; (2) alternative composite liner; or (3) liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/s.[1] See § 257.71(a). On the other hand, lined CCR surface impoundments (as defined in the CCR regulations) that impact groundwater above the specified GWPS are not required to close and could continue operations while corrective action was performed, and the source of the leak was addressed.

On August 21, 2018, the U.S. Court of Appeals for the District of Columbia Circuit found in the *USWAG* decision that the rulemaking record did not support the conclusion that the 2015 CCR rule would adequately address the adverse effects posed by clay-lined CCR surface impoundments. Therefore, the court vacated the provisions that treated clay-lined surface impoundments differently than unlined impoundments, with the result that such units are now required to either retrofit or close. *USWAG,* 901 F.3d at 449 . In response to this ruling, EPA received reports from industry groups and individual companies claiming that some surface impoundments that would now be required to retrofit or close have an engineered liner or underlying soils that are equivalent or even superior to the performance of the liners required by the 2015 CCR rule.[2] EPA agrees it is possible for individual impoundments that are not lined with either a composite liner or alternative composite liner (as those terms are defined in the CCR regulations) to still be protective of human health and the environment. This is possible if the effective hydraulic conductivity of the liner and underling soil is so low that, even if leachate migrates from the unit, the volume of leachate that can be transmitted to the underlying aquifer over time is so small that it will not adversely affect ground water. Therefore, EPA is proposing procedures at § 257.71(d) to allow facilities to submit an alternate liner demonstration to EPA that would provide a sufficient record to support the continued operation of individual unlined surface impoundments that can be demonstrated to pose no reasonable

[1] The liner terms ''compacted soil'' and ''clay-lined'' are used interchangeably in this preamble discussion.

[2] These reports are available in the docket to this rulemaking.

probability of adverse effects on human health or the environment.

The current self-implementing regulations limit the ability of owners and operators to make a site-specific demonstration that the design of a particular impoundment is equivalent to the composite liner system in §§ 257.71(c) and 257.72(c); consequently, a regulatory revision would be necessary. However, the Agency's current record would not support conclusions on whether any individual impoundment has a low enough effective hydraulic conductivity to be protective of human health and the environment, were the unit allowed to continue operations. This would require site-specific data, such as liner performance and surrounding hydrogeologic characterization information. The data available for the 2014 Risk Assessment consisted of distributions compiled at various geographic scales (*e.g.,* local, regional, national). These data were sufficient for that assessment because the purpose was to identify the potential for risk at a national scale; however, the same data could not be used to draw conclusions about any individual impoundment. While reports submitted to EPA by industry since finalization of the 2015 CCR rule have provided valuable information about the characteristics of impoundments anticipated to perform equivalent to the liner system required by the 2015 CCR Rule, these reports generally did not include the type or specificity of data needed to support conclusions about individual impoundments.

Therefore, owners and operators who believe individual surface impoundments meet the § 4004(a) standard and should be allowed to continue operation as designed must provide EPA or a Participating State Director with the site-specific data and analysis necessary to demonstrate this fact. EPA is proposing a process for those facilities to notify and submit the required information and technical data to make such a demonstration. Based on the available groundwater monitoring and location restriction data posted on facilities' websites, EPA believes that it is likely only a small fraction of non-composite lined surface impoundments currently in operation will be able to apply successfully for this demonstration.

EPA is proposing to establish a two-step process: Requiring an initial application and then the submission of the alternative liner demonstration. The application step is designed to ensure that a unit meets minimum requirements before embarking on a comprehensive alternate liner demonstration. The owner or operator must first submit a letter to EPA, no later than 30 days after the effective date of a final rule, declaring their intention to submit a demonstration under this provision. Along with the letter, the owner or operator must submit information to EPA documenting that the facility is in compliance with applicable requirements in 40 CFR part 257 subpart D, including the location restrictions. A copy of the letter and all associated documentation must be simultaneously posted to the facility's CCR public website.

Furthermore, the facility must show that the existing network of monitoring wells is sufficient to capture any releases based on direction of flow, well location, screening depth and other relevant factors, including well construction logs and a sufficient number of diagrams to depict depth to groundwater, the potentiometric surface, and the anticipated direction(s) of groundwater flow across the site (multiple diagrams may be necessary if the direction of flow is affected by seasonal, tidal or other influences),[3] and that there is no indication from groundwater monitoring data that the unit has or will adversely affect groundwater (*i.e.,* no statistically significant increases (SSI) of Appendix IV constituents above relevant GWPS), including documentation of the most recent statistical tests conducted and the rationale for the methods used in these comparisons. Facilities that have improperly placed groundwater monitoring wells or conducted improper statistical analysis of groundwater monitoring results would not be eligible to apply or submit a demonstration. Failure to remain in compliance with all provisions of 40 CFR part 257 subpart D (or any subsequent revisions or permits issued) may be cause to deny the facility's demonstration. EPA will evaluate the information submitted and determine whether or not the surface impoundment is eligible to submit an alternate liner demonstration. EPA will notify the facility of its determination as expeditiously as possible. The facility must also post EPA's determination to its CCR public website. If the application is found by EPA to lack necessary information or specificity, the facility may have an opportunity to resubmit with the required information. However, no resubmissions will be accepted after the initial application deadline, which is the date 30 days after the effective date of a final rule.

In order for an unlined surface impoundment to continue to operate, EPA is proposing that the owner or operator demonstrate that continued operation of the unit would pose no reasonable probability of adverse effects to human health or the environment in the future. This would require that, at a minimum, the owner or operator demonstrate that the surface impoundment has not and will not result in groundwater concentrations above relevant GWPS at the unit boundary (health-based or background, whichever is higher). This is the standard used to trigger corrective action for lined surface impoundments and is considered equally appropriate in this context. The function of the liner system beneath a surface impoundment is to contain the impounded liquid and prevent it from migrating through the subsurface and into the groundwater at a rate that would adversely affect groundwater quality. As designed, the geosynthetic liners required by the 2015 CCR rule would prevent any release of leachate to the subsurface. In contrast, soil-based liners and the underlying soil are permeable by nature and so may have greater potential for leachate to migrate from the unit over time. Thus, if these alternate units together with the surrounding subsurface environment cannot be reasonably anticipated to prevent leakage to a degree that prevent adverse effects to groundwater (*i.e.,* trigger corrective action), then the design and environmental setting of these units cannot be considered equivalent to a lined unit.

Required Lines of Evidence

Both the amount of site-specific data and the complexity of the analyses necessary for a demonstration will vary based on the size of the unit, the type of engineered liner present (or lack thereof), heterogeneity of site geology, and other site-specific factors. Yet there are certain lines of evidence that would need to be incorporated into any demonstration. EPA identified these lines of evidence based on the understanding that the low effective hydraulic conductivity of the liner and surrounding soils is the primary mechanism that will limit release and transport of contaminants. These are characterization of site hydrogeology and characterization of potential infiltration through the liner and underlying soils. However, the more site-specific data that can be incorporated into a demonstration and the greater the characterization of the

[3] This diagram should also include all the water table measurements reported from a standard datum, a map scale, and a legend of any important map symbols.

associated uncertainties, the greater the confidence in the ultimate conclusions and the greater likelihood of approval.

Line of Evidence #1: Characterization of Site Hydrogeology

The first line of evidence that EPA is proposing to require as part of any demonstration is a characterization of the site-specific hydrogeology that surrounds the surface impoundment. Some surface impoundments are located on soils that are expected to have extremely low hydraulic conductivity. However, there are concerns that heterogeneity within these soils may result in preferential flow pathways that effectively negate the low conductivity of the remaining soil. For example, many electric utilities are located in close proximity to bodies of water. The flow path of these water bodies are likely to have shifted over geologic time, which could result in complex depositional environments with interconnected lenses of sand. Therefore, the purpose of this line of evidence is to define the variability of the soil around the impoundment and to ensure that this variability is reflected in any analysis of contaminant fate and transport.

Traditional geologic mapping that relies primarily on the Unified Soil Classification System (USCS) has been found to underestimate the interconnectedness of such deposits, as the USCS was developed for engineering or geotechnical purposes with little emphasis on the identification of depositional environments and the resulting distribution of different types of sediments. In 2017, EPA compiled a practical guide on the use of sequence stratigraphy and facies models to better characterize subsurface heterogeneity.[4] The cited guide is intended to help facilities better define groundwater flow paths and preferential contaminant migration pathways, identify data gaps in the site characterization, determine appropriate locations for wells, and determine appropriate well construction design (*e.g.,* screen intervals).

At a minimum, documentation for this line of evidence would need to include measurements of the hydraulic conductivity in the uppermost aquifer measured from existing monitoring wells and discussion of the methods used to obtain these measurements; conceptual site models with cross-sectional depictions of site stratigraphy that include the relative location of the impoundment (with depth of ponded water noted), monitoring wells (with screening depths noted), and all other subsurface samples used in the development of the conceptual models;[5] a narrative description of the site geological history (*e.g.,* the conditions under which nearby soil layers formed; the potential for any features that may result in preferential flow, such as buried stream beds; the potential location and size of such features); and all of the data used in the conceptual site model summarized into easily readable graphs or tables (*e.g.,* grain size logs, gamma logs). The types and amount of data necessary to adequately characterize site stratigraphy will vary based on the size of the impoundment, the complexity of the subsurface environment, and whether the soil underlying the impoundment will be relied upon to limit contaminant release and migration.[6] There are a number of methods available that can provide useful data at the necessary spatial resolution, such as direct-push logging (*e.g.,* cone penetration test) and borehole geophysical logging. Some data may already be available from previous investigations, such as the installation of monitoring wells or other subsurface evaluations, but it is likely that additional data will be necessary to provide adequate coverage of the subsurface. Samples must be located around the perimeter of the impoundment at a spatial resolution sufficient to ensure that any regions of substantially higher conductivity have been identified. EPA recommends that initial samples be collected at distances no greater than 200 ft apart in low-conductivity soils.[7] If there is indication from the site history, collected soil samples, or other sources that high-conductivity deposits may be present at widths narrower than 200 ft, then even finer sample spacing may be warranted. EPA also recommends that samples extend down to the top of the natural water table or at least 20 ft beneath the bottom of the nearest water body (to identify potential for upwelling), whichever is greater, to ensure that any potential preferential flow pathways have been identified. The demonstration must substantiate why the number and types of samples collected are sufficient to capture any heterogeneity in the subsurface and why the data used to estimate contaminant fate and transport through the subsurface are representative of the variability identified. If regions of higher conductivity are present around the site, the potential impacts of preferential flow on groundwater concentrations will need to be considered in the demonstration. Furthermore, if regions of preferential flow are identified in otherwise low-conductivity soils that are not adequately captured by the existing monitoring well network, then re-evaluation of the placement of monitoring wells around the unit boundary would be warranted to address these gaps.

Line of Evidence #2: Potential for Infiltration

The second line of evidence that EPA is proposing to require as part of any demonstration is a characterization of the potential for infiltration through liners and underlying soils that control release and transport of leachate. The purpose of this line of evidence is to provide a reasonable estimate of the rate at which contaminants may be released and transported to groundwater over time. One approach would be to measure actual infiltration from underneath the unit. However, reliable collection of in-situ data may be difficult in low-conductivity soils or may disturb the integrity of the impoundment. Therefore, it may be more practical to rely on analysis conducted in a laboratory setting for soil-based liners and underlying soil, but it is critical that any laboratory tests are designed to reflect the conditions at the specific site in order to provide useful data. For example:

- Tests used to estimate hydraulic conductivity (*e.g.,* ASTM D 5084) need to use a permeant liquid that reflects the composition of the infiltrating impoundment porewater. CCR porewater can have both extreme pH and high salinity.[8] Extreme pH may dissolve key components of the soil structure, while high salinity may result in interlayer shrinkage of clays, both of which can result in higher hydraulic

[4] Best Practices for Environmental Site Management: A Practical Guide for Applying Environmental Sequence Stratigraphy to Improve Conceptual Site Models (EPA/600/R–17/293).

[5] This diagram should also include a scale and a legend of any important symbols, such as different soil types and the top of the water table.

[6] If an engineered liner is the primary mechanism intended to limit contaminant release and migration (*i.e.,* the soil beneath the impoundment has substantially higher hydraulic conductivity), then variability within the underlying soil will not exert as great an influence on long-term transport.

[7] This distance reflects recommendations by the U.S. Department of Transportation for the characterization of unknown subsurface environments in Geotechnical Aspects of Pavements (FHWA NHI–05–037).

[8] The pH of CCR wastes can range from around 3 to 13. Although the total pH range is wide, the majority of wastes are more basic, with a median value somewhere between 10 and 11. CCR wastes managed with coal refuse can be substantially more acidic. U.S. EPA, ''Human and Ecological Risk Assessment of Coal Combustion Residuals,'' December 2014.

conductivity. Use of a non-representative liquid (*e.g.,* deionized water) as the permeant liquid or pre-hydrating the clay may actually decrease the conductivity of clay through swelling and result in a lower measured conductivity than would actually occur in the field.

▪ Preparation of samples intended to reflect compacted soil liners for testing may result in the soil becoming temporarily less permeable as a result of thixotropic behavior. Thixotropic materials, such as certain clays, become more fluid when agitated and the resulting dispersed structure can make it more difficult for water to infiltrate. However, the material will gradually become more solid and permeable as it is allowed to rest. Failure to allow such samples to rest for sufficient periods prior to testing could result in a lower measured conductivity than would actually occur in the field.

▪ Preparation for samples intended to reflect soils beneath the impoundment for testing may result in the soil becoming permanently less permeable by disturbing the natural structure of the soil and eliminating voids and other features that may act as conduits for infiltration in the field. Methods have been developed to obtain undisturbed soil samples for testing (*e.g.,* ASTM Method #D1587–74). Failure to preserve the structural integrity of such samples could result in a lower measured conductivity than would actually occur in the field.

▪ The timeframe over which samples are tested would need to be adequate to capture long-term behavior of the liner. Some tests for hydraulic conductivity stop after the inflow and outflow rates equilibrate or after a specified volume of water has passed through the soil. However, these metrics may not be sufficient to capture the reactions that can occur between the soil and liquid (*e.g.,* exchange of adsorbed cations). Some metrics that more directly address the chemistry of the soil-leachate interactions include equilibration of electrical conductivity and pH. Failure to run the test on a timeframe relevant to the chemical reactions of interest may result in a lower measured conductivity than would actually occurs in the field.

Even when site conditions are reflected in the design of laboratory tests, the resulting data are an approximation of real-world performance. Therefore, the demonstration would need to include a thorough discussion of how the laboratory tests were designed and why the data relied upon in the demonstration are believed to be representative of both long-term leaching conditions and natural variability at the site.

In instances where a non-soil liner is present that does not meet specifications in the 2015 CCR Rule (*e.g.,* 30 mil geomembrane), the liner may not be as sensitive to the chemical composition of the leachate present and performance may depend more on the quality of production and installation. These types of liners are designed to prevent migration of leachate from the unit, but may be more prone to damage during construction and operation. In these instances, laboratory tests of liner samples may not provide representative data. Leakage rates from these types of liners might be better captured through predictive modeling that considers the range of possible construction quality and leakage scenarios based on empirical performance data, similar to the approach outlined by EPRI.[9] However, the demonstration would need to include documentation to support the range of leakage rates used (*e.g.,* a liner construction quality assurance report that demonstrates the liner was installed with good soil contact). Any soil-based components of the liner system would require the same considerations previously described.

Incorporation of Lines of Evidence Into Demonstration

The required lines of evidence will be incorporated into the final demonstration because each one provides different site-specific data that is necessary to conclude whether exceedances of GWPS have occurred or may occur at some point in the future. Depending on the complexity of a particular site, the data may be applied to a probabilistic fate and transport model similar to that used in the *2014 Human and Ecological Risk Assessment of Coal Combustion Residuals*[10] or 2019 EPRI *Model Evaluation of the Relative Performance of Alternative Liners.*[11] If a site is less complex (*e.g.,* homogenous low-conductivity soil), then more deterministic calculations may be sufficient to demonstrate that no adverse effects will occur. Regardless of the approach used, all of the data incorporated into the calculations must be documented and justified.

In some instances, direct infiltration to groundwater may not be the sole mechanism by which unpermitted release of leachate from an impoundment occurs. It is possible that additional, site-specific release pathways may exist for some unlined units. In particular, if an unlined impoundment extends above grade, is adjacent to a water body and is underlain by a low-conductivity soil, there may be lateral transport from the impoundment directly into the water body driven in part by the hydrostatic head within the impoundment. If such conditions are present at a site, then the demonstration would also need to address whether such releases may occur and the potential adverse effects on health or the environment associated with these pathways. The same types of data collected to evaluate releases to groundwater should also support evaluation of such pathways. However, incorporation of other lines of evidence may also be warranted.

Submission of Alternate Liner Demonstration and Approval Process

EPA is proposing that the owner or operator must submit the facility's alternate liner demonstration to EPA no later than one year after the deadline for submission of the initial application (*i.e.,* 13 months after the effective date of a final rule), with all the data, analyses and conclusions certified by a professional engineer. If the demonstration is found by EPA to lack necessary information or specificity, EPA will notify the facility as expeditiously as possible and the facility may have an opportunity to resubmit with the required information. However, no resubmissions will be accepted after the deadline. The owner or operator must post the alternate liner demonstration to the facility's CCR public website one month after submittal to EPA. The proposed timeframe for completion of the demonstrations is considered appropriate because (1) there is currently no evidence that units that can clear the initial application are leaking or have adversely affected surrounding media, (2) it can take some time to collect and analyze samples to provide the types of detailed data required for the demonstration and (3) the data collected in support of these demonstrations will improve the understanding of site hydrogeology and help to identify any gaps that currently exist in the monitoring and remedial framework at these sites (*e.g.,*

[9] Electric Power Research Relative Liner Performance for Coal Combustion Product Management Sites: Conceptual Review and Model Evaluation for Surface Impoundments. EPRI, Palo Alto, CA: 2019. 3002016498.

[10] U.S. EPA, ''Human and Ecological Risk Assessment of Coal Combustion Residuals,'' December 2014.

[11] EPA reviewed the analyses described in this document and provided a summary of additional considerations that may affect model results in a separate memo titled, *Review of Analyses in EPRI White Paper: Model Evaluation of Relative Performance of Alternative Liners,* included in the docket to this proposed rule.

preferential flow pathways). Therefore, it is possible that these demonstrations can identify leaks that might have been missed for some time and result in greater long-term protection at the site. It is possible that analysis of some low conductivity soils may take a considerable amount of time.[12] If it is not feasible to complete the demonstration within the timeframe specified above because of analytical limitations, the facility must submit a request for an extension no later than 90 days before the deadline for submission of the demonstration that includes a summary of the data that has been analyzed to date for the samples responsible for the delay and an alternate timeline for completion that has been certified by the laboratory. EPA will evaluate the information submitted and determine whether or not the duration of the requested extension is acceptable.

EPA will review each submitted demonstration and post a tentative approval or denial for public comment on EPA's website. After reviewing the comments, EPA will then take final action on each submitted demonstration. If a demonstration is denied, the owner or operator must cease receipt of waste and initiate closure within six months of the denial. If a facility needs to build alternate capacity, they may do so in accordance with the provisions in § 257.103, which have been proposed in a separate rulemaking.[13] If at any point in the process, it is clear that all conditions have not been met, EPA can without further notice or process deny the owner or operator's request; this may include any noncompliance with the CCR regulations, such as improper groundwater well placement.

Duration of Alternate Liner Demonstration

The approved demonstration will be effective for the remaining active life of the unit since the demonstration must show that the design of the surface impoundment would not result in exceedances of the GWPS at any point in the future. Groundwater monitoring will continue at the site as required by part 257 to ensure that the unit continues to perform as expected. If groundwater monitoring detects an SSI of any Appendix III constituents, the facility must either complete an alternate source demonstration or initiate assessment monitoring pursuant to § 257.95. To ensure that no exceedances of GWPS will occur in the future, facilities that trigger assessment monitoring must also conduct intra-well analyses on each downgradient well as part of subsequent groundwater monitoring reports to identify any trends of increasing concentrations. If there is evidence that the unit may exceed GWPS before source control measures will be put in place (*e.g.,* dewatering, impermeable cap, clean closure), then the authorization would be reconsidered.

EPA solicits comment on the appropriateness of the requirements included in this proposal. EPA also solicits comment on whether there are any additional lines of evidence or specific types of data that should be included as part of any demonstration.

B. Use of CCR in Units Subject to Closure for Cause

The CCR regulations require certain CCR surface impoundments and CCR landfills to cease placing CCR and non-CCR wastestreams into the unit and initiate closure[14] of the unit under specified time frames. See § 257.101. On March 15, 2018, EPA proposed to revise the current regulations to allow the use of CCR during certain closure situations for CCR units closing for cause pursuant to § 257.101. 83 FR 11584, 11605. The March 2018 proposed approach would have allowed the continued placement of CCR in units triggered for closure to construct final cover systems under four conditions: (1) Only CCR generated on-site may be used in the construction of the cover system; (2) CCR may be used exclusively for the purposes of grading and contouring of the final cover system; (3) CCR must be placed within the vertical plane of the boundary of the unit; and (4) CCR must be placed at either no steeper than a 5 percent grade or at a steeper grade, as determined by the Director of an approved program based on a stability analysis. As stated in the March 2018 proposal, the Agency expected that facilities taking advantage of the proposed revision would complete closure more quickly and accordingly realize reduced risks more quickly. *Id.*

The Agency also explained in March 2018 proposal that the current CCR regulations expressly prohibit ''placing CCR'' in a CCR unit required to close for cause pursuant to § 257.101 after dates established in the CCR regulations.[15] EPA further explained that the CCR regulations do not distinguish between placement that might be considered beneficial use and placement that might be considered disposal. All further placement of CCR into the unit—whether for beneficial use or disposal—is prohibited once the provisions of § 257.101 are triggered. *Id.*

In response to the March 2018 proposal, EPA received comments in three general areas. First, the Agency received comments generally opposing continued placement of CCR in units subject to closure for cause. Several commenters expressed concern regarding the potential risks associated with continued placement of large volumes of CCR in a unit determined to be deficient because the proposal placed no limits on the volumes of CCR that could be used. These commenters also expressed concern that the proposed approach would not prevent contact between the placed CCR and water, which would lead to leaching of contaminants from the unit. In addition, these commenters stated that the proposal placed no limitations on where units using CCR for grading and contouring could be located (*i.e.,* no location restrictions on the CCR unit itself). The second area of comments were from entities that generally supported the proposed approach to allow continued placement of CCR for purposes of grading and contouring, but they recommended modifications to the proposed approach. These commenters stated that the proposed conditions of the exemption were too restrictive and therefore should be removed from any final action because the conditions are unnecessary and actually will impede the rapid closure of CCR units. The final area of comments concerned EPA's statements in the March 2018 proposed rule about further placement of CCR in a unit after the waste placement prohibition deadline in § 257.101 is triggered. These commenters objected to EPA's interpretation that the current CCR regulations prohibit placement of CCR for beneficial use in a unit closing pursuant to § 257.101.

After considering the issues raised by these commenters, the Agency is considering two additional options to

[12] Laboratory analysis of the hydraulic conductivity of some clay have taken nearly 400 days to reach equilibrium, as discussed in *Hydraulic Conductivity of Compacted Soil Liners Permeated with Coal Combustion Product Leachates* (Benson, 2018).

[13] See proposed rule titled ''Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure''; 84 FR 65941 (December 2, 2019).

[14] The CCR regulations provide the owner or operator the option to retrofit a CCR unit in certain situations in lieu of closing the unit. See § 257.101(a). The retrofit provisions are codified in § 257.102(k). This action would not be applicable to CCR units that are retrofitted.

[15] As EPA stated in the March 2018 proposal, the CCR regulations do not restrict further placement or use of CCR when the unit is not subject to closure for cause pursuant to § 257.101. 83 FR at 11605.

allow use of CCR in surface impoundments and landfills closing for cause and is co-proposing both alternatives. Under the first proposal, the Agency would retain the prohibition on any further addition of CCR in a closing unit after the deadline in § 257.101 except as authorized under the following procedures to allow facilities to place CCR in a closing unit for the purpose of supporting closure of the CCR unit. These procedures would require the owner or operator of the unit to submit the written closure plan to the Administrator or Participating State Director for review and approval demonstrating that such CCR placement would pose no reasonable probability of adverse effects during the period that the unit is being closed and during the post-closure care period. This proposal discusses the information that must be included in the written closure plan and lays out the review and approval process of the closure plan. Under the second proposal, EPA would allow the use of CCR in a unit closing for cause for the purpose of supporting closure of the CCR unit, provided that such use is beneficial use as defined in the CCR regulations. Finally, this Unit of the preamble also solicits comment on a proposed revision to the alternative final cover system provisions to correct a typographical error.

1. Co-Proposed Option One—Use of CCR during closure of a unit subject to closure for cause under an approved closure plan.

The first co-proposed option would allow the addition of CCR to a CCR surface impoundment closing for cause after the waste placement prohibition deadline provided such placement is conducted under an approved closure plan. This proposed alternative would be implemented as an exemption to the waste placement prohibition deadline specified in § 257.101 and the owner or operator of the CCR unit would need to submit the written closure plan required under § 257.102(b) to the Administrator or Participating State Director for review and approval showing that the use of CCR during closure of unit would pose no reasonable probability of adverse effects during the closure and post-closure care periods. Under this co-proposed option, the approved closure plan would need to demonstrate that: (1) The volume of CCR that would be placed during closure would not exceed the volume of soil or borrow material that otherwise would be used to achieve the subgrade elevations necessary to support the final cover system, thus ensuring such CCR use is not a guise for continued operation of the unit; (2) the time needed to complete closure of the unit when using CCR would not exceed the time needed to close the unit with soil or borrow material, thus ensuring that the unit will be closed no slower than if this CCR placement exemption was not available; (3) the placed CCR would only be used in a unit in compliance with the location restriction for unstable areas at § 257.64, thus ensuring any placed CCR will remain in place (*i.e.,* not likely to move, shift, or be released after placement); (4) the placed CCR would be used in a unit that is in compliance with the closure performance standards applicable to units closing with CCR in place, and that would remain in compliance with those standards even after the additional placement of CCR; (5) the placed CCR would be protected by a final cover system designed and constructed to be no more permeable than the CCR placed in the unit as part of closure, thus preventing lateral releases of CCR leachate from the unit during the post-closure care period; and (6) the additional placement of CCR will not adversely affect compliance with the corrective action remedy requirements, thus ensuring the groundwater cleanup goals are not slowed or delayed.

EPA believes there can be benefits associated with closing units under the conditions prescribed in this proposal. For example, a facility could consolidate the CCR from one or more units into a single unit, even though the receiving unit was subject to closure for cause under § 257.101. Consolidating multiple units into a single unit would result in an overall smaller CCR unit footprint. Closing two 10-acre impoundments by removal of CCR and using the removed CCR for the purpose of achieving subgrade elevations necessary to support the closure and final cover system of a third 35-acre CCR unit is an example of consolidation resulting in a smaller CCR disposal footprint. One environmental benefit of this closure scenario would be the elimination of any long-term threat of impact to groundwater and surface water from 20 acres of land (two 10-acre units) as well as concerns about the long-term performance of a final cover system had these units been closed alternatively with CCR in place. In addition, upon closure of the two 10-acre impoundments, a total of 20 acres of land would become available for other uses. Finally, there may be benefits to allowing an owner or operator to focus their long-term monitoring, care and cleanup obligations on a single unit rather than multiple units.

Under this co-proposed Option One, owners and operators of CCR landfills would not be eligible to place CCR in the unit after the waste placement prohibition deadline. Under § 257.101, CCR landfills are subject to closure for cause only in one situation: When the unit is not able to comply with the location criteria for unstable areas under § 257.64(a). Under the unstable area provisions, the owner or operator must demonstrate that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted, or the landfill must close. Given that the owner or operator of the unit is unable to document that the integrity of the structural components (*e.g.,* bottom liners, leachate collection and removal systems, final cover systems) of the unit cannot be ensured due to where it is sited, EPA is proposing that CCR landfills would not be allowed to place additional CCR after the waste placement prohibition date.

a. Contents of the Closure Plan. The Agency is proposing that the owner or operator of the CCR unit would need to submit to the Administrator or Participating State Director a written closure plan for review and approval. The written closure plan would need to demonstrate that the use of CCR during closure (after the waste placement prohibition deadline) would pose no reasonable risk of adverse effects during the closure and post-closure care periods by showing that the placed CCR will remain contained (*i.e.,* isolated) in the unit closed in accordance with the closure performance standards under § 257.102(d) so as to limit contact of the CCR in the unit with water and to prevent releases to the environment, including releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, and catastrophic unit failures. EPA believes that units closed consistent with these proposed requirements, which also include volumetric and temporal limits on CCR placement, under a closure plan approved by the Administrator or Participating State Director would meet the RCRA section 4004(a) protectiveness standard, as explained below.

The Agency has long viewed the placement of liners beneath the waste as a key element in its liquids management strategy.[16] This is because a liner is a barrier technology that prevents or greatly restricts migration of liquids into the ground and groundwater, thereby

[16] For example, under the RCRA subtitle C program for hazardous waste landfills and surface impoundments: 47 FR 32274, 32283 (July 26, 1982).

providing greater assurance of long-term protection during the active life [17] of the unit. After closure of a unit is completed, EPA's stated view is that a properly designed and constructed final cover system becomes the most important feature of the liquids management strategy. This is because the closure requirements require that the final cover system be designed and constructed to provide long-term minimization of the movement of water (*e.g.,* resulting from precipitation) through the final cover system and into the closed unit. The Agency has previously found in the RCRA hazardous waste program for landfills and surface impoundments that where the waste mass lies entirely above the zone of groundwater saturation, a properly designed and maintained final cover system can prevent, for all practical purposes, the entry of water into the closed unit, and thus minimize the formation and migration of leachate from the unit.[18]

In the case of CCR surface impoundments, the Agency recognizes that many of the units that would likely make use of this proposal will be unlined CCR surface impoundments and still in operation, thus raising protectiveness concerns about the continued operation of units not using a barrier technology capable of preventing or greatly restricting the migration of liquids into the ground and groundwater. Some operating unlined CCR surface impoundments may also be in contact with the groundwater table. First, this proposal (discussed in Unit IV.B.1 of the preamble) would not change or impact the current requirement that all unlined CCR surface impoundments initiate closure of the surface impoundment by a date certain.[19] Thus, these unlined CCR surface impoundments are on a set path to initiating closure. Second, this proposal would not prolong or extend the time provided in the CCR regulations to complete closure of the unit (*i.e.,* the amount of time the facility is provided to install the final cover system). This is because the proposal would require the owner or operator of the unit to demonstrate in its written closure plan (submitted to EPA or Participating State Director for approval) that the time needed to complete closure of the unit when using CCR as part of closure would not exceed the time needed to close the unit without the proposed exemption (*e.g.,* if the unit was closed alternatively with borrow material). Finally, CCR used to support closure will serve to achieve the subgrade elevations needed to support the final cover system (while also meeting all prescribed closure performance standards specified in § 257.102(d)) and such CCR will not be managed with water or under a hydraulic head, which can promote rapid leaching of contaminants into the ground and groundwater from an unlined unit.

The CCR regulations currently include protective design requirements for final cover systems and closure performance standards when closing a unit with waste in place. As stated in the 2015 CCR final rule, EPA modeled the closure and post-closure care requirements for CCR unit on current requirements that apply to interim status hazardous waste surface impoundments, which are codified in part 265, and on current regulations that apply to municipal solid waste landfills, which are codified in part 258. See 80 FR 21409 (April 17, 2015). Similar to other RCRA waste program requirements, the CCR regulations currently include detailed technical standards for final cover systems in § 257.102(d)(3) that would apply to units closing under this proposal. In addition, the CCR regulations include several performance standards that are relevant here, including a general performance standard that a facility must meet—*i.e.,* that it has ''controlled, minimized or eliminated, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere; . . .'' § 257.102(d)(1)(i). A CCR surface impoundment that extends into the groundwater table will need to include measures to comply with this and other closure performance standards. How any particular unit or facility will meet the performance standards is a site-specific determination that will depend on a number of factual and engineering considerations, such as the hydrogeology of the site, then engineering of the unit, and the kinds of engineering measures available that could be implemented to achieve the closure performance standards. Given the concerns about unlined CCR surface impoundments that may be currently in contact with the groundwater table, the Agency is specifically proposing to require facilities document in the closure plan how the unit will achieve the closure performance standards specified in § 257.102(d). This is discussed in Unit IV.B.1.a.(3) of this preamble.

At a minimum the submittal would need to include the following additional analyses and documentation in the written closure plan required under § 257.102(b).

(1) *Volumetric and temporal limits on CCR placement.* The Agency is proposing limits on the amount of CCR (as volume) that could be placed in the CCR unit after the waste placement prohibition deadline and a limit on the maximum duration over which this volume of CCR can be placed into the unit. The proposed approach would require the owner or operator first to estimate the amount of soil or borrow material that would be needed to close the unit under the current regulatory provisions (*i.e.,* no exemption from the waste placement prohibition for the use of CCR is available). This volume should represent the minimum volume of soil or borrow material needed to properly achieve the subgrade elevations needed to support the final cover system while also meeting all prescribed performance standards specified in § 257.102. The owner or operator must also document the time required to close the unit with this volume of material. Upon review and approval, the use of CCR after the waste placement prohibition deadline would be limited to these volumetric and temporal amounts. By limiting the volume of CCR that could be placed in the unit and the length of time to place the CCR to amounts that would otherwise be needed to complete closure of the unit, this approach would be consistent with the timely closure of the unit.

Under this approach, the owner or operator would need to include the volumetric and temporal analysis in the written closure plan that is submitted to the Administrator or Participating State Director for review and approval. The analysis would need to document the basis of the volumetric and temporal estimates, including an explanation of all assumptions used in the analysis. The analysis should also be supported by additional technical information, such as maps, drawings, figures, plans, schedules, engineering calculations, or

[17] The ''active life'' (or ''in operation'') of a CCR unit is defined in § 253.53 as the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with § 257.102.

[18] U.S. EPA, ''Technical Guidance Document: Final Covers on Hazardous Waste Landfills and Surface Impoundments'', EPA 530–SW–89–047, July 1989.

[19] In a separate action, EPA is proposing to establish a revised date by which unlined CCR surface impoundments must cease placing CCR and non-CCR wastestreams into the unit and either retrofit or close the unit. This separate proposal was taken following its reconsideration of certain deadlines in the CCR regulations in light of the *USWAG* decision in 2018. See 84 FR 65941 (December 2, 2019).

other visual information. The analysis would need to be sufficiently detailed and presented in a manner that is organized and clearly labeled so that it can be understood by the reviewing authority.

(2) *Unstable areas.* The Agency is proposing that if the closing unit is located in an unstable area, the owner or operator must document in the written closure plan that the unit receiving the CCR is in compliance with the location restriction requirements under § 257.64 for unstable areas. The Agency is proposing this requirement because environmental releases may result from the shifting of additional CCR (*e.g.,* slumping and sliding of CCR if slope stability is not maintained) or potential structural failure of the unit's engineering controls (*e.g.,* bottom liners, final cover systems). Therefore, continued CCR placement in units where the integrity of the structural components of the CCR unit cannot be demonstrated would not be protective of human health and the environment.

The unstable area provision requires the owner or operator to demonstrate that recognized and generally accepted good engineering practices have been incorporated into the design of the CCR unit to ensure that the integrity of the structural components of the CCR unit will not be disrupted. The current CCR regulations define an ''unstable area'' as a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases at the unit. The regulations also provide examples of unstable areas that include poor foundation conditions, areas susceptible to mass movements, and karst terrains. The regulations further provide that CCR units that cannot make the demonstration required by § 257.64(a) must cease further placement of CCR by a specified date; however, these units are allowed to close by leaving CCR in place provided that the requisite performance standards are met (*i.e.,* these units are not required to close by removal of CCR). While the current federal regulations allow a unit in an unstable area to be closed with CCR in place, EPA is proposing that CCR units that cannot make the unstable area demonstration would not be eligible for the proposed exemption to allow the use of CCR during closure. This is because the integrity of the structural components of the unit can be ensured in the future and thus additional CCR placement under this exemption may not be protective of human health and the environment. The Agency specifically solicits comment on whether CCR units in unstable areas should be eligible for this proposed exemption. EPA also requests comment on whether it would be appropriate to consider CCR units located in seismic impact zones and fault areas similarly to unstable areas under this proposed exemption (*i.e.,* units that failed the location restrictions for seismic impact zones or fault areas would not be eligible for the proposed exemption).

The Agency is also proposing that the owner or operator may use the demonstration for unstable areas completed under the requirements of § 257.64 in lieu of conducting the demonstration a second time. EPA believes this is a reasonable approach given that the demonstrations under § 257.64 were conducted recently and therefore represent current conditions of the unit.[20] However, the Agency is proposing that the owner or operator would need to incorporate (or otherwise include) the unstable area demonstration into the closure plan submitted to the approving authority.

The Agency is aware that some owners and operators of existing units did not conduct the unstable areas demonstration under § 257.64 by the deadlines specified in the CCR regulations because closure of the unit had already been initiated. Because the regulatory consequence of not demonstrating compliance with any applicable location restriction requirement, including for unstable areas, is for the owner or operator to close the unit, an action already being taken, these owners and operators reasoned it made no sense to conduct the demonstrations. For purposes of this proposal, an owner or operator who has not prepared the demonstration previously would need to complete the required demonstration and incorporate it into the closure plan in order to be eligible to place CCR after the waste placement prohibition deadline.

(3) *Closure performance standards and requirements.* To ensure that units receiving CCR under this exemption would be in compliance with the closure requirements, EPA is proposing to require owners and operators to document in the closure plan how the unit will achieve the closure performance standards specified in § 257.102(d). Units for which the demonstration cannot be made would not be eligible for the proposed exemption to the waste placement prohibition.

The closure performance standard under § 257.102(d)(1) requires that the CCR unit be closed in a manner that will: (i) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere; (ii) Preclude the probability of future impoundment of water, sediment, or slurry; (iii) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period; (iv) Minimize the need for further maintenance of the CCR unit; and (v) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.

The provisions under § 257.102(d)(2) establish requirements for the drainage and stabilization of CCR surface impoundments. Prior to installing a final cover system, free liquids must be eliminated by removing liquid wastes or solidifying the remaining waste and waste residues and remaining wastes must be stabilized sufficient to support the final cover system.

(4) *Design of the final cover system.* The Agency is proposing that owners and operators of closing units demonstrate in the closure plan that the design and construction of the final cover system will not be more permeable than the CCR placed during closure. This would be an additional final cover system design requirement. Under the current CCR regulations, final cover systems must include an infiltration (or barrier) layer no more permeable than $1x10^{-5}$ cm/sec or no more permeable than the bottom liner, whichever is less (*i.e.,* more impermeable).[21] See § 257.102(d)(3)(i). However, the current regulations impose no requirement that the final cover system be more impermeable than the CCR in the unit. By design, the infiltration layer functions to limit percolation of water (*e.g.,* precipitation) through the final cover system. The rule requirement that the final cover system be more impermeable than the bottom liner (or natural subsoils present) is to prevent the ''bathtub effect'' from

[20] Most existing CCR units were required to complete these demonstrations by October 17, 2018. For eligible inactive CCR surface impoundments, the deadline to prepare these demonstrations is April 16, 2020. For more information on eligible inactive CCR surface impoundments, see the preamble to the direct final rule published on August 5, 2016 (81 FR 51802).

[21] For example, if a CCR unit had a bottom liner system with a hydraulic conductivity of $4x10^{-4}$ cm/s, then it would be acceptable if the final cover system was designed and constructed to be no more permeable than $1x10^{-5}$ cm/s, because $1x10^{-5}$ cm/s is less than $4x10^{-4}$ cm/s.

occurring within the unit, whereby liquids that infiltrate through the overlying final cover system are contained by a less permeable underlying liner system in the unit.[22]

EPA is proposing to require this demonstration to prevent the ''bathtub'' effect from occurring above a compacted CCR layer in the unit. This can occur when the compacted CCR layer is more impermeable than the final cover system because a well-compacted CCR can be more impermeable than $1x10^{-5}$ cm/s (the maximum permeability of a final cover system under § 257.102(d)(3)(i)).[23] Said another way, there is a possibility of a situation where the final cover system is more permeable than a compacted CCR layer within the unit resulting in the potential forr the bathtub effect above the CCR layer. An example situation would be one where the final cover is designed with a permeability of $1x10^{-5}$ cm/s, a compacted CCR layer in the unit at $1x10^{-6}$ cm/s, and the liner at $1x10^{-4}$ cm/s. In this situation, accumulation of leachate on top of a compacted CCR layer could result in the lateral release of leachate from the unit. Under this proposal, the owner or operator would demonstrate that the design and construction of the final cover system will not be more permeable than the CCR placed during closure.

EPA believes this demonstration is needed due to new information learned since the promulgation of the 2015 CCR rule. Information posted to CCR websites by electric utilities with impoundments shows that approximately 70 percent of all surface impoundments are known not to be lined with a composite liner or alternative composite liner (see § 257.70(b) and (c) for a description of these liner types).[24] In addition, over 70 percent of surface impoundments have detected impacts to the groundwater whereby the unit is operating pursuant to the assessment monitoring program requirements and nearly 50 percent of all surface impoundments are now operating under the corrective action program provisions of the CCR regulations. Based on this new information, many surface impoundments appear to have been designed and constructed without an effective bottom liner system. To prevent the potential lateral release of leachate from the unit from occurring, the Agency is proposing that the owner or operator not only demonstrate that the design and construction of the final cover system will not be more permeable than any bottom liner, but also than the placed CCR within the unit. This proposed requirement would be in addition to the current requirements specified in § 257.102(d)(3) for final cover systems and alternative final cover systems.

(5) *Corrective action requirements.* For units that have triggered the corrective action requirements of the CCR regulations, the Agency is proposing that the owner or operator demonstrate in the closure plan that the additional placement of CCR will not adversely affect compliance with the corrective action remedy requirements. For CCR units, the corrective action program is triggered when it is determined that any constituent listed in appendix IV to part 257 has been detected at a statistically significant level exceeding a groundwater protection standard defined under § 257.95(h), Once the exceedance of a groundwater protection standard is determined, the owner or operator must conduct an assessment of corrective measures followed by the selection of a remedy, which is specified in § 257.97(b). One of the requirements of a remedy is that it must ''Control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of constituents in appendix IV to this part into the environment.'' Source control refers to a range of actions (*e.g.,* removal, containment) designed to protect human health and the environment by eliminating or minimizing migration of, or exposure to, significant contamination. To ensure the groundwater cleanup goals are not slowed or delayed, this proposal requires the owner or operator to demonstrate in the closure plan that the additional placement of CCR (*i.e.,* source material) will not adversely affect compliance with the corrective action remedy requirements.

b. Review and approval of closure plan under co-proposed Option One. EPA is proposing that the owner or operator of the unit submit the written closure plan to the Administrator or Participating State Director for review and approval. The written closure plan required by § 257.102(b) would also need to contain the information listed in proposed § 257.102(d)(4) and also discussed above in Unit V.B.1.a of the preamble. The Agency is proposing that the closure plan must be submitted to the Administrator or Participating State Director for review and approval in advance of the anticipated date that the CCR would be needed for closure activities to provide EPA or the Participating State Director adequate time to review and approve the plan.

EPA or the Participating State Director should notify the owner or operator of approval or intent to disapprove the submitted closure plan within 3 months after receipt of the original closure plan, and within 2 months after receipt of any supplemental information submitted. A notice of intent to disapprove the written closure plan will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time the owner or operator will have to submit additional information. If EPA or the Participating State Director has not approved the closure plan by the date CCR would be needed for closure activities, the owner or operator would not be allowed to use CCR to support closure of the unit.

Finally, as discussed in greater detail in the next section, EPA received comments objecting to EPA's interpretation that the prohibition on ''placing CCR'' in any units subject to closure for cause pursuant to § 257.101 prohibited both placement that might be considered beneficial use and placement that might be considered disposal. These commenters criticized the Agency's reading of the word ''placement'' is at odds with RCRA's text and EPA's historical use of that term, as well as the existing provision in § 257.50(g), which provides that the CCR regulations do not apply to practices that meet the definition of a beneficial use of CCR. To avoid any future confusion under this option, EPA requests comment on whether substituting the word ''receipt'' or ''addition'' for the term ''placing'' or ''placement'' would better communicate EPA's intent to prohibit both disposal and beneficial use. EPA also requests comment on whether conforming amendments to § 257.50(g) would also be helpful.

2. Co-Proposed Option Two—Beneficially using CCR during closure of a unit subject to closure for cause.

The CCR regulations include a ''beneficial use of CCR'' definition to distinguish between legitimate beneficial uses of CCR and the disposal of CCR. The beneficial use definition is comprised of four criteria: (1) The CCR must provide a functional benefit; (2) the CCR must substitute for the use of a virgin material, conserving natural

[22] For example, see 57 FR at 28627 (June 26, 1992).

[23] U.S. Department of Transportation, ''Federal Highway Administration Research and Technology: Coordinating, Developing, and Delivering Highway Transportation Innovations.'' Publication Number: FHWA–RD–97–148.

[24] In addition, approximately 20 percent of surface impoundments did not post a liner demonstration to their CCR website indicating the type of liner system used, if any. Thus, how these impoundments are lined is unknown.

resources that would otherwise need to be obtained through practices such as extraction; (3) the use of the CCR must meet relevant product specifications, regulatory standards, or design standards, when available, and where such specifications or standards have not been established, CCR may not be used in excess quantities; and (4) when unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil, and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use. See, § 257.53 and 80 FR 21349–54 (April 15, 2015).

EPA's current regulations at § 257.53 require that to be considered a ''beneficial use,'' when unencapsulated CCR is placed on the land in amounts greater than 12,400 tons, in non-roadway applications, the user must demonstrate that releases to environmental media (*i.e.,* groundwater, surface water, soil, air) are comparable to or lower than those from analogous products made without CCR or that releases to environmental media will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use. The Agency established this environmental criterion to ensure that unencapsulated uses of CCR would be conducted in an environmentally protective manner. This fourth criterion was designed to address both the concern that large-scale fills were effectively operating as landfills and the potential effects associated with the placement of unencapsulated CCR in or near water sources. See, 80 FR 21351–52 (April 15, 2015).

The Agency recently issued a proposed rule in which EPA proposed to revise criterion four of the ''beneficial use of CCR'' definition. In that proposed rule, EPA proposed to eliminate the mass-based numerical threshold of 12,400 tons and replace it with specific location-based criteria, which were largely derived from the current location criteria for CCR units, to trigger an environmental demonstration. See 84 FR 40353 (August 14, 2019). Thus, under the August 2019 proposal, before the placement of any amount of unencapsulated CCR could occur in areas not meeting the location-based criteria, the owner or operator of the unit would need to make an affirmative demonstration that releases to environmental media (*i.e.,* groundwater, surface water, soil, and air) would be comparable to or lower than those from analogous products made without CCR, or releases to environmental media would be at or below relevant regulatory and health-based benchmarks for human health and ecological receptors during use. The Agency also did not propose in the August 2019 action any revisions to criteria one through three of the definition of beneficial use of CCR. When preparing comments on co-proposed Option Two, commenters should take into account the potential revisions to the beneficial use definition's fourth criterion put forth in the August 2019 proposed rule. The Agency is not reopening for comment any aspects of the August 2019 proposal or underlying support documents and will not consider comments pertaining to the proposals included in the August 2019 action.

As discussed earlier in this section, EPA received comments concerning statements made in a 2018 proposal regarding further placement of CCR into a unit triggered into closure. See 83 FR at 11605 (March 15, 2018). As part of that proposal, EPA explained that the current regulation expressly prohibits ''placing CCR'' in any unit subject to closure for cause pursuant to § 257.101. EPA further explained in the proposal that the CCR regulations do not distinguish between placement that might be considered beneficial use and placement that might be considered disposal. All further placement of CCR into the unit is prohibited once the provisions of § 257.101 are triggered. *Id.*

In response to this March 2018 proposal, EPA received comments objecting to this interpretation of the regulations. For example, several commenters state that the Agency's broad reading of the word ''placement'' is at odds with RCRA statutory text and EPA's historical use of that term. These commenters point out that the definition of the RCRA term ''disposal'' encompasses the term ''placing'' meaning that placement is disposal. Put another way, these commenters state while disposal can be (and is) broader than just placement of waste, placement can never be broader than the term disposal. Commenters also state that EPA's interpretation of the CCR regulations is not contrary to the plain language of the regulations. These commenters point to the existing provision in § 257.50(g) which provides that the CCR regulations do not apply to practices that meet the definition of a beneficial use of CCR. Thus, the commenters state the current rule exempts all beneficial uses from all provisions of the CCR rule, irrespective of whether such uses can be viewed as placement. As a result, if the use of CCR meets all applicable conditions in the definition of beneficial use of CCR, the prohibition on further placement under § 257.101 would not apply.

After considering these comments, the Agency is soliciting comment on a second approach to allow the use of CCR in a unit subject to closure for cause under § 257.101. Under co-proposed Option Two, an owner or operator would be allowed to use CCR to support closure of the unit provided such use meets the rule's definition of beneficial use of CCR. A potential example of CCR beneficially used is CCR fill placed beneath the final cover system to achieve the needed subgrade elevations to ensure that precipitation will drain off the closed unit. This option is based on the regulatory reading put forward by commenters that the CCR regulations are clear in that the CCR minimum national criteria do not apply ''to practices that meet the definition of a beneficial use of CCR.'' See § 257.50(g). Under this co-proposed option, CCR used beneficially would not be subject to the waste placement prohibition date provided in § 257.101. However, the prohibition on waste placement would continue to apply to any CCR that does not meet the definition of ''beneficial use of CCR,'' as well as any other non-CCR waste. This is because the definition of ''beneficial use of CCR'' only applies to CCR, and not to other non-CCR wastes.

Under this co-proposed option, the CCR minimum national criteria codified in subpart D of part 257 would not apply to the practice of using CCR to support closure of the CCR unit provided its use meets the conditions prescribed in the definition of a ''beneficial use of CCR.'' However, beneficially using CCR in a unit subject to closure for cause would not change the regulatory status of or the requirements that apply to the CCR unit itself. Thus, a CCR unit in which CCR is used beneficially remains subject to all applicable CCR rule requirements, such as the closure performance standards. For example, the CCR regulations require that a CCR unit must be closed in a manner that will ''preclude the probability of future impoundment of water, sediment, or slurry.'' See § 257.102(d)(1)(ii). While CCR could be beneficially used (provided such use meets the definition of beneficial use of CCR) as subgrade fill beneath the final cover system, such use

would not relieve the owner or operator from designing the final cover system in a manner that would promote positive drainage of precipitation as required by the CCR regulations to preclude such future impoundment.

In addition, owners and operators of the CCR unit would need to revise the written closure plan and document how the CCR would be used to support closure of the unit. The beneficial use of CCR in a unit does not affect the requirement that the owner or operator prepare a written closure plan describing how the closure performance standards and requirements will be achieved. Under the current definition of beneficial use of CCR, owners or operators beneficially using CCR when unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications are required to provide the environmental demonstration to anybody upon request. Given that the CCR unit is a regulated unit, EPA is proposing under this option to add a new provision to § 257.102(b)(1) requiring the owner or operator to document in the written closure plan how the use of CCR in the closing unit achieves the conditions specified in the beneficial use definition. Specifically, the Agency is proposing to add a new paragraph (b)(1)(vii) to § 257.102: ''If CCR is placed for beneficial use in the unit after the applicable waste placement prohibition deadline specified under § 257.101, the owner or operator must document in the written closure plan how the conditions specified in the definition of ''Beneficial use of CCR'' under § 257.53 will be achieved.'' [25] EPA is proposing this requirement to provide appropriate transparency to the closure process.

The Agency also recognizes that the environmental demonstration under the fourth criterion of the definition of ''beneficial use of CCR'' may not be required in all situations, *e.g.,* current regulations only require that the environmental demonstration be done when unencapsulated use of CCR involves placement on the land of 12,400 tons or more in non-roadway applications. EPA solicits comment on whether the rule under Option Two should require the owner or operator to conduct the environmental demonstration in all circumstances (*e.g.,* regardless of the mass of CCR to be used) where CCR is placed in the closing unit after the waste placement prohibition date given that such placement would be occurring in a CCR unit subject to closure for cause (*e.g.,* the unit is unlined and groundwater monitoring may show an exceedance of a groundwater protection standard).

3. Proposed correction to § 257.102(d)(3)(ii) for alternative final cover systems.

EPA is proposing to revise the alternative final cover system requirements under § 257.102(d)(3)(ii) to correct a typographical error. In the introductory text to § 257.102(d)(3)(ii), the regulation currently states that the ''owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in paragraphs (f)(3)(ii)(A) through (D) . . .'' This is an incorrect cross-reference that was recently brought to our attention by a State interested in permit program approval. The correct cross-reference should be to the criteria in paragraphs (d)(3)(ii)(A) through (C) and the Agency is proposing to revise the introductory text in § 257.102(d)(3)(ii) to correct this error.

C. Closure of CCR Units by Removal of CCR

Closure by removal of CCR is one of two options provided in the CCR regulations to close a CCR surface impoundment or landfill.[26] The closure by removal approach consists of two performance standards. First, the owner or operator must remove all CCR from the unit and decontaminate all areas affected by releases from the CCR unit. Second, the regulations specify that closure is complete when all CCR in the unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring demonstrates that there are no exceedances of any groundwater protection standard. See § 257.102(c). Importantly, the second performance standard requires groundwater corrective action of a unit to be completed before the owner or operator can assert that closure of the unit has been completed.

The CCR regulations also establish deadlines to initiate and complete closure activities.[27] For example, the regulations generally require owners and operators of CCR surface impoundments to complete closure activities within five years of commencing closure activities, while closure of CCR landfills must be completed within six months. See § 257.102(f)(1). Notwithstanding these deadlines to complete closure, the CCR regulations also allow for additional time to be obtained provided the owner or operator can make the prescribed demonstrations that are based on site-specific circumstances beyond the facility's control. For CCR surface impoundments, the amount of additional time beyond the five years varies based on the demonstrated need and the surface area acreage of the impoundment. For impoundments 40 acres or smaller, the maximum time extension that can be obtained is two years. For impoundments greater than 40 acres, the maximum time extension is five two-year extensions (for a total extension of ten years). For CCR landfills, the amount of additional time beyond the six months does not vary according to the size of the landfill, rather the maximum time extension is two one-year extensions (for a total extension of two years). To obtain additional time, owners or operators of CCR units must substantiate the factual circumstances demonstrating the need for the extension. See § 257.102(f)(2). In all instances the number of time extensions is capped to a certain number of years.

The CCR regulations also require the owner or operator of the CCR unit to obtain a certification from a qualified professional engineer or approval from the Participating State Director (or EPA where EPA is the permitting authority) verifying that closure has been completed in accordance with the written closure plan and all applicable closure requirements of § 257.102. See § 257.102(f)(3). In addition, the owner or operator must prepare a notification stating that closure of the unit has been completed. This notification must be completed within 30 days of completion of unit closure and must include the certification required by § 257.102(f)(3). See § 257.102(h). As the CCR regulations are currently structured for units closing by removal of CCR, the closure certification and notification cannot be completed until all CCR removal and decontamination activities, including groundwater corrective action,[28] are completed. Finally, owners and

[25] For purposes of limiting potential confusion regarding the proposed regulatory changes to § 257.102 under the two co-proposed options, the Agency is presenting the proposed regulatory language supporting co-proposed Option Two only in the preamble to this action, Therefore, the reader will not find the proposed language in the ''regulatory text'' portion of this action.

[26] The other alternative provided to close a CCR unit is to leave CCR in place. For a discussion of both closure alternatives, see 80 FR 21411–14 (April 17, 2015) and § 257.102(c) and (d).

[27] The closure deadlines are the same whether closing by removal of CCR or by closing by leaving CCR in place.

[28] For purposes of this preamble discussion, the term ''groundwater corrective action'' includes those actions taken to implement the selected remedy specified in § 257.98(c) to attain the groundwater protection standards in § 257.95(h).

operators that complete closure of a unit by removal of CCR are exempt from any other post-closure care requirements for the unit (see § 257.104(a)(2)) and are also exempt from the deed notation requirements upon certification that closure by removal of CCR has been completed (see § 257.102(i)(4)).

Through EPA's recent work with States on permit programs,[29] State representatives expressed concern that the requirement to complete groundwater corrective action of a CCR unit may not be feasible in the timeframes provided by the CCR regulations. These State representatives conveyed that groundwater corrective action can take years or decades to complete and that the actual cleanup time will depend on several factors, which would vary from site to site.

After evaluating this issue and recognizing that groundwater corrective action can take longer to complete than the closure timeframes provided in the CCR regulations, EPA is proposing an additional closure option for CCR units being closed by removal of CCR. Under this new closure option, an owner or operator that cannot complete groundwater corrective action by the time all other closure by removal activities have been completed (*i.e.,* during the active life [30] of the CCR unit) may complete groundwater corrective action during a post-closure care period. Under this option, the owner or operator must first complete all other removal and decontamination activities within the timeframes provided for completing closure. In addition, the owner or operator must have implemented the remedy selected under § 257.97 such that all components of the remedy are in place and operating as intended. Upon completion of all removal and decontamination activities (except for completion of groundwater corrective action) and implementation of the selected remedy, the owner or operator would be allowed to certify that the CCR unit has been closed. Thereafter, the CCR unit would be subject to the existing post-closure care requirements in § 257.104 until completion of groundwater corrective action. EPA is not proposing any substantive revisions to the current closure standard when closing by removal of CCR under § 257.102(c) and is not reopening those requirements to comment in this action. EPA is, however, proposing to present the current closure standard in a slightly revised format to accommodate the proposed action. See proposed § 257.102(c)(1).

EPA is proposing this additional option of closing by removal of CCR because the Agency has new information indicating that the closure of CCR units will likely be more complex than EPA envisioned at the time the 2015 CCR rule was published. The Agency generally believed that most CCR units would be closed with CCR in place, not by removal of CCR due to the ''expense and difficulty of such an operation.'' 80 FR at 21412 (April 17, 2015). However, information reported on publicly accessible CCR Rule Compliance Data and Information websites (CCR websites) by facilities with CCR units since the 2015 CCR rule was published indicates that greater than 40 percent of existing CCR surface impoundments subject to the CCR regulations are planned to be closed by removal of CCR. In addition, EPA has new information on how existing CCR surface impoundments are lined. Information posted to CCR websites by facilities shows that the majority of surface impoundments are not lined with a composite liner or alternative composite liner (as defined in § 257.70(b) and (c)). Available information indicates that more than 70 percent of all CCR surface impoundments subject to the CCR regulations currently have neither type of composite liner system. Given the number of unlined CCR units, many of which have already reported exceedances of groundwater protection standards, it is now evident that many CCR units have released CCR constituents into the surrounding soils and groundwater. This means that the closure activity is simply not a matter of removing CCR from the unit, but instead will likely require a significant undertaking to remediate impacted soil and groundwater in order to achieve the current CCR removal and decontamination standards. With this new information, the Agency believes that the existing timelines to complete closure by removal of CCR were not designed to also provide sufficient time to complete groundwater corrective action. Furthermore, the Agency is concerned that the current CCR regulations may create a disincentive to close a unit by removal of CCR and as discussed in Unit IV.B.1 of this preamble, there can be environmental benefits to closing a unit by CCR removal.

As discussed, this proposal would establish a second alternative when closing a CCR unit by removal of CCR. Under this new option, the owner or operator would be able to able to close the CCR unit by completing all removal and decontamination activities, except for groundwater corrective action, during the active life of the CCR unit and completing groundwater corrective action during post-closure care. Thus, groundwater corrective action would begin during the active life of the CCR unit and finish during the post-closure care period. The owner or operator would need to meet the following requirements when closing a CCR unit under this option. First, the owner or operator must complete all removal and decontamination activities, except groundwater corrective action, within the current timeframes for closure. Second, the owner or operator must have begun implementation of the selected remedy to achieve compliance with the groundwater protection standards. Third, groundwater corrective action must be completed as a post-closure care requirement. Fourth, the owner or operator must amend the written closure and post-closure plans to reflect this approach to close the unit. Fifth, the owner or operator must obtain the certification or approval of closure completion within the current timeframes for closure. Finally, the owner or operator must record the notation on the deed to the property that the land has been used as a CCR unit prior to the start of the post-closure care period. Each of these proposed requirements is discussed further below and the proposed regulatory text is presented in § 257.102(c)(2).

Removal and decontamination activities. These activities include removing or decontaminating all CCR and CCR residues, containment system components, contaminated subsoils, contaminated groundwater, and CCR unit structures and ancillary equipment. To qualify for the new closure by CCR removal option, EPA is proposing that owners and operators would need to complete all removal and decontamination activities, except for groundwater corrective action, which would be completed under the post-closure care provisions at § 257.104. To demonstrate that all CCR has been removed from the unit, the owner or operator would need to remove the entire contents of the CCR unit, including all CCR and any CCR residues. This would include, for example, the removal of any fugitive dust (CCR) discovered outside the waste

[29] In December 2016, Congress amended RCRA to establish a federal permitting program similar to other environmental statutes. Under these new provisions, States may now apply to EPA for approval to operate a permit program to implement the CCR regulations codified under part 257, subpart D.

[30] The ''active life'' of a CCR unit is defined in § 253.53 as the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with § 257.102.

unit boundary. In addition, any containment system components such as a bottom liner, contaminated subsoils, and unit structures and equipment (*e.g.,* concrete outlet structures and ancillary piping) would have to be removed prior to closure of the unit. Finally, any areas affected by releases from the CCR unit must have been removed (*e.g.,* impacted soils beneath the bottom liner system). The intent of this requirement is for the owner or operator to complete all CCR removal activities during closure prior to transitioning to the post-closure care period which will largely be a groundwater cleanup activity.

Implementation of selected remedy. Under the current regulations, if one or more constituents in appendix IV to part 257 are detected at statistically significant levels above the groundwater protection standard in any sampling event, the owner or operator must, among other requirements, initiate a corrective action program. See § 257.95(g). The corrective action program includes initiating an assessment of corrective measures to prevent further releases, to remediate any releases, and to restore affected areas to original conditions, as specified in § 257.96(a). After the assessment of corrective measures has been completed, the owner or operator must select a remedy that meets prescribed standards, including a requirement that the remedy attain the groundwater protection standards. See § 257.97(a) and (b). Finally, the corrective action program requires the owner or operator of the CCR unit to initiate remedial activities within 90 days of selecting a remedy. See § 257.98(a). The Agency is proposing that the owner or operator must have begun implementation of the selected remedy as required by § 257.98(a) in order to be eligible for this proposed closure alternative. This requirement would help ensure that impacted groundwater is returned to original conditions as soon as is practicable.

Groundwater corrective action. For owners and operators that close a unit under this new alternative, EPA is proposing that the CCR unit would remain subject to the post-closure care requirements under § 257.104 until groundwater corrective action has been completed. Specifically, EPA is proposing that these units would not be subject to the requirement to conduct post-closure care for 30 years; rather, these units would remain in post-closure care until all groundwater monitoring and corrective action requirements are achieved. See proposed revisions to § 257.104(c). Groundwater corrective action is complete when the groundwater monitoring concentrations do not exceed the groundwater protection standards for constituents listed in Appendix IV to part 257. This corrective action requirement is the same standard as currently specified in the closure by CCR removal provisions under § 257.102(c). This proposal does not change any requirements of the groundwater monitoring and corrective action program. Under this proposal, the owner or operator would need to conduct groundwater monitoring and corrective action in accordance with the requirements of §§ 257.90 through 257.98.

Closure and post-closure care plans. EPA is proposing that owners and operators closing a CCR unit under this new closure alternative would need to revise their written closure plan. The closure plan describes the closure of the unit and provides a schedule for implementation of the plan. Under this proposal, the owner or operator would need to revise the current plan and describe how the CCR unit would be closed in accordance with the proposed requirements. The current CCR regulations already include procedures to amend written plans under certain circumstances, including when there is a change in the operation of a CCR unit that would substantially affect the current written plan or when unanticipated events necessitate a revision of the plan. See §§ 257.102(b)(3)(ii). EPA expects that owners and operators would revise the current closure plan according to these existing procedures.

The Agency is also proposing that owners or operators would need to prepare an initial post-closure care plan within 6 months of the effective date of this provision. The post-closure care plan describes how the CCR unit would be maintained after closure of the unit is completed. Currently, CCR units closed by removal of CCR are exempt from any post-closure care requirements (see § 257.104(a)(2)), so the preparation of a post-closure care plan would be a new requirement for owners and operators. EPA believes that 6 months from the effective date of the provision, or one year from publication of a final action, would be a reasonable amount of time to prepare the post-closure care plan because the owner or operator has already prepared the closure plan for the unit and begun implementation of the corrective measures remedy. EPA is aware that some facilities that planned to close a unit by removal of CCR nonetheless completed a post-closure care plan. In this situation, the current CCR regulations already include requirements to amend written plans under certain circumstances, including when there is a change in the operation of a CCR unit that would substantially affect the current written plan or when unanticipated events necessitate a revision of the plan. See §§ 257.104(d)(3). EPA expects that these owners or operators would revise the existing post-closure care plan according to these existing procedures.

Notation on the deed to the property. Under the current regulations, following the closure of a CCR unit that will be subject to post-closure care, the owner or operator must record a notation on the deed to the property, or some other instrument that is normally examined during title search, notifying any potential purchaser of the property in perpetuity that the land has been used as a CCR unit, and its use is restricted under the post-closure care requirements. See § 257.102(i). The rationale for this requirement is to ensure that prospective and subsequent owners are aware of the presence of a closed unit on the property and of the need for continued maintenance of the cover or of any on-going corrective actions. Following that same logic, units that have closed by removal in accordance with § 257.102(c) are exempt from the deed notation requirement, both because all waste and associated contamination have been removed, and because there is no continuing post closure care that needs to be maintained. See § 257.102(i)(4).

Under these existing regulations, units that fall within the current proposal would be required to record a deed notation because they would not have closed by removal in accordance with § 257.102(c) (as corrective action would not have been completed) and because post-closure care would be required. See § 257.102(i)(4). But these units are not wholly analogous to the other units subject to a deed notation—*i.e.,* those closing with waste in place. Units falling within the current proposal will have already had all waste removed in its entirety and so would require no continued maintenance. However, groundwater remediation actions would be continuing, raising concern about potential exposures.

EPA is therefore proposing to retain a modified requirement that the owner or operator record a notation on the deed to the property (or some other instrument normally examined during a title search) until all groundwater corrective action has been completed—*i.e.,* when groundwater monitoring concentrations do not exceed the groundwater protection standard

established pursuant to § 257.95(h) for constituents listed in appendix IV to part 257. EPA is proposing to retain a deed notation because all removal and decontamination actions have not been completed. Given that groundwater corrective action will be ongoing and may continue for years or decades, the deed restrictions are a practical way of limiting human exposure during a period when contamination is still present, and thereby ensuring that the statutory standard under § 4004(a) of RCRA continues to be met.

But because no waste will remain in place, the Agency is also proposing as part of the post-closure care provisions under § 257.104 to allow removal of the deed notation, or the addition of a second notation reflecting the inapplicability of the first notation, as may be applicable under existing state or local law, when groundwater corrective action is completed for the CCR unit. Here, completion of groundwater corrective action would indicate that all removal and decontamination actions have been completed. To remove the deed notation (or add a second notation), the owner or operator would need to complete two actions. First, the owner or operator would need to demonstrate that groundwater monitoring concentrations no longer exceed any groundwater protection standard established pursuant to § 257.95(h) for constituents listed in Appendix IV to part 257. Second, the owner or operator would need to complete the notification stating the post-closure care requirements have been met as required in § 257.104(e). Removing the deed notation upon completion of all removal and decontamination activities would be consistent with the current procedures for CCR units that close by removing CCR under § 257.102(i)(4). See proposed § 257.104(h).

The use of deed restrictions is one type of institutional control that can be used when CCR is left onsite. Institutional controls are non-engineered instruments such as administrative and legal controls that help minimize the potential for human exposure to contamination and/or protect the integrity of the closed unit (*e.g.,* prevent disturbance of the final cover system). Another example of an institutional control that could be used is property use restrictions based on private property law, such as environmental (or restrictive) covenants. Currently, the CCR regulations require a specific type of control (*i.e.,* deed notices) to communicate use limitations to present and future users of the land with the closed CCR unit. The Agency solicits comments on whether the use of deed restriction controls is too narrow and whether the CCR regulations should allow for the use of different legal mechanisms and controls to communicate limits to the activities that can safely take place at the site.

Closure certification or approval. EPA is proposing that the owner or operator be subject to the same certification or approval requirement that is currently applicable to all CCR units as specified in § 257.102(f)(3). Under this requirement, the owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director (or EPA where EPA is the permitting authority) verifying that closure has been completed in accordance with the written closure plan and all applicable closure requirements of § 257.102. Under this proposal, the certification or approval would reflect that all removal and decontamination activities, except for groundwater corrective action, have been completed. The certification or approval would not address the remediation of the impacted groundwater because groundwater corrective action will be completed during the post-closure care period, including applicable post-closure care certification and approval requirements.

D. Annual Closure Progress Reports and Notice of Intent To Close

EPA reviewed the data posted on the facilities' CCR websites to gain a better understanding of the current operating and compliance status of each unit covered by the CCR rule. During this review the Agency identified the potential for a significant time gap in reported information between when the facilities post the notice of intent to close a unit (§ 257.102(g)) and the notification certifying that closure of the unit has been completed (§ 257.102(h)). Therefore, EPA is proposing to amend the notification of intent to close requirements and proposing to require annual closure progress reports. The proposed notification revisions and progress report requirements would provide necessary information to the public, states and EPA and increase transparency of the CCR unit closure process.

Notification of intent to close a CCR unit. EPA is proposing to require owners and operators to include the actual date the facility commenced closure of the unit in the notification of intent to close required under § 257.102(g). This notification's purpose is to inform EPA, participating states, and the public that the facility will begin or has started the closure process. Under the current CCR regulations, owners and operators are required to prepare this notification ''no later than the date the owner or operator initiates closure'' of the unit and are not explicitly required to document when unit closure was or will be initiated. In addition, the CCR regulations do not limit how far in advance of closure commencement this notification can be prepared, thus injecting further uncertainty into determining whether closure has initiated. EPA's review of CCR websites confirms that facilities often post a notice of intent to close a CCR unit, as required by § 257.102(g), but provide no indication of when the unit will actually begin closure activities. This was found to be particularly common with respect for posted notifications for inactive surface impoundments. Therefore, EPA is proposing to require that the notification of intent to close include the actual date on which the facility commenced closure activities. This date is important to know so the public can determine when CCR units must complete closure of the unit.

The Agency is proposing tailored requirements based on whether a notification of intent to close was previously completed for the CCR unit. EPA is proposing that if an owner or operator has prepared a notification of intent to close in accordance with § 257.102(g) prior to the effective date of a rule finalizing this proposal that does not contain the date on which the owner or operator commenced closure, then no later than two months following the effective date of a rule finalizing this proposal, the owner or operator would need to prepare and place in the facility's operating record an updated notification of intent to close that includes the of date on which the owner or operator commenced closure of the unit. However, notifications of intent to close posted to a CCR website prior to the effective date of a rule finalizing this proposal, that meet the proposed requirements (*e.g.,* the notification includes the date of closure initiation) would not be required to be updated. Nor would notifications for CCR units that have completed closure, provided the owner or operator prepared the completion of closure notification in accordance with § 257.102(h).

For owners and operators that have not previously prepared a notification of intent to close prior to the effective date of a rule finalizing this proposal, the Agency is proposing to require an owner or operator to complete the notification of intent to close a unit no later than two weeks after the date closure of the CCR unit has been initiated. In addition

to the current requirements codified under § 257.102(g), the notification would need to include the date that closure of the CCR unit was initiated. To ensure that these notifications document the actual date that closure was initiated, the Agency is proposing to revise the regulatory language in § 257.102(g) to allow owners and operators to complete the notification soon after closure is initiated (*i.e.,* within two weeks) instead of prior to the initiation of closure. See proposed regulatory language in § 257.102(g).

Annual closure progress reports. EPA is proposing new requirements for annual closure progress reports, which would be codified in § 257.102(l). In this report, the owner or operator would be required to provide an update on the progress the facility has made in closing the CCR unit. Under this proposal, the annual closure progress report would be required to contain: (1) Discussion on which stage of closure the unit is currently undergoing, (2) Discussion of the closure schedule, and (3) Discussion of any problems that were experienced. See example closure progress reports in the docket.

The first section of the closure progress report would discuss the current stage of closure the CCR unit is undergoing. For example, if the unit is a CCR surface impoundment and is closing by removal of CCR, the various stages of closure could include: Dewatering of the unit, CCR removal, testing soil and sediments for complete removal of the CCR, groundwater monitoring and clean up, filling the excavated surface impoundment, etc. This section of the report would also discuss the major milestones achieved in the past year since the previous report. If it is the first report, then it would include the major milestones achieved since the initiation of closure.

The second section of the closure progress report would discuss the closure schedule. In this section of the report the owner or operator would discuss the overall schedule for closing the CCR unit. This discussion would include dates for any major milestones expected for the next year. Some major milestones may include: Date on which dewatering was complete, date on which CCR removal is complete, etc. This section of the report should also discuss any changes to the closure schedule and describe the basis for the change and impact to the overall schedule. If the facility anticipates requesting an extension to the closure deadline, that should be discussed in this section.

The last section of the closure progress report discusses any problems that occurred in the past year that affected the closure of the CCR unit and the actions taken to resolve the problems. This section could potentially tie in to the previous discussion of whether closure is progressing on schedule. Problems that arose and caused a delay in schedule should be discussed in this section. Such problems could be a delay of equipment, severe weather, delay of a permit, etc. There should be a discussion of what caused the problem, the effects of the problem, and the plan to resolve the problem.

EPA is proposing owners and operators prepare the annual progress report by placing it into the facility's operating record no later than January 31 of each year. The first annual progress report would be due the first January 31 following the effective date of a rule finalizing this proposal or the first January 31 following the year that closure activities for the unit were commenced, whichever date is later. EPA selected January 31 as the deadline to prepare the annual progress report because a winter deadline allows all closure-related activities during a construction season to be captured into a single annual report. The progress reports are required to be completed annually no later than January 31 until closure is completed, as required by § 257.102(f) and (h). See proposed § 257.102(l)(1) and (2).

As a result of the new annual progress report requirements, EPA is also proposing to update the respective recordkeeping requirements, notification requirements, and publicly accessible internet site requirements under §§ 257.105–257.107, respectively. Upon evaluating where to place the proposed requirements in these sections, EPA discovered certain recordkeeping requirements under § 257.105(i) were not updated in 2016 with the direct final rule that extended certain compliance deadlines for eligible inactive CCR surface impoundments.[31] Therefore, EPA is proposing to update those requirements as well to properly reflect current requirements in the CCR rule. Prior to the 2016 direct final rule, the 2015 CCR rule required annual closure progress reports and a notification for inactive units and those requirements were codified under § 257.105(i)(2) and (3). Since those requirements no longer exist for inactive CCR surface impoundments, EPA is proposing to remove and reserve those paragraphs. The Agency is proposing to place the new proposed annual closure progress report requirements in §§ 257.105(i)(14), 257.106(i)(14), and 257.107(i)(14). Finally, EPA is proposing to revise the citation in § 257.105(i)(1) to reference § 257.100(e)(1)(i) rather than the vacated § 257.100(c)(1).

V. The Projected Economic Impacts of This Action

A. Introduction

The EPA estimated the costs and benefits of this action in a Regulatory Impact Analysis (RIA) which is available in the docket for this action. The RIA estimates that the net annualized impact of this proposed regulatory action over a 100-year period of analysis will be annual cost savings of between $41 million and $138 million when discounting at 7%. This action is considered an economically significant action under Executive Order 12866.

B. Affected Universe

The proposed rule potentially affects coal fired electric utility plants (assigned to the utility sector North American Industry Classification System (NAICS) code 221112) that dispose of their waste onsite in surface impoundments or landfills. The universe consists of approximately 768 units at 300 facilities.

C. Baseline Costs

The RIA estimates the incremental costs and costs savings attributable to the provisions of this rule against the baseline costs and practices in place as a result of the 2015 CCR final rule (80 FR 21302 (April 17, 2015)) and the 2018 CCR Phase 1, Part One final rule (83 FR 36435 (July 30, 2018)). Baseline costs against which the effects of the proposed rule can be compared are available for Provisions One, Three, and Four in the RIA. Robust baseline costs are not available for key elements of Provision Two, therefor incremental costs and cost savings are estimated instead. For a comprehensive discussion of the baseline for this proposed rulemaking action see Chapter 2, Section 3 of the RIA. In a supplemental analysis the RIA also estimates the incremental costs and costs savings of this rule assuming the provisions of the companion Part A proposed rule[32] are in place.

[31] For more information on eligible inactive CCR surface impoundments, see the preamble to the direct final rule published on August 5, 2016 (81 FR 51802).

[32] ''Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure''; 84 FR 65941 (December 2, 2019).

D. Costs and Benefits of the Proposed Rule

The RIA estimates costs and cost savings of the proposed provisions in this action. The RIA discusses the incremental effects on benefits as well. The remainder of this section will briefly summarize the first four provisions of the rule and describe their effect on the regulated universe. A comprehensive discussion of the cost or cost savings impact of each provision, and of the rule overall, can be found in the RIA which is available in the docket for this action.

The Alternative Liner Demonstration, called Provision One in the RIA, results in paperwork costs associated with submitting an application for demonstration and, if approved, the required demonstration. Provision One also results in cost savings associated with delays in closure of units (*i.e.,* time value of money savings). Overall the RIA estimates that the time value of money cost savings will be greater than the paperwork costs, making this a net cost savings provision of approximately $4 million to $9 million per year when annualizing at 7%.

The Use of CCR in Closure provision, called Provision Two in the RIA, consists of two co-proposed options. Option One requires paperwork which result in costs; but it also results in cost savings from avoided disposal costs of CCRs that are used as fill and subsequently do not need to be disposed of elsewhere; and from the avoided cost of fill materials (*e.g.,* soil) that have been replaced with CCRs. Option Two consists of broadly similar components. Paperwork, which results in costs, and the avoided costs of disposal of CCR and the avoided costs of virgin fill material, which cause cost savings. Overall both Provision Two, Option One and Provision Two, Option Two result in net cost savings of approximately $41 million to $65 million per year for Option One and $85 million to $140 million per year for Option Two when annualizing at 7%.

The Closure of CCR units by Removal of CCR provision, called Provision Three in the RIA consists of paperwork costs associated with amending closure and post-closure plans; and avoided paperwork costs that result from units closing earlier and therefor avoiding certain documentations under this provision. Overall this provision results in net costs of approximately $0.2 million per year when annualizing at 7%.

The Annual Closure Progress Reports and Novice of Intent to Close provision, called Provision Four in the RIA causes paperwork costs associated with new documentation of approximately $0.1 million per year when annualizing at 7%.

The RIA also qualitatively describes the potential effects of the proposed rule's provisions on two categories of benefits from the 2015 CCR final rule. Benefits from the beneficial use of CCRs may be impacted by the diversion of eligible CCRs from higher valued beneficial use, such as in concrete, to lower valued use as fill under Provision Two, Option 2 of the proposed rule. Provision One and Provision Two of the proposed rule may impact human health and environmental benefits from the 2015 CCR final rule. Under Provision One, facilities that successfully apply for an alternative liner demonstration, but whose demonstrations are ultimately rejected by EPA will be able to continue operating their impoundments for the duration of the demonstration process. This period is expected to be brief, and the resulting impacts expected to be minimal.

In the case of Provision Two, under both options, existing units may be closed with greater volumes of CCR than they would have been otherwise. However these additional volumes of CCR are expected to come from the consolidation of multiple units into a single unit at a facility, which may provide benefits by decreasing the footprint of the remaining CCR disposal units. Additionally, CCRs will be added during the closure of the receiving unit and after the unit has been dewatered and thus will more closely resemble dry placement in a landfill than a surface impoundment still containing water.

Units closing under Co-Proposed Option 1 of Provision Two must demonstrate in a closure plan submitted to EPA (or a Participating State Director) that the unit will be closed in accordance with the closure performance standards under § 257.102(d) and must limit CCR in the unit coming into contact with water and prevent releases to the environment, including releases through surface transport by precipitation runoff, releases to soil and groundwater, and wind-blown dust.

Units closing under Co-Proposed Option 2 of Provision Two would also need to be closed in accordance with the closure performance standards and consistent with the conditions specified in the definition of ''beneficial use of CCR.'' The fourth criterion of this definition requires that at the volumes of CCR anticipated to be used in closure, users must demonstrate that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR.

A comprehensive discussion of the qualitative impacts to benefits is available in Chapter 4 of the RIA, which is available in the docket for this rulemaking.

The net effect of these four provisions is an annualized cost savings of between $41 million and $138 million when discounting at 7%.

Finally, EPA requests comment on the assumptions, methodology, data used, and estimates presented in the RIA.

VI. Statutory and Executive Order (E.O.) Reviews

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

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis: Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure'', is available in the docket and is summarized in Section V of this preamble.

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

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2609.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information collection includes mandatory reporting by facilities with respect to the closure of their units. It also includes documentation that must be submitted to EPA to take advantage of the alternate liner demonstration

provision and the use of CCR in closure provision.

Respondents/affected entities: Coal-fired electric utility plants that will be affected by the rule.

Respondent's obligation to respond: The recordkeeping, notification, and posting are mandatory as part of the minimum national criteria being promulgated under Sections 1008, 4004, and 4005(a) of RCRA.

Estimated number of respondents: 300.

Frequency of response: The frequency of response varies.

Total estimated burden: 17,301 hours (per year with Co-Proposed Option 1 of Provision Two) and 20,170 hours (per year with Co-Proposed Option 2 of Provision Two). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $5.06 million (per year with Co-Proposed Option 1 of Provision Two), includes $4.01 million annualized operation & maintenance costs. $5.86 million (per year with Co-Proposed Option 2 of Provision Two), includes annualized 4.64 million operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than April 2, 2020. The EPA will respond to any ICR-related comments in the final rule.

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. In making this determination, the impact of concern is any significant adverse economic impact 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 action is expected impact 6 affected small entities' annual revenue by more than 1%; and just 1 entity by more than 3%. This results in a total of 7 of 81 (8.64%) of affected small entities to be significantly affected. We have determined that 8.4% of affected small entities is not a substantial number small entities, and have therefore concluded that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any 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. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. The costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of ''federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program.

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 has tribal implications because it would impose requirements on facilities located in Indian country. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA will engage with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes concurrent with the public comment process for this regulation to permit them to have meaningful and timely input into its development.

EPA has identified that three of the 414 coal-fired electric utility plants (in operation as of 2012) are located on tribal lands. The three facilities are: (1) The Navajo Generating Station in Coconino County, Arizona, which is operated by the Arizona Salt River Project and owned by the Navajo Nation; (2) the Bonanza Power Plant in Uintah County, Utah, which is operated by the Deseret Generation and Transmission Cooperative and owned by the Ute Indian Tribe; and (3) the Four Corners Power Plant in San Juan County, New Mexico, which is operated by the Arizona Public Service Company and owned by the Navajo Nation. The Navajo Generating Station and the Four Corners Power Plant are on tribal trust lands belonging to the Navajo Nation, while the Bonanza Power Plant is located on tribal trust lands within the Uintah and Ouray Reservation of the Ute Indian Tribe. Because CCR units are land-based units, the fact that these CCR facilities are located on tribal trust land means that the facility owners within the meaning of the CCR Rule are the tribal trust beneficial landowner tribes. The Agency continues to believe that the facility operators will bear all direct compliance costs associated with the above-mentioned rules and proposed rules. However, to the extent that an operator fails to comply with a federal CCR requirement, CCR facility owners may also be held liable.

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

This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the document titled ''Human and Ecological Risk Assessment of Coal Combustion Residuals'' which is available in the docket for the final rule as docket item EPA–HQ–RCRA–2009–0640–11993.

As ordered by E.O. 13045 Section 1–101(a), for the ''Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' published on April 17, 2015 (80 FR 21302), EPA identified and assessed environmental health risks and safety risks that may disproportionately affect children in the revised risk assessment. The results of the screening assessment found that risks fell below the criteria when wetting and run-on/runoff controls required by the rule are considered. Under the full probabilistic analysis, composite liners required by the rule for new waste management units showed the ability to reduce the 90th percentile child cancer and non-cancer risks for the groundwater to drinking water pathway to well below EPA's criteria. Additionally, the groundwater monitoring and corrective action required by the rule reduced risks from current waste management units.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. For the 2015 CCR rule, EPA analyzed the potential impact on electricity prices relative to the ''in excess of one percent'' threshold. Using the Integrated Planning Model (IPM), EPA concluded that the 2015 CCR Rule may increase the weighted average nationwide wholesale price of electricity between 0.18 percent and 0.19 percent in the years 2020 and 2030, respectively. As the final rule represents a cost savings rule relative to the 2015 CCR rule, this analysis concludes that any potential impact on wholesale electricity prices will be lower than the potential impact estimated of the 2015 CCR rule; therefore, this final rule is not expected to meet the criteria of a ''significant adverse effect'' on the electricity markets as defined by Executive Order 13211.

J. National Technology Transfer and 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).

The documentation for this decision is contained in EPA's Regulatory Impact Analysis (RIA) for the CCR rule which is available in the docket for the 2015 CCR rule as docket item EPA–HQ–RCRA–2009–0640–12034.

EPA's risk assessment did not separately evaluate either minority or low-income populations. However, to evaluate the demographic characteristics of communities that may be affected by the CCR rule, the RIA compares the demographic characteristics of populations surrounding coal-fired electric utility plants with broader population data for two geographic areas: (1) One-mile radius from CCR management units (*i.e.,* landfills and impoundments) likely to be affected by groundwater releases from both landfills and impoundments; and (2) watershed catchment areas downstream of surface impoundments that receive surface water run-off and releases from CCR impoundments and are at risk of being contaminated from CCR impoundment discharges (*e.g.,* unintentional overflows, structural failures, and intentional periodic discharges).

For the population as a whole 24.8 percent belong to a minority group and 11.3 percent falls below the Federal Poverty Level. For the population living within one mile of plants with surface impoundments 16.1 percent belong to a minority group and 13.2 percent live below the Federal Poverty Level. These minority and low-income populations are not disproportionately high compared to the general population. However, the percentage of minority residents of the entire population living within the catchment areas downstream of surface impoundments is disproportionately high relative to the general population, *i.e.,* 28.7 percent, versus 24.8 percent for the national population. Also, the percentage of the population within the catchment areas of surface impoundments that is below the Federal Poverty Level is disproportionately high compared with the general population, *i.e.,* 18.6 percent versus 11.3 percent nationally.

Comparing the population percentages of minority and low income residents within one mile of landfills to those percentages in the general population, EPA found that minority and low-income residents make up a smaller percentage of the populations near landfills than they do in the general population, *i.e.,* minorities comprised 16.6 percent of the population near landfills versus 24.8 percent nationwide and low-income residents comprised 8.6 percent of the population near landfills versus 11.3 percent nationwide. In summary, although populations within the catchment areas of plants with surface impoundments appear to have disproportionately high percentages of minority and low-income residents relative to the nationwide average, populations surrounding plants with landfills do not. Because landfills are less likely than impoundments to experience surface water run-off and releases, catchment areas were not considered for landfills.

The CCR rule is risk-reducing with reductions in risk occurring largely within the surface water catchment zones around, and groundwater beneath, coal-fired electric utility plants. Since the CCR rule is risk-reducing and this action does not add to risks, this action will not result in new disproportionate risks to minority or low-income populations.

List of Subjects in 40 CFR Part 257

Environmental protection, Beneficial use, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Dated: February 19, 2020.

Andrew R. Wheeler,

Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 257 as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), 6945(d); 33 U.S.C. 1345(d) and (e).

■ 2. Amend § 257.53 by adding the definition of ''Borrow material'' to read as follows:

§ 257.53 Definitions.

* * * * *

Borrow material means materials that are dug from a pit or area for use as fill and include such materials as soil, sand, silt, clay, and gravel.

* * * * *

■ 3. Amend § 257.71 by adding paragraph (d) to read as follows:

§ 257.71 Liner design criteria for existing CCR surface impoundments.

* * * * *

(d) *Alternate Liner Demonstration.* An owner or operator of a CCR surface impoundment constructed without a composite liner or alternate composite liner as defined in § 257.70(b) or (c), may submit an Alternate Liner Demonstration to the Administrator or the Participating State Director to demonstrate that the design of the current liner system or the naturally occurring media present performs equivalent to a composite liner as defined in § 257.70(b). To be granted, the owner or operator must demonstrate, with a reasonable degree of certainty, that based on the construction of the unit and surrounding site conditions, operation of the surface impoundment will not result in groundwater concentrations above the relevant groundwater protection standard at the unit boundary. Prior to the submission of the alternate liner demonstration, the facility must submit an alternate liner demonstration application documenting

the unit's eligibility to submit a demonstration. The application and demonstration must be submitted to the Administrator or the Participating State Director no later than the relevant deadline in paragraph (d)(2) of this section. The Administrator or the Participating State Director will act on the submissions in accordance with the procedures in paragraph (d)(2) of this section.

(1) To obtain approval under this paragraph, the owner or operator of the CCR surface impoundment must submit the following:

(i) *Application.* The owner or operator of the CCR surface impoundment must submit a letter to the Administrator or the Participating State Director, announcing their intention to submit a demonstration under this paragraph. The application must include the location of the facility and identify the specific CCR surface impoundment for which the demonstration will be made. The written demonstration must include information proving all of the following:

(A) The unit is in full compliance with this subpart except for § 257.71 (a)(1)(ii) and (iii),

(B) That the existing network of monitoring wells is sufficient to capture any releases, based on direction of flow, well location, screening depth and other relevant factors, including well construction logs and a sufficient number of diagrams to depict depth to groundwater, the potentiometric surface, and the anticipated direction(s) of groundwater flow across the site (multiple diagrams may be necessary if the direction of flow is affected by seasonal, tidal or other influences);

(C) That there is no indication from groundwater monitoring data that the unit has or will adversely affect groundwater (*i.e.,* no statistically significant increases (SSI) of Appendix IV to this part constituents above relevant GWPS), including documentation of the most recent statistical tests conducted and the rationale for the methods used in these comparisons, and

(D) That the unit meets the location restrictions under §§ 257.60 through 257.64.

(ii) *Alternate Liner Demonstration Package.* The completed alternate liner demonstration package must be certified by a professional engineer. The package must present evidence to demonstrate, with a reasonable degree of certainty, that based on the construction of the unit and surrounding site conditions, operation of the surface impoundment will not result in groundwater concentrations above the relevant groundwater protection standard at the unit boundary. For each line of evidence, as well as any other data and assumptions incorporated into the determination, the facility must include documentation on how the data were collected and why these data and assumptions are believed to adequately reflect potential contaminant transport at and around that specific impoundment. The alternate liner demonstration at a minimum must contain all of the following lines of evidence:

(A) *Characterization of site hydrogeology.* A characterization of the site-specific hydrogeology that surrounds the surface impoundment that defines the variability of the soil around the impoundment. The characterization must include all of the following:

(*1*) Measurements of the hydraulic conductivity in the uppermost aquifer measured from existing monitoring wells and discussion of the methods used to obtain these measurements.

(*2*) Subsurface samples collected to characterize site hydrogeology must be located around the perimeter of the impoundment at a spatial resolution sufficient to ensure that any regions of substantially higher conductivity have been identified;

(*3*) Conceptual site models with cross-sectional depictions of site stratigraphy that include the relative location of the impoundment (with depth of ponded water noted), monitoring wells (with screening depths noted), and all other subsurface samples used in the development of the models;

(*4*) A narrative description of site geological history; and

(*5*) All of the data used in the conceptual site model summarized into easily readable graphs or tables.

(B) *Potential for infiltration.* This report must evaluate the potential for infiltration through any liners and underlying soils that control release and transport of leachate by either in-situ sampling, or by conducting an analysis of the soil-based liner and underlying soil of the unit through laboratory testing.

(2) *Procedures for Adjudicating Requests.* (i) *Deadlines for Submission.* The owner or operator must submit the application under paragraph (d)(1)(A) of this section to EPA or the Participating State Director for approval no later than April 2, 2020. The owner or operator must submit the demonstration required under paragraph (d)(1)(B) of this section to EPA for approval no later than one year after the deadline for the initial application. If the owner or operator cannot meet this second deadline due to analytical limitations, the owner or operator must submit a request for an extension no later than 90 days prior to the deadline for submission of the demonstration that includes a summary of the data that have been analyzed for the samples responsible for the delay and an alternate timeline for completion that has been certified by the laboratory.

(ii) *Application Review.* EPA or the Participating State Director will evaluate the application and may request additional information as necessary to complete its review. Submission of a complete application will toll the facility's deadline to cease receipt of waste into that unit until issuance of a final decision on the unit's eligibility. Incomplete submissions will not toll the facility's deadline. Within sixty days of receiving a complete application, EPA or the Participating State Director will notify the owner or operator of its determination on the eligibility of their surface impoundment.

(iii) *Demonstration Review.* EPA or the Participating State Director will evaluate the demonstration package and may request additional information as necessary to complete its review. Submission of a complete demonstration package will toll the facility's deadline to cease receipt of waste into that unit until issuance of a final decision under paragraph (d)(2)(v) of this section. Incomplete submissions will not toll the facility's deadline.

(iv) EPA or the Participating State Director will publish a proposed decision on the alternate liner demonstration package on EPA's or the Participating State Director's website for a 30-day comment period.

(v) After consideration of the comments, EPA or the Participating State Director will issue its decision on the alternate liner demonstration package within 4 months of receiving a complete alternate liner demonstration package. If no substantive comments are received, the proposed decision will become effective 5 days from the close of the comment period.

(vi) *Effect of Denial.* If EPA or the Participating State Director determines that the unit is not eligible under paragraph (d)(1)(i) of this section, the owner or operator must cease receipt of waste and initiate closure within six months of the denial or by the deadline in § 257.101(a), whichever is later. If EPA or the Participating State Director determines that the unit's alternate liner does not meet the standard for approval in paragraph (d) of this section, the owner or operator must cease receipt of waste and initiate closure within six months of the denial. If a facility needs to obtain alternate capacity, they may do

so in accordance with the procedures in § 257.103.

(vii) *Loss of authorization.* (A) If at any time assessment monitoring pursuant to § 257.95 is triggered for the unit, the facility must conduct intra-well analyses on each well as part of subsequent groundwater monitoring reports to identify any trends of increasing concentrations. If there is evidence that the unit may exceed the groundwater protection standard for any constituent within the operational life of the unit, EPA or the Participating State Director will reevaluate the authorization, and may revoke it if source control measures cannot be put in place while the unit continues to operate.

(B) The onus remains on the facility at all times to demonstrate that the unit meets the conditions for authorization under this section. If at any point, any condition for qualification under this section has not been met, EPA or the Participating State Director can without further notice or process deny or revoke the owner or operator's authorization under paragraph (d)(2)(vii).

■ 4. Amend § 257.102 by:

■ a. Revising paragraphs (c) and introductory text (d)(3)(ii);

■ b. Adding paragraph (d)(4);

■ c. Revising paragraphs (g) and (i)(4);

■ d. Adding paragraph (l).

The additions and revisions read as follows:

§ 257.102 Criteria for conducting the closure or retrofit of CCR units.

* * * * *

(c) *Closure by removal of CCR.* An owner or operator closing a CCR unit by removal of CCR must follow the procedures specified in either paragraph (c)(1) or (c)(2) of this section. Closure by removal activities include removing or decontaminating all CCR and CCR residues, containment system components such as the unit liner, contaminated subsoils, contaminated groundwater, and CCR unit structures and ancillary equipment.

(1) *Complete all removal and decontamination activities during the active life of the CCR unit.* Within the timeframes specified in paragraph (f) of this section the owner or operator must do all of the following:

(i) Complete removal and decontamination of all areas affected by releases from the CCR unit;

(ii) Document that constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standards established pursuant to § 257.95(h) for constituents listed in appendix IV to this part; and

(iii) Obtain the completion of closure certification or approval required by paragraph (f)(3) of this section.

(2) *Complete removal and decontamination activities during the active life and post-closure care period of the CCR unit.* The owner or operator may close the CCR unit by completing all removal and decontamination activities, except for groundwater corrective action, during the active life of the CCR unit and by completing groundwater corrective action during the post-closure care period pursuant to the following procedures:

(i) Within the timeframes specified in paragraph (f) of this section, complete all removal and decontamination activities except for groundwater corrective action;

(ii) Within the timeframes specified in paragraph (f) of this section, begin implementation of the remedy selected under § 257.97 such that all components of the remedy are in place and operating as intended;

(iii) Complete groundwater corrective action as a post-closure care requirement as specified in § 257.104(g);

(iv) Amend the written closure plan required by paragraph (b) of this section and the written post-closure care plan required by § 257.104(d), if necessary;

(v) Within the timeframes specified in paragraph (f) of this section, obtain the completion of closure certification or approval required by paragraph (f)(3) of this section; and

(vi) Within the timeframes specified in paragraph (f) of this section, record the notation on the deed to the property required by paragraph (i) of this section.

(d) * * *

(3) * * *

(ii) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in paragraphs (d)(3)(ii)(A) through (C) of this section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this section.

* * * * *

(4) *Exemption for the use of CCR in a CCR surface impoundment closing for cause.* (i) This paragraph specifies the conditions under which CCR may be used in the closure of CCR surface impoundments closing pursuant to § 257.101. Notwithstanding the prohibition on further placement in § 257.101, CCR may be used in a CCR unit provided the written closure plan is approved by the Administrator or a Participating State Director. The approved closure plan must demonstrate that the use of CCR during closure would pose no reasonable risk of adverse effects during the closure and post-closure care periods by showing that the placed CCR will remain contained (*i.e.,* isolated) in the unit closed in accordance with the closure performance standards under § 257.102(d) so as to limit contact of the CCR in the unit with water and to prevent releases to the environment, including releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, and catastrophic unit failures. The following analyses and documentation must be included in the written closure plan:

(A) The volume of CCR that would be placed during closure would not exceed the volume of borrow material that otherwise would be used to achieve the subgrade elevations necessary to support the final cover system;

(B) The time needed to complete closure of the unit when using CCR would not exceed the time needed to close with soil or borrow material;

(C) The CCR unit meets the requirements of § 257.64;

(D) The CCR unit is and will remain in compliance with the closure performance standards and requirements specified in § 257.102, even after the further placement of CCR;

(E) In addition to the requirements specified in § 257.102(d)(3), the design and construction of the final cover system must ensure the final cover system is no more permeable than the CCR placed in the unit as part of closure; and

(F) If the owner or operator of the unit has determined that any constituent listed in appendix IV to this part has been detected at a statistically significant level exceeding a groundwater detection standard defined under § 257.95(h), the additional placement of CCR will not adversely affect compliance with the corrective action remedy requirements under § 257.97(b).

(ii) *Review and approval.* (A) The owner or operator must submit the closure plan for the unit that includes the demonstrations specified in paragraph (d)(4)(i) of this section to the Administrator or Participating State Director for review and approval in advance of the anticipated date of CCR use. The owner or operator must not make use of the exemption under this paragraph (d) until EPA or the Participating State Director has approved the closure plan.

(B) The approving authority should notify the owner or operator of approval or intent to disapprove the use of CCR in closure within 3 months after receipt of the initial closure plan or within 2 months after receipt of any supplemental information submitted.

* * * * *

(g)(1) Except as provided by paragraph (g)(2) of this section, no later than two weeks from the date the owner or operator initiates closure of a CCR unit, the owner or operator must prepare a notification of intent to close a CCR unit. The notification must include the date that closure of the CCR unit was initiated. The notification must also include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority for the design of the final cover system as required by § 257.102(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(7).

(2) If the owner or operator previously completed a notification of intent to close a CCR unit prior to the effective date of a rule finalizing this proposal that does not contain the date that closure of the unit was initiated, and if the owner or operator has not yet completed closure of the CCR unit by completing the completion of closure notification in accordance with paragraph (h) of this section, then no later than two months following the effective date of a rule finalizing this proposal, the owner or operator must prepare and place in the facility's operating record an updated notification of intent to close that includes the of date on which the owner or operator commenced closure of the unit.

* * * * *

(i) * * *

(4) An owner or operator that closes a CCR unit in accordance with paragraph (c)(1) of this section is not subject to the requirements of paragraphs (i)(1) through (3) of this section.

* * * * *

(l) *Annual Closure Progress Reports.* Owners and operators of any CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is closed in accordance with paragraph (c) or (d) of this section must complete the notices and progress reports specified in paragraphs (l)(1) and (2) of this section.

(1) The owner or operator must prepare annual closure progress reports summarizing the progress of closure implementation. The report must include the following information:

(i) Discussion on which stage of closure the unit is currently undergoing;

(ii) Discussion of the closure schedule; and

(iii) Discussion of any problems that were experienced.

(2) The owner or operator of a CCR unit must prepare the initial closure progress report no later than the first January 31 following the effective date of a rule finalizing this proposal or the first January 31 following the year that closure activities for the unit were commenced, whichever date is later. An annual closure progress report must be completed for the unit until closure of the unit is completed in accordance with paragraphs (f) and (h) of this section.

■ 5. Amend § 257.104 by:

■ a. Revising paragraphs (a)(2) and (c)(1); and

■ b. Adding paragraphs (c)(3), (g) and (h).

The additions and revisions read as follows:

§ 257.104 Post-closure care requirements.

(a) * * *

(2) An owner or operator of a CCR unit that elects to close a CCR unit by removing CCR as provided by § 257.102(c)(1) is not subject to the post-closure care criteria under this section.

* * * * *

(c) * * * (1) Except as provided by paragraph (c)(2) and (c)(3) of this section, the owner or operator of the CCR unit must conduct post-closure care for 30 years.

* * * * *

(3) An owner or operator closing a unit pursuant to § 257.102(c)(2) must conduct post-closure care pursuant to paragraph (g) of this section.

* * * * *

(g) *Completion of removal and decontamination activities.* For a CCR unit closing pursuant to § 257.102(c)(2), the owner or operator must complete groundwater corrective action by demonstrating that any areas affected by releases from the CCR unit do not exceed the groundwater protection standards established pursuant to § 257.95(h) for constituents listed in appendix IV to this part.

(h) *Removal of a deed notation.* The owner or operator of a CCR unit closed pursuant to §§ 257.102(c)(2) and 257.104 may remove the notation from the deed specified in § 257.102(i) upon:

(1) Completion of groundwater corrective action demonstrating that any areas affected by releases from the CCR unit do not exceed the groundwater protection standards established pursuant to § 257.95(h) for constituents listed in appendix IV to this part; and

(2) Completion of the notification of completion of post-closure care period required by paragraph (e) of this section.

■ 6. Amend § 257.105 by:

■ a. Revising paragraph (i)(1);

■ b. Removing and reserving paragraphs (i)(2) and (i)(3); and

■ c. Adding paragraph (i)(14).

The additions and revisions read as follows:

§ 257.105 Recordkeeping requirements.

* * * * *

(i) * * *

(1) The notification of intent to initiate closure of the CCR unit as required by § 257.100(e)(1)(i).

* * * * *

(14) The annual progress reports of closure implementation as required by § 257.102(l)(2) and (3).

* * * * *

■ 7. Amend § 257.106 by:

■ a. Removing and reserving paragraphs (i)(2) and (i)(3); and

■ b. Adding paragraph (i)(14).

The additions and revisions read as follows:

§ 257.106 Notification requirements.

* * * * *

(i) * * *

(14) The annual progress reports of closure implementation as required by § 257.105(i)(14).

* * * * *

■ 8. Amend § 257.107 by:

■ a. Removing and reserving paragraphs (i)(2) and (i)(3); and

■ b. Adding paragraph (i)(14).

The additions and revisions read as follows:

§ 257.107 Publicly accessible internet site requirements.

* * * * *

(i) * * *

(14) The annual progress reports of closure implementation as required by § 257.105(i)(14).

* * * * *

[FR Doc. 2020–04033 Filed 3–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2013–0225; FRL–10003–21]

RIN 2070–AJ99

Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule; Supplemental Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is supplementing a proposed significant new use rule (SNUR) issued under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for long-chain perfluoroalkyl carboxylate (LCPFAC) chemical substances to make inapplicable the exemption for persons who import a subset of LCPFAC chemical substances as part of surface coatings on articles. This subset of LCPFAC chemical substances also includes the salts and precursors of these perfluorinated carboxylates. This supplemental proposal would require importers to notify EPA at least 90 days before commencing the import of these chemical substances in certain articles for the significant new use described in this document. The required significant new use notification would initiate EPA's evaluation of the conditions of use associated with the intended significant new use. Manufacturing (including import) or processing for the significant new use would be prohibited from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination.

DATES: Comments must be received on or before April 17, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2013–0225, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Tyler Lloyd, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4016; email address: *lloyd.tyler@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), process, or distribute in commerce chemical substances and mixtures. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them.

Potentially affected entities may include:

- Apparel Manufacturing (NAICS code 315).
- Electrical Equipment, Appliance, and Component Manufacturing (NAICS code 335).
- Merchant Wholesalers, Durable Goods (NAICS codes 423).
- Merchant Wholesalers, Nondurable Goods (NAICS 424).
- Furniture and Home Furnishings Stores (NAICS codes 442).
- Electronics and Appliance Stores (NAICS codes 443).
- Building Material and Garden Equipment and Supplies Dealers (NAICS code 444).
- Clothing and Clothing Accessories Stores (NAICS code 448).
- Sporting Goods, Hobby, Musical Instrument, and Book Stores (NAICS code 449).
- General Merchandise Stores (NAICS code 450).
- Non-store Retailers (NAICS code 451).

This action may affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Those persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. Additionally, persons who export or intend to export a chemical substance that is the subject of a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b); see also 40 CFR part 707, subpart D and 40 CFR 721.20). Under the existing TSCA import certification and export notification rules, persons who import a chemical substance covered under this proposed rule as part of an article would be exempt from TSCA section 13 import certification, and persons who export or intend to export a chemical substance as part of an article would be exempt from the TSCA section 12(b) export notification requirements. See Unit V. for more information on the applicability of the import certification and export notification requirements.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical information contact listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

• The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

• The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture (including import) or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA furthermore prohibits such manufacturing or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). Additionally, TSCA section 5(a)(5) (15 U.S.C. 2604(a)(5)), as amended in 2016, authorizes EPA to require notification for the import or processing of a chemical substance as part of an article or category of articles under TSCA section 5(a)(1) (15 U.S.C. 2604(a)(1)(A)(ii)) if EPA makes an affirmative finding in a rule under TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule justifies notification. This supplemental proposal proposes to exercise EPA's authority under TSCA section 5(a)(5) to require notification for the import of the subject chemical substances as part of the category of articles, articles that contain certain LCPFAC chemical substances as part of a surface coating, discussed in Unit I.C. As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. What action is the Agency taking?

In the **Federal Register** of January 21, 2015 (80 FR 2885) (FRL–9915–63) (Ref. 1), EPA proposed a SNUR for long-chain perfluoroalkyl carboxylate (LCPFAC) and perfluoroalkyl sulfonate chemical substances. As stated in the previous proposal, the LCPFAC chemical substances also include the salts and precursors of these perfluorinated carboxylates. In that previously proposed rule, EPA proposed to make the exemption from notification requirements for persons who import the chemical substance as part of an article inapplicable for the import of a subset of LCPFAC chemical substances in all articles. EPA is now issuing a supplemental proposal for the import of certain LCPFAC chemical substances; this action would make the exemption from notification requirements inapplicable and require significant new use notification reporting for the import of a subset of LCPFAC chemical substances only as part of a surface coating on articles. This supplemental proposal better defines the articles subject to the rule by defining the subject articles as ''imported articles where certain LCPFAC chemical substances are part of surface coating on the articles'' rather than what was originally proposed, ''imports of articles.'' EPA is issuing this supplemental proposal to be responsive to the article consideration provision at TSCA section 5(a)(5), added with the passage of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114–182), which states that articles can be subject to notification requirements as a significant new use if the Administrator makes an affirmative finding in a rule that the reasonable potential for exposure to a chemical from an article or category of articles justifies notification. Rather than making the article exemption inapplicable for any article, as was proposed in the January 21, 2015, proposal (Ref. 1), this action proposes to make a finding under TSCA section 5(a)(5) and make the article exemption at 40 CFR 721.45(f) inapplicable for persons importing the category of articles that contain certain LCPFAC chemical substances as part of a surface coating on articles. As to processors, it is EPA's understanding that there is no ongoing manufacturing or processing of LCPFAC chemical substances in the U.S. Based on that understanding, EPA does not expect that there would be any future such processing, and EPA therefore is not proposing that this Supplemental Proposed Rule apply to processors. EPA seeks comment on this approach.

In the proposed rule issued in the **Federal Register** of January 21, 2015 (Ref. 1), EPA also proposed: (1) An amendment to a SNUR for LCPFAC chemical substances by designating as a significant new use manufacturing (including importing) or processing of a subset of LCPFAC chemical substances for any use that was no longer ongoing after December 31, 2015; (2) an amendment to a SNUR for LCPFAC chemical substances by designating as a significant new use manufacturing (including importing) or processing of all other LCPFAC chemicals substances for any use that was no longer ongoing after January 21, 2015; and (3) an amendment to a SNUR for perfluoroalkyl sulfonate chemical substances that would make inapplicable the exemption from notification requirements for persons who import perfluoroalkyl sulfonate chemical substances as part of carpets. These other amendments, as proposed on January 21, 2015 (Ref. 1), are not the subject of this supplemental proposal. EPA is considering the comments received on the January 21, 2015, proposal (Ref. 1) and will respond to them with publication of the final rule.

During the public comment period for the rule proposed in the **Federal Register** of January 21, 2015 (Ref. 1), EPA received comments about ongoing uses of LCPFAC and perfluorooctanoic acid (PFOA) chemical substances and requests that EPA modify the proposed SNUR to specifically recognize and exclude from the significant new uses certain ongoing activities. EPA received public comments claiming several ongoing uses. EPA continues to review these claims of ongoing use to understand whether these uses remain ongoing. EPA intends to undertake further outreach to commenters to confirm and better understand the ongoing uses. In the final rule, EPA will recognize and exclude from the significant new uses any ongoing activities for these chemicals. The final rule would take final action on both the previously proposed rule and this supplemental proposal. For further background information for this supplemental proposal, consult the proposal issued in the **Federal Register** of January 21, 2015 (Ref. 1) and the corresponding docket for this rulemaking (EPA–HQ–OPPT–2013–0225).

This supplemental proposal to the proposed SNUR would require persons who intend to import these LCPFAC chemical substances as part of a surface coating on articles for a significant new use, consistent with the requirements at 40 CFR 721.25, to notify EPA at least 90 days before commencing such import. This supplemental proposal to the proposed SNUR would furthermore preclude the commencement of import of such articles until EPA has conducted a review of the notice, made an appropriate determination on the notice, and taken such actions as are required in association with that determination. As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of the TSCA section 5(a)(1)(B) is best served by designating a use as a significant new

use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. This rule was proposed on January 21, 2015. Uses arising after the publication of the proposed rule are distinguished from uses that exist at publication of the proposed rule. The former would be new uses, the latter ongoing uses, except that uses that are ongoing as of the publication of the proposed rule would not be considered ongoing uses if they have ceased by the date of issuance of a final rule.

D. Why is the Agency taking this action?

Enacted on June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114–182) amended several sections of TSCA and added section 5(a)(5), Article Consideration. As a precondition to authorizing EPA to ''require notification under this section for the import or processing of a chemical substance as part of an article or category of articles under paragraph (1)(A)(ii),'' this provision requires that EPA affirmatively find in a rule under section 5(a)(2) that the reasonable potential for exposure to a chemical substance through the article or category of articles justifies notification. After considering the reasonable potential for exposure from articles under TSCA section 5(a)(5), EPA is now issuing a supplemental proposal to make inapplicable the exemption for persons who import certain LCPFAC chemical substances when those LCPFAC chemical substances are part of a surface coating on articles.

If finalized as proposed, the January 21, 2015, proposed SNUR would require timely advance notice to EPA of any future import of LCPFAC chemical substances for new uses that may produce changes in human and environmental exposures, and would ensure that an appropriate determination (relevant to the risks associated with such importing, processing, and use) has been issued prior to the commencement of such importing. The proposed SNUR is furthermore necessary to ensure that manufacturing (including importing) or processing for the significant new use cannot proceed until EPA has responded to the circumstances by taking the required actions under TSCA sections 5(e) or 5(f) in the event that EPA determines any of the following: (1) That the significant new use presents an unreasonable risk under the conditions of use (without consideration of costs or other non-risk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA); (2) that the information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the significant new use; (3) that, in the absence of sufficient information, the manufacturing (including importing), processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, may present an unreasonable risk (without consideration of costs or other non-risk factors, and including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by EPA); or (4) that there is substantial production and sufficient potential for environmental release or human exposure (as defined in TSCA section 5(a)(3)(B)(ii)(II)).

The rationale and objectives for this supplemental proposal are explained in Unit III.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential importers of articles containing the chemical substances included in this supplemental proposal when they are part of a surface coating on articles. This analysis (Ref. 2), which is available in the docket, is discussed in Unit IX., and is briefly summarized here.

In the event that a SNUN is submitted, costs are estimated to be approximately $23,000 per SNUN submission for large business submitters and about $10,000 for small business submitters. The rule may also affect firms that plan to import or process articles that may be subject to the SNUR. Although there are no specific requirements in the rule for these firms, they may choose to undertake some activity to assure themselves that they are not undertaking a significant new use. In the accompanying Economic Analysis for this SNUR (Ref. 2), EPA provides example steps (and their respective costs) that an importer or processor might take to identify LCFPAC chemical substances in articles. These can include gathering information through agreements with suppliers, declarations through databases or surveys, or use of a third-party certification system. Additionally, importers may require suppliers to provide certificates of testing analysis of the products or perform their own laboratory testing of certain articles. EPA is unable to predict, however, what, if any, particular steps an importer might take; thus, potential total costs were not estimated.

F. Do you have comments or information about ongoing uses?

EPA welcomes comment on all aspects of this supplemental proposal. EPA based its understanding of the use profile of these chemicals on the published literature, company progress reports submitted during the 2010/2015 PFOA Stewardship Program, the 2016 CDR submissions, market research, and review of Safety Data Sheets. To confirm EPA's understanding, the Agency is requesting public comment on all aspects of this supplemental proposal. In providing comments on the reasonable potential for exposure to LCPFAC chemical substances in articles, commenters are urged to provide sufficient information for EPA to substantiate any assertions of use and of exposure. Additionally, EPA requests comment on the assumption that article importers that choose to investigate their products will incur costs at the lower end of the ranges presented in the Economic Analysis for this supplemental proposed rule.

G. Additional Considerations for Comment

TSCA section 5(a)(5) provides that the EPA Administrator ''*may* require notification under this section for the import or processing of a chemical substance as part of an article or category of articles under paragraph (1)(A)(ii) *if* the Administrator makes an *affirmative* finding in a rule under paragraph (2) that the *reasonable* potential for exposure to the chemical substance through the article or category of articles subject to the rule *justifies* notification.'' (Emphasis added.) Thus, Congress provided EPA with considerable discretion to determine (1) what is a ''reasonable'' potential for exposure; (2) what kind of reasonable potential ''justifies'' notification; and (3) whether, in EPA's discretion (''*may* require''), to require notification in a case in which such a reasonable potential exists. By making notification contingent on the existence of a ''reasonable'' potential for exposure, TSCA section 5(a)(5) implies that there is some category of less than reasonable potentials for exposure that could not give rise to notification.

EPA requests comment on whether or not the Agency should affirmatively establish an explicit threshold at which, or explicit criteria for determining whether, a significant new use exhibits a reasonable potential for exposure that justifies notification. While TSCA section 5(a)(5) does not establish a specific threshold or specific criteria for making this determination and does not

require EPA to affirmatively establish such a threshold or such criteria, EPA may establish a threshold, or criteria, for determining reasonable potential for exposure if appropriate.

EPA seeks comment on whether EPA could adopt a de minimis threshold for determining ''reasonable potential for exposure'' and if so, how that de minimis threshold could be established. For example, the United States Court of Appeals for the District of Columbia Circuit has recognized that ''[u]nless Congress has been extraordinarily rigid, there is likely a basis for an implication of de minimis authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.'' *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1980).

In *Alabama Power,* the Court has recognized that ''[c]ategorical exemptions from statutory commands may . . . be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered de minimis. It is commonplace, of course, that the law does not concern itself with trifling matters, and this principle has often found application in the administrative context. Courts should be reluctant to apply the literal terms of a statute to mandate pointless expenditures of effort.'' 636 F.2d at 360 (citations omitted). ''The ability . . . to exempt de minimis situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design.'' *Id.* Courts have continued to recognize that authority to create de minimis exemptions may be implied where ''the burdens of regulation yield a gain of trivial or no value.'' *Envtl. Def. Fund, Inc.* v. *EPA,* 82 F.3d 451, 466 (D.C. Cir. 1996) (internal quotation marks omitted); *see also, e.g., Ass'n of Admin Law Judges* v. *FLRA,* 397 F.3d 957, 961–62 (D.C. Cir. 2005). As an application of the statutory requirements in the context of this specific Significant New Use Rule, EPA could set a specific threshold level for the content of the LCPFAC below which reporting would not be required (in percentage of the product composition for example). EPA requests comment both on how this threshold level could be determined, and on what such levels might be. Establishment of a threshold could be based on one or more of the following rationales: (1) Below the selected threshold level, there is no ''reasonable potential for exposure'' within the meaning of section 5(a)(5) (*i.e.,* the risk of exposure is very low); and (2) below the selected threshold level, there is a ''reasonable potential for exposure'' (or, alternatively, there may be such a potential), but the potential does not ''justif[y] notification'' (*i.e.,* potential for risk is very low in light of the low level of LCPFAC present in the surface coating). EPA is seeking comment on whether there would be reasonable potential for exposure under typical conditions of use of the article as contrasted with laboratory experiments designed to release the LCPFAC under laboratory conditions.

Alternatively, EPA could establish or use specific criteria to determine whether or not the ''reasonable potential for exposure'' justifies notification. For example, EPA could receive from importers information on the level of LCPFAC in the product or in the surface coating, and determine the level is low enough to not meet the ''reasonable potential for exposure'' notification requirement. EPA notes also that a person's exposure to LCPFAC could be impacted by whether or not the article itself is used as a stand-alone product or incorporated into another product, and as such receiving such information could also be of help to the Agency. Another consideration could be that EPA requests information on the method by which the LCPFAC is incorporated into the surface coating and whether that method changes the likelihood of release from the article. EPA seeks comment on the above discussion and on criteria that the Agency could use to determine whether or not the ''reasonable potential for exposure'' justifies notification. EPA seeks detailed input on these potential criteria, as well as other suggestions for criteria that could be implemented to help ensure that the notification is justified.

We invite robust comment on these and other possible thresholds or criteria that could be implemented by EPA in a final rule.

Finally, EPA notes that diverse importers of articles could be affected by this rule, and that some may be unfamiliar with the SNUR process and may not identify at the time of this rulemaking that they have an ongoing use of a LCPFAC. EPA requests comment on whether or not the Agency should include a safe harbor provision for importers of articles that can demonstrate their use was ongoing prior to the effective date of this rule. EPA requests that commenters discuss the text of section 5(a)(5) and how the discretion granted therein could be exercised to allow for a safe harbor provision. EPA also requests specific language that could be used in structuring such a safe harbor provision.

H. What should I consider as I prepare my comments for EPA?

When submitting your comments, keep the following items in mind:

1. *Submitting CBI.* It is EPA's policy to include all comments received in the public docket without change or further notice to the commenter and to make the comments available on-line at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that is claimed to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2, subpart B.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www2.epa.gov/dockets/commenting-epa-dockets#tips.*

II. Chemical Substances Subject to This Proposed Rule

A. What chemicals are covered by this supplemental proposal?

This supplemental proposal would modify the requirements for a subset of LCPFAC chemical substances at 40 CFR 721.10536 by making the exemption at 40 CFR 721.45(f) inapplicable for persons who import LCPFAC chemical substances listed in this unit and PFOA or its salts (see the second bulleted list of this unit) as part of an article in which these LCPFAC chemical substances have been applied as part of a surface coating. The subset of LCPFAC chemical substances also includes the salts and precursors of these perfluorinated carboxylates. EPA proposes to make the exemption inapplicable for import of these articles because there is reasonable potential for exposure to LCPFAC chemical substances, including PFOA, if these chemical substances are part of surface coatings on articles imported into the United States. As proposed in the 2015 SNUR NPRM, the article exemption

would still apply to LCPFAC chemical substances not listed in this unit, with the exception of the import of carpets, for which the import exemption is already inapplicable (78 FR 62443; October 22, 2013) (FRL–9397–1). The other provision of 40 CFR 721.45(f), respecting processing a chemical substance as part of an article, remains applicable. These LCPFAC chemical substances are:

- Perfluorooctyl iodide (CAS Registry No. (CASRN) 507–63–1; TSCA Chemical Inventory Name: Octane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8-heptadecafluoro-8-iodo-)
- Tetrahydroperfluoro-1-decanol (CASRN 678–39–7; TSCA Chemical Inventory Name: 1-Decanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro-)
- Perfluoro-1-dodecanol (CASRN 865–86–1; TSCA Chemical Inventory Name: 1-Dodecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-heneicosafluoro-)
- Perfluorodecyl iodide (CASRN 2043–53–0; TSCA Chemical Inventory Name: Decane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8-heptadecafluoro-10-iodo-)
- 1,1,2,2-Tetrahydroperfluorododecyl iodide (CASRN 2043–54–1; TSCA Chemical Inventory Name: Dodecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10-heneicosafluoro-12-iodo-)
- Perfluorodecylethyl acrylate (CASRN 17741–60–5; TSCA Chemical Inventory Name: 2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-heneicosafluorododecyl ester)
- 1,1,2,2-Tetrahydroperfluorodecyl acrylate (CASRN 27905–45–9; TSCA Chemical Inventory Name: 2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl ester)
- 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12-Pentacosafluoro-14-iodotetradecane (CASRN 30046–31–2; TSCA Chemical Inventory Name: Tetradecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12 pentacosafluoro-14-iodo-)
- 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-Pentacosafluorotetradecan-1-ol (CASRN 39239–77–5; TSCA Chemical Inventory Name: 1-Tetradecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-pentacosafluoro-)
- 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,16-Nonacosafluorohexadecan-1-ol (CASRN 60699–51–6; TSCA Chemical Inventory Name: 1-Hexadecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,16-nonacosafluoro-)
- 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14-Nonacosafluoro-16-iodohexadecane (CASRN 65510–55–6; TSCA Chemical Inventory Name: Hexadecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14-nonacosafluoro-16-iodo-)
- Sodium;2-methylpropane-1-sulfonate (CASRN 68187–47–3; TSCA Chemical Inventory Name: 1-Propanesulfonic acid, 2-methyl-, 2-[[1-oxo-3-[(.gamma.-.omega.-perfluoro- C4–16-alkyl) thio]propyl]amino] derivs., sodium salts)
- 1,1,2,2-Tetrahydroperfluoroalkyl (C8–C14) alcohol (CASRN 68391–08–2; TSCA Chemical Inventory Name: Alcohols, C8–14, .gamma.-.omega.-perfluoro)
- Thiols, C8–20, gamma-omega-perfluoro, telomers with acrylamide (CASRN 70969–47–0; TSCA Chemical Inventory Name: Thiols, C8–20, .gamma.-.omega.-perfluoro, telomers with acrylamide)
- Silicic acid (H_4SiO_4), sodium salt (1:2), reaction products with chlorotrimethylsilane and 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro-1-decanol (CASRN 125476–71–3; TSCA Chemical Inventory Name: Silicic acid (H_4SiO_4), sodium salt (1:2), reaction products with chlorotrimethylsilane and 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro-1-decanol)
- Thiols, C4–20, gamma-omega-perfluoro, telomers with acrylamide and acrylic acid, sodium salts) (CASRN 1078712–88–5; TSCA Chemical Inventory Name: Thiols, C4–20, .gamma.-.omega.-perfluoro, telomers with acrylamide and acrylic acid, sodium salts)
- 1-Propanaminium, 3-amino-N-(carboxymethyl)-N,N-dimethyl-, N-(2-((gamma-omega-perfluoro-C4–20-alkyl)thio)acetyl) derivs., inner salts (CASRN 1078715–61–3; TSCA Chemical Inventory Name: 1-Propanaminium, 3-amino-N-(carboxymethyl)-N,N-dimethyl-, N-[2-[(.gamma.-.omega.-perfluoro-C4–20-alkyl)thio]acetyl] derivs., inner salts)
- Polyfluoroalkyl betaine (generic) (CASRN is CBI; EPA Accession No. 71217; TSCA Chemical Inventory Name: Polyfluoroalkyl betaine (PROVISIONAL))
- Modified fluoroalkyl urethane (generic) (CASRN is CBI; EPA Accession No. 89419; TSCA Chemical Inventory Name: Modified fluoroalkyl urethane (PROVISIONAL))
- Perfluorinated polyamine (generic) (CASRN is CBI; EPA Accession No. 274147; TSCA Chemical Inventory Name: Perfluorinated polyamine (PROVISIONAL))

The term LCPFAC refers to the long-chain category of perfluoroalkyl carboxylate chemical substances with perfluorinated carbon chain lengths equal to or greater than seven carbons and less than or equal to 20 carbons. The category of LCPFAC chemical substances also includes the salts and precursors of these perfluorinated carboxylates. See Unit II.A. of the proposed rule (Ref. 1) for further discussion of the LCPFAC category. In addition to the subset of LCPFAC chemical substances identified in the list above, PFOA and its salts would be subject to the proposal. PFOA and its salts are considered LCPFAC chemical substances. PFOA and examples of PFOA salts with CASRNs and chemical names are as follows:

- Pentadecafluorooctanoyl fluoride (CASRN 335–66–0; TSCA Chemical Inventory Name: Octanoyl fluoride, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-)
- Perfluorooctanoic acid (CASRN 335–67–1; TSCA Chemical Inventory Name: Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro- (PFOA))
- Silver perfluorooctanoate (CASRN 335–93–3; TSCA Chemical Inventory Name: Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-, silver (+) salt (1:1))
- Sodium perfluorooctanoate (CASRN 335–95–5; TSCA Chemical Inventory Name: Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-, sodium salt (1:1))
- Potassium perfluorooctanoate (CASRN 2395–00–8; TSCA Chemical Inventory Name: Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-, potassium salt (1:1))
- Ammonium perfluorooctanoate (CASRN 3825–26–1; TSCA Chemical Inventory Name: Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-, ammonium salt (1:1) (APFO)

B. What are the uses and production volumes of LCPFAC chemical substances?

PFOA, a member of the LCPFAC category, is a synthetic (man-made) chemical that does not occur naturally in the environment. The ammonium salt of PFOA was manufactured in U.S. for use primarily as an aqueous dispersion agent in the manufacture of fluoropolymers. Chemical Data

Reporting (CDR) rule requires manufacturers (including importers) to report for PFOA if they meet 2,500 pounds production volume threshold at a single site. The last time PFOA manufacture was reported to EPA as part of this collection effort was for the 2016 reporting period. PFOA can also be created unintentionally by the degradation of some fluorotelomers, which are not manufactured using PFOA but could degrade to PFOA. Fluorotelomers are used to make polymers that impart soil, stain, grease, and water resistance to coated articles. Some fluorotelomer based products are also used as high-performance surfactants in products where an even flow is essential, such as paints, coatings, cleaning products, and fire-fighting foams for use on liquid fuel fires (Ref. 3).

Through the 2010/2015 PFOA Stewardship Program, a voluntary risk reduction program, eight major manufacturers and processors of LCPFAC chemical substances committed to voluntarily work toward a phase-out of LCPFAC chemical substances (Ref. 4). All participating companies have met the PFOA Stewardship Program goals and have ceased the manufacture (including import) of the chemical substances listed in Tables 1 and 2 of this unit. As such, the reduced supply of long-chain perfluorinated chemicals has led industries to transition to replacement chemical substances for many uses, as noted in both public comments and industry communication. However, there are still a number of ongoing uses of these chemical substances by companies not participating in the PFOA Stewardship Program. EPA became aware of these uses through public comments identifying several ongoing uses. In the final rule, EPA will recognize and exclude from the significant new uses any confirmed ongoing activities for these chemicals. Ongoing uses identified by EPA are not significant new uses of LCPFAC chemical substances and therefore would not be subject to this rule and would not require a significant new use notice submission to the Agency.

The accompanying economic analysis for this supplemental proposed rule (Ref. 2) details which chemicals listed in Tables 1 and 2 of this unit were reported under the CDR rule (40 CFR 711) as manufactured (including imported) for 2015, the final year of the Stewardship Program (see Exhibits 2–1, 2–2, and 2–3 of the Economic Analysis). The production volumes have been withheld to protect confidential business information.

C. What are the potential health effects of LCPFAC chemical substances?

To date, PFOA has ~~LCPFACs have~~ been linked to a number of health effects, including thyroid disease and impacts on reproductive function (Refs. 5 and 6). PFOA and its salts, which are considered LCPFAC chemical substances, have been the primary focus of studies related to LCPFAC class of chemical substances. PFOA is persistent, widely present in humans and the environment, has a half-life in humans of 2.3–3.8 years, and can cause adverse effects in laboratory animals, including cancer and developmental and systemic toxicity (Refs. 3, 7, 8, 9, and 10). Human epidemiology data report associations between PFOA exposure and high cholesterol, increased liver enzymes, decreased vaccination response, thyroid disorders, pregnancy-induced hypertension and preeclampsia, and cancer (testicular and kidney) (Ref. 11).

III. Rationale and Objectives

A. Rationale

This supplemental proposal presents the basis for the reasonable potential for exposure to LCPFAC chemical substances from this category of articles for purposes of TSCA section 5(a)(5). LCPFAC chemical substances have been found in the blood of the general human population, as well as in wildlife, indicating that exposure to these chemical substances is widespread (Ref. 3, 12, and 13). Multiple pathways of exposure, including through drinking water, food, house dust, and release from treated articles are possible (Ref. 14).

In the absence of a regulation, manufacture or processing for the significant new uses proposed on January 21, 2015 (Ref. 1), may begin at any time, without prior notice to EPA. As explained in the January 21, 2015, proposal (Ref. 1), EPA is concerned that commencement of the manufacture (including import) or processing for any new uses, including resumption of past uses, of LCPFAC chemical substances could increase the magnitude and duration of exposure to humans.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to propose a SNUR for a particular chemical is not based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. Rather, the existence of a SNUR requires a notice, upon receipt of which EPA would conduct an assessment. If a person decides to begin importing any of these chemicals for a significant new use, the notice to EPA allows the Agency to evaluate the use according to the specific parameters and circumstances surrounding the conditions of use.

In most cases, LCPFAC chemical substances are not incorporated into the article and bound to the article matrix but are rather added or applied as a coating or as part of coating aid. Surface coatings are subject to mechanical and/or chemical or photolytic stress, which can lead to degradation of the coating layer, depending on the circumstances (*e.g.,* depending upon the stressor and the type of coating matrix). As an unbound, unincorporated component of a surface coating (Refs. 15 and 16), LCPFAC chemical substances can thereby be released from the coating as a result of this degradation of the coating layer. Additionally, because LCPFAC chemical substances used in this category of articles are coating the surface, if the underlying substrate of the article is degraded and released, the LCPFAC surface coating could be released at the same time.

Rather than making the article exemption inapplicable for any article, as was proposed in the January 21, 2015, proposal (Ref. 1), this action proposes to make a finding under TSCA section 5(a)(5) and make the article exemption at 40 CFR 721.45(f) inapplicable for persons importing the category of articles that contain certain LCPFAC chemical substances as part of a surface coating for a non-ongoing use. EPA defines ''articles where certain LCPFAC chemical substances are part of surface coating on articles'' as the category of articles subject to this rule, based on the reasonable potential for exposure as shown through research on LCPFAC chemical substances. This category of articles is expected to exhibit reasonable potential for exposure to LCPFAC chemical substances, as elaborated herein. EPA is not making a finding on the reasonable potential for exposure from articles that do not contain LCPFAC chemical substances as a surface coating.

i. Reasonable Potential for Exposure of LCPFAC From Surface Coatings

A coating is a material applied in a thin layer to a surface as a protective, decorative, or functional film. This term often refers to paints such as lacquers or enamels, but also refers to films applied to other materials including, but are not limited to, paints, varnishes, sealants, adhesives, inks, maskants, and temporary protective coatings. LCPFAC chemical substances have been used in surface coatings for numerous applications given their hydrophobic and lipophobic properties. Examples of

LCPFAC coating applications in articles are stain- and water-repellent fabrics and nonstick products (*e.g.,* coatings for cookware) (Ref. 3).

The release of LCPFAC chemical substances from coatings on articles has been well-documented in the scientific literature. LCPFAC chemical substances can be released continuously over years from treated jackets, furniture, and carpets into the air due to volatilization (Refs. 17, 18, and 19) and due to degradation of commercial LCPFAC coatings by simple abiotic reaction with water (Ref. 20). Stone and tile sealants have been shown to contain extractable amounts of LCPFAC chemical substances and, for homes without carpeting, could be an indoor source of these chemical substances (Ref. 21).

Given the reasonable potential for exposure to LCPFAC chemical substances from articles that have LCPFAC chemical substances as part of a surface coating, EPA is proposing to require notification for the import of articles that have LCPFAC chemical substances as part of a surface coating. As noted in Section 1F, EPA is also seeking robust comment on implementing a *de minimis* threshold, an alternative threshold, or other criteria to assist in determining whether the reasonable potential for exposure justifies notification to EPA. EPA is also seeking comment on a safe harbor provision.

Articles that could potentially have LCPFAC chemical substances as part of a surface coating include, but are not limited to: Furniture, medical garments, safety equipment, outdoor apparel or equipment, automobile components, aerospace components, electronics, heavy machinery, and household appliances. EPA cites these studies (Refs. 17, 18, 19, 20, and 21) to support the Agency's conclusion that there is reasonable potential for exposure from the category of articles that contain certain LCPFAC chemical substances as part of a surface coating.

ii. Proposed Finding

Based on these considerations, EPA is proposing to make the TSCA section 5(a)(5) finding and make inapplicable the exemption at 40 CFR 721.45(f) for persons who import any of a defined set of LCPFAC chemical substances as part of an article where LCPFAC chemical substances have been applied as part of a surface coating for a non-ongoing use. The defined subset are the chemical substances phased out through the 2010/2015 PFOA Stewardship Program, shown in Table 1 and Table 2 of Unit II.

The article exemption at 40 CFR 721.45(f) is based on an assumption that people and the environment will generally not be exposed to chemical substances in articles (Ref. 22). However, when added to the surface coating of an article, LCPFAC can be released over time with use (Refs. 3 and 20). Studies on the degradation of fluorotelomer-based polymers show that these polymers are subject to hydrolysis, photolysis and biodegradation, with half-lives of a few days to hundreds of years (Ref. 23). In addition, research by EPA on degradation of fluorotelomers and fluoropolymers has shown that some urethanes and acrylates biodegrade; however, half-lives and kinetics are not yet well-defined (Ref. 16). These studies have shown that the perfluorinated portion of some polymers is released as the polymer is degraded by microbial or abiotic processes to form telomer alcohols or other intermediates and that they eventually form LCPFAC. Based on this understanding, upon receipt of a SNUN, EPA intends to evaluate the potential risk of exposure to human health and the environment for any intended significant new use of LCPFAC chemical substances (including as part of a surface coating of an article).

Given that the release of LCPFAC chemical substances from surface coatings on articles has been shown to occur and that these releases can be expected to result in exposure to the users of articles, EPA has reason to anticipate that importing articles that have certain LCPFAC chemical substances as part of a surface coating would create the potential for exposure to these LCPFAC chemical substances, and that EPA should have an opportunity to review the intended use before such use could occur. Therefore, EPA affirmatively finds under TSCA section 5(a)(5) that notification for import is justified by the reasonable potential for exposure to certain LCPFAC chemical substances when part of surface coatings for the articles identified in this SNUR. Existence of the SNUR triggers the submission of a SNUN, thereby allowing EPA to evaluate potential uses (before those uses would begin) whether in the form of an article, or not, for any hazards, exposures and risks that might exist.

A person who imports any of the chemical substances identified in this supplemental proposed SNUR for a significant new use as part of a surface coating on an article would be subject to the significant new use notification requirements. No person would be able to begin importing, as part of a surface coating for an article, any of the LCPFAC chemical substances identified in this supplemental proposed SNUR, for a significant new use without first submitting a SNUN to EPA.

B. Objectives

Based on the considerations in Unit III.A., EPA wants to achieve the following objectives with regard to the significant new uses of LCPFAC chemical substances that are designated in the January 21, 2015, proposal (Ref. 1), including the articles identified in this supplemental proposal:

1. EPA would receive notice of any person's intent to import the chemical substances for the described significant new use before that activity begins.

2. EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins importing the chemical substances for the described significant new use.

3. EPA would be able to either determine that the significant new use is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

IV. Economic Analysis

A. SNUNs

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential importers of the chemical substance included in this supplemental proposal in surface coatings of articles (Ref. 2). In the event that a SNUN is submitted, average costs are estimated at approximately $23,000 per SNUN submission for large business submitters and about $10,000 for small business submitters. These estimates include the cost to prepare and submit the SNUN (averaging about $7,300), and the payment of a user fee. Businesses that submit a SNUN would be subject to either a $16,000 user fee required by 40 CFR 700.45(c)(2)(ii), or, if they are a small business, a reduced user fee of $2,800 (40 CFR 700.45(c)(1)(ii)). Businesses that submit a SNUN are also estimated to incur average costs of $63 for rule familiarization. First time submitters will incur an average cost of $123 for CDX registration and associated activities. Companies importing articles containing LCPFAC chemical substances as part of a surface coating will incur an average cost of $79 for notifying their customers of SNUR regulatory activities. EPA's complete economic analysis is available in the public docket for this rule (Ref. 2).

In making inapplicable the exemption relating to persons who import certain

chemical substances as part of the surface coating of an article, this action may affect firms that plan to import or process types of articles that may contain the subject chemical substance in a surface coating. This is because while some firms have an understanding of the contents of the articles they import or process other firms do not. EPA acknowledges that importers and processors of articles may have varying levels of knowledge about the chemical content of the articles that they import or process. These parties may need to become familiar with the requirements of the rule. And while not required by the SNUR, these parties may take additional steps to determine whether the subject chemical substances are part of the articles that they are considering for import or processing. This determination may involve activities such as gathering information from suppliers along the supply chain, and/or testing samples of the article itself. Costs vary across the activities chosen and the extent of familiarity a firm has regarding the articles it imports or processes. Cost ranges are presented in Understanding the Costs Associated with Eliminating Exemptions for Articles in SNURs (Ref. 24). Based on available information, EPA believes that article importers or processors that choose to investigate their products would incur costs at the lower end of the ranges presented in the Economic Analysis. For those companies choosing to undertake actions to assess the composition of the articles they import or process, EPA expects that importers would take actions that are commensurate with the company's perceived likelihood that a chemical substance might be a part of an article for the significant new uses identified in Units II. and III., and the resources it has available. Example activities and their costs are provided in the accompanying Economic Analysis of this supplemental proposal (Ref. 2).

B. Export Notification

Under TSCA section 12(b) and the implementing regulations at 40 CFR part 707, subpart D, exporters must notify EPA if they export or intend to export a chemical substance or mixture for which, among other things, a rule has been proposed or promulgated under TSCA section 5. For persons exporting a substance that is the subject of a SNUR, a one-time notice to EPA must be provided for the first export or intended export to a particular country. The total costs of export notification will vary by chemical, depending on the number of required notifications (*i.e.,* the number of countries to which the chemical is exported).

V. Scientific Standards, Evidence, and Available Information

EPA has used scientific information, technical procedures, measures, methods, protocols, methodologies, and models consistent with the best available science, as applicable. These information sources supply information relevant to whether a particular use would be a significant new use, based on relevant factors including those listed under TSCA section 5(a)(2). Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to promulgate a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use; as such, the January 2015 proposed rule (Ref. 1) and this supplemental proposal are not based on an evaluation of expected risks.

The clarity and completeness of the data, assumptions, methods, quality assurance, and analyses employed in EPA's decision are documented, as applicable and to the extent necessary for purposes of the January 2015 proposed rule and this supplemental proposal, in Unit II. and in the references cited throughout the two preambles. Considering the extent to which the various information, procedures, measures, methods, protocols, methodologies or models used in EPA's decision have been subject to independent verification or peer review, EPA believes that their use is appropriate in this rule. EPA recognizes, based on the available information, that there is variability and uncertainty in whether any particular significant new use would actually present an unreasonable risk. For precisely this reason, EPA is proposing to require notice and review for these uses at such time as they are known more definitely.

VI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Long-Chain Perfluoroalkyl Carboxylate and Perfluoroalkyl Sulfonate Chemical Substances; Significant New Use Rule. Proposed Rule. **Federal Register**. 80 FR 2885, January 21, 2015 (FRL–9915–63).
2. EPA. Economic Analysis of the Supplemental Proposal to the Significant New Use Rule for Perfluoroalkyl Sulfonates and Long-Chain Perfluoroalkyl Carboxylate Chemical Substances. January 23, 2020.
3. EPA. Long-Chain Perfluorinated Chemicals Action Plan. December 30, 2009. Accessed at: *https://www.epa.gov/sites/production/files/2016-01/documents/pfcs_action_plan1230_09.pdf*.
4. EPA. Risk Management for Per- and Polyfluoroalkyl Substances (PFASs) under TSCA. Accessed at: *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-and-polyfluoroalkyl-substances-pfass*.
5. Melzer, David, et al. ''Association between serum perfluorooctanoic acid (PFOA) and thyroid disease in the US National Health and Nutrition Examination Survey.'' Environmental health perspectives 118.5 (2010): 686–692.
6. Knox, Sarah S., et al. ''Implications of early menopause in women exposed to perfluorocarbons.'' The Journal of Clinical Endocrinology & Metabolism 96.6 (2011): 1747–1753.
7. Butt, Craig M., et al. ''Levels and trends of poly-and perfluorinated compounds in the arctic environment.'' *Science of the Total Environment* 408.15 (2010): 2936–2965.
8. Houde, Magali, et al. ''Biological monitoring of polyfluoroalkyl substances: a review.'' *Environmental Science & Technology* 40.11 (2006): 3463–3473.
9. Calafat, Antonia M., et al. ''Polyfluoroalkyl chemicals in the US population: data from the National Health and Nutrition Examination Survey (NHANES) 2003–2004 and comparisons with NHANES 1999–2000.'' *Environmental Health Perspectives* 115.11 (2007): 1596.
10. Lau, Christopher, et al. ''Perfluoroalkyl acids: a review of monitoring and toxicological findings.'' *Toxicological Sciences* 99.2 (2007): 366–394.
11. EPA. Health Effects Support Document for Perfluorooctanoic Acid (PFOA). EPA 822–R–16–003. May 2016.
12. EPA. Perfluoroalkyl Sulfonates; Significant New Use Rule; Final Rule. **Federal Register**. 67 FR 11008, March 11, 2002 (FRL–6823–6).
13. 3M Company. The Science of Organic Fluorochemistry. St. Paul, Minnesota, February 5, 1999.
14. Strynar, Mark J., and Andrew B. Lindstrom. ''Perfluorinated compounds in house dust from Ohio and North Carolina, USA.'' *Environmental Science & Technology* 42.10 (2008): 3751–3756.
15. Bohnet, Matthias. Ulmann's Encyclopedia of Industrial Chemistry. Wiley-Vch, 2003.
16. Plastics Industry Association. Guide to the Safe Handling of Fluoropolymer Resins. Fifth Addition. 2018.
17. Knepper, Thomas P., et al. ''Understanding the exposure pathways

of per-and polyfluoralkyl substances (PFASs) via use of PFASs-containing products–risk estimation for man and environment.'' *Texte* 47 (2014): 2014.
18. Gremmel, Christoph, et al. ''Systematic determination of perfluoroalkyl and polyfluoroalkyl substances (PFASs) in outdoor jackets.'' *Chemosphere* 160 (2016): 173–180.
19. Liu, Xiaoyu, et al. ''Determination of fluorotelomer alcohols in selected consumer products and preliminary investigation of their fate in the indoor environment.'' *Chemosphere* 129 (2015): 81–86.
20. Washington, J.W., T.M. Jenkins. 2015. Abiotic hydrolysis of fluorotelomer polymers as a source of perfluorocarboxylates at the global scale. *Environmental Science & Technology.* 49. 14129–14135.
21. Guo, Zhishi, et al. ''Perfluorocarboxylic acid content in 116 articles of commerce.'' Research Triangle Park, NC: US Environmental Protection Agency (2009).
22. EPA. Significant New Uses of Chemical Substances; Certain Chemicals; Final Rule. **Federal Register**. 49 FR 35014, September 5, 1984 (FRL–2541–8).
23. Washington, John W., et al. ''Decades-scale degradation of commercial, side-chain, fluorotelomer-based polymers in soils and water.'' Environmental science & technology 49.2 (2015): 915–923.
24. U.S. EPA. Understanding the Costs Associated with Eliminating Exemptions for Articles in SNURs. May 1, 2013.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

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

The Office of Management and Budget (OMB) designated this to be a significant regulatory action and it was submitted to OMB for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of Executive Order 12866.

EPA prepared an economic analysis of the potential costs and benefits associated with this action. A copy of the economic analysis, entitled ''Economic Analysis of the Supplemental Proposal to the Significant New Use Rule for Perfluoroalkyl Sulfonates and Long-Chain Perfluoroalkyl Carboxylate Chemical Substances'' (Ref. 2), is available in the docket and is briefly summarized in Unit IV.

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

This action is expected to be subject to the requirements for regulatory actions specified in Executive Order 13771 (82 FR 9339, February 3, 2017). EPA prepared an analysis of the estimated costs and benefits associated with this action (Ref. 2), which is available in the docket and is summarized in Unit I.E.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). The information collection activities associated with existing chemical SNURs are already approved under OMB control number 2070–0038 (EPA ICR No. 1188); and the information collection activities associated with export notifications are already approved under OMB control number 2070–0030 (EPA ICR No. 0795). If an entity were to submit a SNUN to the Agency, the annual burden is estimated to be less than 100 hours per response, and the estimated burden for export notifications is less than 1.5 hours per notification. In both cases, burden is estimated to be reduced for submitters who have already registered to use the electronic submission system.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR, part 9, and included on the related collection instrument, or form, as applicable.

D. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* I certify that promulgation of this SNUR would not have a significant economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. Since this SNUR will require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemical substances, the Agency receives only a handful of notices per year. During the six-year period from 2005–2010, only three submitters self-identified as small in their SNUN submission (Ref. 2). Based on this, EPA believes that few SNUN submissions will occur as a result of the rule. EPA believes the cost of submitting a SNUN, $10,000 for small business submitters, is relatively small compared to the cost of developing and marketing a chemical new to a firm or marketing a new use of the chemical and that the requirement to submit a SNUN generally does not have a significant economic impact.

Therefore, EPA believes that the potential economic impact of complying with this proposed SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule on August 8, 1997 (62 FR 42690) (FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this rulemaking. As such, the requirements of sections 202, 203, 204, or 205 of UMRA, 2 U.S.C. 1531–1538, do not apply to this action.

F. Executive Order 13132: Federalism

This action will not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effect on 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 (65 FR 67249, November 9, 2000), because it will not have any effect on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this action does not address environmental health or safety risks, and 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.

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

This action is not a significant energy action as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have any effect on energy supply, distribution, or use.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve any technical standards and is therefore not subject to considerations under section 12(d) of NTTAA, 15 U.S.C.272 note.

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

This action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 20, 2020.

Andrew R. Wheeler,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. Revise § 721.10536 to read as follows:

§ 721.10536 Long-chain perfluoroalkyl carboxylate chemical substances.

(a) *Definitions.* The definitions in § 721.3 apply to this section. In addition, the following definition applies:

Carpet means a finished fabric or similar product intended to be used as a floor covering. This definition excludes resilient floor coverings such as linoleum and vinyl tile.

(b) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified in this paragraph, where $5 < n < 21$ or $6 < m < 21$, are subject to reporting under this section for the significant new uses described in paragraph (b)(4)(i) and (b)(4)(iv) of this section.

(i) $CF_3(CF_2)_n$-COO M where M, = H^+ or any other group where a formal dissociation can be made.

(ii) $CF_3(CF_2)_n$-CH=CH_2.

(iii) $CF_3(CF_2)_n$-C(=O)-X, where X is any chemical moiety.

(iv) $CF_3(CF_2)_m$-CH_2-X, where X is any chemical moiety.

(v) $CF_3(CF_2)_m$-Y-X, where Y = non-S, non-N heteroatom and where X is any chemical moiety.

(2) The chemical substances listed in Table 1 of this paragraph are subject to reporting under this section for the significant new uses described in paragraph (b)(4)(ii) of this section.

TABLE 1 TO PARAGRAPH (b)—LCPFAC CHEMICAL SUBSTANCES SUBJECT TO REPORTING AFTER DECEMBER 31, 2015

Chemical name	CAS registry No. (CASRN)	EPA accession No.	TSCA chemical inventory name
Perfluorooctyl iodide	507–63–1	N/A	Octane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8-heptadecafluoro-8-iodo-.
Tetrahydroperfluoro-1-decanol	678–39–7	N/A	1-Decanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro-.
Perfluoro-1-dodecanol	865–86–1	N/A	1-Dodecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,12-heneicosafluoro-.
Perfluorodecyl iodide	2043–53–0	N/A	Decane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8-heptadecafluoro-10-iodo-.
1,1,2,2-Tetrahydroperfluorododecyl iodide	2043–54–1	N/A	Dodecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10 ,10-heneicosafluoro-12-iodo-.
Perfluorodecylethyl acrylate	17741–60–5	N/A	2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11, 12,12,12-heneicosafluorododecyl ester.
1,1,2,2-Tetrahydroperfluorodecyl acrylate	27905–45–9	N/A	2-Propenoic acid, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluorodecyl ester.
1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12-Pentacosafluoro-14-iodotetradecane.	30046–31–2	N/A	Tetradecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12-pentacosafluoro-14-iodo-.
3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-Pentacosafluorotetradecan-1-ol.	39239–77–5	N/A	1-Tetradecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,14-pentacosafluoro-.
3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,16-Nonacosafluorohexadecan-1-ol.	60699–51–6	N/A	1-Hexadecanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14,15,15,16,16,16-nonacosafluoro-.
1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14-Nonacosafluoro-16-iodohexadecane.	65510–55–6	N/A	Hexadecane, 1,1,1,2,2,3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,11,11,12,12,13,13,14,14-nonacosafluoro-16-iodo-.
Sodium;2-methylpropane-1-sulfonate	68187–47–3	N/A	1-Propanesulfonic acid, 2-methyl-, 2-[[1-oxo-3-[(.gamma.-.omega.-perfluoro-C4–16-alkyl)thio]propyl]amino] derivs., sodium salts.
1,1,2,2-Tetrahydroperfluoroalkyl (C8–C14) alcohol	68391–08–2	N/A	Alcohols, C8-14, .gamma.-.omega.-perfluoro.
Thiols, C8-20, gamma-omega-perfluoro, telomers with acrylamide	70969–47–0	N/A	Thiols, C8–20, .gamma.-.omega.-perfluoro, telomers with acrylamide.
Silicic acid (H_4SiO_4), sodium salt (1:2), reaction products with chlorotrimethylsilane and 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro-1-decanol.	125476–71–3	N/A	Silicic acid (H_4SiO_4), sodium salt (1:2), reaction products with chlorotrimethylsilane and 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro-1-decanol.
Thiols, C4-20, gamma-omega-perfluoro, telomers with acrylamide and acrylic acid, sodium salts).	1078712–88–5	N/A	Thiols, C4-20, .gamma.-.omega.-perfluoro, telomers with acrylamide and acrylic acid, sodium salts.
1-Propanaminium, 3-amino-N-(carboxymethyl)-N,N-dimethyl-, N-(2-((gamma-omega-perfluoro-C4-20-alkyl)thio)acetyl) derivs., inner salts.	1078715–61–3	N/A	1-Propanaminium, 3-amino-N-(carboxymethyl)-N,N-dimethyl-, N-[2-[(.gamma.-.omega.-perfluoro-C4-20-a lkyl)thio]acetyl] derivs., inner salts.
Polyfluoroalkyl betaine (generic)	CBI	71217	Polyfluoroalkyl betaine (PROVISIONAL).

TABLE 1 TO PARAGRAPH (b)—LCPFAC CHEMICAL SUBSTANCES SUBJECT TO REPORTING AFTER DECEMBER 31, 2015—Continued

Chemical name	CAS registry No. (CASRN)	EPA accession No.	TSCA chemical inventory name
Modified fluoroalkyl urethane (generic)	CBI	89419	Modified fluoroalkyl urethane (PROVISIONAL).
Perfluorinated polyamine (generic)	CBI	274147	Perfluorinated polyamine (PROVISIONAL)

(3) The chemical substances identified as perfluorooctanoic acid (PFOA) and its salts, including those listed in Table 2 of this paragraph, are subject to reporting under this section for the significant new uses described in paragraph (b)(4)(iii) of this section.

TABLE 2 TO PARAGRAPH (b)—PFOA AND EXAMPLES OF ITS SALTS

Chemical name	CAS registry No. (CASRN)	TSCA chemical inventory name
Pentadecafluorooctanoyl fluoride	335–66–0	Octanoyl fluoride, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-.
Perfluorooctanoic acid	335–67–1	Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro- (PFOA).
Silver perfluorooctanoate	335–93–3	Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-, silver (+) salt (1:1).
Sodium perfluorooctanoate	335–95–5	Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-, sodium salt (1:1).
Potassium perfluorooctanoate	2395–00–8	Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-, potassium salt (1:1).
Ammonium perfluorooctanoate	3825–26–1	Octanoic acid, 2,2,3,3,4,4,5,5,6,6,7,7,8,8,8-pentadecafluoro-, ammonium salt (1:1) (APFO).

(4) Significant new uses:

(i) The significant new use for chemical substances identified in paragraph (b)(1) of this section are: Manufacture (including import) or processing for use as part of carpets or to treat carpets (*e.g.,* for use in the carpet aftercare market).

(ii) The significant new use for chemical substances identified in paragraph (b)(2) of this section are: Manufacture (including import) or processing for any use after December 31, 2015.

(iii) The significant new use for chemical substances identified in paragraph (b)(3) of this section are: Manufacture (including import) or processing for any use. Import of fluoropolymer dispersions and emulsions, and fluoropolymers as part of articles, containing chemical substances identified in paragraph (b)(3) of this section shall not be considered as a significant new use subject to reporting.

(iv) The significant new use for chemical substances identified in paragraph (b)(1) of this section, except for those chemicals identified in Table 1 of paragraph (b)(2) of this section are: Manufacture (including import) or processing for any use other than that use already covered by paragraph (b)(4)(i) of this section.

(c) *Specific requirements.* (1) *Revocation of certain notification exemptions.* With respect to imports of carpets, the provisions of § 721.45(f) do not apply to this section. With respect to imports of articles, the provisions of § 721.45(f) also do not apply to a chemical substance identified in paragraphs (b)(2) or (b)(3) of this section when they are part of a surface coating of an article. A person who imports a chemical substance identified in paragraph (b)(1) of this section as part of a carpet or who imports a chemical substance identified in paragraphs (b)(2) or (b)(3) of this section as part of a surface coating on an article is not exempt from submitting a significant new use notice. The other provision of § 721.45(f), respecting processing a chemical substance as part of an article, remains applicable.

(2) [Reserved]

[FR Doc. 2020–03865 Filed 3–2–20; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–81

[FMR Case 2018–102–2; Docket No. 2020–0009; Sequence No. 1]

RIN 3090–AJ94

Federal Management Regulation; Physical Security

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration is proposing to revise the Federal Management Regulation (FMR) to clarify the responsibilities of agencies for maintaining physical security standards in federally owned and leased facilities in light of current law, executive orders and updated standards. The revision will also update nomenclature and reorganize the subparts for better readability and clarity.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before May 4, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FMR Case 2018–102–2 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''FMR Case 2018–102–2'' under the heading select ''Enter Keyword or ID'' and select ''Search''. Select the link ''Submit a Comment'' that corresponds with ''FMR Case 2018–102–2'' and follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FMR Case 2018–102–2'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Lois Mandell, Director, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FMR Case 2018–102–2'' in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov* including any personal and business confidential

information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Chris Coneeney, Director, Real Property Policy Division, Office of Government-wide Policy at 202–501–2956 or *chris.coneeny@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, 202–501–4755. Please cite ''FMR Case 2018–102–2''.

SUPPLEMENTARY INFORMATION:

A. Background and Authority for This Rulemaking

6 U.S.C. 232 vests in the GSA Administrator the authority to operate, maintain and protect buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody or control of the Administrator. This rule proposes to revise in its entirety 41 CFR part 102–81, Physical Security, last published in the **Federal Register** on November 8, 2005 (70 FR 67856), in light of changes to law, executive orders and updated standards. This regulation is applicable to all GSA-controlled facilities, including those owned and leased under GSA authority and those delegated under GSA authority.

Six months after the bombing of the Alfred P. Murrah Federal Building, President William Clinton issued Executive Order (E.O.) 12977: Interagency Security Committee, creating the Interagency Security Committee (ISC) within the Executive Branch (60 FR 54411, Oct. 19, 1995). The ISC is a membership organization that includes 63 Federal departments and agencies. The ISC's mandate is to enhance the quality and effectiveness of physical security in, and the protection of, buildings and nonmilitary Federal facilities, and to provide a permanent body to address continuing government-wide security issues for these facilities. Pursuant to E.O. 12977, the ISC also prepared guidance for the Facility Security Committees (FSCs) that are responsible for addressing and implementing facility-specific security issues at each multi-occupant Federal facility.

In response to the terrorist attacks on September 11, 2001, Congress enacted the Homeland Security Act of 2002 (available at *https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf*), Public Law 107–296, 116 Stat 2135 (the ''Act''), to better protect the assets and critical infrastructure of the United States. The Act established the U.S. Department of Homeland Security (DHS), and among other things, transferred the Federal Protective Service (FPS) from GSA to DHS. FPS was established as a component of GSA in January 1971, and historically has been the security organization that conducts investigations to protect property under the control of GSA, enforces Federal laws to protect persons and property, and makes arrests without a warrant for any offense committed upon Federal property if a policeman had reason to believe the offense was a felony and the person to be arrested was guilty of the felony. Section 1706 of the Act, codified at 40 U.S.C. 1315, transferred FPS's specific security and law enforcement functions and authorities to the Secretary of Homeland Security.

Section 422 of the Act also references 6 U.S.C. 232, which vests in the Administrator of General Services the authority to operate, maintain and protect buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody or control of the Administrator.

Following enactment of the Act, President George Bush issued E.O. 13286: Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security, which transferred responsibility for chairing the ISC from the Administrator of General Services to the Secretary of Homeland Security (68 FR 10619, March 5, 2003).

In August 2004, President George Bush issued Homeland Security Presidential Directive 12 (HSPD–12) (available at *https://www.dhs.gov/homeland-security-presidential-directive-12*), which requires, to the maximum extent practicable, the use of identification by Federal employees and contractors that meets the standard promulgated by the Secretary of Commerce (*e.g.,* Federal Information Processing Standard Publication 201) to gain physical access to Federally controlled facilities.

HSPD–12 was followed by the REAL ID Act of 2005, Public Law 109–13, 119 Stat. 302 (the ''REAL ID Act''), which establishes minimum security standards for license issuance and production and prohibits Federal agencies from accepting for certain purposes driver's licenses and identification cards from states not meeting the REAL ID Act's minimum standards. The purposes covered by the REAL ID Act are accessing Federal facilities, entering nuclear power plants and boarding federally regulated commercial aircraft.

In June 2006, GSA and DHS signed a Memorandum of Agreement (MOA) outlining the responsibilities of each agency with regard to facility security. According to the MOA, FPS is required to conduct facility security assessments of GSA buildings in accordance with ISC standards. The resulting facility security assessment report should include recommended countermeasures for identified vulnerabilities. The MOA also established that both agencies are responsible for the implementation of approved countermeasures, with FPS responsible for security equipment and GSA in charge of facility security fixtures. This 2006 MOA was revised and superseded by an MOA executed by DHS and GSA as of September 27, 2018.

In February 2013, Presidential Policy Directive 21: Critical Infrastructure Security and Resilience required the Secretary of Homeland Security (available at *https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil*) to conduct comprehensive assessments of the vulnerabilities of the nation's critical infrastructure. This directive also designated both GSA and DHS as the responsible agencies for providing institutional knowledge and specialized expertise in support of security programs and activities for government buildings.

In August 2013, the ISC issued The Risk Management Process for Federal Facilities (the ''RMP Standard''), a standard to define the criteria and processes to determine the facility security level and provide a single source of physical security countermeasures for federal buildings. The ISC updated the standard in November 2016. See, The Risk Management Process for Federal Facilities: An Interagency Security Committee Standard (2nd Ed., November 2016) *https://www.cisa.gov/sites/default/files/publications/isc-risk-management-process-2016-508.pdf.* The following terms have the same definition as ascribed to them in the RMP Standard:

Baseline Level of Protection,
Facility Security Assessment,
Facility Security Committee,
Facility Security Level,
Risk,
Risk Mitigation,
Level of Protection,
Level of Risk, and

Vulnerability.

Some notable provisions of the ISC standard are described below:

(a) According to the ISC standard, buildings with two or more federal tenants should have a FSC. See, Facility Security Committees: An Interagency Security Committee Standard (2nd Ed. Jan. 1, 2012) (available at *https://www.dhs.gov/xlibrary/assets/isc-facility-security-committees-standard-january-2012-2nd-edition.pdf*). FSCs are responsible for addressing building-specific security issues and approving the implementation of recommended countermeasures and practices. FSCs include representatives of all federal occupant agencies in the building, as well as FPS and GSA. However, FPS and GSA do not have voting rights, unless they are occupants in the building. If the FSC approves a countermeasure, each federal occupant agency in the building is responsible for funding its *pro rata* share of the cost. According to the ISC standard, in a building with only one federal occupant agency, that agency is the decision-maker for the building's security. Therefore, these types of buildings do not require FSCs.

(b) The ISC standard requires FPS to conduct facility security assessments to identify vulnerabilities and recommend countermeasures. FSCs use a building's facility security assessment report to—

1. Evaluate security risk;
2. Implement countermeasures to mitigate risk; and
3. Allocate security resources effectively.

For example, a facility security assessment report might include a recommendation to install cameras and relocate a loading dock. Upon deliberation, the FSC might decide only to install the cameras. FPS, in consultation with the FSC, helps determine a facility's security level, which determines the baseline level of protection. Facility security levels range from Level 1 (lowest risk) to Level 5 (highest risk), and dictate the frequency of the facility security assessments for that building. The facility security level is based on five factors: Mission criticality, symbolism, building population, building size, and threat to occupant agencies. In addition, intangibles (such as a short duration occupancy) can be used to adjust the security level.

Occupant agency or FSCs use the facility security assessment reports they receive from FPS to inform deliberations regarding recommended risk mitigation countermeasures and other security related actions. GSA will facilitate the implementation of the countermeasures or other actions after occupant agency or FSC approval, and commitment of each occupant agency to pay its *pro rata* share of the cost.

B. Section-by-Section Analysis and Regulatory Changes Proposed by GSA in This Rulemaking

Subpart A—General Provisions

§ 102–81.5

GSA proposes changes in this section to describe more accurately the scope and coverage of the regulation. The regulation uses the phrase ''under the jurisdiction, custody or control of GSA,'' which appears in 6 U.S.C. 232, to describe the buildings and grounds owned or occupied by the Federal Government that are covered by this part. This phrase replaces and clarifies the phrase ''operating under, or subject to, the authorities of the Administrator of General Services,'' which was used in the previous version. The definitions of ''Federal facility'' and ''Federal grounds'' are included to clarify any confusion in the scope.

§ 102–81.10

GSA proposes a substantive change to this section to clarify that, under E.O. 12977, the ISC is responsible for setting policies and recommendations that govern Federal agency physical security. The ISC issues standards, such as the ISC Risk Management Process Standard (2nd Ed., November 2016) (the ''RMP Standard''). ISC policies do not supersede other laws, regulations and executive orders that are intended to protect unique assets.

§ 102–81.15

GSA proposes adding this section to clarify the governing authorities that pertain to this regulation.

§ 102–81.20

GSA proposes to eliminate in its entirety the previous section 102–81.20 because the RMP Standard supersedes all previous guidance contained in the Department of Justice's report ''Vulnerability Assessment of Federal Facilities'' (June 28, 1995). There is no difference between existing and new facilities in the ISC policies and standards. GSA proposes to add the replacement provision to clarify that Federal agencies are required to follow this regulation. Federal agencies must cooperate and comply with ISC policies and recommendations, except where the Director of National Intelligence determines that compliance would jeopardize intelligence sources and methods or the Secretary of Energy determines that compliance would conflict with the authorities of the Secretary of Energy over Restricted Data and Special Nuclear Material under, among others, sections 141, 145, 146, 147, and 161 of the Atomic Energy Act of 1954, as amended, the Department of Energy Organization Act, or any other statute.

Subpart B—Physical Security

§ 102–81.25

GSA proposes to eliminate in its entirety the previous section 102–81.25 because the RMP Standard supersedes all previous guidance contained in the Department of Justice's report ''Vulnerability Assessment of Federal Facilities'' (June 28, 1995). GSA proposes to add the replacement provision to clarify that Federal agencies are responsible for meeting physical security standards in accordance with ISC standards, policies and recommendations. Occupant agency or FSCs use the facility security assessment reports they receive from FPS to inform deliberations regarding recommended countermeasures and other security related actions. GSA will facilitate the implementation of the countermeasures or other actions after occupant agency or FSC approval, and commitment of each occupant agency to pay its *pro rata* share of the cost.

§ 102–81.30

GSA proposes to eliminate in its entirety the previous section 102–81.30 because the requirements are addressed in section 231 of Public Law 101–647. GSA proposes to add the replacement provision to be consistent with the RMP Standard. This section now describes physical security considerations associated with existing facilities.

§ 102–81.31

GSA proposes adding this section to be consistent with the RMP Standard. This section describes physical security considerations associated with leased facilities or new construction.

C. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, harmonizing rules and promoting flexibility. This rule is a

significant regulatory action, and is subject to review under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

D. Executive Order 13771

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to be related to agency organization, management, or personnel.

E. Regulatory Flexibility Act

GSA certifies this rule will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

F. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements on, or the collection of information from, offerors, contractors or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

G. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801, since it relates solely to agency management or personnel.

List of Subjects in 41 CFR Part 102–81

Federal buildings and facilities, Government property management and physical security measures.

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

For the reasons set forth in the preamble, GSA proposes to revise in its entirety 41 CFR part 102–81 as follows:

PART 102–81—Physical Security

■ 1. The authority citation for part 102–81 is revised to read as follows:

Authority: 40 U.S.C. 121(c) and 581; 6 U.S.C. 232; Homeland Security Presidential Directive 12; and the REAL ID Act of 2005, Pub. L. 109–13, 119 Stat. 302.

■ 2. Amend part 102–81 to read as follows:

Part 102–81—Physical Security

Subpart A—General Provisions

Sec.

§ 102–81.5 What does this part cover?
§ 102–81.10 What basic physical security policy governs Federal agencies?
§ 102–81.15 What are the governing authorities for this part?
§ 102–81.20 Who must comply with these provisions?

Subpart B—Physical Security

§ 102–81.25 Who is responsible for implementing, maintaining and upgrading physical security standards in each Federally owned and leased facility?
§ 102–81.30 Are there any special considerations for existing facilities?
§ 102–81.31 Are there any special considerations for leased facilities or new construction?

Subpart A—General Provisions

§ 102–81.5 What does this part cover?

This part covers physical security in and at federally owned and leased facilities and grounds under the jurisdiction, custody or control of GSA, including those facilities and grounds that have been delegated by the Administrator of General Services. Federal facility means all or any part of any building, physical structure or associated support infrastructure (*e.g.,* parking facilities and utilities) that is under the jurisdiction, custody or control of GSA. Federal grounds mean all or any part of any area outside a Federal facility that is under the jurisdiction, custody or control of GSA.

§ 102–81.10 What basic physical security policy governs Federal agencies?

The Interagency Security Committee (ISC) is responsible for developing and evaluating physical security standards for Federal facilities. In accordance with Executive Order 12977, the ISC sets policies and recommendations that govern Federal agency physical security. This includes the ISC Risk Management Process Standard (the ''RMP Standard'') that Federal agencies use in the protection of the real property they occupy, including the protection of persons on the property. The goal of the RMP Standard is a level of protection commensurate with the level of risk. ISC policies do not supersede other laws, regulations, and executive orders that are intended to protect unique assets.

§ 102–81.15 What are the governing authorities for this part?

The governing authorities are as follows:

(a) 40 U.S.C. 121(c) and 581.

(b) Executive Order 12977.

(c) Executive Order 13286, sec. 23.

(d) 6 U.S.C. 232.

(e) Homeland Security Presidential Directive 12.

(f) REAL ID Act of 2005 (Pub. L. 109–13).

§ 102–81.20 Who must comply with these provisions?

Each occupant agency in a Federal facility or on Federal grounds under the jurisdiction, custody or control of GSA, including those facilities and grounds that have been delegated by the Administrator of General Services, must cooperate and comply with these provisions, except where the Director of National Intelligence determines that compliance would jeopardize intelligence sources and methods or the Secretary of Energy determines that compliance would conflict with the authorities of the Secretary of Energy over Restricted Data and Special Nuclear Material under, among others, sections 141, 145, 146, 147, and 161 of the Atomic Energy Act of 1954, as amended, the Department of Energy Organization Act, or any other statute.

Subpart B—Physical Security

§ 102–81.25 Who is responsible for implementing, maintaining and upgrading physical security standards in each Federally owned and leased facility?

Each occupant agency in a Federal facility or on Federal grounds under the jurisdiction, custody or control of GSA, including those facilities and grounds that have been delegated by the Administrator of General Services, is responsible for meeting physical security standards in accordance with ISC standards, policies and recommendations. Occupant agency or FSCs use the facility security assessment reports they receive from FPS to inform deliberations regarding recommended countermeasures and other security related actions. GSA will facilitate the implementation of the countermeasures or other actions after occupant agency or FSC approval, and commitment of each occupant agency to pay its *pro rata* share of the cost.

§ 102–81.30 Are there any special considerations for existing facilities?

As provided in subsection 5.2.2 of the RMP Standard, for existing Federal facilities, both leased and government-owned, the RMP Standard is applied as part of the periodic risk assessment process. The security organization will conduct a periodic risk assessment and recommend countermeasures and design features to be implemented at the facility. The FSC will determine whether the recommended countermeasures will be implemented or if risk will be accepted. The design and implementation of approved countermeasures at existing facilities must comply with applicable laws, regulations and executive orders. For approved countermeasures that cannot

be implemented immediately, a plan to phase in countermeasures and achieve compliance must be instituted and documented in accordance with the RMP Standard. In some cases, the implementation of countermeasures must be delayed until renovations or modernization programs occur.

§ 102–81.31 Are there any special considerations for leased facilities or new construction?

Yes. GSA will coordinate with the occupant agency and the security organization responsible for the Federal facility when determining the applicable physical security clauses to use in the procurement package.

[FR Doc. 2020–04268 Filed 3–2–20; 8:45 am]

BILLING CODE 6820–14–P

Notices

Federal Register
Vol. 85, No. 42
Tuesday, March 3, 2020

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

Agricultural Marketing Service

[Document No. AMS–LP–20–0003]

National Research, Promotion, and Consumer Information Programs; Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this document announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB), for an extension of and revision to the currently approved information collection of the National Research, Promotion, and Consumer Information Programs.

DATES: Comments must be received by May 4, 2020.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments should be submitted on the internet at *http://www.regulations.gov* or to Research and Promotion, Livestock and Poultry Program, AMS, U.S. Department of Agriculture (USDA), 1400 Independence Avenue SW, STOP 0251, Room 2610–S, Washington, DC 20250–0251. All comments should reference the document number, the date and the page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth R. Flores, Acting Deputy Director, Research and Promotion Division, Livestock and Poultry Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0251, Room 2610–S, Washington, DC 20250–0251; telephone at (202) 260–8593, or by email at *elizabethr.flores@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: August 31, 2020.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: National research and promotion programs are designed to strengthen the position of a commodity in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for specified agricultural commodities. AMS has the responsibility for implementing and overseeing programs for a variety of commodities including beef, blueberries, cotton, dairy, eggs, fluid milk, Hass avocados, honey, lamb, mangos, mushrooms, paper and paper-based packaging, peanuts, popcorn, pork, potatoes, softwood lumber, sorghum, soybeans, and watermelons. The enabling legislation includes the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901–2911]; the Cotton Research and Promotion Act of 1966 [7 U.S.C. 2101–2118]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4514]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718]; the Hass Avocado Promotion, Research, and Information Act [7 U.S.C. 7801–7813]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act of 1985 [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act [7 U.S.C. 2611–2627]; the Soybean Promotion, Research, and consumer Information Act [7 U.S.C. 6301–6311]; the Watermelon Research and Promotion Act [7 U.S.C. 4901–4916]; and the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425] (which governs the blueberry, honey, lamb, mango, paper and paper-based packaging, peanut, softwood lumber, and sorghum programs). These programs appear in the Code of Federal Regulations 7 CFR, parts 1150 and 1160, and parts 1205 through 1260.

These programs carry out projects relating to research, consumer information, advertising, sales, promotion, producer information, market development, and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. Approval of the programs is required through referendum of affected parties. The programs are administered by the industry boards composed of producer, handler, processor, manufacturers, and in some cases, importer and public members appointed by the Secretary of Agriculture. Program funding is generated through assessments on designated industry segments.

The Secretary also approves the board's budgets, plans, and projects. These responsibilities have been delegated to AMS. The applicable commodity program areas within AMS have direct oversight of the respective programs.

The information collection requirements in this request are essential to carry out the intents of the various Acts authorizing such programs, thereby providing a means of administering the programs. The objective in carrying out this responsibility includes assuring the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the enabling legislation; and, (3) the board's administration of programs conforms to USDA policy. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the respective orders, and their use is necessary to fulfill the intents of the Acts as expressed in orders. The information collected is used only by authorized employees of the various boards and authorized employees of USDA.

The various boards utilize a variety of forms including: Reports concerning status information such as handler and importer reports; transaction reports; exemption from assessment forms and reimbursement forms; forms and information concerning board nominations and selection and acceptance statements; certification of

industry organizations; and recordkeeping requirements. The forms and information covered under this information collection require minimum information necessary to effectively carry out the requirements of the programs and their use is necessary to fulfill the intent of the applicable authority.

As part of this renewal collection for the National Research, Promotion, and Consumer Information Programs (0581–0093), AMS is deleting all references to the processed raspberry program as termination of the program was favored by a majority of eligible producers and importers voting in a referendum from September 10 through October 5, 2018. The termination order was published in the **Federal Register** on September 24, 2019 (Vol. 84, No. 185).

Two previously approved OMB packages are merged into this submission for renewal and approval:

For National Sheep Improvement Center

Estimate of Burden: Public reporting burden for this collection information is estimated to average 0.50 hours per response.

Respondents: Sheep and goat producers.

Estimated Number of Respondents: 10.

Estimated Total Annual Responses: 20.

Estimated Number of Responses per Respondent: 1 per year per form.

Estimated Total Annual Burden on Respondents: 6 hours.

For Soybean Promotion, Research, and Consumer Information; Beef Promotion and Research; Amendments To Allow Redirection of State Assessments to the National Program

Estimate of Burden: Public reporting burden for this collection information is estimated to average 0.0830 hours per response.

Respondents: Soybean and beef producers.

Estimated Number of Respondents: 30.

Estimated Total Annual Responses: 30.

Estimated Number of Responses per Respondent: 1 per year per form.

Estimated Total Annual Burden on Respondents: 2.49 hours.

AMS is committed to comply with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

For National Research, Promotion, and Consumer Information Program—0581–0093

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.27 hours per response.

Respondents: Producers, processors, handlers, manufacturers, importers, and others in the marketing chain of a variety of agricultural commodities, and recordkeepers.

Estimated Number of Respondents: 118,232.

Estimated Total Annual Responses: 439,447.

Estimated Number of Responses per Respondent: 3.72.

Estimated Total Annual Burden on Respondents: 149,909 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 44 U.S.C. Chapter 35.

Dated: February 26, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–04281 Filed 3–2–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0004]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the swine health protection program.

DATES: We will consider all comments that we receive on or before May 4, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0004.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0004* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the swine health protection program, contact Dr. Ross Free, Swine Commodity Health Specialist, Strategy and Policy, Veterinary Services, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7712. For more detailed information on the information collection process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Swine Health Protection.

OMB Control Number: 0579–0065.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal

diseases and pests of livestock and to conduct programs to detect, control, and eradicate pests and diseases of livestock.

The Swine Health Protection Act (7 U.S.C. 3801 *et seq.,* referred to below as the Act) prohibits the feeding of garbage to swine intended for interstate movement or foreign commerce or that substantially affect such commerce unless the garbage has been treated to kill disease organisms. Untreated garbage is one of the primary media through which numerous infectious and communicable diseases can be transmitted to swine. APHIS' regulations promulgated under the Act, which are located at 9 CFR part 166, require that garbage intended to be fed to swine must be treated at a facility that holds a valid permit to treat the garbage and must be treated in accordance with the regulations.

As part of its swine health protection program, APHIS conducts a pseudorabies (PRV) eradication program in cooperation with State governments, swine producers, swine shippers, herd owners, and accredited veterinarians. The program identifies PRV-affected swine, provides herd management techniques, and has eliminated PRV in commercial production herds. However, APHIS periodically finds infected swine when swine are exposed to feral swine or other swine that have had exposure to feral swine.

The regulations in 9 CFR parts 71 and 85 facilitate the PRV eradication program and general swine health by providing requirements for moving swine interstate within a swine production system. (A production system consists of separate farms that each specialize in a different phase of swine production such as sow herds, nursery herds, and finishing herds. These separate farms, all members of the same production system, may be located in more than one State.)

The regulations for the feeding of garbage to swine and for the PRV eradication program require the use of a number of information collection activities, including the creation of food waste reports; the completion of applications to operate garbage treatment facilities; an acknowledgement of the Swine Health Protection Act and implementing regulations; garbage treatment facility inspection; cancellation of license by State animal health officials; request for a hearing; cancellation of license by licensee; notification by licensee of sick or dead animals; notification by licensee of changes to name, address, or management; cooperative agreements for those States that issue garbage feeding licenses under VS supervision but do not have primary enforcement responsibility (four States); swine health protection program inspection summary; permit to move restricted animals; owner-shipper statement; certificate of veterinary inspection; accredited veterinarian's statement; embryo and semen shipments; identification for swine moving interstate; swine production system health plan; interstate movement report and notification; cancellation or withdrawal of a swine production system health plan; appeal of cancellation of a swine production system health plan; shipment to slaughter seal; appraisal and indemnity claim form; report of net salvage proceeds; herd management plans; and recordkeeping.

The information collection requirements above are currently approved by the Office of Management and Budget (OMB) under OMB control numbers 0579–0323 (Trichinae Certification Program) and 0579–0065 (Swine Health Protection). After OMB approves this combined information collection package (0579–0065), APHIS will retire OMB control number 0579–0323.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 1.78 hours per response.

Respondents: Owners/operators (licensees) of garbage treatment facilities, herd owners, food establishments, accredited veterinarians, and State animal health authorities.

Estimated annual number of respondents: 15,150.

Estimated annual number of responses per respondent: 63.57.

Estimated annual number of responses: 962,899.

Estimated total annual burden on respondents: 1,715,536 hours. (Due to averaging, the total annual burden hours may-not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of February 2020.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–04283 Filed 3–2–20; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Pennsylvania Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

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 meeting of the Pennsylvania Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (EST) on Tuesday, March 17, 2020. The purpose of the project planning meeting is to discuss the Committee's draft report on its civil rights project titled, School Discipline and the School-to-Prison Pipeline in PA.

Public Call-In Information: Conference call-in number: 800–353–6461 and conference call ID number: 6813288.

FOR FURTHER INFORMATION CONTACT: Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 800–353–6461 and conference call ID number: 6813288. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they

initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 800–353–6461 and conference call ID number: 6813288.

Members of the public are invited to make brief statements during the Public Comment section of the meeting or submit written comments. The written comments must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may phone 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://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjZAAQ;* click 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: Tuesday, March 17, 2020

I. Rollcall

II. Welcome

III. Project Planning

—Discuss draft Committee report on its civil rights project

IV. Other Business

V. Next Meetings

VI. Public Comments

VII. Adjourn

Dated: February 27, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–04329 Filed 3–2–20; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–10–2020]

Foreign-Trade Zone (FTZ) 176—Rockford, Illinois; Notification of Proposed Production Activity; UniCarriers Americas Corporation (Forklift Engines and Assemblies); Marengo, Illinois

UniCarriers Americas Corporation (UniCarriers) submitted a notification of proposed production activity to the FTZ Board for its facilities in Marengo, Illinois. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on February 18, 2020.

UniCarriers already has authority (originally approved as Nissan Forklift Corporation North America) to produce forklifts within FTZ 176. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt UniCarriers from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, UniCarriers would be able to choose the duty rates during customs entry procedures that apply to internal combustion engines, mast assemblies, and transmission assemblies for forklifts (duty rate ranges from duty-free to 2.5%). UniCarriers would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Various paints (polyester-based; acrylic or vinyl polymer-based); varnishes based on acrylic or vinyl polymers; prepared water pigments; adhesives; various plastic components (tubes, pipes and hoses (rigid; flexible; not reinforced without fittings; reinforced); self-adhesive certification and operation labels; lids, caps, plugs and plates; bushings and spacers; buttons, clips and ties; covers; seals, washers and O-rings; insulators and protectors; handles and knobs; mats and pads; shrouds and panels; slippers); various bearings (plastic; ball; roller lift ball; sprocket; wheel chain ball; needle roller; cylindrical roller; side roller; main); various gaskets (plastic; graphite or carbon; copper; cylinder head; combined metal and paper, metal and rubber, metal and plastic); various guards (plastic; canvas rain; rain; overhead); various housings (plastic; flywheel; thermostat; timing chain; oil pump; drive axle; torque converter; motor sensor; connector; meter); various vulcanized rubber components (tubes, pipes and hoses (not reinforced without fittings; not reinforced with fittings); endless transmission belts; transmission belts; kits; water seals, insulators, O-rings and washers; gaskets and gasket repair kits; oil seals and oil seal repair kits; seals and seal repair kits; bellows, dampers and diaphragms; insulation; shock absorbers; boots, clips and cups; mats or cushions; mounts; valves, bonnets and covers; caps, plugs, grommets, rings and stoppers); various rubber components (tubes, pipes and hoses (with fittings reinforced with metal; without fittings reinforced with textile materials; without fittings reinforced with material other than metal or textiles; with fittings reinforced with materials other than metal or textiles); floor mats); various tires (new pneumatic; solid or cushion); various tubes (rubber inner; engine fluid drain; engine water; engine injection; lift cylinder; drive axle; exhaust; suction); cellular rubber pads and seals; various gaskets and packing (cork; coated paper or paperboard); not printed paper or paperboard labels; various manuals (operational; service; printed); tempered safety glass; various mirrors (rear view; framed glass); various engine components (insulation; cases and plates; heat shields; nozzles and holders); insulators; various assemblies (insulation; lock; hinge; caster; engine with drive plates or flywheels; air horn; chain tensioner; crankshaft damper; distributor support; fuel tube; injection tube; injector holder; jet; liquefied petroleum gas adapter; oil filler cap; oil pan; throttle chamber; engine nozzle; governor; cylinder head for hydraulic or pneumatic engines and motors; cylinder rod; fuel, grease, injection, water, oil, gear, charging, hydraulic fluid, orbital steering or roller pump; oil pump drive spindle; turbo charger; main catalyst converter; winch; radiator baffle; ball screw; battery mounting; bracket; brake; bumper; front lower forklift cab; catch; control lever shift; control valve lever; duct; floorboard; forklift panel; guard; inching lever; inching shaft; pedal link; load wheel; liquefied petroleum gas tube; mast; lower, stopping, side,

locking and axle plate; hydraulic oil pipe; pipe, tube and hose; power steering tube; rod; side shift; tie rod socket; steer axle; wheel; valve; relief and safety valve; solenoid valve; vaporizer; control valve; side roller bearings; camshaft; crankshaft; flange; drive unit; gear; torque converter; flywheel; pulley; clutch; yoke; clutch drum; final drive; idler shaft; transmission case; armature; holder; stator or rotor; charger; converter; rectifier; magnet; battery; distributor; ignition coil; glow plug timer; pilot; lamp; lens; turn signal lamp; heater; buzzer; flasher unit; horn; display; printed circuit board; meter; control; headlamp; LED lamp; camshaft sensor; engine controller module; regulator; sensor; battery cable; brush; thermostat switch; oil gauge; electrical pressure sensor; airflow meter; indicator; oxygen sensor; hour meter; meter housing; thermostat); various wires (zinc-coated or plated; insulated copper); various iron or steel components (fittings with mechanical, push-on or flanged joints; pipe or tube adapters, joints or unions; pipe or tube connectors, nipples and connector assemblies; threaded adapters, connectors and connector assemblies; stranded wire with fittings; stranded wire or cable; roller chain; chain; master chain links; leaf chain; lifting chain; threaded self-tapping screws; machine screws; screws or bolts; threaded bolts or studs; U-bolts; threaded nuts; threaded plugs; spring or lock washers; washers; rivets; cotters; splint pins or snap rings; dowel pins; plug and pin assemblies; orifice plugs; Woodruff keys; helical springs; springs; beams and supports; links and bands; adjuster bars; bushings; cable guides; cables for caliper brakes; caps, clamps and clevis pins; clips; consoles; hose band assemblies; brake shoes, levers, tie rods and pivot pins; retainer plates; rods and rod assemblies); various iron, alloy or nonalloy steel components (threaded couplings or elbows; adapters, connectors, nipples and connector assemblies); various heaters (non-electric air; water and immersion; electric for forklift cab use); steel balls for port plugging; various copper components (washers; seals and plugs; insulated cable); various aluminum components (tubes and pipes; clips, pins, seals and washers; connectors); zinc clips and pins; lock cylinders and keys; locks; ignition keys; hinges; swivel casters; various iron, steel, aluminum or zinc components (gas spring cylinders; stay assemblies; brackets); various plates (base metal; camshaft; fuel pump cover; fuel receiver; brake backing; mounting, retaining, baffle, cover and backing; lower, stopping, side, locking and axle; battery, step, guide, tilt, chain, anchor and lever; drive; contact); various engines (spark ignition; diesel); various plugs (ball and blind; taper; Welch; sill body; vent; drain or oil; spark; glow and glow sets); carburetors; various components for use on spark-ignition internal combustion piston engines (assemblies (connecting rod; cylinder block; cylinder head; valve rocker cover; valve rocker shaft; water outlet); exhaust manifolds; exhaust valves; fan and air horn spacers; intake manifolds; intake valves; piston pins, rings and sets; push rods; vacuum connectors; water bypass connectors; water pump connectors); various covers (exhaust manifold; engine front; engine upper; battery; air pipe, fuse box, relay box, steering column, tilt cylinder, radiator, control level and step; seal; clutch housing; transmission/gearbox components; motor brush, front and bearing; sensor); carburetor fuel bowl floats; various spacers (fuel pump; crankshaft; fan; bevel pinion; lift cylinder; forklift; suction filter; main shaft; pinion; spacers); various cases (gear; battery; air cleaner; front cover; print board); main air bleeders; various yokes (manifold; steering linkage; yoke); oil pump adapters; oil throwers; various retainers (oil seal; valve spring; battery; forklift); various levers (throttle; inching; parking); various valve components (collets, lifters and rocker arms; spring seats; guides; hydraulic fluid; oleohydraulic or pneumatic transmission; valves; PVC; magnets); various components for use on diesel engines (assemblies (connecting rod; cylinder block; cylinder head; valve rocker cover; valve rocker shaft; water outlet); exhaust manifolds; exhaust valves; intake manifolds; intake valves and valve guides; piston pins, rings and sets; push rods; vacuum connectors; water bypass connectors; water pump connectors); various cylinder components (liners; caps; slave cylinders; supports); flywheel to torque converter pilots; hydraulic linear acting engines and motors; pistons; various pumps (fuel, grease, injection, water, oil or gear; charging, hydraulic fluid, orbital steering or roller; vacuum); pump couplings, impellers, rods and steel balls; cooling fans; compressors; turbo chargers; breathers and mufflers; fan blades; various vacuum components (pump mufflers; tanks; controls); air conditioners and their various components (motors and fans; valve expansions; condensers); hydraulic fluid and transmission oil filters and filter elements of pleated paper; intake air filters and air filter elements of pleated paper for internal combustion engines; oil strainers; weighing machinery components; scales or weighing machinery; fire extinguishers; winches; various forklift components (hydraulic jacks; adapters and adjusters; base tilt gauges; bulkheads; mast mounting caps; frames; inner mast beams; lower finger bars; mast beams; ribs; seals; shafts; steps; stiffeners; stoppers; upper finger bars; keyboards); various forklifts (battery powered; self-propelled rider type; operator riding electrical); accelerator, clutch and brake pedals; axle shafts; axle weldments; various shims (metal; lift cylinder; lift roller; forklift); ball joints; fork, mast and material handling adjusting bars and guides; torsion and guide bars; battery trays; battery rollers and stoppers; bell cranks; body panels; bogie wheel frames; bosses for joining or mating; book cover, fuse and switch boxes; bracket assembly carriages; brake boosters, chambers, drums and shoes; calipers; various collars (bolt and pin; engine mount and exhaust mounting; shaft and control level); control lever knobs and bellows; control valve rods; counterweight hooks; steel couplers; various shrouds (air pipe, battery, fuse box, relay box, steering column, tilt cylinder, radiator, control level and step; engine and fan); cross members; dashboards; drag links; drag rods; drive axle hubs; drive axle mounting brackets; eccentric discs or wheels; parking brake equalizers; fenders; front and rear overhead guard pillars; spring, pin, hose, tube and cable guides; left hand, right hand and lock pin handles; various holders (air duct, battery, lever, shrink wrap, bushing, switch and lamp; air guide, mast side and fork side; holders; fuse); hood hinges and lock bases; hood panels; hose pulley shafts; hub caps; level, pressure and air balance pump controllers; inching level bushings; jaw sideshifts; various pins (pedal, link, drawbar, guide, traction, bell crank and king; pivot, locking, hinge, lifting link, tie rod, side cover, trunnion, bell crank and anchor); load backrests; mast rail liners; various kits (mini steering wheel rebuild; ignition; electronic ignition pick up; diagnostic; seat cushion assembly); radiator, control handle and tiller arm pivot mounts; mufflers; reinforcement patches; Pitman arms; pressure lift bars; propeller shafts; various protectors (head lamp and rear lamp; chain hose, hose pulley and control lever; voltage overload); pull/push bars; pulley shafts; radiator screens; radiators; relay brackets; reservoir tanks; various wheel components (rims; brackets; forks); various rings (locking, hub, side and

spacer; tolerance); roller guides; dust screens; spindle knuckles; stabilizing arms; steer axle hubs; steering columns; steering wheels; hood latch and door strikers; struts; axle and mast supports; tail pipes; tapped mast rail boss; steering connecting tie rods; tiller arms; hydraulic accumulators; mast side rollers; tapered roller bearings, cones and cups; bearing balls and needles; bearing cones and cups; camshafts; crankshafts; metal bushings; connecting rod, crankshaft and flange rod bearings; sprockets; gears, pinions and gearing; transmissions; flywheels; pulleys; clutches; universal joints; control valve packing; sleeves and sprockets; mechanical seals; various motors (electric under 18.65W; AD/DC; DC to an output of 750W; DC of an output from 750W to 75kW; AC multi-phase; starter; wiper); armatures; spring brushes; stators and rotors; inverter unit drives; power supplies, inverters and rectifiers; magnets; various sensors (magnet input; crank angle; pressure; sensors; speed; temperature; water temperature; fuel; meter); electromagnetic couplings, clutches and brakes; lead-acid storage batteries; starter generators; alternators and generators; igniters; pilots; voltage and voltage current regulators; voltage advancers; condensers; distributor contact sets; distributor caps and shafts; rotors; lamps; rear drive lights; rotating beacons; work lamps; windshield wipers; wiper arms and blades; light bulbs; lenses; television cameras; monitors; combination meters and meter panels; various resistors (pilot lamp; fixed; variable); potentiometers; rheostats; transistor cards; logic and traction cards; printed circuit boards; meters; various switches (isolating or make-and-break; push button; knife; rotary; snap-action; slide; limit; electronic); lightning arresters, voltage limiters and surge suppressors; various connectors (sensor; electrical; battery or charger); snap plug receptacles; male and female bullet terminals; fuses; contactors and relays for a voltage up to 60V; contactors and relays for a voltage over 60V; motor starters; bus bars; terminal boards; electrical panel insulators; boards, panels, modules and controllers; contact tips; contactor bases; headlamps; lamps for a voltage of 100V or lower; LED lamps; thyristors; LED diodes; transistors; speed controls; drive motor, pump motor and electrical power cables; various wire harnesses (body; engine subassembly; light); brushes; thermometers; dipsticks; flow meters; water gauges; oil gauge guides; tube guides for measurement instruments; revolution counters; hour meters; speedometers and tachometers; upholstered metal frame seats; cloth seat backs, cushions, frames and seating; and, seat cushions (duty rate ranges from duty-free to 9.0%). The request indicates that certain new pneumatic tires, lock washers, and tapered roller bearings and parts are subject to antidumping/countervailing duty (AD/CVD) orders if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign (PF) status (19 CFR 146.41). The request also indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in PF status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is April 13, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: February 25, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–04269 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–09–2020]

Foreign-Trade Zone (FTZ) 124—Gramercy, Louisiana; Notification of Proposed Production Activity; Frank's International, LLC (Line Pipe With Tubular Joints); New Iberia and Lafayette, Louisiana

Frank's International, LLC submitted a notification of proposed production activity to the FTZ Board for its facilities located in New Iberia and Lafayette, Louisiana. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on February 19, 2020.

The grantee of FTZ 124 has submitted a separate application for FTZ designation at the facilities of Frank's International, LLC. The facilities will be used for production of API specification line pipe with tubular joints. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Frank's International, LLC from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, the company would be able to choose the duty rates during customs entry procedures that apply to API specification 5L line pipe with welded on pin and box connections (duty-free). Frank's International, LLC would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include API specification 5L line pipe with an outer diameter greater than 16 inches but less than or equal to 24 inches, API specification 5L line pipe with an outer diameter greater than 24 inches, API specification 5L line pipe of alloy steel, and welded on pin and box threaded connections (duty-free). The request indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is April 13, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: February 25, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–04266 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–266–2019]

Approval of Subzone Status; Walgreen Co.; Mt. Vernon, Illinois

On December 26, 2019, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the America's Central Port District, grantee of FTZ 31, requesting subzone status subject to the existing activation limit of FTZ 31, on behalf of Walgreen Co., in Mt. Vernon, Illinois.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (85 FR 298, January 3, 2020). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 31D was approved on February 25, 2020, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 31's 2,000-acre activation limit.

Dated: February 25, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–04267 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–903]

Polyethylene Terephthalate Sheet From the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that polyethylene terephthalate sheet (PET sheet) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is July 1, 2018 through June 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 3, 2020.

FOR FURTHER INFORMATION CONTACT: Peter Zukowski or Kate Sliney, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0189 or (202) 482–2437, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 27, 2019.[1] On December 17, 2019, Commerce postponed the preliminary determination of this investigation and the revised deadline is now February 25, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is PET sheet from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 733(b) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences, for non-participating mandatory respondent Plastech Co. Ltd. (Plastech), as well as the following companies which did not submit a response to Commerce's initial request for quantity and value information: Chungdang Co., K Stout Co., Kemicolor Corp., KP Tech Ltd., Moojin Che, OKS Poly, Puyoung Industry Co., Samjin Plastic Co., Sangil Corp., SK Chemicals, Tae Kwang New Tech. Co., Ltd., and Unidesign Co (collectively, non-responsive companies). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce

[1] *See Polyethylene Terephthalate Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 44854 (August 27, 2019) (*Initiation Notice*).

[2] *See Polyethylene Terephthalate Sheet from the Republic of Korea and the Sultanate of Oman: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 70941 (December 26, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Polyethylene Terephthalate Sheet from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Polyethylene Terephthalate Sheet from the Republic of Korea: Preliminary Scope Decision Memorandum,'' dated concurrently with this notice (Preliminary Scope Decision Memorandum).

shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce preliminarily assigned a rate based entirely on facts available to Plastech. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for Jin Young Chemical Co., Ltd. (JYC). Consequently, the rate calculated for JYC is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Jin Young Chemical Co., Ltd	8.02
Plastech Co., Ltd	52.01
Chungdang Co	52.01
K Stout Co	52.01
Kemicolor Corp	52.01
KP Tech Ltd	52.01
Moojin Che	52.01
OKS Poly	52.01
Puyoung Industry Co	52.01
Samjin Plastic Co	52.01
Sangil Corp	52.01
SK Chemicals	52.01
Tae Kwang New Tech. Co., Ltd.	52.01
Unidesign Co	52.01
All Others	8.02

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Commerce is setting different deadlines for scope-related case and rebuttal briefs, and case and rebuttal briefs addressing all other issues.

Scope briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of the preliminary antidumping duty (AD) determinations for Korea and Oman in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted no later than three days after the deadline for the scope case briefs. These deadlines are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of PET sheet. There is only one briefing schedule for scope case and rebuttal briefs in the AD investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing AD PET sheet investigations. No new factual information should be included in scope case briefs or rebuttal scope briefs, and no proprietary information should be submitted in the scope case briefs and rebuttal scope briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing on the revised scope, limited to issues raised in the scope case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, separate from the hearing on issues raised in case briefs, within five days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Scope comments may only be included in the scope case brief and scope rebuttal brief. Should this investigation result in an order, interested parties may submit requests for a scope ruling afterwards.

Case briefs or other non-scope written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 18, 2020, pursuant to 19 CFR 351.210(e), JYC requested that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months. In addition, on February 14, 2020, the petitioners [8] requested that Commerce fully postpone the deadline for the final determination in this investigation. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, Commerce will notify the ITC of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether subject imports are materially injuring, or threaten material injury to, the U.S. industry.

[8] The petitioners are Advanced Extrusion Inc., Ex-Tech Plastics, Inc., and Multi-Plastics Extrusions, Inc.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: February 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is raw, pretreated, or primed polyethylene terephthalate sheet, whether extruded or coextruded, in nominal thicknesses of equal to or greater than 7 mil (0.007 inches or 177.8 μm) and not exceeding 45 mil (0.045 inches or 1,143 μm) (PET sheet). The scope includes all PET sheet whether made from prime (virgin) inputs or recycled inputs, as well as any blends thereof. The scope includes all PET sheet meeting the above specifications regardless of width, color, surface treatment, coating, lamination, or other surface finish.

The merchandise subject to this investigation is properly classified under statistical reporting number 3920.62.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting number is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Postponement of Final Determination and Extension of Provisional Measures
VI. Application of Facts Available and Use of Adverse Inference
VII. Discussion of the Methodology
VIII. Date of Sale
IX. Product Comparisons
X. Constructed Export Price
XI. Normal Value
XII. Currency Conversion
XIII. Recommendation

[FR Doc. 2020–04344 Filed 3–2–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–123]

Certain Corrosion Inhibitors From the People's Republic of China: Initiation of Countervailing Duty Investigation

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

DATES: Applicable February 25, 2020.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson or Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631 or (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On February 5, 2020, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition (Petition) concerning imports of certain corrosion inhibitors (corrosion inhibitors) from the People's Republic of China (China), filed in proper form on behalf of Wincom Incorporated (the petitioner). The CVD Petition was accompanied by an antidumping duty (AD) Petition concerning imports of corrosion inhibitors from China.[1]

On February 10, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions.[2] The petitioner filed responses to these requests on February 14, 2020.[3] On February 14, 2020, Commerce requested additional supplemental information pertaining to the CVD investigation.[4] On February 18, 2020, the petitioner responded to this request.[5] On February 19, 2020, Commerce requested additional supplemental information pertaining to the CVD investigation.[6] On February 21, 2020, the petitioner responded to the

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Corrosion Inhibitors from China,'' dated February 5, 2020 (the Petitions).

[2] *See* Commerce's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Corrosion Inhibitors from the People's Republic of China: Supplemental Questions,'' dated February 10, 2020 (General Issues Questionnaire); *see also* Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Corrosion Inhibitors from the People's Republic of China: Supplemental Questions,'' dated February 10, 2020.

[3] *See* Petitioner's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Responses to Supplemental Questions (Volume I),'' dated February 14, 2020 (General Issues Supplement); *see also* Petitioner's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Responses to Supplemental Questions (Volume III),'' dated February 14, 2020 (CVD Supplement).

[4] *See* Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Corrosion Inhibitors from the People's Republic of China: Supplemental Questions,'' dated February 14, 2020.

[5] *See* Petitioner's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Responses to Second Supplemental Questions (Volume III),'' dated February 18, 2020.

[6] *See* Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Imports of Certain Corrosion Inhibitors from the People's Republic of China: Supplemental Questions,'' dated February 19. 2020.

request.[7] On February 21, 2020, Commerce received comments on industry support from SUEZ WTS USA Inc. (Suez), an importer of the subject merchandise.[8] The petitioner responded to Suez's industry support comments on February 24, 2020.[9]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of corrosion inhibitors in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing corrosion inhibitors in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition was accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party, as defined in sections 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[10]

Period of Investigation

Because the Petition was filed on February 5, 2020, the period of investigation (POI) is January 1, 2019 through December 31, 2019.[11]

Scope of the Investigation

The merchandise covered by this investigation is corrosion inhibitors from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[12] As a result, the petitioner modified the scope of the Petition to clarify the description of the merchandise covered by the Petition.[13] The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[14] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[15] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on March 16, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on March 26, 2020, which is 10 calendar days from the initial comment deadline.[16]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the record of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[17] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the Petition.[18] The GOC did not request consultations.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also

[7] *See* Petitioner's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Third Supplemental Questionnaire Response (Volume III),'' dated February 21, 2020.

[8] *See* Suez's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Industry Support Comments on the Petitions for Antidumping and Countervailing Duties and Request to Poll Industry,'' dated February 21, 2020.

[9] *See* Petitioner's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Response to Comments From SUEZ WTS USA, Inc. Regarding Industry Support,'' dated February 24, 2020.

[10] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[11] *See* 19 CFR 351.204(b)(2).

[12] *See* General Issues Questionnaire at 3.

[13] *See* General Issues Supplement at 2–4 and at Exhibit I–S1.

[14] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[15] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

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

[17] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[18] *See* Commerce's Letter, ''Countervailing Duty Petition on Corrosion Inhibitors from the People's Republic of China,'' dated February 5, 2020.

determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[19] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[20]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[21] Based on our analysis of the information submitted on the record, we have determined that corrosion inhibitors, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[22]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2019, as well as 2019 production of its two toll producers, who also support the Petition.[23] The petitioner states that there are no other known producers of corrosion inhibitors in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[24] We relied on data provided by the petitioner for purposes of measuring industry support.[25]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[26] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[27] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[28] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[29] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[30]

Injury Test

Because China is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product.[31] In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[32]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; a decline in the domestic industry's financial performance; decline in production, capacity utilization, U.S. shipments, and net sales quantities; and impacts on employment-related indicators.[33] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[34]

Initiation of CVD Investigation

Based upon the examination of the Petition on corrosion inhibitors from China, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of corrosion inhibitors from China benefit from countervailable subsidies conferred by the GOC. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on 17 of the 18 alleged programs. For a full discussion of the basis for our decision

[19] *See* section 771(10) of the Act.

[20] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[21] *See* Volume I of the Petition, at 11–14; *see also* General Issues Supplement at 4–8 and Exhibits I–S2 and I–S3.

[22] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Certain Corrosion Inhibitors from the People's Republic of China (China CVD Initiation Checklist) at Attachment II, ''Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Corrosion Inhibitors from the People's Republic of China'' (Attachment II), dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Commerce building.

[23] *See* Volume I of the Petition, at 3–4, 9, 14, and Exhibits I–12, I–14, and I–15; *see also* General Issues Supplement at 8–10 and Exhibits I–S4 and I–S8.

[24] *See* Volume I of the Petition, at 3–4; *see also* General Issues Supplement, at 8–10 and Exhibits I–S4 and I–S8.

[25] *See* Volume I of the Petition, at 3–4, and 9, and Exhibits I–12, I–14, and I–15; *see also* General Issues Supplement at 8–10 and Exhibits I–S4 and I–S8. For further discussion, *see* China CVD Initiation Checklist, at Attachment II.

[26] *See* Volume I of the Petition, at 3–4, and 9, and Exhibits I–12, I–14, and I–15; *see also* General Issues Supplement at 8–10 and Exhibits I–S4 and I–S8. For further discussion, *see* China CVD Initiation Checklist, at Attachment II.

[27] *See* section 702(c)(4)(D) of the Act; *see also* China CVD Initiation Checklist, at Attachment II.

[28] *See* China CVD Initiation Checklist, at Attachment II.

[29] *Id.*

[30] *Id.*

[31] *See* Volume I of the Petitions at 1–2.

[32] *Id.* at Exhibit I–11.

[33] *See* Volume I of the Petitions, at 14–25 and Exhibits I–5, I–7 through I–15; *see also* Petitioner's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Responses to Supplemental Questions (Volume I),'' dated February 14, 2020 (General Issues Supplement), at 10–13, and Exhibits I–S5, I–S6, and I–S7.

[34] *See* China CVD Initiation Checklist, at Attachment III, ''Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Corrosion Inhibitors from the People's Republic of China'' (Attachment III).

to initiate (or not initiate) on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named nine companies in China as producers/exporters of corrosion inhibitors.[35] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and, it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on quantity and value (Q&V) questionnaires issued to the potential respondents. Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) numbers listed in the scope of the investigation. However, for this investigation, among the HTSUS numbers under which the subject merchandise would enter (2933.99.82.10, 2933.99.82.20, 2933.99.82.90), are basket categories under which non-subject merchandise may enter. Therefore, we cannot rely on CBP entry data in selecting respondents. We intend instead to issue Q&V questionnaires to each potential respondent for which the petitioner has provided a complete address.

Exporters and producers of certain corrosion inhibitors from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from the Enforcement and Compliance website at *http://trade.gov/enforcemnet/news.asp.*

Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on March 11, 2020. All Q&V responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the GOC via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of corrosion inhibitors from China are materially injuring or threatening material injury to a U.S. industry.[36] A negative ITC determination will result in the investigation being terminated.[37] Otherwise, this CVD investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [38] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[39] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties wishing to submit factual information in this investigation are asked to review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[40] Parties must use the certification formats provided in 19 CFR 351.303(g).[41] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website

[35] *See* Volume I of the Petitions at Exhibit I–15.

[36] *See* section 733(a) of the Act.

[37] *Id.*

[38] *See* 19 CFR 351.301(b).

[39] *See* 19 CFR 351.301(b)(2).

[40] *See* section 782(b) of the Act.

[41] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

at *http://enforcement.trade.gov/apo.* Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing a letter of appearance).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: February 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is tolyltriazole and benzotriazole. This includes tolyltriazole and benzotriazole of all grades and forms, including their sodium salt forms. Tolyltriazole is technically known as Tolyltriazole IUPAC 4,5 methyl benzotriazole. It can also be identified as 4, 5 methyl benzotriazole, tolutriazole, TTA, and TTZ.

Benzotriazole is technically known as IUPAC 1,2,3-Benzotriazole. It can also be identified as 1,2,3-Benzotriazole, 1,2-Aminozophenylene, 1H-Benzotriazole, and BTA.

All forms of tolyltriazole and benzotriazole, including but not limited to flakes, granules, pellets, prills, needles, powder, or liquids, are included within the scope of these petitions.

The scope includes tolyltriazole/sodium tolyltriazole and benzotriazole/sodium benzotriazole that are combined or mixed with other products. For such combined products, only the tolyltriazole/sodium tolyltriazole and benzotriazole/sodium benzotriazole component is covered by the scope of these investigations. Tolyltriazole and sodium tolyltriazole that have been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

Tolyltriazole, sodium tolyltriazole, benzotriazole and sodium benzotriazole that is otherwise subject to these investigations is not excluded when commingled with tolyltriazole, sodium tolyltriazole, benzotriazole, or sodium benzotriazole from sources not subject to these investigations. Only the subject merchandise component of such commingled products is covered by the scope of these investigations.

A combination or mixture is excluded from this investigation if the total tolyltriazole or benzotriazole component of the combination or mixture (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

Notwithstanding the foregoing language, a tolyltriazole or benzotriazole combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the tolyltriazole or benzotriazole can no longer be separated from the other products through a distillation or other process is excluded from this investigation.

Tolyltriazole has the Chemical Abstracts Service (''CAS'') registry number 299385–43–1. Tolyltriazole is classified under Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 2933.99.82.20.

Sodium Tolyltriazole has the CAS registry number 64665–57–2 and is classified under HTSUS subheading 2933.99.82.90.

Benzotriazole has the CAS registry number #95–14–7 and is classified under HTSUS subheading 2933.99.82.10.

Sodium Benzotriazole has the CAS registry number 15217–42–2. Sodium Benzotriazole is classified under HTSUS subheading 2933.99.82.90.

Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2020–04342 Filed 3–2–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–122]

Certain Corrosion Inhibitors From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

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

DATES: Applicable February 25, 2020.

FOR FURTHER INFORMATION CONTACT: Lochard Philozin or Nicholas Czajkowski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4260 or (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On February 5, 2020, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition (Petition) concerning imports of certain corrosion inhibitors (corrosion inhibitors) from the People's Republic of China (China), filed in proper form on behalf of Wincom Incorporated (the petitioner). The AD Petition was accompanied by a countervailing duty (CVD) Petition concerning imports of corrosion inhibitors from China.[1]

On February 10 and February 11, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] The petitioner filed responses to these requests on February 14, 2020.[3] On February 21, 2020, Commerce received comments on industry support from SUEZ WTS USA Inc. (Suez), an importer of the subject merchandise.[4] The petitioner responded to Suez's industry support comments on February 24, 2020.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of corrosion inhibitors from China are being, or are likely to be, sold in the United States at less-than-fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing corrosion inhibitors in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.[6]

Period of Investigation

Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), and because the Petition was filed on February 5, 2020, the period of investigation (POI) is July 1, 2019 through December 31, 2019.

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[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Corrosion Inhibitors from China,'' dated February 5, 2020 (the Petitions).

[2] *See* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Certain Corrosion Inhibitors from the People's Republic of China: Supplemental Questions,'' dated February 11, 2020 (General Issues Supplemental Questionnaire); *see also* Commerce's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Corrosion Inhibitors from the People's Republic of China: Supplemental Questions,'' dated February 10, 2020.

[3] *See* Petitioner's Letter, ''Corrosion Inhibitors from the People's Republic of China: Responses to Supplemental Questions (Volume I),'' dated February 14, 2020 (General Issues Supplement); *see also* Petitioner's Letter, ''Corrosion Inhibitors from the People's Republic of China: Responses to Supplemental Questions (Volume II),'' dated February 14, 2020 (AD Supplement).

[4] *See* Suez's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Industry Support Comments on the Petitions for Antidumping and Countervailing Duties and Request to Poll Industry,'' dated February 21, 2020.

[5] *See* Petitioner's Letter, ''Certain Corrosion Inhibitors from the People's Republic of China: Petitioner's Response to Comments From SUEZ WTS USA, Inc. Regarding Industry Support,'' dated February 24, 2020.

[6] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

Scope of the Investigation

The merchandise covered by this investigation is corrosion inhibitors from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

Commerce requested further information from the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[7] As a result, the petitioner modified the scope of the Petition to clarify the description of the merchandise covered by the Petition.[8] The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[9] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[10] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on March 16, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on March 26, 2020, which is 10 calendar days from the initial comment deadline.[11]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must be filed on the record of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[12] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of corrosion inhibitors to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. Eastern Time (ET) on March 16, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on March 26, 2020, which is 10 calendar days from the initial comment deadline.[13] All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of this AD investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[14] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[15]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to

[7] *See* General Issues Supplemental Questionnaire at 3.

[8] *See* General Issues Supplement at 2–4 and at Exhibit I–S1.

[9] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[10] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

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

[12] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

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

[14] *See* section 771(10) of the Act.

[15] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[16] Based on our analysis of the information submitted on the record, we have determined that corrosion inhibitors, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[17]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2019, as well as 2019 production of its two toll producers, who also support the Petition.[18] The petitioner states that there are no other known producers of corrosion inhibitors in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[19] We relied on data provided by the petitioner for purposes of measuring industry support.[20]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[21] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[22] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[23] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[24] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[25]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[26]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; a decline in the domestic industry's financial performance; decline in production, capacity utilization, U.S. shipments, and net sales quantities; and a decline in the industry's employee indicators, *e.g.,* the average number of employees, their hours worked, and total wages paid.[27] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[28]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of corrosion inhibitors from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

Export Price

The petitioner based export price (EP) on two sources. First, the petitioner based EP on the average unit value (AUV) of corrosion inhibitors imports from China during the POI, calculated using data from the ITC's Dataweb.[29] Second, the petitioner also based EP on two transaction-specific AUVs for Gold Chemical Ltd. and Nanjing Trust Chemical Co. Ltd. for shipments of tolyltriazole (TTA) identified from China during the POI.[30] In order to calculate ex-factory U.S. prices, where appropriate, the petitioner made deductions from U.S. prices for foreign inland freight and foreign brokerage and handling.[31]

Normal Value

Commerce considers China to be an NME country.[32] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore,

[16] *See* Volume I of the Petition at 11–14; *see also* General Issues Supplement at 4–8 and Exhibits I–S2 and I–S3.

[17] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Antidumping Duty Investigation Initiation Checklist: Certain Corrosion Inhibitors from the People's Republic of China (China AD Initiation Checklist) at Attachment II, ''Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Corrosion Inhibitors from the People's Republic of China'' (Attachment II), dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Commerce building.

[18] *See* Volume I of the Petition at 3–4, 9, 14, and Exhibits I–12, I–14, and I–15; *see also* General Issues Supplement at 8–10 and Exhibits I–S4 and I–S8.

[19] *See* Volume I of the Petition at 3–4; *see also* General Issues Supplement at 8–10 and Exhibits I–S4 and I–S8.

[20] *See* Volume I of the Petition at 3–4 and 9, and Exhibits I–12, I–14, and I–15; *see also* General Issues Supplement at 8–10 and Exhibits I–S4 and I–S8. For further discussion, *see* China AD Initiation Checklist at Attachment II.

[21] *See* Volume I of the Petition at 3–4 and 9, and Exhibits I–12, I–14, and I–15; *see also* General Issues Supplement at 8–10 and Exhibits I–S4 and I–S8. For further discussion, *see* China AD Initiation Checklist at Attachment II.

[22] *See* section 732(c)(4)(D) of the Act; *see also* China AD Initiation Checklist, at Attachment II.

[23] *See* China AD Initiation Checklist at Attachment II.

[24] *Id.*

[25] *Id.*

[26] *See* Volume I of the Petitions at 17 and Exhibit I–11.

[27] *See* Volume I of the Petitions at 14–25 and Exhibits I–5, I–7 through I–15; *see also* General Issues Supplement at 10–13, and Exhibits I–S5, I–S6, and I–S7.

[28] *See* China AD Initiation Checklist at Attachment III, ''Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Corrosion Inhibitors from the People's Republic of China'' (Attachment III).

[29] *See* Volume II of the Petition at Exhibit II–3A; *see also* General Issues Questionnaire at 8 and Exhibit I–S3.

[30] *See* Volume II of the Petition at Exhibits II–7A through II–8B; *see also* AD Supplement at Exhibit II–S1.

[31] *See* Volume II of the Petition at 5–6 and Exhibit II–4.

[32] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy,* unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[33]

The petitioner claims that Malaysia is an appropriate surrogate country for China because it is a market economy country that is at a level of economic development comparable to that of China and it is a significant producer of comparable merchandise.[34] The petitioner provided publicly available information from Malaysia to value all FOPs. Based on the information provided by the petitioner, we determine that it is appropriate to use Malaysia as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Because information regarding the volume of inputs consumed by Chinese producers/exporters was not reasonably available, the petitioner used its own product-specific consumption rates as a surrogate to estimate Chinese manufacturers' FOPs.[35] The petitioner valued the estimated FOPs using surrogate values from Malaysia.[36] The petitioner calculated factory overhead, selling, general and administrative expenses, and profit based on the experience of a Malaysian producer of anti-corrosion and anti-wear inhibitors in engine oils.[37]

Fair Value Comparisons

Based on the data provided in the Petition, there is reason to believe that imports of corrosion inhibitors from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for corrosion inhibitors from China range from 384.97 percent to 420.32 percent.[38]

Initiation of LTFV Investigation

Based upon the examination of the Petition on corrosion inhibitors from China, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of corrosion inhibitors from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The petitioner named nine companies in China as producers/exporters of corrosion inhibitors.[39] In AD investigations involving NME countries, Commerce selects respondents based on quantity and value (Q&V) questionnaires in cases where it has determined that the number of companies is large and it cannot individually examine each company based upon its resources. Given that there are nine producers and exporters identified in the Petition, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioner had provided a complete address.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on Enforcement and Compliance's website at *http://www.trade.gov/enforcement/news.asp.* In accordance with the standard practice for respondent selection in AD cases involving NME countries, Commerce intends to base respondent selection on the responses to the Q&V questionnaire that it receives.

Responses to the Q&V questionnaire must be submitted by the relevant Chinese producers/exporters no later than 5:00 p.m. ET on March 11, 2020. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above. Commerce intends to finalize its decisions regarding respondent selection within 20 days of publication of this notice.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[40] The specific requirements for submitting a separate-rate application in a China investigation are outlined in detail in the application itself, which is available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[41] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V questionnaire response will not receive separate rate consideration.

Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[42]

[33] *See* AD Initiation Checklist.

[34] *See* Volume II of the Petition at 2–4 and Exhibit II–1.

[35] *See* Volume II of the Petition at 7 and Exhibit II–9G; *see also* AD Supplement at 3–4.

[36] *See* Volume II of the Petition at 7 and Exhibits II–5A–B, II–9C–F, and II–10A–11A; *see also* AD Supplement at 2–3.

[37] *See* Volume II of the Petition at 4, 9, and Exhibit II–11A–C.

[38] *See* AD Initiation Checklist; *see also* General Issues Supplement at Exhibit II–S2.

[39] *See* Volume I of the Petition at Exhibit I–5.

[40] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[41] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[42] *See* Policy Bulletin 05.1 at 6 (emphasis added).

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the Government of China via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of corrosion inhibitors from China are materially injuring or threatening material injury to a U.S. industry.[43] A negative ITC determination will result in the investigation being terminated.[44] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[45] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[46] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Parties wishing to submit factual information in this investigation are asked to review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[47] Parties must use the certification formats provided in 19 CFR 351.303(g).[48] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at *http://enforcement.trade.gov/apo.* Parties wishing to participate in this investigation should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing a letter of appearance).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: February 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is tolyltriazole and benzotriazole. This includes tolyltriazole and benzotriazole of all grades and forms, including their sodium salt forms. Tolyltriazole is technically known as Tolyltriazole IUPAC 4,5 methyl benzotriazole. It can also be identified as 4,5 methyl benzotriazole, tolutriazole, TTA, and TTZ.

Benzotriazole is technically known as IUPAC 1,2,3-Benzotriazole. It can also be identified as 1,2,3-Benzotriazole, 1,2-Aminozophenylene, lH-Benzotriazole, and BTA.

All forms of tolyltriazole and benzotriazole, including but not limited to flakes, granules, pellets, prills, needles, powder, or liquids, are included within the scope of this investigation.

The scope includes tolyltriazole/sodium tolyltriazole and benzotriazole/sodium benzotriazole that are combined or mixed with other products. For such combined products, only the tolyltriazole/sodium tolyltriazole and benzotriazole/sodium benzotriazole component is covered by the scope of this investigation. Tolyltriazole and sodium tolyltriazole that have been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

Tolyltriazole, sodium tolyltriazole, benzotriazole and sodium benzotriazole that is otherwise subject to this investigation is not excluded when commingled with tolyltriazole, sodium tolyltriazole, benzotriazole, or sodium benzotriazole from sources not subject to this investigation. Only the subject merchandise component of such commingled products is covered by the scope of this investigation.

A combination or mixture is excluded from this investigation if the total tolyltriazole or benzotriazole component of the combination or mixture (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

Notwithstanding the foregoing language, a tolyltriazole or benzotriazole combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the tolyltriazole or benzotriazole can no longer be separated from the other products through a distillation or other process is excluded from this investigation.

Tolyltriazole has the Chemical Abstracts Service (CAS) registry number 299385–43–1.

[43] *See* section 733(a) of the Act.

[44] *Id.*

[45] *See* 19 CFR 351.301(b).

[46] *See* 19 CFR 351.301(b)(2).

[47] *See* section 782(b) of the Act.

[48] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

Tolyltriazole is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2933.99.8220.

Sodium Tolyltriazole has the CAS registry number 64665–57–2 and is classified under HTSUS subheading 2933.99.8290.

Benzotriazole has the CAS registry number 95–14–7 and is classified under HTSUS subheading 2933.99.8210.

Sodium Benzotriazole has the CAS registry number 15217–42–2. Sodium Benzotriazole is classified under HTSUS subheading 2933.99.8290.

Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2020–04339 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Scope Ruling on Unpatented R–421A; Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order for Unpatented R–421A; and Extension of Time Limit for Final Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that imports of unpatented R–421A from the People's Republic of China (China) are circumventing the antidumping duty (AD) order on HFC blends from China. As a result, imports of blends of unpatented R–421A from China will be subject to suspension of liquidation effective June 18, 2019. We invite interested parties to comment on this preliminary determination.

DATES: Applicable March 3, 2020.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Manuel Rey, 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) 482–4987 or (202) 482–3342, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2019, Commerce initiated an anti-circumvention inquiry to determine whether blends of unpatented R–421A from China, that are further processed into finished HFC blends in the United States,[1] are circumventing the *Order* on HFC blends from China.[2] Additionally, in our *Notice of Initiation,* we stated that, as part of this anti-circumvention inquiry,[3] we would also address both a covered merchandise referral from U.S. Customs and Border Protection (CBP),[4] and a scope inquiry filed by Choice Refrigerants under 19 CFR.225(c).[5] As part of this preliminary determination, we also have made a final scope finding. With respect to the covered merchandise referral, we will inform CBP of our findings at the conclusion of this anti-circumvention proceeding. For a complete description of the events that followed the initiation of this inquiry, *see* the Preliminary Decision Memorandum.[6]

Scope of the *Order*

The products subject to this order are HFC blends. HFC blends covered by the scope are R–404A, R–407A, R–407C, R–410A, and R–507A.[7] HFC blends covered by the scope of the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers imports of unpatented R–421A, a blend of HFC components R–125 (also known as Pentafluoroethane) and R–134a (also known as 1,1,1,2-Tetrafluoroethane), from China that are further processed in the United States to create an HFC blend that would be subject to the *Order.*[8]

Methodology

Commerce made this preliminary finding of circumvention in accordance with section 781(a) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.225(g). We relied on information placed on the record by the American HFC Coalition (the petitioners) and information placed on the record by LM Supply Inc. and Cool Master USA, LLC, the importers of the merchandise in question, and their affiliated blenders, BMP USA Inc. (BMP USA) and IGas USA, Inc. Further, because certain interested parties did not cooperate to the best of their abilities in responding to Commerce's requests for information, we have based parts of our preliminary determination on the facts available, with adverse inferences, pursuant to sections 776(a) and (b) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached at the Appendix to this notice.

Scope Ruling and Affirmative Preliminary Determination of Circumvention

As detailed in the Preliminary Decision Memorandum, we determine, pursuant to 19 CFR 351.225(k), that because the scope only covers five HFC blends, and unpatented R–421A is not one of the five blends, that consequently, unpatented R–421A is not covered by the scope of the *Order* within the meaning of 19 CFR

[1] *See Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order; Unpatented R–421A,* 84 FR 28281 (June 18, 2019) (*Notice of Initiation*).

[2] *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (October 16, 2017) (*Order*).

[3] *See Notice of Initiation,* 84 FR 28281, 28283–84.

[4] *See Hydrofluorocarbon Blends from the People's Republic of China: Notice of Covered Merchandise Referral,* 83 FR 9277 (March 5, 2018).

[5] *See* Choice Refrigerants' Letter, ''Application for Scope Ruling on Exclusion of Patented HFC Blends from Antidumping Duty Order A–570–028: Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China,'' dated November 30, 2017.

[6] *See* Memorandum, ''Decision Memorandum for Preliminary Decision Memorandum for Scope Ruling and Anti-Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China; Unpatented R–421A'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

[8] The scope of the order explicitly excludes Choice® R–421A (also referred to as ''patented R–421A''). The scope also only covers five HFC blends; R–421A is not one of the covered blends. Patented R–421A is a blend of 58 percent R–125, and 42 percent R–134a, with a lubricant added to it. The patent holder for R–421A is Choice Refrigerants.

351.225(k). Accordingly, because unpatented R–421A is not specifically excluded from the *Order,* a circumvention analysis and determination is warranted for the unpatented R–421A blends, under 19 CFR 351.225(g).

As detailed in the Preliminary Decision Memorandum, we preliminarily determine, pursuant to section 781(a) of the Tariff Act, that imports of unpatented R–421A from China are circumventing the *Order.*

Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), Commerce will instruct CBP to suspend liquidation of all unpatented R–421A (as defined in the Merchandise Subject to the Anti-Circumvention Inquiry section above) from China that are entered, or withdrawn from warehouse, for consumption on or after June 18, 2019, the date of initiation of this anti-circumvention inquiry.[9] CBP shall require cash deposits in accordance with those rates prevailing at the time of entry, depending upon the exporter in question. At this time, we have not included a certification requirement; however, based upon comments from interested parties, we may add such a certification requirement for the final determination.

Public Comment

Interested parties may submit case briefs to Commerce no later than 14 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[12] Case and rebuttal briefs should be filed electronically via ACCESS.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically and received successfully in its entirety, via ACCESS by 5:00 p.m. Eastern Time within 14 days after the date of publication of this notice.[14] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[15]

Postponement of Final Determination

Section 781(f) of the Act provides that, to the maximum extent practicable, Commerce shall make its anti-circumvention determinations within 300 days from the date of initiation of the inquiry. We determine that it is not practicable to make a final determination in this anti-circumvention inquiry by the current deadline of April 13, 2020, because Commerce will require additional time to notify the U.S. International Trade Commission (ITC), and to review and analyze case and rebuttal briefs. Therefore, we are extending the time period for issuing the final determination in this inquiry by 45 days, to May 28, 2020.

Notification to the ITC

Consistent with section 781(e) of the Act, Commerce is notifying the ITC of this affirmative preliminary determination to include the merchandise subject to this inquiry within the AD order on HFC blends from China. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the subject merchandise. These consultations must be concluded within 15 days after the date of the request. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days to provide written advice to Commerce.

Notification to Interested Parties

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

Dated: February 25, 2020.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Merchandise Subject to the Scope and Anti-Circumvention Inquiry
IV. Scope of the Order
V. Statutory and Regulatory Framework for Scope Inquiry
VI. Interested Party Scope Comments
VII. Commerce's Scope Determination
VIII. Period of Anti-Circumvention Inquiry
IX. Surrogate Countries and Methodology for Valuing Inputs From China
X. Statutory and Regulatory Framework for Anti-Circumvention Inquiry
XI. Use of Facts Available With An Adverse Inference
XII. Allegations of Circumvention as Identified in the Initiation of Inquiry
XIII. Anti-Circumvention Analysis
XIV. Intent To Consider Certification Requirement
XV. Country-Wide Determination
XVI. Recommendation

[FR Doc. 2020–04354 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

[9] *See, e.g., Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 63 FR 54672, 54675–6 (October 13, 1998).

[10] Commerce is exercising its discretion, under 19 CFR 351.309(c)(1)(ii), to alter the time limit for filing of case briefs.

[11] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

[14] *See* 19 CFR 351.310(c).

[15] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967; C–570–968]

Aluminum Extrusions From the People's Republic of China: Rescission of Antidumping and Countervailing Duty Circumvention Inquiries

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the anti-circumvention inquiries on aluminum extrusions from the People's Republic of China (China) that were initiated on May 6, 2019.

DATES: Applicable March 3, 2020.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2011, Commerce published antidumping (AD) and countervailing duty (CVD) orders on

aluminum extrusions from China.[1] On May 6, 2019, in response to a request from Air Master Awning LLC (Air Master), Commerce initiated anti-circumvention inquiries regarding the *Orders* with respect to aluminum window frame extrusions processed into aluminum jalousie shutters (jalousie shutters) in the Dominican Republic, and also self-initiated a scope inquiry to determine whether the jalousie shutters at issue are merchandise covered by the scope of the *Orders*.[2] On May 24, 2019, Commerce invited interested parties to submit comments on whether the jalousie shutters are merchandise covered by the scope of the *Orders*.[3] On June 11, 2019, we received comments from Aluvinsa Industrial SRL (Aluvinsa), a Dominican producer and exporter of jalousie shutters.[4] In June 2019, we received comments [5] and rebuttal comments [6] from Air Master. We also received letters in support of Air Master's submission from the Aluminum Extrusions Fair Trade Committee (the petitioner).[7] On October 15, 2019, Commerce issued a final scope ruling, in which it determined that the jalousie shutters processed in the Dominican Republic from Chinese aluminum extrusions are merchandise covered by the scope of the *Orders*.[8]

Rescission of Circumvention Inquiries

In its final scope ruling, Commerce indicated that it intended to rescind the anti-circumvention inquiries as moot.[9] This determination is consistent with what Commerce has previously stated to be the purpose of an anti-circumvention inquiry. Specifically, Commerce has stated that ''[t]he purpose of an anti-circumvention inquiry . . . is to determine whether a product that is outside the scope should be included within the scope because it was altered in form or appearance in minor respects.'' [10] Because we have determined that aluminum jalousie shutters processed in the Dominican Republic from aluminum extrusions produced in China are merchandise covered by the scope of the *Orders,* we are rescinding the anti-circumvention inquiries.

Notification Regarding Administrative Protective Orders

This notice will serve as the only reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice and determinations are issued and published in accordance with section 781 of the Tariff Act of 1930, as amended, and 19 CFR 351.225.

Dated: February 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–04345 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).

[2] *See Aluminum Extrusions from the People's Republic of China: Initiation of Anti-Circumvention and Scope Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 84 FR 19757 (May 6, 2019).

[3] *See* Commerce's Letter, ''Aluminum Extrusions from the People's Republic of China: Initiation of Scope Inquiries on Window Frame Extrusions,'' dated May 24, 2019.

[4] *See* Aluvinsa's Letter, dated June 6, 2019. Due to filing deficiencies in Aluvinsa's submission, on September 30, 2019, we requested that Aluvinsa revise and resubmit its June 6, 2019, submission, consistent with Commerce's filing requirements. Aluvinsa resubmitted its comments on October 2, 2019, but we rejected these comments from the record because they contained new factual information. On October 2, 2019, Commerce again requested that Aluvinsa submit a revised version of its June 6, 2019, submission. Aluvinsa made that submission on October 8, 2019.

[5] *See* Air Master's Letter, ''Aluminum Extrusions from the People's Republic of China, A–570–967 and C–570–968; Scope Inquiries on Window Frame Extrusions,'' dated June 13, 2019.

[6] *See* Air Master's Letter, ''Aluminum Extrusions from the People's Republic of China, A–570–967 and C–570–968; Scope Inquiries on Window Frame Extrusions; Rebuttal Comments of Air master Awning LLC,'' dated June 24, 2019.

[7] *See* Petitioner's Letters, ''Aluminum Extrusions from the People's Republic of China: Letter in Support of Air Master Awning LLC's Comments in Scope Inquiries on Window Frame Extrusions,'' dated June 13, 2019, and ''Aluminum Extrusions from the People's Republic of China: Letter in Support of Air Master Awning LLC's Rebuttal Comments,'' dated June 24, 2019.

[8] *See* Memorandum, ''Final Scope Ruling on the Antidumping and Countervailing Duty Orders on Aluminum Extrusions from the People's Republic of China: Aluminum Jalousie Shutters,'' dated October 15, 2019, at 20.

[9] *Id.*

[10] *See Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 82 FR 41610 (September 1, 2017), and accompanying Issues and Decision Memorandum at Comment 1.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–813]

Polyethylene Terephthalate Sheet From the Sultanate of Oman: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that polyethylene terephthalate sheet (PET sheet) from the Sultanate of Oman (Oman) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2018 through June 30, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 3, 2020.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on August 27, 2019.[1] On December 17, 2019, Commerce postponed the preliminary determination of this investigation and the revised deadline is now February 25, 2020.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision

[1] *See Polyethylene Terephthalate Sheet from the Republic of Korea, Mexico, and the Sultanate of Oman: Initiation of Less-than-Fair-Value Investigations,* 84 FR 44854 (August 27, 2019) (*Initiation Notice*).

[2] *See Polyethylene Terephthalate Sheet from the Republic of Korea and the Sultanate of Oman: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 70941 (December 26, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-than-Fair-Value Investigation of Polyethylene Terephthalate Sheet from Oman,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Memorandum is included as Appendix II to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is PET Sheet from Oman. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 733(b) of the Act. Commerce has calculated constructed export price in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(ii) of the Act provides that, in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated an estimated weighted-average dumping margin for OCTAL SAOC—FZC (OCTAL) that is not zero, *de minimis,* or based entirely on facts otherwise available. Commerce determined the all-others rate using the estimated weighted-average dumping margin calculated for OCTAL, the sole respondent.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Exporter/producer	Estimated weighted-average dumping margin (percent)
OCTAL SAOC—FZC (OCTAL)	2.78
All Others	2.78

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Commerce is setting different deadlines for scope-related case and rebuttal briefs, and case and rebuttal briefs addressing all other issues.

Scope briefs may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of the preliminary antidumping duty (AD) determinations for Korea and Oman in the **Federal Register**. Rebuttal scope briefs, limited to issues raised in the scope case briefs, may be submitted no later than three days after the deadline for the scope case briefs. These deadlines are based on publication in the **Federal Register** of the preliminary determinations in the AD investigations of PET sheet. There is only one briefing schedule for scope case and rebuttal briefs in the AD investigations. For all scope issues, parties must file separate and identical documents on the records of all of the ongoing AD PET sheet investigations. No new factual information should be included in scope case briefs or rebuttal scope briefs, and no proprietary information should be submitted in the scope case briefs and rebuttal scope briefs.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing on the revised scope, limited to issues raised in the scope case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, separate from the hearing on issues raised in case briefs, within five days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a

[4] *See Antidumping Duties; Countervailing Duties Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 84 FR at 44855.

[6] *See* Memorandum, ''Polyethylene Terephthalate Sheet from Oman and Korea: Preliminary Scope Decision Memorandum,'' dated concurrently with this preliminary determination (Preliminary Scope Decision Memorandum).

request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Scope comments may only be included in the scope case brief and scope rebuttal brief. Should this investigation result in an order, interested parties may submit requests for a scope ruling afterwards.

Case briefs or other non-scope written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation 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.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On February 12, 2020, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), OCTAL requested that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months. In addition, on February 14, 2020, the petitioners[8] requested that Commerce fully postpone the deadline for the final determination in this investigation. In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, Commerce will notify the ITC of this preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether subject imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: February 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is raw, pretreated, or primed polyethylene terephthalate sheet, whether extruded or coextruded, in nominal thicknesses of equal to or greater than 7 mil (0.007 inches or 177.8 μm) and not exceeding 45 mil (0.045 inches or 1143 μm) (PET sheet). The scope includes all PET sheet whether made from prime (virgin) inputs or recycled inputs, as well as any blends thereof. The scope includes all PET sheet meeting the above specifications regardless of width, color, surface treatment, coating, lamination, or other surface finish.

The merchandise subject to this investigation is properly classified under statistical reporting number 3920.62.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting number is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope Comments
V. Postponement of Final Determination and Extension of Provisional Measures
VI. Discussion of the Methodology
VII. Date of Sale
VIII. Product Comparisons
IX. Constructed Export Price
X. Normal Value
XI. Currency Conversion
XII. Recommendation

[FR Doc. 2020–04346 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] The petitioners are Advanced Extrusion Inc., Ex-Tech Plastics, Inc., and Multi-Plastics Extrusions, Inc.

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

DATES: Applicable March 3, 2020.

SUMMARY: The Department of Commerce (Commerce) hereby publishes a list of scope rulings and anti-circumvention determinations made during the period October 1, 2019 through December 31, 2019. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Marcia E. Short, AD/CVD Operations, Customs Liaison Unit, Enforcement and

Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–1560.

SUPPLEMENTARY INFORMATION:

Background

Commerce regulations provide that it will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on 02/12/2020.[2] This current notice covers all scope rulings and anti-circumvention determinations made by Enforcement and Compliance between October 1, 2019 through December 31, 2019.

Scope Rulings Made October 1, 2019 Through December 31, 2019

Italy

A–475–839: Forged Steel Fittings From Italy

Requestor: Vetco Gray Inc., a wholly-owned subsidiary of Baker Hughes, a GE Company. Eight component parts of tubular connectors used with oil country tubular goods for offshore oil and gas drilling and extraction (OCTG connectors) are not covered by the scope of the antidumping duty order on forged steel fittings from Italy because these parts are made to comply with a Vetco proprietary standard, are different from the industry standards of in-scope merchandise, and have different specifications from in-scope merchandise; October 28, 2019.

People's Republic of China

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Air Master Awning LLC. Aluminum jalousie shutters exported from the Dominican Republic that are manufactured from window frame extrusions produced in the People's Republic of China (China) are within the scope of the antidumping and countervailing duty orders on aluminum extrusions from China because: (1) Their physical characteristics meet the criteria for being subject to the orders; and (2) the processing performed in the Dominican Republic does not substantially transform the product and, therefore, China is the country of origin; October 15, 2019.

A–570–943 and C–570–944: Certain Oil Country Tubular Goods From the People's Republic of China

On July 22, 2019, the United States Court of International Trade issued its final judgment in *Bell Supply Co.* v. *United States,* Court No. 14–00066, affirming Commerce's remand redetermination concerning the final scope ruling, which found that seamless unfinished OCTG from China finished in third countries is not substantially transformed by the third country processing and is therefore covered by the scope of the Orders. There is now a final court decision, applicable August 1, 2019, with respect to the Bell Supply Scope Ruling; October 15, 2019.

A–570–067; A–475–839; A–583–863 and C–570–068: Forged Steel Fittings From the People's Republic of China, Italy and Taiwan

Requestor: Propulse, a Scheiffer Company. Hydraulic hose fittings made to either the ISO 12151–2 or 12151–6 standard, to the extent such fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182, are outside the scope of the antidumping and countervailing duty orders on forged steel fittings from China and the antidumping duty orders of forged steel fittings from Italy and Taiwan because they are used to connect hoses and tubes that convey noncorrosive fluid through machines and therefore differ from the subject merchandise, which is primarily used to distribute high pressure or corrosive liquids in the end markets of oil and gas; October 15, 2019.

A–570–886: Polyethylene Retail Carrier Bags From the People's Republic of China

Requestor: Nashville Wraps, LLC; gift bags (product codes: 634313012803, 634313012889, 634313025896, 634313066448, 634313012827, 634313012902, 634313025926, 634313025933, 634313012193, 634313012230, 634313012209, 634313012247, 634313015415, 634313015446, 634313012261, 634313034270, 634313012278, 634313034287, 634313066257, 634313012292, 634313034294, 3431305533, 634313055343, 634313055367, 634313055374, 6343130039527, 634313041094, 634313041100, 634313034232, 634313034249, 634313055275, 634313055282, 634313055350, 634313055299, 634313055312, 634313055305, 634313045023, 634313045047, 634313045030, 634313045061, 6343130024103, 634313056340, 634313056326) imported from China are outside the scope of the antidumping duty order; October 22, 2019.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Fasnap Corporation. Fasnap Corporation's aluminum boat telescoping poles are outside the scope of the antidumping and countervailing duty orders on aluminum extrusions from China because they meet the criteria for exclusion as finished merchandise; October 31, 2019.

A–570–053 and C–570–054: Aluminum Foil From the People's Republic of China

Requestor: Global Foils LLC. Global Foils' high-quality small rolled aluminum foils are outside the scope of the antidumping and countervailing duty orders on aluminum foil from China because they do not meet the weight threshold for subject merchandise specified in the scope language; November 1, 2019.

A–570–967 and C–570–968: Aluminum Extrusions From the People's Republic of China

Requestor: Ericsson, Inc. Ericsson's mounting kits for telecommunications equipment are included within the scope of the antidumping and countervailing duty orders on aluminum extrusions from China because they do not meet the criteria for exclusion as a finished goods kit or finished merchandise; November 22, 2019.

A–570–901: Lined Paper Products From the People's Republic of China

Requestor: Tree & Journal LLC. Three types of bamboo journals are not covered by the scope of the antidumping duty order on lined paper products from China because the dimensions of the journals fall outside the dimensions listed for subject merchandise in the scope of the order; December 3, 2019.

A–570–090 and C–570–091: Certain Steel Wheels 12 to 16.5 Inches in Diameter From the People's Republic of China

Requestor: Allied Wheel Components, Inc. (Allied Wheel). Commerce determined that certain of Allied Wheel's passenger vehicle winter/snow steel wheels are outside the scope of the antidumping and countervailing duty orders on certain steel wheels 12 to 16.5

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 85 FR 7921 (Feb. 12, 2020).

inches in diameter from China because they have: (1) Larger offsets; (2) different hub bore sizes; and/or (3) lower load ratings that make them unsuitable for use on trailers or towable equipment; December 16, 2019.

A–570–090 and C–570–091: Certain Steel Wheels 12 to 16.5 Inches in Diameter From the People's Republic of China

Requestor: Wheel Source, Inc. (Wheel Source). Commerce determined that certain of Wheel Source's passenger vehicle wheels with a nominal wheel diameter of more than 16.5 inches are outside the scope of the antidumping and countervailing duty orders on certain steel wheels 12 to 16.5 inches in diameter from China based on the plain language of the scope, which covers steel wheels with a nominal wheel diameter of 12 to 16.5 inches. Additionally, Commerce determined that certain of Wheel Source's passenger vehicle wheels are outside the scope of the antidumping and countervailing duty orders on certain steel wheels 12 to 16.5 inches in diameter from China because they have: (1) Different disc profiles to accommodate vehicle disc brakes and calipers; and (2) lower load ratings that make them unsuitable for use on trailers or towable equipment; December 20, 2019.

Republic of Korea

A–580–878 and C–580–879: Certain Corrosion-Resistant Steel Products From the Republic of Korea

Requestor: The scope proceedings were self-initiated by Commerce based upon information it received from U. S. Customs and Border Protection. Certain corrosion-resistant steel (CORE) products that exceed 2.50% manganese by weight are not covered by the scope of the antidumping and countervailing duty orders on CORE products from Korea because the products do not meet the requirements of the plain language of the scope which specifically excludes CORE products that exceed 2.50% manganese by weight; November 4, 2019.

Anti-Circumvention Determinations Made October 1, 2019 Through December 31, 2019

People's Republic of China

A–570–051 and C–570–052: Hardwood Plywood From the People's Republic of China

Requestor: Coalition for Fair Trade in Hardwood Plywood. Certain plywood products with face and back veneers of radiata and/or agathis pine that: (1) Have a Toxic Substances Control Act (TSCA) or California Air Resources Board (CARB) label certifying that it is compliant with TSCA/CARB requirements; and (2) are made with a resin, the majority of which is comprised of one or more of three product types (urea formaldehyde, polyvinyl acetate, and/or soy), exported from China, are circumventing the antidumping countervailing duty orders on certain hardwood plywood products from China and are included in the orders; November 22, 2019.

Republic of Korea

A–580–878 and C–580–879: Certain Corrosion-Resistant Steel Products From the Republic of Korea

Anti-circumvention Inquiries (Through Vietnam): These anti-circumvention inquiries cover CORE produced in Vietnam from hot-rolled steel (HRS) or cold-rolled steel (CRS) substrate input manufactured in Korea and subsequently exported from Vietnam to the United States (merchandise under consideration). These final rulings apply to all shipments of merchandise under consideration on or after the date of initiation of these inquiries. Importers and exporters of CORE produced in Vietnam using: (1) HRS manufactured in Vietnam or third countries; (2) CRS manufactured in Vietnam using HRS produced in Vietnam or third countries; and/or (3) CRS manufactured in third countries, and who qualify to participate in the certification process, must certify that the HRS or CRS processed into CORE in Vietnam did not originate in Korea, as provided for in the certifications attached to the **Federal Register** notice. Otherwise, their merchandise may be subject to antidumping and countervailing duties; December 16, 2019.

A–580–881 and C–580–882: Certain Cold-Rolled Steel Flat Products From the Republic of Korea

Requestors: ArcelorMittal USA LLC; California Steel Industries; Nucor Corporation; Steel Dynamics, Inc.; United States Steel Corporation. Imports of certain cold-rolled steel flat products, produced in Vietnam using carbon hot-rolled steel manufactured in Korea, are circumventing the antidumping and countervailing duty orders on certain cold-rolled steel flat products from Korea; December 26, 2019.

Taiwan

A–583–856: Corrosion-Resistant Steel Products From Taiwan

Requesters: Nucor Corporation, ArcelorMittal USA LLC, United States Steel Corporation, California Steel Industries, and Steel Dynamics, Inc. CORE produced in Vietnam from HRS and/or CRS substrate produced in Taiwan and subsequently exported to the United States from Vietnam are circumventing the antidumping duty order on CORE from Taiwan; December 26, 2019.

Notification to Interested Parties

Interested parties are invited to comment on the completeness of this list of completed scope inquiries and anti-circumvention determinations made during the period October 1, 2019 through December 31, 2019. Any comments should be submitted to the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, Enforcement and Compliance, International Trade Administration, 1401 Constitution Avenue NW, APO/Dockets Unit, Room 18022, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: February 26, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–04341 Filed 3–2–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–826]

Monosodium Glutamate From the Republic of Indonesia: Preliminary Results of the First Full Sunset Review of the Antidumping Duty Order

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

SUMMARY: Commerce preliminarily finds that revocation of the antidumping duty order on monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia) would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Preliminary Results of Review'' section of this notice.

DATES: Applicable March 3, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Dunne, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2328.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2019, Commerce published the notice of initiation of the first full sunset review of the *Order,*[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received notices of intent to participate from Ajinomoto Health & Nutrition North America (the petitioner), a U.S. producer and wholesaler of a domestic like product, within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[3]

On October 31, 2019, the petitioner filed its substantive response, and the CJ Companies filed their response in this sunset review pursuant to 19 CFR 351.218(d)(3).[4] On November 5, 2019, PT. Cheil Jedang Indonesia and CJ America, Inc. (collectively, the CJ Companies) submitted rebuttal comments to the petitioner's response.[5] On November 8, 2019, the petitioner timely filed rebuttal comments to the CJ Companies' response.[6] On January 14, 2020, Commerce determined that we would conduct a full sunset review of MSG from Indonesia in accordance with 19 CFR 351.218 and notified the International Trade Commission. [7]

Scope of the Order

The product covered by the *Order* is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this scope when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. A full description of the scope of the *Order* is contained in the accompanying Preliminary Decision Memorandum.[8]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Preliminary Decision Memorandum,[9] which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://acess.trade.gov,* and to all in the Central Records Unit, Room B8024 of the main Commerce building. A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce preliminarily determines that revocation of the *Order* would be likely to lead to the continuation or recurrence of dumping at weighted-average dumping margins up to 6.19 percent.

Public Comment

Interested parties may submit case briefs no later than 50 days after the date of publication of the preliminary results of this full sunset review, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the time limit for filing case briefs in accordance with 19 CFR 351.309(d). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Ordinarily, a hearing, if requested will be held two days after the scheduled date the rebuttal briefs are due. Commerce will issue a notice of final results of this full sunset review, which will include the results of its analysis of issues raised in any such comments, not later than May 28, 2020.

Notification to Interested Parties

This five-year (sunset) review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(f)(1).

Dated: February 26, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. History of the Order
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Dumping Margin Likely to Prevail
VII. Preliminary Results of Sunset Review
VIII. Recommendation

[FR Doc. 2020–04347 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Amended Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty (AD) order on certain pasta from Italy to correct one ministerial error. The period of review (POR) is July 1, 2017 through June 30, 2018.

DATES: Applicable March 3, 2020.

FOR FURTHER INFORMATION CONTACT: Joy Zhang (Ghigi/Zara) or George McMahon (Indalco), AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 2020, Commerce published its final results of the administrative review of the antidumping duty order on certain pasta

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[1] *Monosodium Glutamate from the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders; and Monosodium Glutamate from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value (Order),* 79 FR 70505 (November 26, 2014) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 52067 (October 1, 2019).

[3] *See* Petitioner's Letter, ''Monosodium Glutamate from Indonesia: Notice of Intent to Participate,'' dated October 15, 2019.

[4] *See* Petitioner's Letter, ''Monosodium Glutamate from Indonesia, First Review: Substantive Response to Notice of Initiation,'' dated October 31, 2019; CJ Companies' Letter, ''Monosodium Glutamate ('MSG') from Indonesia; First Sunset Review; CJ Response to Notice of Initiation,'' dated October 31, 2019.

[5] *See* CJ Companies' Letter, ''Monosodium Glutamate ('MSG') from Indonesia; First Sunset Review; CJ Rebuttal to Petitioner Response to Notice of Initiation,'' dated November 5, 2019.

[6] *See* Petitioner's Letter, ''Monosodium Glutamate from Indonesia, First Review: Rebuttal to Substantive Response of PT. Cheil Jedang Indonesia and CJ America, Inc. to Notice of Initiation,'' dated November 8, 2019.

[7] *See* Memorandum, ''Adequacy Reconsideration: First Sunset Review of Monosodium Glutamate from Indonesia,'' dated January 14, 2019.

[8] *See* Memorandum, ''Preliminary Decision Memorandum for the First Full Sunset Review of the Antidumping Duty Order on Monosodium Glutamate from the Republic of Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] *Id.*

from Italy, covering a 2017–2018 period of review.[1] On January 21, 2020, Industria Alimentare Colavita S.p.A. (Indalco) submitted a timely allegation that Commerce made two ministerial errors in the *Final Results.*[2] On January 23, 2020, Domestic Producers [3] filed a timely rebuttal to Indalco's allegation.[4]

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [5] With respect to final results of an administrative review, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review. . . .''

Ministerial Error Allegations

In its ministerial error allegation, Indalco argues that Commerce failed to recalculate imputed credit expenses for certain home market sales in which Indalco reported no payment date. In addition, Indalco asserts that when Commerce plugged the missing payment date for certain home market sales, Commerce should have relied on the date of its last cost supplemental questionnaire response, rather than the date of the last section B supplemental questionnaire response, which is the date Commerce used in the *Final Results.*

We agree with Indalco that Commerce committed an inadvertent error within the meaning of section 735(e) of the Act and 19 CFR 351.224(f) with respect to imputed credit expenses in the home market. We intended to recalculate imputed credit expenses for certain home market sales in which Indalco reported no payment date. However, we inadvertently omitted that calculation from the dumping calculations used in the *Final Results.* Thus, we determine that, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), we made an unintentional ministerial error in the *Final Results.* As to the date that Commerce should use when the payment date information is missing for certain home market sales, we find that Indalco's comments constitute a methodological argument that does not meet the definition of a ministerial error as defined under 19 CFR 351.224(f). As a result, we have not addressed Indalco's argument on this point for these amended final results.[6] For a detailed discussion of these ministerial error allegations, as well as Commerce's analysis, *see* the Ministerial Error Memorandum.[7]

Non-Examined Companies

Pursuant to 19 CFR 351.224(e), we are amending the *Final Results* to correct the ministerial error. The correction results in a revised weighted-average dumping margin for Indalco of zero percent. The weighted-average dumping margin for Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (Ghigi/Zara) of 91.76 percent *ad valorem* remains unchanged from the *Final Results.*[8] As a result of these amended final results, Ghigi/Zara is the sole mandatory respondent with a weighted-average dumping margin which is not zero, *de minimis* or based entirely on facts available. Thus, consistent with section 735(c)(5)(A) of the Act, we have assigned the weighted-average dumping margin calculated for Ghigi/Zara to the following companies that were not selected for individual examination in this review: Agritalia S.r.L. and Tesa S.r.L.

Amended Final Results

The amended final results are as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Ghigi 1870 S.p.A. and Pasta Zara S.p.A.[9]	91.76
Industria Alimentare Colavita S.p.A	0.00
Agritalia S.r.L	91.76
Tesa SrL (Tesa)	91.76

Disclosure

We intend to disclose the calculation performed for these amended final results within five days of the publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Antidumping Duty Assessment

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The ministerial error corrections resulted in a zero percent margin for Indalco. Accordingly, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate, *i.e.,* 15.45 percent, from the less-than-fair-value investigation as modified by the section 129 determination,[10] if there is no rate for the intermediate company(ies) involved in the transaction.[11]

On January 30, 2020, the Court of International Trade issued preliminary injunctions prohibiting the assessment of duties on entries of subject merchandise produced and/or exported by: (1) Ghigi/Zara; (2) Tesa SrL; and (3) Agritalia S.r.L. starting January 30, 2020. Accordingly, Commerce will not order CBP to assess antidumping duties on entries of that merchandise while the preliminary injunctions are in place.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 16, 2020, the date of publication of the *Final Results* of this administrative review in the **Federal Register**, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be equal to the weighted-average dumping margin established in the amended final results of this administrative review,

[1] *See Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 2714 (January 16, 2020) (*Final Results*).

[2] *See* Indalco's Letter, ''Certain Pasta from Italy: 22nd POR Final Results: Request for Correction of Clerical Error,'' dated January 21, 2020. This submission is timely filed within five days of the disclosure, as provided in 19 CFR 351.224(c)(2).

[3] The domestic producers are Dakota Growers Pasta Company, Riviana Foods and Treehouse Foods (collectively, Domestic Producers).

[4] *See* Domestic Producers' Letter, ''Administrative Review of Certain Pasta from Italy—Petitioners' Response to Indalco's Ministerial Error Comments,'' dated January 23, 2020.

[5] *See* 19 CFR 351.224(f).

[6] For further information, *see* Memorandum, ''Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy; 2017–2018: Ministerial Error Memorandum,'' dated concurrently with these amended final results (Ministerial Error Memorandum).

[7] *Id.*

[8] *See Final Results,* 85 FR at 2714.

[9] The margin calculated for Ghigi 1870 S.p.A. and Pasta Zara S.p.A. is unchanged from the *Final Results.*

[10] *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

[11] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

except when that rate is *de minimis* where the cash deposit rate will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 15.45 percent, the all-others rate established in the less-than-fair-value investigation as modified by the section 129 determination.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to the parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: February 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–04340 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Preliminary Results of Antidumping Duty Administrative Review; and Rescission of Review in Part; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers/exporters subject to this review made sales of stainless steel bar (SS Bar) from India at less than fair value (LTFV) during the period of review (POR) February 1, 2018 through January 31, 2019. Interested parties are invited to comment on these preliminary results.

DATES: Applicable March 3, 2020.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–3477 or (202) 482–2805, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers two producers/exporter of the subject merchandise, Venus Wire Industries Pvt. Ltd., and its affiliates Hindustan Inox, Precision Metals and Sieves Manufacturers (India) Pvt. Ltd. (collectively, the Venus Group),[1] and Ambica Steels Limited (Ambica). Commerce preliminarily determines that sales of subject merchandise by Ambica have not been made at prices below normal value. Commerce also preliminarily determines that sales of subject merchandise by the Venus Group have been made at prices below normal value. Interested parties are invited to comment on these preliminary results.

Scope of the Order

The merchandise subject to the order is SS Bar from India. Imports of the product are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. For a full description of the scope of the order, *see* the Preliminary Decision Memorandum.[2]

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation.

On July 31, 2019, Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively, the petitioners), withdrew their request for an administrative review of one company, Jindal Stainless Hisar Ltd. (JSHL).[3] The petitioners are the only party that requested a review of JSHL. The petitioners' withdrawal of review request was submitted within the deadline set forth under 19 CFR 351.213(d)(1). Accordingly, Commerce is rescinding this review, in part, with respect to JSHL, in accordance with 19 CFR 351.213(d)(1).[4]

Methodology

Commerce is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). Commerce calculated export prices in accordance with section 772 of the Act.

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[1] Commerce has previously determined that Venus Wire Industries Pvt. Ltd., and its affiliates Hindustan Inox, Precision Metals and Sieves Manufacturers (India) Pvt. Ltd. constitute a single entity. *See Stainless Steel Bar from India: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Certain Companies in the Antidumping Duty Order,* 82 FR 48483 (October 18, 2017), and accompanying Preliminary Decision Memorandum at 3–5, unchanged in *Final Results of Changed Circumstances Review and Reinstatement of Certain Companies in the Antidumping Duty Order,* 83 FR 17529 (April 20, 2018). We have received no information on the record of this review to dispute that finding.

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India: 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[3] *See* Petitioners' letter, ''Stainless Steel Bar from India: Withdrawal of Request for Administrative Review,'' dated July 31, 2019.

[4] For more details, *see* the Preliminary Decision Memorandum.

Normal value was calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, located in Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* The electronic and signed versions of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is attached as the appendix to this notice.

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in reaching the final results of review with respect to Ambica.

Preliminary Results of Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for the respondents during the period February 1, 2018 through January 31, 2019:

Producer/exporter	Estimated weighted-average dumping margin (percent)
Venus Wire Industries Pvt. Ltd., and its affiliates Hindustan Inox, Precision Metals and Sieves Manufacturers (India) Pvt. Ltd	11.88
Ambica Steels Limited	0.00

Disclosure and Public Comment

We intend to disclose the calculations and analysis performed in these preliminary results to interested parties within five days of any public announcement of these preliminary results in accordance with 19 CFR 351.224(b).

Because Commerce intends to conduct verification of Ambica, pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than seven days after the date on which the verification report is issued in this proceeding,[5] and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[7]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[8] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(1) and (2).

Assessment Rates

Upon issuance of the final results in this administrative review, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries covered by this POR. If a respondent's weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of these reviews, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and, where possible, the total entered value of sales. Specifically, Commerce will apply the assessment rate calculation method adopted in *Final Modification for Reviews.*[9] Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[10]

For entries of subject merchandise during the POR produced by the Venus Group and Ambica for which they did not know their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this review for all shipments of SS Bar from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be the rates established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.45 percent, the all-others rate established in the LTFV investigation.[11] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[5] *See* 19 CFR 351.309(c)(1)(ii).

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] *See* 19 CFR 351.310(c).

[9] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8103 (February 14, 2012) (*Final Modification for Reviews*).

[10] *See* 19 CFR 351.106(c)(2).

[11] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915, 66921 (December 28, 1994).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: February 26, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Cost of Production Analysis for the Venus Group
V. Application of Facts Otherwise Available and Adverse Inferences
VI. Affiliation and Collapsing
VII. Discussion of the Methodology
VIII. Date of Sale
IX. Product Comparisons
X. Export Price and Constructed Export Price
XI. Normal Value
XII. Verification
XIII. Currency Conversion
XIV. Recommendation

[FR Doc. 2020–04343 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA061]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Skate Committee and Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, March 26, 2020 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Fairfield Inn, 185 MacArthur Drive, New Bedford, MA 02740; telephone: (774) 634–2000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee and Advisory Panel will recap development of Amendment 5 to date; discuss Plan Development Team (PDT) memo on October 2019 tasking; develop recommendations on whether to continue work on Amendment 5; potentially clarify problem statement and goals; and potentially develop alternatives. The Committee and Advisory Panel will also review PDT work on incorporating National Marine Fisheries Service fishing community engagement and reliance indicators to how key skate fishing communities are identified in Council actions. They will also consider PDT recommendations for updates to research priorities.

Other business may be discussed, as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–04334 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA060

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) District Advisory Panels (DAPs) of St. Thomas/St. John, USVI, will hold a one-day meeting in March 25, 2020, to discuss the items contained in the agenda **SUPPLEMENTARY INFORMATION**.

DATES: The meeting will be held on March 25, 2020, from 9 a.m. to 5 p.m.

ADDRESSES: *Meeting address:* The meeting will be held at the University of the Virgin Islands Conference room, ACC Building, First Floor, at 2 Brewers Bay, Charlotte Amalie, VI 00802.

Council address: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón at Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The agenda for the meeting is the following:

9 a.m.–9:15 a.m.—Call to Order/Welcome—Miguel A. Rolón
9:15 a.m.–9:30 a.m.—Introduction—Julian Magras
9:30 a.m.–10 a.m.—Ecosystem Components St. Thomas/St. John—Graciela García-Moliner
10 a.m.–10:15 a.m.—Outreach and Education Considerations in Ecosystem-Based Management—Alida Ortiz
10:15 a.m.–10:30 a.m.—Coffee Break
10:30 a.m.–12 noon—Remarks and Presentations by Representatives of Local Agencies
12 noon–1:30 p.m.—Lunch Break
1:30 p.m.–5 p.m.—Discussion and Adoption of Recommendations by the DAPs to the CFMC on Ecosystem Model the St. Thomas/St. John Area

—Other Business

The order of business may be adjusted as necessary to accommodate the completion of agenda items. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 27, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–04336 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR099]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ward Cove Cruise Ship Dock Project, Juneau, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Power Systems & Supplies of Alaska (PSSA) for authorization to take marine mammals incidental to Ward Cove Cruise Ship Dock Project near Ketchikan, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 2, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Meadows@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On December 30, 2019, NMFS received a request from PSSA for an IHA to take marine mammals incidental to Ward Cove Cruise Ship Dock Project near Ketchikan, Alaska. The application

was deemed adequate and complete on February 5, 2020. PSSA's request is for take of harbor seals by Level B harassment and Level A harassment. Neither PSSA nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The project consists of the construction of a cruise ship dock for two cruise ships in Ward Cove, approximately eight kilometers (5 miles) north of downtown Ketchikan, Alaska. PSSA would install a pile supported 500-foot by 70-foot floating pontoon dock, mooring structures, and shore-access transfer span and trestle. The project includes the following in-water components: Driving one hundred and two 30–48 inch diameter steel pipe piles to support the structures and removal of 48 of these piles (all 30-inch diameter) that are being used solely as templates to guide installation of larger permanent piles. It is expected to take no more than 105 days of in-water work. Pile driving would be by vibratory pile driving until resistance is too great and driving would switch to an impact hammer. Removal of temporary piles would use vibratory methods only. Forty larger 36- and 48-inch piles would also be rock anchored into place using a down-the-hole (DTH) drill.

The pile driving/removal or rock anchoring can result in take of marine mammals from sound in the water which results in behavioral harassment or auditory injury. The footprint of the project is approximately 1.5 square miles around the project site.

Dates and Duration

The work for which take will be authorized began in February 2020. In the time period before we authorize take the applicant has agreed with us to shut down pile driving anytime marine mammals are seen in the Level B Harassment Zone of the project area (see below). PSSA believes they are able to avoid unauthorized take through the use of mitigation and monitoring measures agreed described in their application. Because we do not know exactly when an IHA will be issued, nor exactly how much of the project activities will be complete when an authorization is in place, we may lower the take authorization at final issuance of this IHA. Under an existing permit issued by the Army Corps of Engineers and an Endangered Species Act (ESA) Section 7 Letter of Concurrence issued by NMFS, impact pile driving will cease by June 30 to protect endangered salmon and vibratory pile driving and rock anchoring will cease by July 31 to protect other ESA listed species. PSSA has proposed the daily construction window for pile removal and driving would begin no sooner than 30 minutes after sunrise and would end 30 minutes prior to sunset to allow for marine mammal monitoring.

Specific Geographic Region

The project site is located in Ward Cove north of Ketchikan, Alaska (Figure 1). Ward Cove is a small estuary with an area of approximately 1 square kilometer (0.4 square mile) located off the western coast of Revillagigedo Island and on the North Shore of Tongass Narrows. The cove is approximately 1.6 kilometers long (1 mile) and 0.8 kilometers (0.5 mile) wide with depths to 60 meters (200 feet) (EPA 2015, NOAA 2016). The cove has experienced significant industrialization as it was the former site of a pulp mill, sawmill, and fish processing plant. Effluent and materials from these former industries polluted the cove. The bottom substrate is organic-rich sediments areas overlaid with either sandy material that has been thinly placed (''capped;'' 15–23 inches thick) or sandy material that has been mounded (approximately 1.45 meters thick) as a remediation requirement for the earlier pollution. Deep water areas have deep organic sediments with no sandy overlay. Some areas have a high density of old sunken logs from the sawmill operations (Exponent 2000). Silt curtains will be used around pile driving operations and sediments captured as drill cutting discharge will be removed (see below) and will trap most suspended sediments and prevent dispersal into the wider environment.

Sound from project activities is expected to also move into Tongass Narrows. Tongass Narrows is a U-shaped glacier-carved fjord that varies between 300 meters (0.2 mile) to 2.4 kilometers (1.5 miles) wide and 15 meters (49 feet) to 55 meters (180 feet) deep (ADEC 2017, NOAA 2016). Tongass Narrows is known for strong tidal currents and unusually large tidal ranges of 8 meters (feet) or more (Pentec 2001). The Narrows are characterized by steep bedrock or coarse gravel-cobble-boulder shoreline.

Detailed Description of Specific Activity

The proposed project includes the installation of steel piles to support a new 500-foot by 70-foot floating pontoon dock, mooring structures, and shore-access transfer span and trestle. The project will:

- Install 48 temporary 30-inch diameter steel piles as templates to guide proper installation of permanent piles (these temporary piles would be removed prior to project completion);
- Install 14 permanent 30-inch diameter piles, 20 permanent 36-inch diameter piles, and 20 permanent 48-inch diameter piles to support a new 500-foot x 70-foot floating pontoon dock, mooring structures, and shore-access transfer span and trestle for a total of 54 piles;
- Install dock components such as bull rail, floating fenders, mooring cleats, vehicle driveway, curb, passenger walkway, hand rail, and mast lights.

The temporary, 30-inch diameter piles serving as a template would be installed and removed using a vibratory hammer. The 14 permanent 30-inch trestle piles will be installed through sand and gravel with a vibratory hammer and impact hammer. The 54 permanent 36-inch and 48-inch diameter piles will be driven through sand and gravel with a vibratory hammer and then impact driven into bedrock. After being impacted, these piles will be rock anchored. To rock anchor the pile, a DTH hammer with a 33-inch-diameter bit will be used to drill a shaft into the bedrock. The drill bit will be removed, and the shaft will be filled with vertical reinforcement (a rebar cage) in concrete to secure the pile. The depth of the shaft is to be determined by a geotechnical engineer prior to construction. During anchor drilling the pile will not be touched by the drill, and no steel-on-steel hammer noise will be generated. As much as possible, the hammer will be operated at a reduced energy setting. The contractor will use high-density polyethylene or ultra-high-molecular-weight polyethylene softening material (pile caps) on all templates to eliminate steel on steel noise generation.

In-water construction of the cruise ship dock will begin with installation of the trestle. Once the trestle is constructed, dolphins will be constructed. Trestle and dolphin construction will follow this sequence:

(1) Vibrate 32 temporary 30-inch-diameter piles for the trestle, and 16 temporary 30-inch diameter piles for the dolphins, a minimum of 10 feet into overburden to create a template to guide installation of permanent piles;

(2) Weld a template frame around the temporary piles;

(3) Within the template frame, vibrate and impact 14 permanent 30-inch diameter piles into place for the trestle; or vibrate, impact, and rock anchor 20 permanent 36-inch and 20 48-inch

diameter piles into place for the dolphins;

(4) Remove the template frame and temporary piles; and

(5) Perform this sequence at the seven trestle bent locations, working farther from the shoreline each sequence. Once the trestle is completed perform this sequence at the eight dolphin locations.

After all piles are installed, construction will proceed with installation of the floating dock, transfer span, trestle, mechanical systems, and other above-water components like the vehicle driveway, passenger walkway, and mast lights. Two barges and two small boats will be used to facilitate the construction, transport and stage materials, and support protected species monitoring. Additional standard barges, tug boats, or clamshell equipment will be used to place or remove material (including submerged logs) and position piles on the substrate via a crane.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

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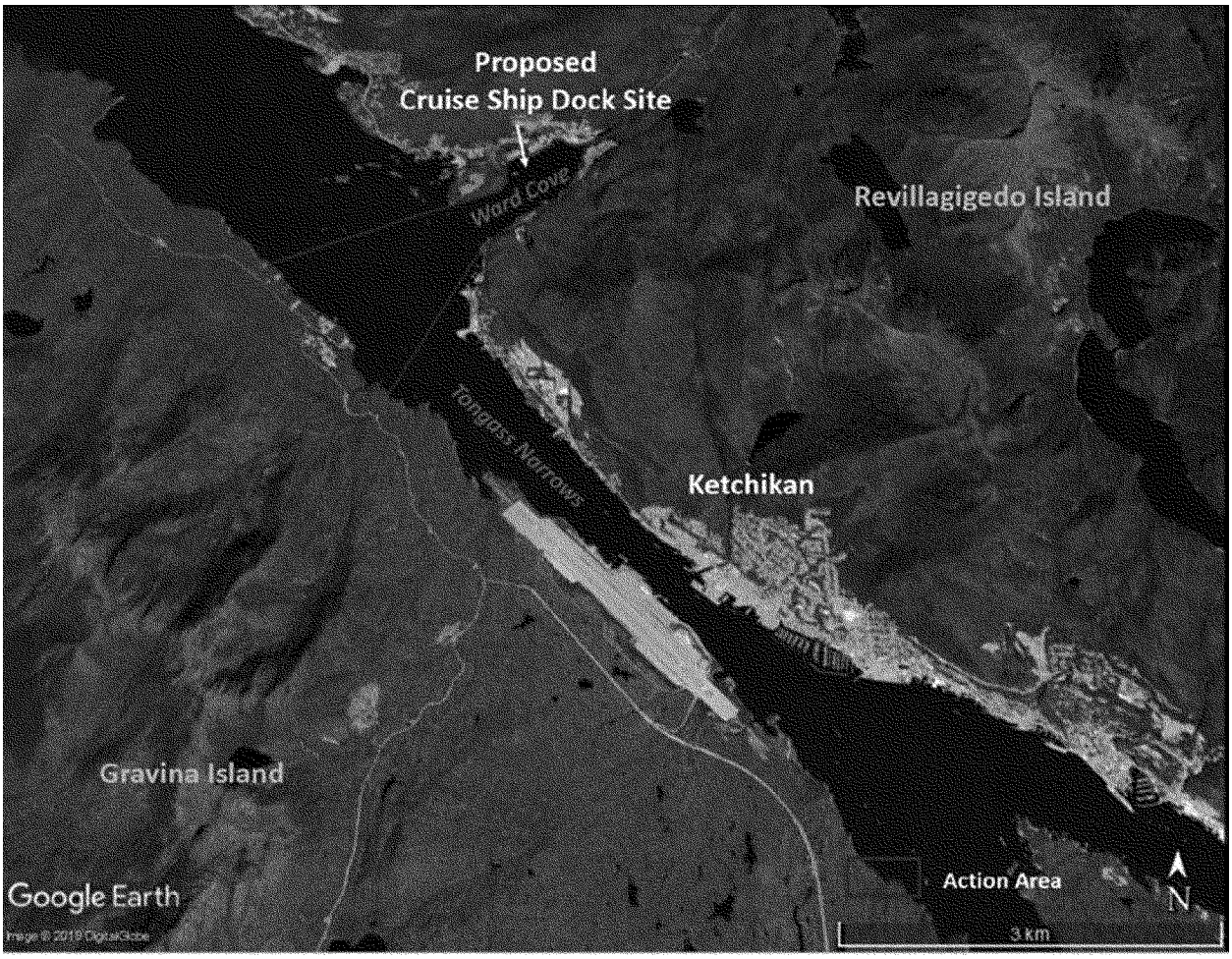

Figure 1. Map of proposed project area near Ketchikan, Alaska.

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Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments)* and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the project area near Ketchikan, Alaska and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent

the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska SARs (*e.g.,* Muto *et al.* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 draft SARs (Muto *et al.,* 2019).

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROPOSED PROJECT AREA

Common name	Scientific name	MMPA stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance Nbest, (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	138
Family Balaenidae:						
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	E, D,Y	10,103 (0.3; 7,891; 2006)	83	25
Minke whale	*Balaenoptera acutorostrata*	Alaska	-, N	N.A.	N.A.	N.A.
Fin whale	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	N.A.	5.1	0.4
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Alaska Resident	-, N	2,347 (N.A.; 2,347; 2012)	24	1
		West Coast Transient	-, N	243 (N.A, 243, 2009)	2.4	0
		Northern Resident	-, N	302 (N.A.; 302, 2018)	2.2	0.2
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	North Pacific	-,-; N	26,880 (N.A.; N.A.; 1990)	N.A.	0
Family Phocoenidae:						
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	-, Y	975 (0.10; 896; 2012)	8.95	34
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, N	N.A.	N.A.	38
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-,-, N	43,201 (N.A.; 43,201; 2017).	2,592	113
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	Clarence Strait	-, N	27,659 (N.A.; 24,854; 2015).	746	40

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable (N.A.).

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

All 10 species that could potentially occur in the proposed survey areas are included in Table 1. However, the temporal and/or spatial occurrence and mitigation measures implemented for seven species (all in Table 1 except harbor seals, Dall's porpoise, and harbor porpoise) is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. These seven species are not expected to have take occur because the applicant will shut down pile driving and rock anchoring activities if these species are observed within the Level B harassment zone defined below. Additionally, minke whale, fin whale, gray whale, Pacific white-sided dolphins and killer whales are rare in the area. The applicant only requested take of harbor seals (see above), but we believe the cryptic nature, small size, and dive duration of Dall's porpoise and harbor porpoise make it possible that these two species could also be taken. Therefore we propose to authorize take for these species (see below) and PSSA concurred.

In addition, the northern sea otter may be found in the project vicinity. However, that species is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

Harbor Seal

Harbor seals (*Phoca vitulina*) inhabit coastal and estuarine waters off Alaska. They haul out on rocks, reefs, beaches, and drifting glacial ice. They are opportunistic feeders and often adjust their distribution to take advantage of locally and seasonally abundant prey (Womble *et al.,* 2009, Allen and Angliss, 2015).

Harbor seals occurring in the project area belong to the Clarence Strait stock. Distribution of the Clarence Strait stock ranges from the east coast of Prince of Wales Island from Cape Chacon north through Clarence Strait to Point Baker and along the east coast of Mitkof and Kupreanof Islands north to Bay Point, including Ernest Sound, Behm Canal, and Pearse Canal (Muto *et al.* 2019). In the project area, they tend to be more abundant during spring, summer and fall months when salmon are present in Ward Creek. Anecdotal evidence indicates that harbor seals typically occur in groups of 1–3 animals in Ward Cove (Spokely 2019). They were not observed in Tongass Narrows during a combined 63.5 hours of marine mammal monitoring that took place in 2001 and 2016 (OSSA 2001, Turnagain 2016). There are no known harbor seal haulouts within the project area.

According to the list of harbor seal haulout locations, the closest listed haulouts are located off the tip of Gravina Island, approximately eight kilometers (five miles) northwest of Ward Cove (AFSC 2018).

Dall's Porpoise

Dall's porpoises (*Phocoenoides dalli*) are found throughout the North Pacific, from southern Japan to southern California north to the Bering Sea. All Dall's porpoises in Alaska are members of the Alaska stock. This species can be found in offshore, inshore, and nearshore habitat.

Jefferson *et al.* (2019) presents historical survey data showing few sightings in the Ketchikan area. The mean group size in Southeast Alaska is estimated at approximately three individuals (Dahlheim *et al.* 2009, Jefferson *et al.* 2019), although Freitag (2017, as cited in 83 FR 37473) suggested group sizes near Ketchikan range from 10 to 15 individuals. Anecdotal reports suggest that Dall's porpoises are found northwest of Ketchikan near the Guard Islands, where waters are deeper, as well as in deeper waters to the southeast of Tongass Narrows. This species has a tendency to bow-ride with vessels and may occur in the action area incidentally a few times per year.

Harbor Porpoise

In the eastern North Pacific Ocean, the harbor porpoise (*Phocoena phocoena*) ranges from Point Barrow, along the Alaska coast, and down the west coast of North America to Point Conception, California. The Southeast Alaska stock ranges from Cape Suckling to the Canadian border (Muto *et al.* 2019). Harbor porpoises frequent primarily coastal waters in Southeast Alaska (Dahlheim *et al.* 2009) and occur most frequently in waters less than 100 meters (328 feet) deep (Dahlheim *et al.* 2015). They are not attracted to areas with elevated levels of vessel activity and noise such as Tongass Narrows.

Studies of harbor porpoises reported no evidence of seasonal changes in distribution for the inland waters of Southeast Alaska (Dahlheim *et al.* 2009). Their small overall size, lack of a visible blow, low dorsal fins and overall low profile, and short surfacing time make them difficult to spot (Dahlheim *et al.* 2015). Ketchikan area densities are expected to be low. This is supported by anecdotal estimates. Anecdotal reports (see IHA Application) specific to Tongass Narrows indicate that harbor porpoises are rarely observed in the action area. Harbor porpoises are expected to be present in the action area only a few times per year.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Harbor seals are in the phocid group and Dall's and harbor porpoises are classified as high-frequency cetaceans.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1994, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, and rock anchoring. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak Sound pressure Levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

Rock anchoring would be conducted using a DTH drill inserted through the hollow steel piles. A DTH drill is a drill bit that drills through the bedrock using a pulse mechanism that functions at the bottom of the hole. This pulsing bit breaks up rock to allow removal of debris and insertion of the pile. The head extends so that the drilling takes place below the pile. The pulsing sounds produced by the DTH drilling method are considered continuous as the noise from the drilling component is expected to be dominant. In addition, the method in this case likely increases sound attenuation because the noise is primarily contained within the steel pile and below ground as opposed to impact hammer driving methods which occur at the top of the pile and introduce sound into the water column to a greater degree. See our detailed discussion of this sound source in the notice of issuance of an IHA for Ferry Berth Improvements in Tongass Narrows, Alaska *https://www.govinfo.gov/content/pkg/FR-2020-01-07/pdf/2020-00038.pdf.*

The likely or possible impacts of PSSA's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and rock anchoring is the primary means by which marine mammals may be harassed from PSSA's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving and drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the

hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson and Hu, 2008). PTS levels for marine mammals are estimates, with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals, largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.,* 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles requires a combination of impact pile driving, vibratory pile driving, and DTH drilling. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal and drilling also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, l*et al*one the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving and DTH drilling) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 meters of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to PSSA's specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements). Monitoring reports from other recent pile driving and DTH drilling projects in Alaska have observed similar behaviors (for example, the Biorka Island Dock Replacement Project *https://www.fisheries.noaa.gov/action/incidental-take-authorization-faa-biorka-island-dock-replacement-project-sitka-ak*).

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The Ketchikan area contains active commercial shipping, cruise ship and ferry operations, as well as numerous recreational and other commercial vessels; therefore, background sound levels in the area are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal and DTH drilling that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Moreover, there are no known haulout areas near the project. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

PSSA's construction activities in Ward Cove could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact pile driving, elevated levels of underwater noise would ensonify Ward Cove and adjacent Tongass Narrows where both fishes and mammals occur and could affect foraging success.

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound.

In-water pile driving, pile removal, and drilling activities would also cause short-term effects on water quality due to increased turbidity. The use of silt curtains and the removal of sediments captured as drill cutting discharge (see below) will trap most suspended sediments and prevent dispersal into the wider environment. Local strong currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. PSSA would employ other standard construction best management practices (see section 11 in application),

thereby reducing any impacts. Therefore, the impact from increased turbidity levels is expected to be discountable.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat (*e.g.,* most of the impacted area is limited to Ward Cove) and does not include any Biologically Important Areas or other habitat of known importance. Pile installation/removal and drilling may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. PSSA must comply with state water quality standards during these operations by using silt curtains and removing all sediments captured as drill cutting discharge to upland disposal sites. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.,* 1980). Any pinnipeds would be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

The duration of the construction activities is relatively short. The construction window is for a maximum of 4–5 months. During each day, construction activities would only occur during daylight hours. Impacts to habitat and prey are expected to be minimal based on the short duration of activities and small size of Ward Cove.

In-water Construction Effects on Potential Prey (Fish)— Construction activities would produce continuous (*i.e.,* vibratory pile driving and DTH drilling) and pulsed (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. There are times of known seasonal marine mammal foraging in Tongass Narrows around fish processing/hatchery infrastructure or when fish are congregating, but the impacted areas of Tongass Narrows are a small portion of the total foraging habitat available in the region. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe of the project and the small project footprint.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish and juvenile salmonid outmigratory routes in the project area. Both herring and salmon form a significant prey base for Steller sea lions, herring is a primary prey species of humpback whales, and both herring and salmon are components of the diet of many other marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 feet or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish and salmon are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in the Tongass Narrows region are routinely exposed to substantial levels of suspended sediment from glacial sources.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events and the relatively small areas being affected, pile driving and drilling activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.,* vibratory or impact pile driving or DTH drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for pinnipeds because predicted auditory injury zones are larger and harbor seals are the only animals routinely seen in Ward Cove. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent

hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Due to the lack of marine marine mammal density, NMFS relied on local occurrence data and group size to estimate take. Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) (root mean square (rms)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources.

PSSA's proposed activity includes the use of continuous (vibratory pile-driving, DTH drilling) and impulsive (impact pile-driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). PSSA's activity includes the use of impulsive (impact pile-driving) and non-impulsive (vibratory pile driving/removal and drilling) sources.

These thresholds are provided in Table 3. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW): (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW): (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving, vibratory pile removal, and DTH drilling).

Vibratory hammers produce constant sound when operating, and produce vibrations that liquefy the sediment surrounding the pile, allowing it to penetrate to the required seating depth. An impact hammer would then generally be used to place the pile at its intended depth through rock or harder substrates. The actual durations of each installation method vary depending on the type and size of the pile. An impact hammer is a steel device that works like a piston, producing a series of independent strikes to drive the pile. Impact hammering typically generates the loudest noise associated with pile installation.

In order to calculate distances to the Level A harassment and Level B harassment sound thresholds for piles of various sizes being used in this project, NMFS used acoustic monitoring data

from other locations to develop source levels (see Table 4). Note that piles of differing sizes have different sound source levels (SSLs).

Empirical data from recent ADOT&PF sound source verification (SSV) studies at Ketchikan were used to estimate sound source levels for vibratory and impact driving of 30-inch steel pipe piles and Kodiak for drilling (Denes *et al.* 2016). Data from Ketchikan was used because of its proximity to this proposed project in Tongass Narrows and Kodiak drilling data was used as a proxy here because of its relative proximity. Details are described below.

The source level for rock anchoring was derived from the above mentioned ADOT&PF SSV study at Kodiak, Alaska. The reported median source value for drilling was determined to be 166.2 dB rms for all pile types (Denes *et al.* 2016, Table 72). See our detailed discussion of this sound source in the notice of issuance of an IHA for Ferry Berth Improvements in Tongass Narrows, Alaska *https://www.govinfo.gov/content/pkg/FR-2020-01-07/pdf/2020-00038.pdf*

TABLE 4—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, DRILLING, AND VIBRATORY PILE REMOVAL

Method and pile type	Sound source level at 10 meters		Literature source
Vibratory Hammer	dB rms		
30-inch steel piles	161.9		Denes *et al.* 2016, Table 72.
36-inch steel piles	168.2		Austin *et al.* 2016, Table 16.
48-inch steel piles	168.2		Austin *et al.* 2016, Table 16.
Drilling Rock Anchors	dB rms		
All pile diameters	166.2		Denes *et al.* 2016, Table 72.
Impact Hammer	dB peak	dB SS SEL	
All pile diameters	212	186.7	Austin *et al.* 2016, Tables 9, 16.

Note: It is assumed that noise levels during pile installation and removal are similar. Use of an impact hammer will be limited to 5–10 minutes per pile, if necessary. It is assumed that drilling produces the same SSL for both pile diameters. SS SEL = single strike sound exposure level; dB peak = peak sound level; rms = root mean square.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

TL = B * Log10 (R1/R2),

Where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R1 = the distance of the modeled SPL from the driven pile, and

R2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the, practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for PSSA's proposed activity.

Using the practical spreading model, PSSA determined underwater noise would fall below the behavioral effects threshold of 120 dB rms for marine mammals at a maximum radial distance of 16,343 m for vibratory pile driving the 36 and 48-inch diameter piles. This distance determines the maximum Level B harassment zone for the project. Other activities, including rock anchoring and impact pile driving, have smaller Level B harassment zones. All Level B harassment isopleths are reported in Table 5 below and visualized in Figure 6 and Table 5 in the IHA application. It should be noted that based on the geography of Ward Cove, Tongass Narrows and the surrounding islands, sound will not reach the full distance of the Level B harassment isopleth. Generally, due to interaction with land, only a thin slice of the possible area is ensonified and the maximum distance before reaching land barriers is 3,645 m.

TABLE 5—CALCULATED DISTANCES TO LEVEL B HARASSMENT ISOPLETHS DURING PILE INSTALLATION AND REMOVAL

Pile size	Level B isopleth (m)
Vibratory Pile Driving/Removal:	
30-inch piles	6,213
36-inch piles	16,343
48-inch piles	16,343
Impact Pile Driving:	
30-inch piles	3,744
36-inch piles	3,744
48-inch piles	3,744
Rock Anchoring:	
36-inch piles	12,023
48-inch piles	12,023

Level A Harassment Zones

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of take by Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as impact/vibratory pile driving or drilling, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS.

Inputs used in the User Spreadsheet (Table 6), and the resulting isopleths are reported below (Table 7). Level A

harassment thresholds for impulsive sound sources (impact pile driving) are defined for both SELcum and Peak SPL, with the threshold that results in the largest modeled isopleth for each marine mammal hearing group used to establish the Level A harassment isopleth. In this project, Level A harassment isopleths based on SELcum were always larger than those based on Peak SPL.

TABLE 6—PARAMETERS OF PILE DRIVING AND DRILLING ACTIVITY USED IN USER SPREADSHEET

Equipment type	Vibratory pile driver (installation/removal of 30-inch steel piles)	Vibratory pile driver (installation of 36 and 48-inch steel piles)	Impact pile driver (30-inch steel piles)	Impact pile driver (36 and 48-inch steel piles)	Rock anchor (36-inch steel piles)	Rock anchor (48-inch steel piles)
Spreadsheet Tab Used	Non-impulsive, continuous.	Non-impulsive, continuous.	Impulsive, Non-continuous.	Impulsive, Non-continuous.	Non-impulsive, continuous.	Non-impulsive, continuous
Source Level	161.9 SPL	168.2 SPL	186.7 SS SEL*	186.7 SS SEL*	166.2 SPL	166.2 SPL
Weighting Factor Adjustment (kHz).	2.5	2.5	2	2	2.5	2.5
(a)Activity duration (time) within 24 hours.	(a) 0:40	(a) 1:00			(a) 8:00	(a) 5:00
(b) Number of strikes per pile (impact).			(b) 40	(b) 100	(240 mins *2)	(300 mins *1)
(c) Number of piles per day.	(c) 4	(c) 2	(c) 2	(c) 2	(c) 2	(c) 1
Propagation (xLogR)	15	15	15	15	15	15
Distance of source level measurement (meters).	10	10	10	10	10	10

Note: Data for all equipment types were for Propagation (xLogR) = 15 and distance of source level measurements was 10 meters.
*Largest isopleth distances for impact pile driving were all found when using SS SEL (see application for details) and SEL is the preferred metric.

The above input scenarios lead to a PTS isopleth distance (Level A threshold) of 3.6 to 322.5 meters, depending on the marine mammal group and scenario (Table 7).

TABLE 7—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS (m) DURING PILE INSTALLATION AND REMOVAL FOR EACH HEARING GROUP

Pile size	Low frequency	Mid frequency	High frequency	Phocid	Otariid
Vibratory Pile Driving/Removal:					
30-inch piles	6	0.5	8.8	3.6	0.3
36-inch piles	20.6	1.8	30.5	12.5	0.9
48-inch piles	20.6	1.8	30.5	12.5	0.9
Impact Pile Driving:					
30-inch piles	327.2	11.6	389.7	175.1	12.7
36-inch piles	602.7	21.4	717.9	322.5	23.5
48-inch piles	602.7	21.4	717.9	322.5	23.5
Rock Anchoring:					
36-inch piles	60.7	5.4	89.7	36.9	2.6
48-inch piles	44.4	3.9	65.6	27	1.9

Note: a 10-meter shutdown zone will be implemented for all species and activity types to prevent direct injury of marine mammals.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of harbor seals that will inform the take calculations. There is no density data for any of the species near Ward Cove.

Harbor Seal

As discussed above anecdotal evidence suggests maximum group size is up to three individuals in Ward Cove at one time. They are known to occur year-round in the area with little seasonal variation in abundance (Freitag (2017) as cited in 83 FR 37473) and local experts estimate that there are about 1 to 3 harbor seals in Tongass Narrows every day. To be conservative we will assume a group size of five individuals in the project area each day.

Dall's Porpoise

Dall's porpoises are expected to only occur in the action area a few times per year. Their relative rarity is supported by Jefferson *et al.*'s (2019) presentation of historical survey data showing very few sightings in the Ketchikan area and conclusion that Dall's porpoise generally are rare in narrow waterways, like the Tongass Narrows. This species is non-migratory; therefore, our occurrence estimates are not dependent on season. We anticipate that one large Dall's porpoise pod (15 individuals) (Freitag (2017), as cited in 83 FR37473) may be present in the project area once each month during construction.

Harbor Porpoise

Harbor porpoises are non-migratory; therefore, our occurrence estimates are not dependent on season. Freitag ((2017) as cited in 83 FR 37473) observed harbor porpoises in Tongass Narrows zero to one time per month. Harbor porpoises observed in the project vicinity typically occur in groups of one to five animals with an estimated maximum group size of eight animals (83 FR 37473, August 1, 2018, Solstice 2018). For our impact analysis, we are considering a group to consist of five

animals, a value on the high end of the typical group size. Based on Freitag (2017), and supported by the reports of knowledgeable locals as described in the application for IHA for Tongass Narrows (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements*), it is estimated that a maximum two groups (10) of harbor porpoises would enter Tongass Narrows and potentially be exposed to project related noise each of the four months of the project.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. As noted above, the applicant only requested take of harbor seals, but we believe the cryptic nature, small size, and dive duration of Dall's porpoise and harbor porpoise make it possible that these two species could also be taken by popping up inside the Level B harassment zone before shutdown can occur (see below). We describe how we estimated their take below.

It is important to note that PSSA proposes to implement a shutdown of pile driving activity if any marine mammal other than harbor seals is observed within the Level B harassment zone (see Proposed Mitigation). Therefore, the proposed take authorization is intended to provide insurance against the event that marine mammals occur within Level B harassment zones that cannot be fully observed by monitors. As a result of this proposed mitigation, we do not believe that Level A harassment is a likely outcome for these two species. While the calculated Level A harassment zone is as large as 720 m for impact driving of 48-in steel piles (ranging from 390 m for other impact driving scenarios), this requires that an animal be present at that range for the full assumed duration of pile strikes (expected to require multiple hours). Given the PSSA's commitment to shut down upon observation of other marine mammals, and the rarity of these animals inside Ward Cove where the Level A harassment zones will be, we do not expect that any of these other species would be present within a Level A harassment zone for sufficient duration to actually experience PTS.

Harbor Seals

The take calculation was estimated based on the conservative group size from above (5) multiplied by the number of expected groups per day multiplied by the number of days of pile driving. Based on the anecdotal observations, it is conservatively estimated that 2 groups of 5 harbor seals may occur within the Level B harassment zone every day that pile driving may occur. Thus we estimate 5 animals in a group x 2 groups per day x 105 days = 1,050 times animals would occur within the Level B harassment zone. The Level B harassment zones areas for trestle construction and mooring dolphin construction differ in size because more sound is expected to leak out of the cove into Tongass Narrows when construction on the dolphins is toward the middle of the cove (see Figure 6 of application). Nevertheless, it is expected that most of the take will occur within Ward Cove (not Tongass Narrows) where the action areas for trestle and dolphin construction overlap and are identical in size, so take is not reduced despite the smaller area of trestle effects.

The Level A harassment zone for harbor seals for impact pile driving of 30-inch piles is 175 meters, and for impact driving of 36 and 48-inch piles, the zone is 325 meters. For other pile driving activities the zones are much smaller. Impact pile driving would be shut down before a harbor seal enters within 200 meters during impact pile driving of all piles; however, take by Level A harassment of harbor seals is requested outside the 200m shutdown zone for larger piles with zones exceeding 200m. Impact driving would occur for no more than 10 minutes per day on 20 days of construction. As above we use group size of 5 individuals and expect 1 group per day to be exposed in the Level A harassment zone. Although mere ''exposure'' within the Level A harassment zone is not indicative of an animal incurring auditory injury due to the fact that injury results from accumulation of energy over an assumed duration of exposure, we conservatively propose to authorize 100 Level A harassment takes of harbor seal (5 animals in a group x 1 groups per day x 20 days = 100 animals). Because these animals exposed in the Level A harassment zone duplicate those exposed in the Level B zone, the authorized Level B harassment take is the number of Level B harassment zone exposures minus the Level A take or 950 animals (1050–100).

Dall's Porpoise

As discussed above we assume a single group of 15 individuals in the project area each month. The take calculation was estimated based on the conservative group size from above (15) multiplied by the number of expected groups per month (1) multiplied by the number of months of pile driving for the project (4). Thus we estimate Level B harassment take of 60 individuals (15 × 1 × 4).

Harbor Porpoise

As discussed above we assume a conservative group size of 5 individuals occurring no more than twice in the project area each month. The take calculation was estimated based on the group size from above (5) multiplied by the number of expected groups per month (2) multiplied by the number of months of pile driving for the project (4). Thus we estimate Level B harassment take of 40 individuals (5 × 2 × 4).

Effects of Specified Activities on Subsistence Uses of Marine Mammals

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. The information from this section is analyzed to determine whether the necessary findings may be made in the *Unmitigable Adverse Impact Analysis and Determination* section.

Subsistence harvest of harbor seals by Alaska Natives is not prohibited by the MMPA. Since surveys of harbor seal subsistence harvest in Alaska began in 1992, there have been declines in the number of households hunting and harvesting seals in Southeast Alaska (Wolf *et al.* 2013). Subsistence harvest data for the Clarence Strait stock indicates an average annual harvest in the years 2004–2008 of 164 harbor seals (80 near Ketchikan) and an average annual harvest in the years 2011–2012 of 40 harbor seals (summarized in Muto *et al.* 2016a from Wolf *et al.* 2013). In 2008, two Steller sea lions were harvested by Ketchikan-based subsistence hunters, but this is the only record of sea lion harvest by residents of Ketchikan. In 2012, the community of Ketchikan had an estimated subsistence take of 22 harbor seals (Wolf *et al.* 2013). This is the most recent data for Ketchikan. The ADF&G has not recorded harvest of cetaceans in the area (ADF&G 2018). Hunting usually occurs in October and November (ADF&G 2009), but there are also records of relatively high harvest in May (Wolfe *et al.* 2013).

In June 2019, attempts were made by PSSA to contact the Alaska Harbor Seal Commission, the Alaska Sea Otter and Steller Sea Lion Commission, and the Ketchikan Indian Community (KIC, Federal-recognized Tribe) to discuss this

project. The Alaska Harbor Seal Commission is currently not operational. Comments were not received from the Alaska Sea Otter and Steller Sea Lion Commission. PSSA met with KIC and KIC submitted comments for the Army Corps of Engineers permit for this project. They did not express concerns about subsistence hunting.

Construction activities at the project site would be expected to cause only short term, non-lethal disturbance of marine mammals. Construction activities are localized and temporary in the previously developed Ward Cove, mitigation measures will be implemented to minimize disturbance of marine mammals in the action area, and, the project will not result in significant changes to availability of subsistence resources. Impacts on the abundance or availability of either species to subsistence hunters in the region are thus not anticipated.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are proposed in the IHA:

- *Schedule:* Pile driving or removal must occur during daylight hours. If poor environmental conditions restrict visibility (*e.g.,* from excessive wind or fog, high Beaufort state), pile installation would be delayed;
- *Pile Driving Delay/Shut-Down:* For use of in-water heavy machinery/vessel (*e.g.,* dredge), PSSA must implement a minimum shutdown zone of 10 m radius around the pile/vessel. For vessels, PSSA must cease operations and reduce vessel speed to the minimum required to maintain steerage and safe working conditions. In addition, if an animal comes within the shutdown zone (see Table 8) of a pile being driven or removed, PSSA would shut down. The shutdown zone would only be reopened if they observe the animal exiting the zone or when a marine mammal has not been observed within the shutdown zone for a 15-minute period. If pile driving is stopped, pile installation would not commence if any marine mammals are observed anywhere within the Level A harassment zone. Pile driving activities must only be conducted during daylight hours when it is possible to visually monitor for marine mammals. If a species for which authorization has not been granted, or if a species for which authorization has been granted but the authorized takes are met, PSSA must delay or shut-down pile driving if the marine mammal approaches or is observed within the Level A and/or B harassment zones. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as serious injury or mortality, the protected species observer (PSO) on watch must immediately call for the cessation of the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and NMFS Alaska Regional Office.

TABLE 8—SHUTDOWN AND MONITORING ZONES FOR EACH ACTIVITY TYPE AND STOCK

Pile size	Harbor seal shutdown distance (m)	Other marine mammal shutdown distance (m)	Level B harbor seal monitoring zone (m)
Vibratory Pile Driving/Removal:			
30-inch piles	10	3,645	3,645
36-inch piles	15	3,645	3,645
48-inch piles	15	3,645	3,645
Impact Pile Driving:			
30-inch piles	200	3,645	3,645
36-inch piles	200	3,645	3,645
48-inch piles	200	3,645	3,645
Rock Anchoring:			
36-inch piles	40	3,645	3,645
48-inch piles	40	3,645	3,645
All Other Activities:			
Any activity	10	N/A	N/A

Note: A Level A harbor seal monitoring zone is implemented for impact pile driving of 36 and 48-inch diameter piles out to the extent of the Level A harassment zone (325 m). Level B monitoring zone (for the three species with authorized take) and other marine mammal shutdown distance of 3,645 m reflects the farthest distance before sound is inhibited by land.

• *Soft-start:* For all impact pile driving, a ''soft start'' technique must be used at the beginning of each pile installation day, or if pile driving has ceased for more than 30 minutes, to allow any marine mammal that may be in the immediate area to leave before hammering at full energy. The soft start requires PSSA to provide an initial set of three strikes from the impact hammer at reduced energy, followed by a 30 second waiting period, then two subsequent 3–strike sets. If any marine mammal is sighted within the Level A shutdown zone prior to pile-driving, or during the soft start, PSSA must delay pile-driving until the animal is confirmed to have moved outside and is on a path away from the Level A harassment zone or if 15 minutes have elapsed since the last sighting;

• *Sediment control:* All material that comes out of the top of the pile during pile driving (drill cutting discharge) must be collected on a barge and transported to a permitted upland location for disposal. Pile driving, temporary pile removal, and collection of excavated material operations must be surrounded by a 50-feet deep silt curtain; and

• *Other best management practices:* PSSA will drive all piles with a vibratory hammer to the maximum extent possible (*i.e.,* until a desired depth is achieved or to refusal) prior to using an impact hammer. PSSA will also use the minimum hammer energy needed to safely install the piles.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring must be conducted 30 minutes before, during, and 30 minutes after pile driving and removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

Four PSO's would be used to monitor the project and their locations are shown in Figure 12 of the monitoring plan. A primary PSO must be placed near the project site in Ward Cove where pile driving would occur. The primary purpose of this observer is to monitor and implement the Level A shutdown and monitoring zones. Three additional PSOs must be positioned in order to focus on monitoring the Level B harassment and other species shutdown zone. PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. The following measures also apply to visual monitoring:

(1) Monitoring must be conducted by NMFS-approved qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Advanced education in biological science or related field (undergraduate degree or higher required);

(c) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

(d) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(e) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(f) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(g) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and

(2) PSSA shall submit observer CVs for approval by NMFS.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of

pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory);
- Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);
- Description of any marine mammal behavior patterns during observation, including direction of travel;
- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and
- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible, when applicable.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, PSSA shall report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and drilling activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal and DTH drilling. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see *Proposed Mitigation* section).

The Level A harassment zones identified in Table 7 are based upon an animal exposed to impact pile driving multiple piles per day. Considering duration of impact driving each pile (up to 3 minutes) and breaks between pile installations (to reset equipment and move pile into place), this means an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement throughout the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated.

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile driving and removal would occur across 4–5 months, any harassment would be temporary. There are no other areas or times of known biological importance for any of the affected species.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In combination, we believe that these

factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Authorized Level A harassment would be very small amounts and of low degree;
- PSSA would implement mitigation measures such as vibratory driving piles to the maximum extent practicable, soft-starts, silt curtains, removal of potentially contaminated sediments, and shut downs; and
- Monitoring reports from similar work in Alaska have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize is 3.8 percent of the Clarence Strait stock's best population estimate for harbor seals. The Alaska stock of Dall's porpoise has no official NMFS abundance estimate as the most recent estimate is greater than eight years old. Nevertheless, the most recent estimate was 83,400 animals and it is highly unlikely this number has drastically declined. Therefore, the 60 authorized takes of this stock clearly represent small numbers of this stock. The take for harbor porpoise is 4.1 percent of the stock. These are all likely conservative estimates because they assume all takes are of different individual animals which is likely not the case. Some individuals may return multiple times in a day but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As discussed above in the subsistence uses section, subsistence harvest of harbor seals and other marine mammals is rare in the area and local subsistence users have not expressed concern about this project. All project activities will take place within the industrial area of Tongass Narrows and Ward Cove immediately adjacent to Ketchikan where subsistence activities do not generally occur. The project also will not have an adverse impact on the availability of marine mammals for subsistence use at locations farther away, where these construction activities are not expected to take place. Some minor, short-term harassment of the harbor seals could occur, but any effects on subsistence harvest activities in the region will be minimal, and not have an adverse impact.

Based on the effects and location of the specified activity, and the mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from PSSA's planned activities.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to PSSA to conduct the Ward Cove Cruise Ship Dock project near Ketchikan, Alaska for one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed Ward Cove Cruise Ship Dock project. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Specified Activities

section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA);
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 26, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–04280 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XT036]

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2020 Research Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: On November 22, 2019, NMFS published a notice inviting qualified commercial shark permit holders to submit applications to participate in the 2020 shark research fishery. The shark research fishery allows for the collection of fishery-dependent data for future stock assessments and cooperative research with commercial fishermen to meet the shark research objectives of the Agency. Every year, the permit terms and permitted activities (*e.g.,* number of hooks and retention limits) specifically authorized for selected participants in the shark research fishery are designated depending on the scientific and research needs of the Agency, as well as the number of NMFS-approved observers available. In order to inform selected participants of this year's specific permit requirements and ensure all terms and conditions of the permit are met, NMFS is holding a mandatory meeting (via conference call) for selected participants. The date and time of that meeting is announced in this notice.

DATES: A conference call will be held on March 9, 2020.

ADDRESSES: A conference call will be conducted. See **SUPPLEMENTARY INFORMATION** for information on how to access the conference call.

FOR FURTHER INFORMATION CONTACT: Guy DuBeck at (301) 427–8503, or Delisse Ortiz at (240) 681–9037.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated Atlantic Highly Migratory species (HMS) Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The final rule for Amendment 2 to the 2006 Consolidated HMS FMP (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008) established, among other things, a shark research fishery to maintain time-series data for stock assessments and to meet NMFS' research objectives. The shark research fishery gathers important scientific data and allows selected commercial fishermen the opportunity to earn more revenue from selling the sharks caught, including sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land/harvest sandbar sharks subject to the sandbar quota available each year. The 2020 base annual sandbar shark quota is 90.7 mt dressed weight (dw). The selected shark research fishery participants also may fish using the research large coastal shark (635.27(b)(1)(iii)(B)), small coastal shark (635.27(b)(1)(i)(C) and 635.27(b)(1)(ii)(D)), and pelagic shark quotas (635.27(b)(1)(iii)(D)) subject to the retention limits at 635.24.

On November 22, 2019 (84 FR 64465), NMFS published a notice inviting qualified commercial shark directed and incidental permit holders to submit an application to participate in the 2020 shark research fishery. NMFS received 16 applications and selected 5 participants. In order to inform selected participants of this year's specific permit requirements and to ensure all terms and conditions of the permit are met, per the requirements of § 635.32(f)(4), NMFS is holding a mandatory permit holder meeting via conference call.

Conference Call Date, Time, and Dial-In Number

The conference call will be held on March 9, 2020, from 1:30 to 3:30 p.m. (EST). Participants and interested parties should call 888–469–1244 and use the passcode 5585842. This call is mandatory for selected participants. Selected participants who do not attend will not be allowed to participate in the shark research fishery. While the conference call is mandatory for selected participants, other interested parties may call in and listen to the discussion. Selected participants are encouraged to invite their captain, crew, or anyone else who may assist them in meeting the terms and conditions of the shark research fishery permit.

Dated: February 27, 2020.

Karyl K. Brewster-Geisz,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–04324 Filed 3–2–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Model Demonstration Projects To Develop Coaching Systems

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal

year (FY) 2020 for Model Demonstration Projects to Develop Coaching Systems, Catalog of Federal Domestic Assistance (CFDA) number 84.326M. These projects will provide support to professionals to collaborate with early learning and early intervention programs, schools, districts, and State agencies to establish the infrastructure, personnel skills, and processes necessary for an effective and sustainable coaching system. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: March 3, 2020.

Deadline for Transmittal of Applications: May 4, 2020.

Deadline for Intergovernmental Review: July 1, 2020.

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 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW, Room 5161, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6673. Email: *Jennifer.Coffey@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 purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

Priority: This competition includes one absolute priority, one competitive preference priority, and one invitational priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority and competitive preference priority are from allowable activities specified in or otherwise authorized in sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1463, 1481(d)).

Absolute Priority: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Model Demonstration Projects to Develop Coaching Systems.

Background

Model demonstrations to improve early intervention, educational, or transitional results for children with disabilities and their families have been authorized under the IDEA since the law's inception. For the purposes of this priority, a model is a set of existing evidence-based practices,[1] including interventions and implementation strategies (*i.e.,* core model components), that research suggests will improve outcomes for children, families, personnel,[2] administrators, or systems, when implemented with fidelity. Model demonstrations involve investigating the degree to which a given model can be implemented and sustained in real-world settings, by staff employed in those settings, while achieving outcomes similar to those attained under research conditions.

Researchers have identified practices that improve academic, functional, developmental, and behavioral outcomes for children with disabilities, yet such evidence-based practices are not implemented or scaled up in a systematic manner to maximize their potential to impact child outcomes (Sanetti & Collier-Meek, 2019). To bridge this research-to-practice gap, the field has responded by developing improved professional development models for supporting the implementation of evidence-based practices.

Coaching has been identified as a key implementation ''driver'' for implementing evidence-based practices (Metz & Bartley, 2012). Kraft et al.'s (2018) meta-analysis of the causal effects of coaching suggests coaching programs hold real promise for improving instructional practice and, as a result, child outcomes. This meta-analysis also found that virtual coaching can be as effective as in-person coaching and that there are many unknowns related to the amount of coaching needed and strategies that will be most effective.

Various coaching models show promising results for improving instructional practices and child outcomes. Examples of promising models include mentoring (Schmidt et al., 2017), data-driven instructional coaching (Glover et al., 2019), and practice-based coaching (Snyder et al., 2015), among others.

The field has also begun to articulate the challenges and solutions to implementing effective coaching models, specifically the infrastructure needed to support a comprehensive and sustainable coaching system. For example, Kraft et al. (2018) suggest that a primary implementation challenge is building a corps of capable coaches whose expertise is well matched to the diverse needs of the personnel being supported. In addition, the State Implementation and Scaling up of Evidence-based Practices Technical Assistance Center (SISEP) developed a resource that describes research-based components of coaching (*https://nirn.fpg.unc.edu/resources/coaching-practice-profile*). These findings provide a basis for investing in efforts to expand the existing research base and to learn more about what it takes to scale up and sustain coaching models.

Model demonstration coaching projects could further refine the key components of effective coaching across various models and provide needed data on whether particular approaches to coaching are effective, how to differentiate coaching strategies based on personnel needs, the amount of coaching individuals need to successfully implement an evidence-based practice and how to select coaches.

Model demonstration coaching projects can identify the challenges to implementation and determine system supports to assist in meeting those challenges. Additionally, these model demonstrations can take the first steps to systematically scale up the critical features of effective coaching.

The projects must be awarded and operated in a manner consistent with

[1] For purposes of this priority, ''evidence-based'' means the proposed project component is supported by promising evidence, which is evidence of the effectiveness of a key project component in improving a ''relevant outcome'' (as defined in 34 CFR 77.1), based on a relevant finding from one of the sources identified under ''promising evidence'' in 34 CFR 77.1.

[2] As defined by section 651(b) of IDEA, the term ''personnel'' means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Priority

The purpose of this priority is to fund three cooperative agreements to establish and operate evidence-based model demonstration projects. The models will implement coaching systems in early intervention, early learning, elementary school, middle school, or high school settings.

The models will address the infrastructure (*e.g.,* implementation teams) and ongoing supports needed to foster the development, implementation, and evaluation of coaches and a coaching system to support personnel who work with children with disabilities.

The models will demonstrate methods for identifying coaching strategies and the necessary intensity and frequency of those strategies to meet the needs of personnel being coached.

The models will capture information about challenges to implementation and determine what system supports may assist in meeting those challenges. Additionally, the models will use coaching data to provide information about how coaching services affect provider services and, accordingly, child outcomes (*i.e.,* connecting coaching fidelity data to intervention fidelity data to child outcome data). The model demonstration projects will assess how models can—

- Support implementation of evidence-based practices that improve outcomes for children with disabilities;
- Improve the capacity of local coaches to support personnel who serve children with disabilities;
- Improve the capacity of sites and the central offices or programs that support them to build infrastructure that supports an effective coaching system; and
- Improve understanding of how State agencies could reduce barriers to, and support, implementation of coaching systems.

Applicants must propose models that meet the following requirements:

(a) The model's core intervention components must include—

(1) Coaching services that are supported by evidence;

(2) Ongoing measures of coaching supports and the impact of those supports, specifically fidelity measures and child outcomes; [3]

(2) Professional development to support coaches' appropriate and timely use of data to inform the need for differentiating coaching strategies, intensity, and frequency dependent on content and personnel needs;

(3) Procedures to refine the model based on the ongoing measures of fidelity of coaching services, fidelity of the implementation of evidence-based practices, and child outcomes;

(4) Procedures for coaches to share data at the site, central office or program, and State levels so that the data can be used to make decisions regarding, remove barriers to, and support, implementation and sustainability of the coaching system; and

(5) Measures of the model's social validity, *i.e.,* measures of personnel and administrator satisfaction with the model components, processes, and outcomes.

(b) The model's core implementation components must include—

(1) Criteria and strategies for selecting [4] and recruiting sites and coaches at those sites, including approaches to introducing the model to, and promoting the model among, site participants.[5] Applicants are encouraged to choose sites from a variety of settings (*e.g.,* urban, rural, suburban, type of school such as elementary, charter, or early learning) and populations (*e.g.,* concentration of students receiving free or reduced-price lunch);

(2) A lag site implementation design, which allows for model development and refinement at the first site in year one of the project period, with sites two and three implementing a revised model based on data from the first site beginning in subsequent project years;

(3) A professional development component that includes a strategy to work with administrators and coaches, to enable site-based personnel to implement the coaching model with fidelity; and

(4) Measures of the results of the professional development required by paragraph (b)(3) of this section.

(c) The core strategies for sustaining the model must include—

(1) Documentation that permits current and future site-based staff to replicate or appropriately tailor and sustain the model at any site; [6]

(2) Guidelines and procedures to—

(i) Help administrators support a coaching system;

(ii) Provide professional development to coaches;

(iii) Collect data on fidelity of coaching services and impact of coaching on intervention fidelity;

(iv) Match coaching strategies and intensity of the strategies based on content and personnel need;

(v) Determine the amount and frequency of coaching needed to improve intervention fidelity; and

(vi) Collect data regarding the connection among coaching strategies used, the frequency and amount of coaching, and the fidelity of the implementation of the model coaching system and child outcomes and communicate regularly about the data at the local, regional (as appropriate), and State levels;

(3) Strategies for the grantee to disseminate or promote the use of the model, such as developing easily accessible online training materials, coordinating with TA providers who might serve as future trainers, or providing technical support (*e.g.,* webinars, training sessions, or workshops) for users who may want to learn about and implement the model and its components; and

(4) Strategies for the grantee to assist State agencies (*e.g.,* State educational agencies (SEAs) and State lead agencies

[3] Applicants must ensure the confidentiality of individual student data, consistent with the Confidentiality of Information regulations under both part B and part C of IDEA, which incorporate requirements and exceptions under section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly known as the ''Family Educational Rights and Privacy Act'' (FERPA), but also include several provisions that are specifically related to children with disabilities receiving services under IDEA and provide protections beyond the FERPA regulations. Therefore, examining the IDEA requirements first is the most effective and efficient way to meet the requirements of both IDEA and FERPA for children with disabilities. Applicants should also be aware of State laws or regulations concerning the confidentiality of individual records. See *www2.ed.gov/policy/gen/guid/ptac/pdf/idea-ferpa.pdf* and *studentprivacy.ed.gov/resources/ferpaidea-cross-walk.* Final FERPA regulatory changes became effective January 3, 2012, and include requirements for data sharing. Applicants are encouraged to review the final FERPA regulations published on December 2, 2011 (76 FR 75604). Questions can be directed to the Student Privacy Policy Office (SPPO) (*https://www2.ed.gov/policy/gen/guid/fpco/index.html*) at 1–800–USA–LEARN (1–800–872–5327) or *https://studentprivacy.ed.gov/contact.*

[4] For factors to consider when selecting model demonstration sites, the applicant should refer to *Assessing Sites for Model Demonstration: Lessons Learned for OSEP Grantees* at *mdcc.sri.com/documents/MDCC_Site_Assessment_Brief_09-30-11.pdf.* The document also contains a site assessment tool.

[5] For factors to consider when preparing for model demonstration implementation, the applicant should refer to *Preparing for Model Demonstration Implementation* at *mdcc.sri.com/documents/MDCC_PreparationStage_Brief_Apr2013.pdf.*

[6] For a guide on documenting model demonstration sustainment and replication, the applicant should refer to *Planning for Replication and Dissemination From the Start: Guidelines for Model Demonstration Projects (Revised)* at *mdcc.sri.com/documents/MDCC_ReplicationBrief_SEP2015.pdf.*

(SLAs) and local early learning or early intervention agencies and local educational agencies (LEAs)) within the State to scale up a model and its components.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Each project funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements

An applicant must include in its application—

(a) A detailed review of the literature addressing the proposed evidence-based model or its implementation components and the proposed processes to improve coaching services for personnel who serve children with disabilities;

(b) A logic model [7] that depicts, at a minimum, the goals, activities, outputs, and outcomes (described in paragraph (a) under the heading *Priority*) of the proposed model demonstration project.

Note: The following websites provide resources for constructing logic models: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework;*

(c) A description of the activities and measures to be incorporated into the proposed model demonstration project (*i.e.,* the project design) to develop coaching systems, including a timeline of how and when the components are introduced within the model. A detailed and complete description must include the following:

(1) Each of the coaching system components.

(2) The existing and proposed measures of fidelity of coaching services, fidelity of the implementation of evidence-based practices, and child outcomes, as well as social validity measures. The measures should be described as completely as possible, referenced as appropriate, and included, when available, in Appendix A.

(3) Each of the implementation components, including, at a minimum, those listed under paragraph (b) under the heading *Priority.* The existing or proposed implementation fidelity measures, including those measuring the fidelity of the professional development strategy, should be described as completely as possible, referenced as appropriate, and included, when available, in Appendix A. In addition, this description should include—

(i) Demographics, including, at a minimum, the settings of, and children participating in, all of the implementation sites that have been identified and successfully recruited for the purposes of this application using the selection and recruitment strategies described in paragraph (b)(1) under the heading *Priority;*

Note: Applicants are encouraged to identify, to the extent possible, the sites willing to participate in the applicant's model demonstration. Final site selection will be determined in consultation with the Office of Special Education Programs (OSEP) project officer following the kick-off meeting described in paragraph (e)(1) of these application requirements, and if the project is working with elementary, middle, or high school sites, the final sites will include at least one school of choice such as a public magnet, public charter, or private school; and

(ii) The lag site implementation design for implementation consistent with the requirements in paragraph (b)(2) under the heading *Priority.*

(4) Each of the strategies to promote sustaining and replicating the model, including, at a minimum, those listed under paragraph (c) under the heading *Priority.*

(d) A description of the evaluation activities and measures to be incorporated into the proposed model demonstration project. A detailed and complete description must include—

(1) A formative evaluation plan, consistent with the project's logic model, that includes evaluation questions, sources of data, a timeline for data collection, and analysis plans. The plan must show how the outcome data (*e.g.,* child, personnel, or systems measures, social validity) and implementation data (*e.g.,* fidelity, effectiveness of professional development activities) will be used separately or in combination to improve the project during the performance period. These data will be reported in the annual performance report (APR). The plan also must outline how these data will be reviewed by project staff, when they will be reviewed, and how they will be used during the course of the project to adjust the model or its implementation to increase the model's usefulness, generalizability, and potential for sustainability; and

(2) A summative evaluation plan, including a timeline, to collect and analyze data on changes to child, teacher, service provider, or system outcomes over time or relative to comparison groups that can be reasonably attributable to project activities. The plan must show how the child, personnel, or system outcome and implementation data collected by the project will be used separately or in combination to demonstrate the promise of the model.

(e) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award.

(2) A three-day project directors' conference in Washington, DC, occurring twice during the project performance period.

(3) Four travel days spread across years two through four of the project period to attend planning meetings, Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP, to be held in Washington, DC.

Other Project Activities

To meet the requirements of this priority, each project, at a minimum, must—

(a) Communicate and collaborate on an ongoing basis with other Department-funded projects, including, at a minimum, OSEP-funded TA centers that might disseminate information on the model or support the scale-up efforts of a model based on promising evidence;

(b) Maintain ongoing telephone and email communication with the OSEP project officer and the other model demonstration projects funded under this priority;

(c) If the project maintains a website, include relevant information about the model, the intervention, and the demonstration activities and ensure that the website meets government- or industry-recognized standards for accessibility; and

(d) Ensure that annual progress toward meeting project goals is posted on the project website.

Competitive Preference Priority: Within this absolute priority, we give competitive preference to applications that address the following competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional 5 points to an application that meets the competitive preference priority. This priority is:

Competitive Preference Priority 1 (0 or 5 points). Projects proposed by applicants that have not had an active grant award under the Technical

[7] *Logic model* (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Assistance and Dissemination to Improve Services and Results for Children model demonstration grants (84.326M) at any point in the preceding five fiscal years (*i.e.,* FY 2015–FY 2019).

Note: If an applicant has previously received a grant under the 84.326M program, the performance period for that grant must have ended on or before September 30, 2014 in order to receive points under this priority.

Invitational Priority: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications. This priority is:

Projects that include a virtual delivery method within their coaching system.

References

Glover, T. A., Reddy, L. A., Kurz, A., & Elliott, S. N. (2019). Use of an online platform to facilitate and investigate data-driven instructional coaching. *Assessment for Effective Intervention, 44*(2), 95–103.

Kraft, M. A., Blazar, D., & Hogan, D. (2018). The effect of teacher coaching on instruction and achievement: A meta-analysis of the causal evidence. *Review of Educational Research, 88*(4), 547–588.

Metz, A., & Bartley, L. (2012). Active implementation frameworks for program success. *Zero to Three, 32*(4), 11–18.

Sanetti, L. M. H., & Collier-Meek, M. A. (2019). Increasing implementation science literacy to address the research-to-practice gap in school psychology. *Journal of School Psychology, 76,* 33–47.

Schmidt, R., Young, V., Cassidy, L., Wang, H., & Laguarda, K. (2017). *Impact of the New Teacher Center's new teacher induction model on teachers and students.* SRI International.

Snyder, P. A., Hemmeter, M. L., & Fox, L. (2015). Supporting implementation of evidence-based practices through practice-based coaching. *Topics in Early Childhood Special Education, 35*(3), 133–143.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and other requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the absolute priority and related definitions in this notice.

Program Authority: 20 U.S.C. 1463 and 1481.

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 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.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $1,200,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2021 from the list of unfunded applications from this competition.

Estimated Range of Awards: $375,000 to $400,000 per year.

Estimated Average Size of Awards: $400,000 per year.

Maximum Award: We will not make an award exceeding $400,000 for a single budget period of 12 months.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian Tribes or Tribal organizations; and for-profit organizations.

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. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the

appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (15 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies;

(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;

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement; and

(iv) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(b) *Quality of the project design (35 points).*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(ii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

(iii) The quality of the proposed demonstration design and procedures for documenting project activities and results;

(iv) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project; and

(v) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(c) *Adequacy of resources and quality of the management plan (25 points).*

(1) The Secretary considers the adequacy of resources and the quality of the management plan for the proposed project.

(2) In determining the adequacy of resources and the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate;

(v) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(vi) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(d) *Quality of the project evaluation (25 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes;

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iv) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings; and

(v) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

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 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. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under

this competition 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.

5. *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 $250,000), 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 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.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection, analysis, and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* Under the Government Performance Results Modernization Act of 2010, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Model Demonstration Projects to Develop Coaching Systems under the Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program. These measures are—

- *Current Program Performance Measure:* The percentage of effective evidence-based program models developed by model demonstration projects that are promoted to States and their partners through the Technical Assistance and Dissemination Network; and
- *Pilot Program Performance Measure:* The percentage of effective program models developed by model demonstration projects that are sustained beyond the life of the model demonstration project.

The current program performance measure and the pilot program performance measure apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

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 at *www.govinfo.gov.* 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 the 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.

Mark Schultz,

Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–04316 Filed 3–2–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–12–000]

Columbia Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Leach XPress Project Amendment and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Columbia Gas Transmission, LLC's (Columbia Gas) request for authorization to amend its certificate of public convenience and necessity granted by the Commission in the Order Issuing Certificates and Approving Abandonment (Order) issued on January 19, 2017 in Docket No. CP15–514–000 for the Leach XPress Project.

The amendment would involve the current and future operation of the Ceredo and Crawford Compressor Stations in Wayne County, West Virginia and Fairfield County, Ohio, respectively. The Commission will use this EA in its decision-making process to determine whether the amendment is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the amendment. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of an authorization. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on Friday, March 27, 2020.

You can make a difference by submitting your specific comments or concerns about the amendment. Your comments should focus on the potential operational impacts from the amendment. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

This notice is being sent to the Commission's current environmental mailing list for the amendment. State and local government representatives should notify their constituents of this proposed amendment and encourage them to comment on their areas of concern.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the amendment docket number (CP20–12–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426

Summary of the Proposed Amendment

Columbia Gas's proposed amendment would modify the Order's noise level requirement, environmental condition 31, for the Ceredo and Crawford Compressor Stations. Since issuance of the Leach XPress Project Order, Columbia Gas has implemented several mitigation measures to reduce the noise levels at the nearest noise sensitive areas surrounding the Ceredo Compressor Station, and it claims that it is infeasible to further mitigate noise levels at this station at the current level of full-load operations. Columbia Gas did not install and was not authorized to install any modified compressor units at the Crawford Compressor Station, and it has confirmed that noise levels at the Crawford Compressor Station have not increased above the pre-existing noise levels since issuance of the Leach XPress Project Order.

Columbia Gas's proposed amendment would restrict any noise level increases at both stations and would slightly reduce the current noise levels at the Ceredo Compressor Station, as noted below. Columbia Gas's requested amendment, however, would modify the noise level restriction required by environmental condition 31 of the Leach XPress Project Order that currently requires it to ensure that noise levels do not exceed an day-night sound level of 55 decibels on the A-weighted scale at the nearest noise sensitive areas. Columbia Gas requests that the Commission modify environmental condition 31 to ensure that the noise

generated by the Ceredo and Crawford Compressor Stations is consistent with the Commission's policy regarding noise levels at legacy compression stations [1] that were built and operated prior to the Commission's noise level criteria included in environmental condition 31.[2]

The legacy reciprocating units are the most dominant noise source at the Ceredo Compressor Station, and Columbia Gas's proposed amendment would also modify its operation of the Ceredo Compressor Station authorized in the Leach XPress Project Order to reduce operational noise levels on noise sensitive areas by the following: (1) Using four instead of five of the seven legacy reciprocating units at any given time, and (2) increasing the horsepower (hp) rate from 11,000 hp to 13,000 hp from each of three electric-driven compressor units installed since issuance of the Leach XPress Project Order. This proposed operational change would not involve any construction activities.

The general location of the Ceredo and Crawford Compressor Station facilities is shown in appendix 1.[3]

Land Requirements for Construction

Given that no ground disturbance or material construction would take place within Ceredo or Crawford Compressor Stations, no land would be required for the amendment.

The EA Process

The EA will discuss impacts that could occur to noise quality as a result of the amendment's operational changes and noise mitigation proposed by Columbia Gas. Commission staff will also evaluate reasonable alternatives to the proposed amendment, and may make recommendations on how to lessen or avoid impacts on noise quality.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [4] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this amendment to formally cooperate in the preparation of the EA.[5] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Environmental Mailing List

The environmental mailing list includes noise sensitive receivers within 0.5 mile of the Ceredo and Crawford Compressor Stations and anyone who submits comments on the amendment. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed amendment.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the amendment is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP20–12). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: February 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04323 Filed 3–2–20; 8:45 am]

BILLING CODE 6717–01–P

[1] If the noise generated by an existing compressor station already exceeds an day-night sound level of 55 decibels on the A-weighted scale, any proposed modification or expansion of the compressor station should not increase above current levels after installing the new project equipment (*Guidance Manual for Environmental Report Preparation* for applications filed under the Natural Gas Act, February 2017, p.4–133; also see 18 CFR 157.206(b)(5)(ii)(B).

[2] The Ceredo Compressor Station was originally constructed in the mid-1950s and the Crawford Compressor Station was originally constructed prior to 1920 and has existing compressor units installed in the 1950s and 1960s. Both compressor stations continue to use legacy facilities to support system operations.

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3452–017]

Erie Boulevard Hydropower, L.P.; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. Project No.: 3452–017.

c. *Date Filed:* June 28, 2019.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Oak Orchard Hydroelectric Project.

f. *Location:* The project is located adjacent to the New York State Canal Corporation's barge canal in the Village of Medina, Orleans County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* Mr. Steven P. Murphy, Director, U.S. Licensing, Erie Boulevard Hydropower, L.P., 33 West 1st Street South, Fulton, NY 13069; (315) 598–6130; email:*steven.murphy@brookfieldrenewable.com.*

i. *FERC Contact:* Laurie Bauer at (202) 502–6519; or email at *laurie.bauer@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–3452–017.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The Oak Orchard Project consists of the following existing facilities: (1) A concrete gravity dam containing a spillway with a crest elevation of 507.6 feet mean sea level (msl) surmounted by 2-foot-high flashboards and two 5-foot-high, 5-foot-wide flood gates; (2) a forebay with a surface area of 0.25 acre and a storage capacity of 3 acre-feet at the normal pool elevation of 509.6 feet msl; (3) an intake structure with trashracks; (4) a 7-foot-diameter, 85-foot-long welded steel penstock from the intake to the turbine; (5) a 20-foot-long, 43-foot-wide powerhouse containing a single turbine-generator unit with a rated capacity of 350 kilowatts; (6) a tailrace located on the left (west) bank of Oak Orchard Creek; (7) a 55-foot-long underground generation lead; (8) three single-phase 167-kilovolt-ampere pole-mounted power transformers; (9) a 400-foot-long access road; and (10) appurtenant facilities.

Erie operates the project off of flows provided to it from the barge canal. During the navigation season, the Canal Corporation provides approximately 225 cubic feet per second (cfs) of water. Under normal operating conditions, Erie uses approximately 200 cfs of the provided water for project operation and the remaining water (approximately 25 cfs) is discharged directly to Oak Orchard Creek. During the period from 2009 to 2016, the average annual generation was approximately 1,147 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. Procedural schedule: The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for filing comments, recommendations, terms and conditions, and prescriptions	April 2020.
Reply comments due	June 2020.
Commission issues EA	September 2020.
Comments on EA due	October 2020.

Dated: February 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04322 Filed 3–2–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP20–52–000; PF19–7–000]

WBI Energy Transmission, Inc.; Notice of Application

Take notice that on February 14, 2020, WBI Energy Transmission, Inc. (WBI), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act, requesting authorization to construct, modify, operate, and maintain the North Bakken Expansion Project located in northwestern North Dakota, all as more fully described in the application which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the

Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, WBI proposes to: (i) Construct approximately 61.9 miles of new 24-inch-diameter natural gas pipeline from WBI Energy's Tioga Compressor Station in Williams County, North Dakota to the proposed Elkhorn Creek Compressor Station in McKenzie County, North Dakota; (ii) construct approximately 0.3 mile of new 24-inch-diameter natural gas pipeline from the proposed Elkhorn Creek Compressor Station to a new interconnect with Northern Border Pipeline Company in McKenzie County; (iii) construct approximately 20.4 miles of new 12-inch-diameter natural gas pipeline loop along WBI Energy's Line Section 25 in Mountrail and Burke Counties, North Dakota; (iv) construct approximately 9.4 miles of new 12-inch-diameter natural gas pipeline loop along WBI Energy's Line Section 30 in Williams County; (v) construct approximately 0.5 mile of new 20-inch-diameter receipt lateral to the Tioga Compressor Station; (vi) uprate Line Section 25; (vii) install an additional 22,500 hp at the Tioga Compressor Station; (viii) construct a new compressor station totaling 3,750 hp, the Elkhorn Creek Compressor Station, in McKenzie County; and (ix) install new, and modify, existing delivery, receipt, and transfer stations along the pipeline routes, replace small segments of pipeline facilities and install block valves, pig launcher/receiver stations and other associated appurtenances.

WBI says that the project will allow it to provide an additional 350 MMcf/d of incremental firm transportation capacity from the Williston Basin in northwest North Dakota to a new interconnect with Northern Border's existing mainline. WBI estimates the cost of the project to be $300 million.

Any questions regarding this application should be directed Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, by telephone at (701) 530–1563 or by email at *lori.myerchin@wbienergy.com.*

On July 3, 2019, Commission staff granted WBI's request to utilize the Pre-Filing Process and assigned Docket No. PF19–7–000 to staff activities involved in the project. Now, as of the filing of this application on February 14, 2020, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in CP20–52–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made in the proceeding with the Commission and must provide a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to show good cause why the time limitation should be waived, and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on March 18, 2020.

Dated: February 26, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–04321 Filed 3–2–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC 61,167 at 50 (2018).

[2] 18 CFR 385.214(d)(1).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0049; FRL–10005–55]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before April 2, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or, Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

A. Notice of Receipt—New Active Ingredients

1. *EPA Registration Number:* 100–1467,100–1462, 100–1463 and 100–1465. *Docket ID number:* EPA–HQ–OPP–2019–0542. *Applicant:* Syngenta Crop Protection, LLC, P. O. Box 18300, Greensboro, NC 27419. *Product name:* Bicyclopyrone technical, bicyclopyrone wet paste manufacturing use product, bicyclopyrone wet paste II manufacturing use product and SYN–A 16003 Herbicide. *Active ingredient:* Bicyclopyrone at 99.3% (Technical Herbicide), 94% (Manufacturing Use Product), 89.6% (II Manufacturing Use Product) and 18.5% (A 16003 Herbicide). *Proposed use:* Lemongrass, dried; lemongrass, fresh; rosemary, dried; rosemary, fresh; wormwood, dried and wormwood, fresh. *Contact:* RD.

2. *EPA Registration Number:* 71711–43 and 71711–44. *Docket ID number:* EPA–HQ–OPP–2019–0580. *Applicant:* Nichino America, Inc, 4550 Linden Hill Road, Suite 501, Wilmington, Delaware 19808 *Product name:* Orthosulfamuron technical and strada herbicide. *Active ingredient:* Orthosulfamuron at 99% (technical herbicide) and 50% (strada herbicide). *Proposed use:* Almond, hulls; small fruit vine climbing subgroup, except fuzzy kiwifruits (crop subgroup 13–07F) and tree nuts (crop group 14–12). *Contact:* RD.

3. *EPA Registration Number:* 71711–AU and 71711–AG. *Docket ID number:* EPA–HQ–OPP–2020–0004. *Applicant:* Nichino America, Inc., 4550 Linden Hill Road, Suite 501, Wilmington, DE 19808. *Product name:* Pyraclonil technical and pyraclonil 1.8% granule herbicide. *Active ingredient:* Herbicide—pyraclonil at 98.2% (pyraclonil technical) and 1.8% (pyraclonil 1.8% granule herbicide). *Proposed use:* Rice. *Contact:* FHB.

4. File Symbol: 73049–LRE. *Docket ID number:* EPA–HQ–OPP–2019–0347. *Applicant:* Valent BioSciences LLC, 870 Technology Way, Libertyville, IL 60048. *Product name:* Aviglycine technical concentrate. *Active ingredient:* Plant growth regulator—aminoethoxyvinylglycine at 22.0%. *Proposed use:* For formulation into plant growth regulator end-use products for use on apple and pear. *Contact:* BPPD.

5. File Symbol: 73049–LRG. *Docket ID number:* EPA–HQ–OPP–2019–0347.

Applicant: Valent BioSciences LLC, 870 Technology Way, Libertyville, IL 60048. *Product name:* ReTain OL plant growth regulator liquid concentrate. *Active ingredient:* Plant growth regulator—aminoethoxyvinylglycine at 12.6%. *Proposed use:* For use as a plant growth regulator applied via foliar application to apple and pear. *Contact:* BPPD.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: February 19, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–04264 Filed 3–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2019–0174; FRL 10006–01–OW]

National Water Reuse Action Plan: Collaborative Implementation (Version 1)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the release of the *National Water Reuse Action Plan: Collaborative Implementation (Version 1).* The Action Plan seeks to promote the consideration of water reuse as a tool to improve the resiliency, security, and sustainability of the Nation's water. The unique features of the Action Plan include creating new partnerships, catalyzing action through implementation milestones, and providing an online, transparent forum to share information, collaborate, and describe progress and results. This Action Plan aims to leverage the talent and expertise of industry, agriculture, governments at the federal, state, tribal, and local levels, and other stakeholders.

The Action Plan is available in two forms: a print version that identifies action leaders, implementation milestones, and target completion dates, and a dynamic online platform that will undergo routine updates on each action's progress.

FOR FURTHER INFORMATION CONTACT: John Ravenscroft, Office of Science and Technology, Office of Water (Mail Code 3207A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–1101; email address: *ravenscroft.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. *Docket.* The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–0174. Publicly available docket materials are available electronically through *www.regulations.gov,* posted online on the EPA's water reuse website (*www.epa.gov/waterreuse/water-reuse-action-plan*) or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings FDsys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*).

II. Why develop a water reuse action plan?

Water is critical to our Nation's health, strength, security, and resilience, yet the solutions available to manage water and its availability and quality are often complex. A comprehensive approach to water resource management is critical to ensuring long-term sustainability of the United States' water supply. Water reuse can be a tool, when considered as part of integrated water resources planning, to ensure safe and reliable sources of water at the national, state, and local level well into the future. This Action Plan seeks to foster greater consideration of water reuse across the water sector, such as agriculture, manufacturing, potable water, national security, environmental restoration, and more. The EPA and federal partners have facilitated development of the Action Plan across the water sector to accelerate the consideration of water reuse approaches and build on existing science, research, policy, technology, and both national and international experiences.

III. Developing the National Water Reuse Action Plan: Collaborative Implementation (Version 1)

On February 27, 2019, the EPA announced that the Agency would facilitate the development of a National Water Reuse Action Plan to better integrate federal policy and leverage the expertise of both industry and government to ensure the effective use of the Nation's water resources. The draft National Water Reuse Action Plan (Draft Plan) was released in September 2019 for public comment. The Draft Plan built on decades of water reuse experience and practice and identified 46 potential actions across 10 thematic areas (*e.g.,* policy coordination, technology development, outreach/communication, and the workforce). The Draft Plan discussed the business case for water reuse recognizing five major sources of water—agriculture, industry, municipal wastewater, stormwater, and oil and gas produced water—that could be reclaimed by treatment to meet ''fit-for-purpose specifications'' for a variety of end uses including: Potable water supplies, non-potable uses, agriculture and irrigation and industrial processes. Public comment was accepted on the Draft Plan from September 10, 2019 through December 16, 2019. During the public comment period, the EPA continued stakeholder outreach with water resource managers, sustainability planners, local, state and federal government agencies, industry, non-profits, researchers, and others, to inform this version of the Action Plan.

The public input and comments served several critical purposes:

1. Identification of the actions with the greatest interest;

2. Identification of specific implementation milestones;

3. Identification of willing leaders and partners;

4. Identification of potential new actions; and

5. Contribution of rich perspective and commentary to inform specific actions.

In addition to a print version, the EPA designed the Action Plan's corresponding website to visually represent continued progress on actions from stakeholders. The online platform complements the Action Plan document by highlighting and expanding upon the array of actions presented in the Draft Plan and discussed in the public docket.

Dated: February 27, 2020.

David P. Ross,

Assistant Administrator.

[FR Doc. 2020–04353 Filed 3–2–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0052; FRL–10005–54]

Pesticide Product Registration; Receipt of Applications for New Uses (January 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before April 2, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under EPA's public participation process for registration actions, there will be an additional opportunity for public comment on the proposed decisions. Please see EPA's public participation website for additional information on this process (*http://www2.epa.gov/pesticide-registration/public-participation-process-registration-actions*).

A. Notice of Receipt—New Uses

1. *EPA Registration Numbers:* 100–815, 100–816, 100–1406, 100–1407. *Docket ID number:* EPA–HQ–OPP–2019–0652. *Applicant:* Syngenta Crop Protection, LLC. P.O. Box 18300, Greensboro, NC 27419. *Active ingredient:* S-Metolachlor. *Product type:* Herbicide. *Proposed use:* Dill and rosemary. *Contact:* RD.

2. *EPA Registration Numbers:* 228–289, 11685–15. *Docket ID number:* EPA–HQ–OPP–2019–0639. *Applicant:* Interregional Research Project #4 (IR–4), 500 College Rd. East, Suite 201, Princeton, NJ 08540. *Active ingredient:* MCPA. *Product type:* Herbicide. *Proposed use:* For use manufacturing products used on intermediate wheatgrass. *Contact:* RD.

3. *EPA Registration Number or File Symbol:* 7969–ULA. *Docket ID number:* EPA–HQ–OPP–2019–0664. *Applicant:* Mitsui Chemicals Agro, Inc., Nihonbashi Dia Building, 1–19–1 Nihonbashi Chuo-ku, Tokyo 103–0027, Japan c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. *Active ingredient:* Dinotefuran. *Product type:* Insecticide. *Proposed use:* Soybeans. *Contact:* RD.

4. *EPA File Symbol Number:* 8329–RRA. *Docket ID number:* EPA–HQ–OPP–2020–0022. *Applicant:* Clarke Mosquito Control Products, Inc., 675 Sidwell Court, St. Charles, IL 60174. *Active ingredient:* Spinetoram. *Product type:* Insecticide. *Proposed use:* Broadcast application to standing water in agricultural crops and rangeland. *Contact:* RD.

5. *EPA Registration Numbers:* 62719–80, 62719–81. *Docket ID number:* EPA–HQ–OPP–2019–0641. *Applicant:* IR–4, 500 College Rd. East, Suite 201, Princeton, NJ 08540. *Active ingredient:* Clopyralid. *Product type:* Herbicide. *Proposed use:* For use manufacturing products used on Caneberry subgroup 13–07A, onion, bulb subgroup 3–07A, and intermediate wheatgrass. *Contact:* RD.

6. *EPA Registration Number:* 62719–86. *Docket ID number:* EPA–HQ–OPP–2019–0639. *Applicant:* IR–4, 500 College Rd. East, Suite 201, Princeton, NJ 08540. *Active ingredient:* MCPA. *Product type:* Herbicide. *Proposed use:* Intermediate wheatgrass. *Contact:* RD.

7. *EPA Registration Number:* 62719–86. *Docket ID number:* EPA–HQ–OPP–2019–0641. *Applicant:* IR–4, 500 College Rd. East, Suite 201, Princeton, NJ 08540. *Active ingredient:* Clopyralid. *Product type:* Herbicide. *Proposed use:* Intermediate wheatgrass. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: February 19, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–04263 Filed 3–2–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0986; FRS 16525]

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 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 May 4, 2020. 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, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0986.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481 and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal government.

Number of Respondents and Responses: 2,034 respondents; 12,729 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 54,519 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes that the Universal Service Administrative Company (USAC) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service program; must not use the data except for purposes of administering the universal support program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), and the Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016); *Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Report and Order, 32 FCC Rcd 5944 (2017). The Commission has received OMB approval for most of the information collections required by these orders.

More recently, through several orders, the Commission has changed or modified reporting obligations for high-cost support. In the *CAF Phase II Auction Order,* the Commission adopted rules requiring Connect America Phase

II auction support recipients to certify the networks they operated in the prior year meet the Commission's performance requirements, to identify the total amount of support, if any, that was used for capital expenditures in the previous calendar year, and to certify they have available funds for all project costs that will exceed the amount of support to be received from the authorization stemming from the Phase II auction for the next calendar year. *Connect America Fund, et al.,* WC Docket No. 10–90, et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*CAF Phase II Auction Order*).

In the *New York Waiver Order,* the Commission extended to New York carriers who receive Connect America Phase II support in conjunction with the state's New NY Broadband Program the same annual reporting requirements adopted for Phase II auction recipients, as well as the requirement for the state public service commission to certify annually that those carriers' high cost support ''was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.'' *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Order, 32 FCC Rcd 968 (2017) (*New York Waiver Order*).

In the *December 2018 Rate-of-Return Order,* the Commission modified the reasonable request certification rule applicable to rate-of-return ETCs to (1) require Connect America Fund-Alternative Connect America Cost Model (CAF–ACAM) support recipients to certify that they are meeting the relevant reasonable request standard and (2) require rate-of-return ETCs receiving legacy high-cost support to certify that they are meeting a 25 Mbps/3 Mbps reasonable request standard. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18–176, at 19–20, para. 17 (Dec. 13, 2018) (*December 2018 Rate-of-Return Order*). *See also* 47 CFR 54.313(f)(1)(i).

In the *CAF Phase II Transitions Order,* the Commission adopted rules requiring price cap or fixed competitive eligible communications carriers receiving phase-down support to certify that the phase-down support they received in the previous year was used to provide voice service to high-cost and extremely high-cost census blocks where they continue to have federal obligation to provide such services. *Connect America Fund,* WC Docket 10–90, Report and Order, FCC 19–8, at 11, para. 25 (Feb. 15, 2019).

The Commission therefore proposes to revise this information collection, as well as Form 481 and its accompanying instructions, to reflect these new and revised requirements. We also propose to increase the burdens associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–04332 Filed 3–2–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket Nos. 17–108, 17–287, 11–42; DA 20–168; FRS 16518]

Telecommunications; Common Carriers; Internet

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Wireline Competition Bureau seeks to refresh the record regarding the issues remanded to the Federal Communications Commission by the U.S. Court of Appeals for the D.C. Circuit decision in *Mozilla Corp.* v. *FCC.*

DATES: Comments are due on or before March 30, 2020, and reply comments are due on or before April 29, 2020.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 17–108, 17–287, and 11–42, by any of the following methods:

- *Federal Communications Commission's Website: https://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.
- *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).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Annick Banoun, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1521 or *annick.banoun@fcc.gov.*

SUPPLEMENTARY INFORMATION: In the *Restoring Internet Freedom Order* (83 FR 7852), the Commission ended utility-style regulation of the internet and returned to the light-touch framework under which a free and open internet underwent rapid and unprecedented growth for almost two decades. In *Mozilla Corp.* v. *FCC,* the U.S. Court of Appeals for the District of Columbia Circuit upheld the vast majority of the Commission's decision, remanding three discrete issues for further consideration by the Commission. On February 6, 2020, the D.C. Circuit denied all pending petitions for rehearing, and the Court issued its mandate on February 18, 2020. With this Public Notice, the Wireline Competition Bureau seeks to refresh the record regarding the issues remanded to the Commission by the *Mozilla* Court.

Public Safety. First, we seek to refresh the record on how the changes adopted in the *Restoring Internet Freedom Order* might affect public safety. In the *Restoring Internet Freedom Order,* the Commission predicted, for example, that permitting paid prioritization arrangements would ''increase network innovation,'' ''lead[ ] to higher investment in broadband capacity as well as greater innovation on the edge provider side of the market,'' and ''likely . . . be used to deliver enhanced service for applications that need QoS

[*i.e.,* quality of service] guarantees.'' Could the network improvements made possible by prioritization arrangements benefit public safety applications—for example, by enabling the more rapid, reliable transmission of public safety-related communications during emergencies? Relatedly, the Commission concluded that, because prioritizing packets for latency-sensitive applications would not typically degrade other applications on the same network, any non-profits, libraries, or independent content providers who declined to pay for prioritization would not be harmed. Would this same logic also apply to public safety communications? Do broadband providers have policies in place that facilitate or prioritize public safety communications? To what extent do public safety officials (at both the state and local level) even rely on mass-market retail broadband services covered by the *Restoring Internet Freedom Order* (*i.e.,* services that only promise ''best efforts'' in the delivery of content), rather than dedicated networks with quality-of-service guarantees (*i.e.,* enterprise or business data services) for public safety applications? With respect to public safety incidents described in the *Mozilla* decision and elsewhere, would the providers' allegedly harmful conduct have been prohibited under the rules adopted by the Commission in the *Title II Order*? Are concerns or consequences of broadband providers' possible actions different for public-safety-to-public-safety communications, such as onsite incident response or Emergency Operations Center communications, versus public safety communications made to or from the public? Do the Commission and other governmental authorities have other tools at their disposal that are better suited to addressing potential public safety concerns than classification of broadband as a Title II service? Are there any other impacts on public safety from the changes adopted in the *Restoring Internet Freedom Order*? Finally, how do any potential public safety considerations bear on the Commission's underlying decision to classify broadband as a Title I information service?

Pole Attachments. Second, we seek to refresh the record on how the changes adopted in the *Restoring Internet Freedom Order* might affect the regulation of pole attachments in states subject to federal regulation. To what extent are ISPs' pole attachments subject to Commission authority in non-reverse preemption states by virtue of the ISPs' provision of cable or telecommunications services covered by section 224? What impact would the inapplicability of section 224 to broadband-only providers have on their access to poles? Have pole owners, following the *Order,* ''increase[d] pole attachment rates or inhibit[ed] broadband providers from attaching equipment''? How could we use metrics like increases or decreases in broadband deployment to measure the impact the *Order* has had on pole attachment practices? Are there any other impacts on the regulation of pole attachments from the changes adopted in the *Order*? Finally, how do any potential considerations about pole attachments bear on the Commission's underlying decision to classify broadband as a Title I information service?

Lifeline Program. Third, we seek to refresh the record on how the changes adopted in the *Restoring Internet Freedom Order* might affect the Lifeline program. In particular, we seek to refresh the record on the Commission's authority to direct Lifeline support to eligible telecommunications carriers (ETCs) providing broadband service to qualifying low-income consumers. In the *2017 Lifeline NPRM,* the Commission proposed that it ''has authority under section 254(e) of the Act to provide Lifeline support to ETCs that provide broadband service over facilities-based broadband-capable networks that support voice service,'' and that ''[t]his legal authority does not depend on the regulatory classification of broadband internet access service and, thus, ensures the Lifeline program has a role in closing the digital divide regardless of the regulatory classification of broadband service.'' How, if at all, does the *Mozilla* decision bear on that proposal, and should the Commission proceed to adopt it? For example, the Court in *Mozilla* invited the Commission to explain how its authority under section 254(e) could extend to broadband, ''even 'over facilities-based broadband-capable networks that support voice service' now that broadband is no longer considered to be a common carrier.'' We seek to refresh the record in light of the Court's invitation. We also ask parties to refresh the record on whether there are other sources of authority that allow the Commission to provide Lifeline support for broadband services. Are there any other impacts on the Lifeline program from the changes adopted in the *Restoring Internet Freedom Order?* Finally, how do any potential considerations about the Lifeline program bear on the Commission's underlying decision to classify broadband as a Title I information service?

These proceedings shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

▪ *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

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).

Federal Communications Commission.

Daniel Kahn,

Associate Chief, Wireline Competition Bureau.

[FR Doc. 2020–04313 Filed 3–2–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16529]

Open Commission Meeting, Friday, February 28, 2020

February 21, 2020.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, February 28, 2020 which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW, Washington, DC.

Item No.	Bureau	Subject
1	Wireless Tele-Communications	*Title:* Expanding Flexible Use of the 3.7 to 4.2 GHz Band (GN Docket No. 18–122). *Summary:* The Commission will consider a Report and Order and Proposed Order of Modification that would reform the use of the 3.7–4.2 GHz band, also known as the C-band, to promote U.S. leadership in the next generation of wireless services, including fifth-generation (5G) wireless and other advanced spectrum-based services, and close the digital divide.
2	Economics & Analytics	*Title:* Auction of Flexible-Use Service Licenses in the 3.7–3.98 GHz Band for the Next-Generation Wireless Services (AU Docket No. 20–25). *Summary:* The Commission will consider a Public Notice that would seek comment on procedures for the auction of new flexible-use overlay licenses in the 3.7–3.98 GHz band (Auction 107) for Next Generation Wireless Services.
3	Economics & Analytics	*Title:* Auction of Priority Access Licenses for the 3550–3650 MHz Band (AU Docket No. 19–244). *Summary:* The Commission will consider a Public Notice that would establish application and bidding procedures for Auction 105, the auction of Priority Access Licenses in the Citizens Broadband Radio Service in the 3550–3650 MHz band.
4	Engineering & Technology	*Title:* Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20–36). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would propose targeted changes to the white space device rules in the TV bands (channels 2–35) to provide improved broadband coverage that would benefit American consumers in rural and underserved areas.
5	Economics & Analytics	*Title:* Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for Rural Digital Opportunity Fund Auction (Auction 904); (AU Docket No. 20–34); (WC Docket No. 19–126); (WC Docket No. 10–90). *Summary:* The Commission will consider a Public Notice that would launch the process of establishing pre- and post-auction application procedures and competitive bidding procedures to allocate up to $16 billion to support the deployment of fixed broadband networks in rural America in Phase I of the Rural Digital Opportunity Fund.
6	Media Bureau	*Title:* Electronic Delivery of MVPD Communications (MB Docket No. 17–317); Modernization of Media Regulation Initiative (MB Docket No. 17–105). *Summary:* The Commission will consider a Report and Order that would modernize the carriage election notice provisions in the FCC's Rules for low-power TV and noncommercial educational translator stations, which are not required to maintain online public inspection files.
7	Media Bureau	*Title:* Amendment of Commission Rule Requiring Records of Cable Operator Interests in Video Programming (MB Docket No. 20–35); Modernization of Media Regulation Initiative (MB Docket No. 17–105). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would seek comment on whether to eliminate or modify the requirement in the FCC's Rules that cable operators maintain records in their online public inspection files regarding the nature and extent of their attributable interests in video programming services.

Item No.	Bureau	Subject
8	Public Safety & Homeland Security	*Title:* Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications (PS Docket No. 15–80); Petition of California Public Utilities Commission and the People of the State of California for Rulemaking on States' Access to the Network Outage Reporting System ("NORS") and a Ruling Granting California Access to NORS. *Summary:* The Commission will consider a Second Further Notice of Proposed Rulemaking that would provide state and federal agencies with read-only access to communications outage data for public safety purposes while also preserving the confidentiality of that data.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Marlene Dortch,

Secretary.

[FR Doc. 2020–04312 Filed 3–2–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0233; FRS 16531]

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 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 May 4, 2020. 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, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0233.

Title: Part 54—Rate-of-Return Carrier Universal Service Reporting Requirements.

Form Number: FCC Form 507, FCC Form 508 and FCC Form 509.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,095 respondents; 4,044 responses.

Estimated Time per Response: 1–22 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 214, 218–220, 221(c), 254, and 303(r).

Total Annual Burden: 43,638 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No assurance of confidentiality has been given regarding the information. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: In order to determine which carriers are entitled to universal service support, all rate-of-return regulated (rate-of-return) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by section 54.1305 for each of its study areas and, if applicable, for each wire center as that term is defined in 47 CFR part 54. See 47 CFR 54.1305 and 54.5. The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated occasionally pursuant to section 54.1306. See 47 CFR 54.1306. Pursuant to section 54.1307, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission on October 1 of each year. See 47 CFR 54.1307. An incumbent LEC is defined as a carrier that meets the definition of "incumbent local exchange carrier" in section 51.5 of the Commission's rules. See 47 CFR 51.5.

In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. The *Rate-of-Return Reform Order* replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–

BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. The *Rate-of-Return Reform Order* replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. For the purposes of calculating and monitoring CAF–BLS, rate-of-return carriers that receive CAF–BLS must file common line and consumer broadband-only loop counts on FCC Form 507, forecasted common line and consumer broadband-only loop costs and revenues on FCC Form 508, and actual common line and consumer broadband-only loop costs and revenues on FCC Form 509. See 47 CFR 54.903(a).

In December 2018, the Commission adopted the *December 2018 Rate-of-Return Reform Order* to require rate-of-return carriers that receive Alternative Connect American Model (A–CAM) or Alaska Plan support to file line count data on FCC Form 507 as a condition of high-cost support. Historically, all rate-of-return carriers received CAF BLS or, prior to that, ICLS, and were required to file line count data on FCC Form 507 as a condition of that support. In recent years, some rate-of-return carriers have elected to receive A–CAM I, A–CAM II, or Alaska Plan instead, and those carriers were not required to file line count data because the requirement to file applied only to rate-of-return carriers receiving CAF BLS. In order to restore a data set that the Commission relied on to evaluate the effectiveness of its high-cost universal service programs, the Commission revised its rules in that Order to require all rate-of-return carriers to file that data. While carriers receiving CAF–BLS must file the line count data on March 31 for line counts as of the prior December 31, the A–CAM I, A–CAM II, and Alaska Plan carriers will be required to file on July 1 of each year to coincide with other existing requirements in OMB Control No. 3060–0986. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, 33 FCC Rcd 11893 (2018) (*2018 Rate-of-Return Reform Order*). *See also* 47 CFR 54.313(f)(5).

The Commission therefore proposes to revise this information collection. We also propose to increase the burdens associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–04330 Filed 3–2–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Notice of FMCS Guidance Document Portal

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Notice of availability.

SUMMARY: Memorandum for Regulatory Policy Officer at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions (OMB Memorandum M–20–02), the Federal Mediation and Conciliation Service (FMCS) is providing notice of the availability of a single, searchable, indexed database, containing all of FMCS's guidance documents currently in effect.

DATES: Applicable as of February 28, 2020.

FOR FURTHER INFORMATION CONTACT: Sarah Cudahy, General Counsel, FMCS, 250 E St. SW, Washington, DC 20427, *scudahy@fmcs.gov, guidancedocuments@fmcs.gov,* 202–606–8090.

SUPPLEMENTARY INFORMATION: Section 3 of Executive Order 13891 requires federal agencies to ''establish or maintain on its website a single, searchable, indexed database that contains or links to all guidance documents in effect from such agency or component.'' Executive Order 13891, 84 FR 55, 235 (October 9, 2019). OMB Memorandum M–20–02 further requires agencies to ''send to the **Federal Register** a notice announcing the existence of the new guidance portal and explaining that all guidance documents remaining in effect are contained on the new guidance portal.'' OMB Memorandum M–20–02, page 1 (October 31, 2019).

In compliance with the above, the Federal Mediation and Conciliation Service (FMCS) is noticing the availability of a single, searchable, indexed database for FMCS containing all FMCS guidance documents currently in effect, which may be accessed at *https://www.fmcs.gov/guidance-portal/.*

Sarah Cudahy,

General Counsel.

[FR Doc. 2020–04261 Filed 3–2–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Prehospital Airway Management

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for Supplemental Evidence and Data Submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Prehospital Airway Management,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before 30 days after the date of publication of this notice.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for Prehospital Airway Management. AHRQ is conducting this systematic review pursuant to Section

902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Prehospital Airway Management,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/prehospital-airway-management/protocol.*

This is to notify the public that the EPC Program would find the following information on *Prehospital Airway Management* helpful:

- *A list of completed studies that your organization has sponsored for this indication.* In the list, please indicate whether results are available on *ClinicalTrials.gov* along with the *ClinicalTrials.gov* trial number.
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

Key Question 1

a. What are the comparative benefits and harms of bag valve mask versus supraglottic airway for patients requiring prehospital ventilatory support or airway protection?

b. Are the comparative benefits and harms modified by:

i. Techniques or devices used?

ii. Characteristics of emergency medical services personnel (including training, proficiency, experience, etc.)?

iii. Patient characteristics?

Key Question 2

a. What are the comparative benefits and harms of bag valve mask versus endotracheal intubation for patients requiring prehospital ventilatory support or airway protection?

b. Are the comparative benefits and harms modified by:

i. Techniques or devices used?

ii. Characteristics of emergency medical services personnel (including training, proficiency, experience, etc.)?

iii. Patient characteristics?

Key Question 3

a. What are the comparative benefits and harms of supraglottic airway versus endotracheal intubation for patients requiring prehospital ventilatory support or airway protection?

b. Are the comparative benefits and harms modified by:

i. Techniques or devices used?

ii. Characteristics of emergency medical services personnel (including training, proficiency, experience, etc.)?

iii. Patient characteristics?

Key Question 4

What are the comparative benefits and harms of the following variations of any one of the three included airway interventions (bag valve mask, supraglottic airways, or endotracheal intubation) for patients requiring prehospital ventilatory support or airway protection:

i. Techniques or devices used?

ii. Characteristics of emergency medical services personnel (including training, proficiency, experience, etc.)?

iii. Patient characteristics?

PICOS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, SETTINGS, STUDY DESIGN SETTINGS)

PICOS	Inclusion criteria	Exclusion criteria
Populations	Patients requiring prehospital ventilatory support or airway protection who are treated in the prehospital setting by emergency medical services personnel (paramedic, advanced emergency medical technician, emergency medical technician, emergency medical responder, etc.).	• Patients treated with naloxone to reverse opioid-related respiratory failure. • Patients cared for in other than the prehospital setting.
Interventions	• Bag valve mask ventilation • Supraglottic airway insertion, including dual-lumen airways. • Endotracheal intubation. ○ Via direct laryngoscopy with or without RSI or DSI. ○ Via video laryngoscopy with or without RSI or DSI.	• Nasotracheal intubation. • Percutaneous devices. • Surgical airway procedures. • CPAP and BiPAP.
Comparators	KQ1: bag valve mask vs. supraglottic airway KQ2: bag valve mask vs. endotracheal intubation. KQ3: supraglottic airway vs. endotracheal intubation. KQ4: different techniques for any one of the three included types of airways.	• No airway management.

PICOS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, SETTINGS, STUDY DESIGN SETTINGS)—Continued

PICOS	Inclusion criteria	Exclusion criteria
Outcomes	*Patient Health Outcomes (highest priority)* • Mortality/survival. ○ To arrival at hospital. ○ To hospital discharge. ○ Any period less than or equal to 30 days post-injury. • Morbidity. ○ Glasgow Outcome Scale, Glasgow Outcome Scale Extended, Modified Rankin Scale, Cerebral Performance Category. ○ Pneumothorax. ○ Aspiration pneumonia. • Length of Stay. ○ Hospital length of stay (days). ○ ICU length of stay (days). ○ ICU-free days. *Intermediate Outcomes (secondary priority).* • Overall success rate. • First pass success rate. • Number of prehospital attempts to secure an airway. • $EtCO_2$ values. • Effective oxygenation. • Effective ventilation. • Definitive Airway Sans Hypoxia/Hypotension on First Attempt (DASH–1A). *Adverse Events/Harms.* • Vomiting. • Gastric content aspiration. • Hypoxia (SpO_2<90%). • Hyperventilation ($EtCO_2$<35). • Hypoventilation (EtCO2>45). • Hypotension. • Oral trauma, airway trauma. • Barotrauma. • Misplaced tube. • Need for additional airway interventions.	Long-term outcomes (more than 30 days post-injury).
Setting	• Prehospital • ED only if needed to fill important gaps where there are no prehospital studies. • International studies in English language.	Airway studies conducted in cadaver labs, or simulated environments; operating rooms; or inpatient. ED studies if prehospital studies of the topic are available.
Study Design	• RCTs If RCTs do not provide sufficient evidence, the following designs will be included: • Prospective comparative studies. • Retrospective comparative studies. • Case control studies.	• Systematic reviews (we will use reference lists to identify studies for possible inclusion). • Case series. • Descriptive studies. • Letters to the editor. • Opinion papers. • Studies published prior to 1990.

BiPAP = bilevel positive airway pressure; CPAP = continuous positive airway pressure; DSI = delayed sequence intubation; ED = emergency department; ICU = intensive care unit; KQ = Key Question; RCT = randomized controlled trial; RSI = rapid sequence intubation

Dated: 26 February 2020.

Virginia L. Mackay-Smith,

Associate Director, Office of the Director, AHRQ.

[FR Doc. 2020–04253 Filed 3–2–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Thursday, March 26, 2020, from 8:30 a.m. to 2:45 p.m.

ADDRESSES: The meeting will be held at AHRQ, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427–1456. For press-related information, please contact Bruce Seeman at (301) 427–1998 or *Bruce.Seeman@AHRQ.hhs.gov.*

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Thursday, March 12, 2020. The agenda, roster, and minutes will be available from Ms. Heather Phelps, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Ms. Phelps' phone number is (301) 427–1128.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). The Council is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality, and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Thursday, March 26, 2020, the Council meeting will convene at 8:30 a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting is open to the public and will be available via webcast at *www.webconferences.com/ahrq.* The meeting will begin with an update on AHRQ's recent accomplishments and budget. The agenda will also include a discussion about 21st Century Care, AHRQ's Digital Healthcare Research Agenda, and Synthetic Data. The meeting will adjourn at 2:45 p.m. The final agenda will be available on the AHRQ website at *www.AHRQ.gov* no later than Thursday, March 19, 2020.

Dated: February 26, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–04293 Filed 3–2–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''AHRQ Research Reporting System (ARRS).''

DATES: Comments on this notice must be received by 60 days after date of publication.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

AHRQ Research Reporting System (ARRS)

AHRQ has developed a systematic method for its grantees and vendors to report project progress and important preliminary findings for grants and contracts funded by the Agency. This system, the AHRQ Research Reporting System (ARRS), previously known as the Grants Reporting System (GRS), was last approved by OMB on May 22nd, 2017. The system addressed the shortfalls in the previous reporting process and established a consistent and comprehensive grants reporting solution for AHRQ. The ARRS provides a centralized repository of grant and contract research progress and additional information that can be used to support initiatives within the Agency. This includes future research planning and support for administrative activities such as performance monitoring, budgeting, knowledge transfer and strategic planning.

This Project has the following goals:

(1) To promote the transfer of critical information more frequently and efficiently and enhance the Agency's ability to support research designed to improve the outcomes and quality of health care, reduce its costs, and broaden access to effective services

(2) To increase the efficiency of the Agency in responding to ad-hoc information requests

(3) To support Executive Branch requirements for increased transparency and public reporting

(4) To establish a consistent approach throughout the Agency for information collection regarding grant and contract progress and a systematic basis for oversight and for facilitating potential collaborations among grantees

(5) To decrease the inconvenience and burden on grantees and vendors of unanticipated ad-hoc requests for information by the Agency in response to particular (one-time) internal and external requests for information

This project is being conducted by AHRQ pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

AHRQ Research Reporting System (ARRS)—Grantees and vendors use the ARRS system to report project progress and important preliminary findings for grants and contracts funded by the Agency. Grantees and vendors submit progress reports on a monthly or quarterly basis which are reviewed by AHRQ personnel. All users access the ARRS system through a secure online interface which requires a user I.D. and password entered through the ARRS login screen. When status reports are due AHRQ notifies principal investigators and vendors via email.

The ARRS is an automated user-friendly resource that is utilized by AHRQ staff for preparing, distributing, and reviewing reporting requests to grantees and vendors for the purpose of

information sharing. AHRQ personnel are able to systematically search the information collected and stored in the ARRS database. Personnel will also use the information to address internal and/or external requests for information regarding grant progress, preliminary findings, and other requests, such as Freedom of Information Act requests, and producing responses related to federally mandated programs and regulations.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents. It will take grantees and vendors an estimated 15 minutes to enter the necessary data into the ARRS System and reporting will occur four times annually. The total annualized burden hours are estimated to be 500 hours.

Exhibit 2 shows the estimated annualized cost burden for the respondents. The total estimated cost burden for respondents is $19,710.

Exhibit 1 Estimated Annualized Burden Hours

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Data entry into ARRS	500	4	15/60	500
Total	500	N/A	N/A	500

Exhibit 2 Estimated Annualized Cost Burden

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Data entry into ARRS	500	500	$39.42	$19,710
Total	500	500	N/A	19,710

* Based upon the average wages for Healthcare Practitioner and Technical Occupations (29–0000), ''National Compensation Survey: Occupational Wages in the United States, May 2015,'' U.S. Department of Labor, Bureau of Labor Statistics, *http://www.bls.gov/oes/current/oes_nat.htm#29-0000.*

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 26, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–04277 Filed 3–2–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–4436]

Bone Anchors—Premarket Notification (510(k)) Submissions; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Bone Anchors—Premarket Notification (510(k)) Submissions.'' This guidance document provides recommendations for 510(k) submissions for bone anchor (suture anchor) devices. FDA is clarifying and providing current thinking on the recommended content for a bone anchor 510(k) submission, including performance testing recommendations and device description.

DATES: The announcement of the guidance is published in the **Federal Register** on March 3, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the

public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–4436 for ''Bone Anchors—Premarket Notification (510(k)) Submissions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf* .

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Bone Anchors—Premarket Notification (510(k)) Submissions'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Laurence Coyne, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4512, Silver Spring, MD 20993–0002, 301–796–6450.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document provides recommendations for 510(k) submissions for bone anchor (suture anchor) devices, which are indicated for attachment of soft tissue to bone. FDA is clarifying and providing current thinking on the recommended content for a bone anchor 510(k) submission, including performance testing recommendations and device description. FDA considered comments received on the draft guidance that appeared in the **Federal Register** of January 3, 2017 (82 FR 128). FDA revised the guidance as appropriate in response to the comments.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Bone Anchors—Premarket Notification (510(k)) Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Bone Anchors—Premarket Notification (510(k)) Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400005 and the complete guidance title to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the following regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
812	Investigational Device Exemption	0910–0078
801	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: February 27, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04361 Filed 3–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–P–3082]

Determination That NEO TECT KIT (Kit for the Preparation of Technetium TC–99m Depreotide Injection) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that NEO TECT KIT (Kit for the Preparation of Technetium Tc 99m Depreotide Injection) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) that refer to the product, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Michelle T. Weiner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6208, Silver Spring, MD 20993–0002, 240–402–0374, *Michelle.Weiner@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was approved previously. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but it must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

NEO TECT KIT (Kit for the Preparation of Technetium Tc 99m Depreotide Injection) is the subject of NDA 021012, currently held by CIS Bio International SA, approved on August 3, 1999. NEO TECT KIT is a scintigraphic imaging agent that identifies somatostatin receptor-bearing pulmonary masses in patients presenting with pulmonary lesions on computed tomography and/or chest x ray who have known malignancy or who are highly suspect for malignancy.

NEO TECT KIT (Kit for the Preparation of Technetium Tc 99m Depreotide Injection) is listed as Discontinued in the Orange Book.

Andarix Pharmaceuticals, Inc. submitted a citizen petition dated June 25, 2019 (Docket No. FDA–2019–P–3082), under 21 CFR 10.30, requesting that the Agency determine whether NEO TECT KIT (Kit for the Preparation of Technetium Tc 99m Depreotide Injection) was withdrawn from sale voluntarily for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records with respect to NEO TECT KIT and based on the information we have at this time, FDA has determined under § 314.161 that NEO TECT KIT (Kit for the Preparation of Technetium Tc 99m Depreotide Injection) was not withdrawn from sale for reasons of safety or effectiveness. FDA carefully reviewed its files for records concerning the withdrawal of NEO TECT KIT (Kit for the Preparation of Technetium Tc 99m Depreotide Injection) from sale. In addition, the Agency independently evaluated relevant literature and data for possible post-marketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NEO TECT KIT (Kit for the Preparation of Technetium Tc 99m Depreotide Injection) in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to NEO TECT KIT (Kit for the Preparation of Technetium Tc 99m Depreotide Injection) may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 24, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04319 Filed 3–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2018–E–2615 and FDA–2018–E–2616]

Determination of Regulatory Review Period for Purposes of Patent Extension; ILUMYA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ILUMYA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by May 4, 2020. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for

extension acted with due diligence during the regulatory review period by August 31, 2020. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 May 4, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 4, 2020. 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 Nos. FDA–2018–E–2615 and FDA–2018–E–2616 ''For Determination of Regulatory Review Period for Purposes of Patent Extension; ILUMYA.'' 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 § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ILUMYA (tildrakizumab (tildrakizumab-asmn)). ILUMYA is indicated for the treatment of adults with moderate-to-severe plaque psoriasis who are candidates for systemic therapy or phototherapy. Subsequent to this approval, the USPTO received patent term restoration applications for ILUMYA (U.S. Patent Nos. 8,293,883 and 8,404,813) from Merck Sharp & Dohme Corp., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 18, 2018, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ILUMYA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO

requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ILUMYA is 3,452 days. Of this time, 3,089 days occurred during the testing phase of the regulatory review period, while 363 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* October 8, 2008. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 8, 2008.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* March 23, 2017. FDA has verified the applicant's claim that the biologics license application (BLA) for ILUMYA (BLA 761067) was initially submitted on March 23, 2017.

3. *The date the application was approved:* March 20, 2018. FDA has verified the applicant's claim that BLA 761067 was approved on March 20, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,149 days or 1,092 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 27, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04362 Filed 3–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances; Draft and Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of additional draft and revised draft product-specific guidances. The guidances provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website. The guidances identified in this notice were developed using the process described in that guidance.

DATES: Submit either electronic or written comments on the draft guidance by May 4, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Product-Specific Guidances; Draft and Revised Draft Guidances for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance documents.

FOR FURTHER INFORMATION CONTACT: Mara Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4709C, Silver Spring, MD 20993–0002, 301–796–0683.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products'' that explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific guidances and provide a meaningful opportunity for the public to consider and comment on those guidances. Under that process, draft guidances are posted on FDA's website and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final guidances or publishes revised draft guidances for comment. Guidances were last announced in the **Federal Register** on November 22, 2019. This notice announces draft product-specific guidances, either new or revised, that are posted on FDA's website.

II. Drug Products for Which New Draft Product-Specific Guidances Are Available

FDA is announcing the availability of new draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 1—NEW DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Albuterol sulfate.
Amifampridine phosphate.
Amino acids; Calcium chloride; Dextrose; Magnesium sulfate; Potassium chloride; Sodium acetate; Sodium glycerophosphate; Soybean oil.
Besifloxacin hydrochloride.
Binimetinib.
Budesonide.
Clevidipine.
Dacomitinib.
Dapagliflozin; Metformin hydrochloride; Saxagliptin hydrochloride.
Diltiazem hydrochloride.
Doravirine.
Doravirine; Lamivudine; Tenofovir disoproxil fumarate.
Duloxetine hydrochloride.
Edaravone.
Elagolix sodium.
Granisetron.
Ivacaftor; Lumacaftor.
Liraglutide recombinant.
Lusutrombopag.
Mexiletine hydrochloride.
Moxidectin.
Propranolol hydrochloride.
Rifamycin sodium.
Selenious acid.
Semaglutide.
Stiripentol (multiple reference listed drugs).
Sumatriptan succinate.
Tacrolimus.
Tiopronin.
Tolvaptan.
Umeclidinium bromide; Vilanterol trifenatate.
Upadacitinib.

III. Drug Products for Which Revised Draft Product-Specific Guidances Are Available

FDA is announcing the availability of revised draft product-specific guidances for industry for drug products containing the following active ingredients:

TABLE 2—REVISED DRAFT PRODUCT-SPECIFIC GUIDANCES FOR DRUG PRODUCTS

Active ingredient(s)
Albuterol sulfate (multiple reference listed drugs).
Beclomethasone dipropionate.
Calcitonin salmon.
Dapagliflozin; Metformin hydrochloride.
Edoxaban tosylate.
Ibrutinib.
Levalbuterol tartrate.
Olsalazine sodium.
Selexipag.

For a complete history of previously published **Federal Register** notices related to product-specific guidances, go to *https://www.regulations.gov* and enter Docket No. FDA–2007–D–0369.

These draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the current thinking of FDA on, among other things, the product-specific design of BE studies to support ANDAs. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidances at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: February 24, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04320 Filed 3–2–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0001]

Preparation for International Cooperation on Cosmetics Regulation Fourteenth Annual Meeting; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the following public meeting entitled ''International Cooperation on Cosmetics Regulation (ICCR)—Preparation for ICCR–14 Meeting.'' The purpose of the public meeting is to invite public input on various topics pertaining to the regulation of cosmetics. We may use this input to help us prepare for the ICCR–14 meeting that will be held June 8 to 10, 2020, in Brussels, Belgium.

DATES: The public meeting will be held on April 14, 2020, from 2 p.m. to 4 p.m. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held at the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5001 Campus Dr., Wiley Auditorium (first floor), College Park, MD 20740. Entrance for the public meeting participants is through the Harvey W. Wiley Federal Building, where routine security check procedures will be performed.

FOR FURTHER INFORMATION CONTACT: Deborah Smegal, Office of Cosmetics and Colors, Food and Drug Administration, 5001 Campus Dr. (HFS–100), College Park, MD 20740, 240–402–1818, *Deborah.Smegal@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The intention of the ICCR multilateral framework is to pave the way for the removal of regulatory obstacles to international trade while maintaining global consumer protection. The purpose of this meeting is to invite public input on various topics pertaining to the regulation of cosmetics. We may use this input to help us prepare for the ICCR–14 meeting that will be held June 8 to 10, 2020, in Brussels, Belgium.

ICCR is a voluntary international group of cosmetics regulatory authorities from Brazil, Canada, the European Union, Japan, and the United States of America. These regulatory authority members will engage in constructive dialogue with their relevant cosmetics industry trade associations and public advocacy groups. Currently, the ICCR members are: The Brazilian Health Surveillance Agency; Health Canada; the European Commission Directorate General for Internal Market, Industry, Entrepreneurship, and Small and Medium-sized Enterprises; the Ministry of Health, Labor, and Welfare of Japan; and United States Food and Drug Administration. All decisions are made by consensus and will be compatible with the laws, policies, rules, regulations, and directives of the respective administrations and governments. Members will implement and/or promote actions or documents within their own jurisdictions and seek convergence of regulatory policies and practices. Successful implementation will need input from stakeholders.

II. Topics for Discussion at the Public Meeting

We will make the agenda for the public meeting available by April 7, 2020, on the internet at *https://www.fda.gov/Cosmetics/InternationalActivities/ICCR/default.htm.*

III. Participating in the Public Meeting

Registration: To register for the public meeting, send registration information (including your name, title, affiliation, address, email, and telephone) to Deborah Smegal (see **FOR FURTHER INFORMATION CONTACT**) by March 31, 2020. If you would like to listen to the meeting by phone, please submit a request for a dial-in number by March 31, 2020 (see **FOR FURTHER INFORMATION CONTACT**). If you need special accommodations due to a disability, please contact Deborah Smegal by April 7, 2020.

Requests for Oral Presentations: If you wish to present, you should notify Deborah Smegal by March 31, 2020, and submit a brief statement of the general nature of the presentation: What you wish to present, your name, title, affiliation, address, email, and telephone, and indicate the approximate amount of time needed to make your presentation. You may wish to present proposals for future ICCR agenda items, data, information, or views, in person or in writing, on issues pending at the public meeting or a topic related to a previous meeting. There will be no presentations by phone. Time allotted for oral presentations may be limited to 10 minutes or less for each presenter, depending on the number of requests received.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may also be viewed at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20850.

Dated: February 26, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–04318 Filed 3–2–20; 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 Institute Council of Research Advocates.

The meeting will be open to the public, 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*).

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: May 11, 2020.

Time: 9:30 a.m. to 4:00 p.m.

Agenda: Welcome and Chairman's Remarks, NCI Updates, Legislative Update, and Director's Update.

Place: National Institutes of Health, 40 Convent Drive, Building 40, Room 1201/1203 Bethesda, MD 20892.

Contact Person: Amy Williams, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892, 240–781–3360, *williaam@mail.nih.gov.*

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 NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on 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: NCRA: *http://deainfo.nci.nih.gov/advisory/ncra/ncra.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: February 26, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–04297 Filed 3–2–20; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings 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: Interdisciplinary Molecular Sciences and Training.

Date: March 25, 2020.

Time: 10:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4809, *lystranne.maynard-smith@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Opioids and HIV at the Single Cell, Single RNA Level.

Date: March 26, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Cardiovascular and Respiratory Sciences.

Date: March 26–27, 2020.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Silver Spring Downtown, 8506 Fenton Street, Silver Spring, MD 20910.

Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cellular and Molecular Immunology.

Date: March 26, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207, MSC 7812, Bethesda, MD 20892, (301) 435–1238, *hodged@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Opioids and HIV at the Biological, Single RNA Level.

Date: March 26, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Nuria E Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Microbial (non-HIV) Diagnostics and Detection of Infectious Agents, Food and Waterborne Pathogens, and Methods in Microbial Sterilization, Disinfection and Bioremediation.

Date: March 26–27, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Gagan Pandya, Ph.D. Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Vaccines, Host Defense, Inflammation and Immunity.

Date: March 26, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrea Keane-Myers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 301–435–1221, *andrea.keane-myers@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA–NS18–041: Discovery of Heal-Biomarkers for Pain.

Date: March 26, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph G. Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844 Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Pediatric and Obstetric Pharmacology and Therapeutics.

Date: March 26, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: March 26–27, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Cardiovascular Sciences.

Date: March 26, 2020.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chee Lim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, Bethesda, MD 20892, 301–435–1850, *limc4@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Collaborative Minority Health and Health Disparities Research with Tribal Epidemiology Centers.

Date: March 26, 2020.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gabriel B. Fosu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov*.

(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: February 27, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–04373 Filed 3–2–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2015]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and, case No.	Chief executive, officer of community	Community map, repository	Online location of, letter of map revision	Date of, modification	Community, No.
Arizona:						
Maricopa	Town of Queen Creek (19–09–1906P).	The Honorable Gail Barney, Mayor, Town of Queen Creek, 22358 South Ellsworth Road, Queen Creek, AZ 85142.	Town Hall, 22358 South Ellsworth Road, Queen Creek, AZ 85142.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 5, 2020	040132
Pima	Town of Marana (20–09–0131P).	The Honorable Ed Honea, Mayor, Town of Marana, 11555 West Civic Center Drive, Marana, AZ 85653.	Engineering Department, Marana Municipal Complex, 11555 West Civic Center Drive, Marana, AZ 85653.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 29, 2020	040118
Pima	Unincorporated Areas of Pima County (19–09–0046P).	The Honorable Richard Elías, Chairman, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*https://msc.fema.gov/portal/advanceSearch.*	May 27, 2020	040073
California:						
Lake	Unincorporated Areas of Lake County (19–09–1042P).	The Honorable Tina Scott, Chair, Board of Supervisors, Lake County, 255 North Forbes Street, Lakeport, CA 95453.	Lake County, Department of Public Works, 255 North Forbes Street Room 309, Lakeport, CA 95453.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 8, 2020	060090
Riverside	Unincorporated Areas of Riverside County (19–09–0463P).	The Honorable Kevin Jeffries, Chairman, Board of Supervisors, Riverside County, 4080 Lemon Street, 5th Floor, Riverside, CA 92501.	Riverside County, Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 8, 2020	060245
San Bernardino.	City of Colton, (19–09–1360P).	The Honorable Frank J. Navarro, Mayor, City of Colton, 650 North La Cadena Drive, Colton, CA 92324.	Public Works Department, 160 South 10th Street, Colton, CA 92324.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2020	060273
San Bernardino.	Unincorporated Areas of San Bernardino County (19–09–1360P).	The Honorable Curt Hagman, Chairman, Board of Supervisors, San Bernardino County, 385 North Arrowhead Avenue, 5th Floor, San Bernardino, CA 92415.	San Bernardino County Public Works, Water Resources Department, 825 East 3rd Street, San Bernardino, CA 92415.	*https://msc.fema.gov/portal/advanceSearch.*	May 1, 2020	060270
Santa Clara	City of San Jose (19–09–1592P).	The Honorable Sam Liccardo, Mayor, City of San Jose, 200 East Santa Clara Street, 18th Floor, San Jose, CA 95113.	Department of Public Works, 200 East Santa Clara Street Tower, 5th Floor, San Jose, CA 95113.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 1, 2020	060349
Sonoma	Town of Windsor (19–09–0487P).	The Honorable Dominic Foppoli, Mayor, Town of Windsor, 9291 Old Redwood Highway, Building 400, Windsor, CA 95492.	Building Department, 9291 Old Redwood Highway, Windsor, CA 95492.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 17, 2020	060761
Florida: St. Johns	Unincorporated Areas of St. Johns, (18–04–6491P).	The Honorable Jeb S. Smith, Chair, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Building Department, 4040 Lewis Speedway, St. Augustine, FL 32084.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 11, 2020	125147
Idaho:						
Blaine	City of Bellevue (19–10–1086P).	The Honorable Ned Burns, Mayor, City of Bellevue, City Hall, 115 Pine Street, Bellevue, ID 83313.	City Hall, 115 Pine Street, Bellevue, ID 83313.	*https://msc.fema.gov/portal/advanceSearch.*	May 28, 2020	160021
Blaine	Unincorporated Areas of Blaine County, (19–10–1086P).	The Honorable Jacob Greenberg, Chairman, Blaine County Commissioners, Blaine County Annex Building, 219 South 1st Avenue Suite 300, Hailey, ID 83333.	Blaine County Planning and Zoning, 219 South 1st Avenue Suite 208, Hailey, ID 83333.	*https://msc.fema.gov/portal/advanceSearch.*	May 28, 2020	165167
Illinois:						
DuPage	City of Warrenville (20–05–1148P).	The Honorable David L. Brummel, Mayor, City of Warrenville, 28W701 Stafford Place, Warrenville, IL 60555.	City Hall, 28W701 Stafford Place, Warrenville, IL 60555.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 10, 2020	170218
Will	City of Aurora (20–05–0274P).	The Honorable Richard C. Irvin, Mayor, City of Aurora, 44 East Downer Place, Aurora, IL 60505.	City Hall, 44 East Downer Place, Aurora, IL 60505.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 3, 2020	170320

State and county	Location and, case No.	Chief executive, officer of community	Community map, repository	Online location of, letter of map revision	Date of, modification	Community, No.
Nevada: Carson City.	City of Carson City (19–09–1428P).	The Honorable Robert L. Crowell, Mayor, City of Carson City, City Hall, 201 North Carson City Suite 2, Carson City, NV 89701.	Building Division, Permit Center, 108 East Proctor Street, Carson City, NV 89701.	*https://msc.fema.gov/portal/advanceSearch.*	May 28, 2020	320001
Texas:						
Tarrant	City of Fort Worth (19–06–3826P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 4, 2020	480596
Tarrant	City of Grand Prairie, (19–06–3826P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, 317 West College Street, Grand Prairie, TX 75053.	Community Development Center, 206 West Church Street, Grand Prairie, TX 75050.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 4, 2020	485472
Wisconsin: Waukesha.	Village of Summit (19–05–5478P).	Mr. Jack Riley, Village President, Village of Summit, 37100 Delafield Road, Summit, WI 53066.	Village Hall, 2911 North Dousman Road, Oconomowoc, WI 53066.	*https://msc.fema.gov/portal/advanceSearch.*	Jun. 12, 2020	550663

[FR Doc. 2020–04279 Filed 3–2–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2020–N043; FXES11140800000–190–FF08EVEN00]

Draft Habitat Conservation Plan and Draft Environmental Assessment for Oak Hills Estate, Santa Barbara County, California; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments; correction.

SUMMARY: On February 25, 2020, we, the U.S. Fish and Wildlife Service, announced the availability for public comment of a draft habitat conservation plan and associated draft environmental assessment for activities associated with an application for an incidental take permit. Our notice inadvertently did not give the correct contact name and phone number. In this notice, we correct that error.

DATES: Written comments should be received on or before March 26, 2020.

ADDRESSES: *Obtaining Documents:* You may download documents for review at *http://www.fws.gov/ventura/,* or you may request copies of the documents by U.S. mail (below) or by phone (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Comments: Please send us your written comments using one of the following methods:

- *U.S. mail:* Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.
- *Email: rachel_henry@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Henry, by phone at 805–677–3312, via the Federal Relay Service at 1–800–877–8339 for TTY assistance, or at the Ventura address (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION: On February 25, 2020, we, the U.S. Fish and Wildlife Service, announced the availability for public comment of a draft habitat conservation plan and associated draft environmental assessment for activities associated with an application for an incidental take permit under the Endangered Species Act. Our notice inadvertently did not give the correct contact name and phone number in the **FOR FURTHER INFORMATION CONTACT** section. Please see corrected information above.

Sara Prigan,

Federal Register Liaison.

[FR Doc. 2020–04270 Filed 3–2–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT926000–L19100000.BK0000–XXX–LRCSEX903100; MO#4500142709]

Notice of Proposed Filing of Plats of Survey; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed official filing.

SUMMARY: The plats of survey for the lands described in this notice are scheduled to be officially filed 30 calendar days after the date of this publication in the BLM Montana State Office, Billings, Montana. The surveys, which were executed at the request of the Bureau of Reclamation, Rapid City Field Office, Rapid City, South Dakota, are necessary for the management of these lands.

DATES: A person or party who wishes to protest this decision must file a notice of protest in time for it to be received in the BLM Montana State Office no later than 30 days after the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Josh Alexander, BLM Chief Cadastral Surveyor for South Dakota; telephone: (406) 896–5123; email: *jalexand@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at (800) 877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Black Hills Meridian, South Dakota

T. 8 N., R. 3 E.
Sec. 1.

A person or party who wishes to protest an official filing of a plat of survey identified above must file a written notice of protest with the BLM Chief Cadastral Surveyor for South Dakota at the address listed in the **ADDRESSES** section of this notice. The notice of protest must identify the

plat(s) of survey that the person or party wishes to protest. The notice of protest must be received in the BLM Montana State Office no later than the scheduled date of the proposed official filing for the plat(s) of survey being protested; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of the protest, if not filed with the notice of protest, must be filed with the BLM Chief Cadastral Surveyor for South Dakota within 30 calendar days after the notice of protest is received.

If a notice of protest of the plat(s) of survey is received prior to the scheduled date of official filing or during the 10 calendar day grace period provided in 43 CFR 4.401(a) and the delay in filing is waived, the official filing of the plat(s) of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day after all timely protests have been dismissed or otherwise resolved, including appeals.

If a notice of protest is received after the scheduled date of official filing and the 10 calendar day grace period provided in 43 CFR 4.401(a), the notice of protest will be untimely, may not be considered, and may be dismissed.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chapter 3.

Joshua F. Alexander,

Chief Cadastral Surveyor for South Dakota.

[FR Doc. 2020–04314 Filed 3–2–20; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029809; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: State of Hawaii Department of Transportation, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The State of Hawaii Department of Transportation, in consultation with the appropriate Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects and sacred objects. Lineal descendants or representatives of any Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the State of Hawaii Department of Transportation. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Native Hawaiian organization not identified in this notice that wish to submit a claim for these cultural items should submit a written request with information in support of the claim to the State of Hawaii Department of Transportation at the address in this notice by April 2, 2020.

ADDRESSES: Jade T. Butay, Director, State of Hawaii Department of Transportation, 869 Punchbowl Street, Honolulu, HI 96813, telephone (808) 587–2150, email *Jade.Butay@hawaii.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the State of Hawaii Department of Transportation, Honolulu, HI, that meet the definition of unassociated funerary objects and sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

From 1989 to 1992, 13 cultural items were removed from Hawai'i State Inventory of Historic Places (SIHP) site #s 50–80–09–2134, 50–80–09–2136, 50–80–09–2137, and 50–80–09–2010 in Aiea, HI. The items were discovered and collected in Halawa Valley during archeological work for the construction of the Interstate Route H–3 Freeway, and have since been housed at the Bernice Pauahi Bishop Museum on behalf of the State of Hawaii Department of Transportation. The 11 unassociated funerary objects are three unidentified bones, one dog bone, one bag of soil, one bag of basalt lithic, one bag of wood charcoal, one milled wood, one lithic, one shell, and one bowl/cup. The two sacred objects are one zoomorphic bowl and one basalt cup. The unassociated funerary objects were catalogued under Project #379 and placed in bags numbering: 370, 367, 420, 421, 422, 2470, 0024C, and in catalog numbering B1–85–107 and B1–85–260. During a review of the artifact database, these items were discovered by Office of Hawaiian Affairs staff. The evidence of cultural affiliation was recorded in the artifacts database as ''Possible Association with Individual #1,'' and listed as ''burial fill'' intended for reburial.

In consultation with the Office of Hawaiian Affairs and lineal descendant Ella Paguyo, and ahupua'a-affiliated descendant Clara Matthews, it is believed that these artifacts are unassociated funerary objects and were to be part of the repatriation that took place on September 13, 1992, for the individuals identified and disinterred during archeological investigations preceding construction of the Interstate H–3 in Halawa Valley. It is further believed that the sacred objects are for ceremonial purposes. In the October 17, 1992, Halawa Valley Reinterment Report, Ella Paguyo, Clara and Boots Matthews, and Vivian Hong were listed as lineal and ahupua'a-affiliated descendants.

Determinations Made by the State of Hawaii Department of Transportation

Officials of the State of Hawaii Department of Transportation have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 11 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native Hawaiian individual.
- Pursuant to 25 U.S.C. 3001(3)(C), the two cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 43 CFR 10.14(b), Ella Paguyo, Clara and Boots Matthews, and Vivian Hong are lineal and Ahupua'a-affiliated descendants of the individual

with whom the 13 cultural items described above were placed.

Additional Requestors and Disposition

Lineal descendants or representatives of any Native Hawaiian organization not identified in this notice that wish to submit a claim for these cultural items should submit a written request with information in support of the claim to Jade T. Butay, Director, State of Hawaii Department of Transportation, 869 Punchbowl Street, Honolulu, HI 96813, telephone (808) 587–2150, email *Jade.Butay@hawaii.gov,* by April 2, 2020. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects and sacred objects to the lineal descendants listed in this notice may proceed.

The State of Hawaii Department of Transportation is responsible for notifying the Native Hawaiian organizations and lineal descendants that this notice has been published.

Dated: February 7, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–04326 Filed 3–2–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0029818; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Auburn University, Auburn, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Auburn University has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Auburn University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Auburn University at the address in this notice by April 2, 2020.

ADDRESSES: Savannah Newell, Auburn University, 7030 Haley Center, Auburn, AL 36849, telephone (334) 844–5008, email *sgn0010@auburn.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of Auburn University, Auburn, AL. The human remains and associated funerary objects were removed from the Abercrombie Site, Russell County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Auburn University professional staff in consultation with representatives of the Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and Thlopthlocco Tribal Town (hereafter referred to as ''The Tribes'').

History and Description of the Remains

Sometime during the early 1960s, human remains representing, at minimum, one individual were removed from the Abercrombie Site in Russell County, AL. This individual, represented by a mandible, is estimated to be around 5 years old based on dental development. While specifics regarding the excavation of the cultural items listed in this notice are not fully known, the items likely derive from an excavation conducted during the 1960s by the Alabama Archaeological Society, and were transferred to Dr. John Cottier at Auburn University. No known individuals were identified. The three associated funerary objects are three vessels.

Abercrombie (1-Ru-61), originally recorded by Wesley Hurt, is a large site along the Chattahoochee River and likely around the location of Coweta. The three vessels in this notice were listed as Ru°1, the original number given by Wesley Hurt to the mound at Abercrombie. Included with them is a picture of a burial showing the human remains of a child. As best as can be determined, based on age assessments, this burial yielded the isolated mandible listed in this notice. Abercrombie chronology includes a Bull Creek Phase (representing a late Mississippian period) and an Abercrombie Phase (ca. A.D. 1550–1650), as well as 17th century occupation (based on European goods present at the site). Historically, this area was occupied by Hitchiti speakers and Lower Creek during the 17th century. These groups are ancestral to the present-day Creek and Seminole Indian Tribes.

Determinations Made by Auburn University

Officials of Auburn University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Savannah Newell, Auburn University, 7030 Haley Center, Auburn, AL 36849, telephone (334) 844–5008, email *sgn0010@auburn.edu,* by April 2, 2020. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

Auburn University is responsible for notifying The Tribes that this notice has been published.

Dated: February 10, 2020.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2020–04325 Filed 3–2–20; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1119]

Certain Infotainment Systems, Components Thereof, and Automobiles Containing the Same; Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, Public Interest, and Bonding; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined to review in part the final initial determination (''FID'') of the administrative law judge (''ALJ''). The Commission requests briefing from the parties on certain issues under review, as indicated in this notice. The Commission also requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding. The Commission has also determined to extend the target date for completion of this investigation until April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3228. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's Electronic Docket Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 12, 2018, the Commission instituted this investigation based on a complaint filed by Broadcom Corporation (''Broadcom'') of San Jose, California. 83 *FR* 27349 (June 12, 2018). The complaint alleged that 19 U.S.C. 1337, as amended, (''section 337'') was violated due to the importation into the United States, sale for importation, or sale in the United States after importation of certain infotainment systems, components thereof, and automobiles containing same that purportedly infringe one or more claims of U.S. Patent Nos. 6,937,187 (''the '187 patent''); 8,902,104 (''the '104 patent''); 7,512,752 (''the '752 patent''); 7,530,027 (''the '027 patent''); 8,284,844 (''the '844 patent''); and 7,437,583 (''the '583 patent'') (collectively, ''the Asserted Patents''). The notice of investigation named 15 respondents, including Toyota Motor Corporation of Aichi, Japan; Toyota Motor North America, Inc. of Plano, TX; Toyota Motor Sales, U.S.A., Inc. of Plano, TX; Toyota Motor Engineering & Manufacturing North America, Inc. of Plano, TX; Toyota Motor Manufacturing, Indiana, Inc. of Princeton, IN; Toyota Motor Manufacturing, Kentucky, Inc. of Erlanger, KY; Toyota Motor Manufacturing, Mississippi, Inc. of Tupelo, MS; Toyota Motor Manufacturing, Texas, Inc. of San Antonio, TX; Panasonic Corporation of Osaka, Japan; Panasonic Corporation of North America of Newark, NJ; DENSO TEN Limited of Kobe City, Japan; DENSO TEN AMERICA Limited of Torrance, CA; Renesas Electronics Corporation of Tokyo, Japan; Renesas Electronics America, Inc. of Milpitas, CA; and Japan Radio Co., Ltd. of Tokyo, Japan. *Id.* at 27349–50. The Office of Unfair Import Investigations was not named as a party. *Id.* at 27351. The complaint and notice of investigation were later amended to add ten more respondents, including Pioneer Corporation of Tokyo, Japan; Pioneer Automotive Technologies, Inc. of Farmington Hills, MI; DENSO Corporation of Aichi, Japan; DENSO International America, Inc. of Southfield, MI; DENSO Manufacturing Tennessee, Inc. of Maryville, TN; DENSO Wireless Systems America, Inc. of Vista, CA; u-blox AG of Thalwil, Switzerland; u-blox America, Inc. of Reston, VA; u-blox San Diego, Inc. of San Diego, CA; and Socionext Inc. of Kanagawa, Japan. Order No. 14 (Oct. 3, 2018), *not rev'd in relevant part,* Comm'n Notice (Nov. 1, 2018).

Certain patent claims were subsequently withdrawn and terminated from the investigation. *See* Order No. 20 (Jan. 31, 2019), *not rev'd,* Comm'n Notice (Feb. 19, 2019); Order No. 48 (June 5, 2019), *not rev'd,* Comm'n Notice (June 18, 2019); Order No. 49 (June 13, 2019), *not rev'd,* Comm'n Notice (June 28, 2019). The claims still at issue are claims 1–3, 5, and 9 of the '187 patent; claim 12 of the '104 patent; claims 1–2 and 4–8 of the '752 patent; claims 11 and 20 of the '027 patent; claims 11 and 13 of the '844 patent; and claims 17–18 and 25–26 of the '583 patent. *See* Comm'n Notice (June 28, 2019).

On November 13, 2019, the ALJ issued the FID finding no violation of section 337. *See* FID. The ALJ recommended that, if a violation was found, then the Commission should issue a limited exclusion order and cease and desist orders to certain domestic respondents.

On November 26, 2019, Broadcom filed a petition for review of the FID and the respondents filed a contingent petition for review. On December 4, 2019, Broadcom and the respondents filed responses to each other's petitions.

On December 16, 2019, Broadcom filed a submission on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). That same day, respondents Toyota Motor Corporation and its subsidiaries, Renesas Electronics Corporation and Renesas Electronics America, Inc., and Tier 1 Suppliers (DENSO Corporation, DENSO International America, Inc., DENSO Manufacturing Tennessee, Inc., and DENSO Wireless Systems America, Inc.; DENSO TEN Limited and DENSO TEN America Limited; Panasonic Corporation and Panasonic Corporation of North America; Pioneer Corporation and Pioneer Automotive Technologies, Inc.) filed their submissions on the public interest pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). On December 18, 2019, two non-parties, Peter Morici and the Reshoring Initiative, filed submissions on the public interest in response to the Commission's notice requesting such responses. 84 *FR* 64104 (Nov. 20, 2019).

Having reviewed the record in this investigation, including the ALJ's orders and FID, as well as the parties' petitions and responses thereto, the Commission has determined to review the FID in part, as follows.

With regard to the '583 patent, the Commission has determined to review the FID's construction of the term ''at least one processor.'' The Commission has further determined to review the

FID's infringement and technical prong findings regarding the '583 patent.

With regard to the '752 patent, the Commission has determined to review the FID's findings as to whether the asserted claims are invalid. The Commission has further determined to review whether the accused Pioneer head units meet the limitations of claims 2 and 5.

The Commission has determined not to review the remaining findings in the FID.

The Commission has also determined to extend the target date for completion of this investigation until April 30, 2020.

The parties are asked to provide additional briefing on the following issues regarding the '583 patent and '752 patent, with appropriate reference to the applicable law and the existing evidentiary record.

A. With regard to claims 25 and 26 of the '583 patent, if the Commission determines that the term ''at least one processor'' should be construed to mean, ''at least one processor separate from the hardware control block,'' does this modified claim construction affect any other findings in the FID regarding the '583 patent? If there is a difference, please explain how it affects the FID's infringement, domestic industry technical prong, invalidity, or other findings. Is this modified claim construction supported by the intrinsic and/or extrinsic evidence?

B. With regard to the '752 patent, discuss whether there is a difference between the ''data,'' which the FID finds is capable of being sent over the link disclosed in U.S. Patent No. 6,240,492 to Foster, et al. (''Foster''), versus the ''data stored at the addresses in the memory from the lists of addresses in the memory'' as claimed. If there is a difference, please explain the difference, including how it affects the validity of claim 8.

C. Discuss whether the link disclosed in Foster (*see* FID at 94) would need to be modified in order to meet the claim limitation ''the memory access unit receives data stored at the addresses in the memory from the lists of addresses in the memory over said link'' as required by claim 8 of the '752 patent. If modification is needed, how would Foster's link need to be modified to meet the claim 8 limitation?

D. Discuss whether the evidence of record supports a finding that Foster alone renders claims 1, 2, 4, 5, 7, and 8 of the '752 patent obvious. Further, please discuss *Realtime Data, LLC* v. *Iancu,* 912 F.3d 1368, 1373 (Fed. Cir. 2019).

E. Discuss whether the scope of claims 2 and 5 of the '752 patent covers hardware only or also covers a combination of hardware and software. Please identify and explain how any controlling Federal Circuit precedent regarding the infringement standard for apparatus claims, such as the cases cited in the FID and the parties' briefing, applies to the evidence in the record in this investigation. In particular, please discuss at least *Telemac Cellular Corp.* v. *Topp Telecom, Inc.,* 247 F.3d 1316 (Fed. Cir. 2001).

The parties are requested to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) An exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor,* Inv. No. 337–TA–977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same,* Inv. No. 337–TA–959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainants seek a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainants also rely on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

3. Please discuss any other basis upon which the Commission could enter a cease and desist order.

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist order would have on: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005. 70 *FR* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation are requested to file submissions on the issues under review. In addition, the parties, interested government agencies, and any other interested persons are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such initial written submissions should include views on

the recommended determination by the ALJ on remedy and bonding.

In its initial written submission, complainant is also requested to identify the form of the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply identification information for all known importers of the products at issue in this investigation. Complainant is additionally requested to identify and explain, from the record, articles that are ''components of'' the subject products, and thus covered by the proposed remedial orders, if imported separately from the subject products.

Initial written submissions, including proposed remedial orders must be filed no later than the close of business on March 11, 2020. Reply submissions must be filed no later than the close of business on March 18, 2020. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1119'') in a prominent place on the cover page and/or the first page. (*See* Handbook on Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary at (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel (all contract personnel will sign appropriate nondisclosure agreements) solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: February 26, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–04284 Filed 3–2–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AG Order No. 4645–2020]

Clarifying Lawful Overseas Use of Data Act; Attorney General Certification and Determination

AGENCY: Department of Justice.

ACTION: Notice of the certification and determination by the Attorney General regarding the Agreement between the Government of the United States of America (''U.S.'' or the ''United States'') and the Government of the United Kingdom of Great Britain and Northern Ireland (''U.K.'' or the ''United Kingdom'') on Access to Electronic Data for the Purpose of Countering Serious Crime (the ''U.S.–U.K. CLOUD Agreement'').

SUMMARY: In accordance with the Clarifying Lawful Overseas Use of Data Act (''CLOUD Act''), relating to an executive agreement governing access by a foreign government to electronic data, notice is given that the Attorney General has determined, and has submitted a written certification of such determination to Congress, that the U.S.–U.K. CLOUD Agreement satisfies the requirements of the CLOUD Act.

DATES: On November 27, 2019, the Attorney General certified that he had determined that the U.S.–U.K. CLOUD Agreement satisfies the requirements of the CLOUD Act. On January 10, 2020, the Attorney General completed the process of providing his certification to Congress. The U.S.–U.K. CLOUD Agreement will enter into force not earlier than July 8, 2020, unless Congress enacts a joint resolution of disapproval, in accordance with the CLOUD Act.

FOR FURTHER INFORMATION CONTACT: Richard Downing, Deputy Assistant Attorney General, Criminal Division, 950 Pennsylvania Avenue NW, Washington, DC 20530–0001, email: *Criminal.Division@usdoj.gov,* phone: 202–514–2000.

SUPPLEMENTARY INFORMATION: On March 23, 2018, the CLOUD Act was signed into law. Public Law 115–141, Div. V, 132 Stat. 1213–25. The CLOUD Act lifts certain restrictions under U.S. law on companies disclosing electronic data, in response to qualifying, lawful orders in investigations of serious crime, directly to a qualifying foreign government with which the United States has entered into an executive agreement governing access by the foreign government to covered data. *Id.* at 132 Stat. at 1213–17. Before an agreement can go into effect, the Attorney General, with the concurrence of the Secretary of State, must determine that the considerations outlined in 18 U.S.C. 2523(b) have been met. The Attorney General must then submit a written certification of his determination to Congress, including an explanation of each consideration required by 18 U.S.C. 2523(b), not later than 7 days after the date on which the Attorney General certifies the executive agreement. 18 U.S.C. 2523(d)(1). The executive agreement will enter into force not earlier than 180 days after the date the Attorney General notifies Congress, unless Congress enacts a joint resolution of disapproval, in accordance with the CLOUD Act. 18 U.S.C. 2523(d)(2). Under 18 U.S.C. 2523(g), the Attorney General's determination or certification under 18 U.S.C. 2523(b) must be published in the **Federal Register** as soon as is reasonably practicable.

Determination and Certification Pursuant to Section 2523(b)

On October 3, 2019, the Home Secretary of the United Kingdom and the Attorney General of the United States signed the U.S.–U.K. CLOUD Agreement. A copy of the U.S.–U.K. CLOUD Agreement is available at: *https://www.justice.gov/dag/cloudact.* On November 27, 2019, the Attorney General certified his determination that the U.S.–U.K. CLOUD Agreement satisfies the requirements of 18 U.S.C. 2523(b). The Attorney General's determination was based on the considerations in paragraphs (1), (2), (3), and (4) of 18 U.S.C. 2523(b), as

explained in the ''Explanation of Each Consideration in Determining that the Agreement Satisfies the Requirements of 18 U.S.C. 2523(b),'' available at: *https://www.justice.gov/dag/cloudact.* Secretary of State Pompeo concurred with the Attorney General's determination.

Notification to Congress Pursuant to Section 2523(d)

The Department of Justice (''Department'') transmitted the U.S.–U.K. CLOUD Agreement certification to the Committee on the Judiciary and the Committee on Foreign Relations of the Senate on December 4, 2019. Although the Department intended to notify the Committee on the Judiciary and the Committee on Foreign Affairs of the House of Representatives on the same date, the Department, because of a clerical error, did not provide actual notification to those committees until January 10, 2020. Because the Department completed this notice requirement on January 10, 2020, the U.S.–U.K. CLOUD Agreement will enter into force not earlier than July 8, 2020, absent the enactment into law of a resolution of disapproval as set forth under 18 U.S.C. 2523(d).

Non-Reviewable Determination and Certification

In accordance with 18 U.S.C. 2523(c), the determination and certification by the Attorney General described in this notice are not subject to judicial or administrative review.

Dated: February 25, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020–04248 Filed 3–2–20; 8:45 am]

BILLING CODE 4410–14–P

LIBRARY OF CONGRESS

[Docket No: 2020–01]

Public Input Regarding the Next Register of Copyrights

AGENCY: Library of Congress.

ACTION: Request for public input.

SUMMARY: The Library of Congress seeks public input on the expertise needed by the next Register of Copyrights and the top three priorities for the next Register. Public input will inform the Library's understanding of the knowledge, skills, and abilities that are most important in the selection of the next Register.

DATES: Interested persons are invited to provide input by March 20, 2020.

ADDRESSES: You may provide input at the Library of Congress website: *https://www.loc.gov/about/librarian-of-congress-seeks-input-on-register-of-copyrights/.*

FOR FURTHER INFORMATION CONTACT: April V. Slayton, Director of Communications, (202) 707–0020, *aslayton@loc.gov.*

SUPPLEMENTARY INFORMATION: (17 U.S.C. 701).

Dated: February 26, 2020.

Carla Hayden,

Librarian of Congress.

[FR Doc. 2020–04247 Filed 3–2–20; 8:45 am]

BILLING CODE 1410–10–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–021)]

NASA Advisory Council; STEM Engagement Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science, Technology, Engineering and Mathematics (STEM) Engagement Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Thursday, March 26, 2019, 1:00–5:00 p.m., Eastern Time.

ADDRESSES: NASA Headquarters, Room 3H42A, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Girten, Designated Federal Officer, Office of STEM Engagement, NASA Headquarters, Washington, DC 20546, (202) 358–0212, or *beverly.e.girten@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be held at NASA Headquarters and will be open to the public to the capacity of the room and available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll-free access number 1–844–467–6272 or local toll access number 1–720–259–6462, and then the numeric participant passcode: 423307 followed by the # sign. To join via WebEx, use link: *https://nasaenterprise.webex.com/.* The meeting number is 902 780 711 and the password is NACstem#26 (Password is case sensitive.) *Note:* If dialing in, please ''mute'' your telephone. The agenda for the meeting will include the following:

—Opening Remarks by Chair
—STEM Engagement Update
—National STEM Activities
—Priorities in Sparking Interest in STEM
—Performance and Evaluation Update
—Findings and Recommendations to the NASA Advisory Council
—Other Related Topics

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–04358 Filed 3–2–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–022)]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration announces a meeting of the NASA International Space Station (ISS) Advisory Committee. The purpose of the meeting is to review all aspects related to the safety and operational readiness of the ISS, and to assess the possibilities for using the ISS for future space exploration.

DATES: Monday, March 30, 2020, 11:00 a.m.–12:00 p.m., Eastern Time.

ADDRESSES: NASA Headquarters, Glennan Conference Room (1Q39), 300 E Street SW, Washington, DC 20546. Note: Room 1Q39 is located on the first floor of NASA Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Finley, Designated Federal Officer, Office of International and Interagency Relations, NASA Headquarters, Washington, DC 20546, 202–358–5684.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. This meeting is also accessible via teleconference. To participate telephonically, please contact Mr. Finley 202–358–5684 before 4:30 p.m. Eastern Time on March 25, 2020. You will need to provide your name, affiliation, and phone number.

Attendees will be requested to sign a register and to comply with NASA

security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Mr. Finley via email at *patrick.t.finley@nasa.gov* or by telephone at 202–358–5684. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation at least three working days prior to the meeting to Mr. Finley. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–04359 Filed 3–2–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; 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: Proposal Review Panel for Office of International Science and Engineering—PIRE: Bio-inspired Materials and Systems (10749)—Site Visit.

Date and Time: March 19, 2020, 8:00 a.m.–9:30 p.m.; March 20, 2020, 8:30 a.m.–2:30 p.m.

Place: University of Delaware, Clayton Hall, 210 S College Avenue, Newark, DE 19716.

Type of Meeting: Part-open.

Contact Person: Maija Kukla, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone 703/292–7250.

Purpose of Meeting: NSF site visit to conduct a review during year 3 of the five-year award period. To conduct an in-depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 27, 2020.

Crystal Robinson,

Committee Management Officer.

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314

Partnerships for International Research and Education (PIRE)

Site Visit Agenda, University of Delaware, DE

Thursday, March 19, 2020

8:00 a.m. Travel to the Site Review Location
Breakfast, Coffee/light refreshments
Panel Orientation—(*Closed*)
PIRE Rationale and Goals
Charge to Panel
8:45 a.m. Welcome and Introductions—L. Korley
PIRE Overview and Goals—L. Korley
International Partnership—C. Weder, University of Fribourg-AMI
Project Management—L. Korley, S. Rowan
10:15 a.m. NSF Executive Session—(*Closed*)
Break
10:30 a.m. Research Thrusts—L. Korley; J. Capadona; G. Wnek; J. Pokorski; R. Quinn
12:00 p.m. NSF Executive Session—(*Closed*)
12:30 p.m. Lunch—Discussion with Students—(*Closed*)
Poster Session
2:00 p.m. Lab Tours—ISE Lab—M. Hore/PIRE students
3:00 p.m. Integrating Research, Education, and Outreach across the PIRE—G. Wnek
Evaluation & Assessment—Research and Education Bureau—Kent State University
Dissemination and Leveraging of PIRE activities—J. Pokorski
Next Steps toward Achieving Project Goals—L. Korley; C. Weder; S. Rowan; J. Pokorski
4:30 p.m. Institutional Support—Meeting with Administrators
5:00 p.m. NSF Executive Session—(*Closed*)
6:00 p.m. Critical Feedback to the PIRE PI/Project Team—(*Closed*)
6:30 p.m.—9:30 p.m. NSF Executive Session/Working Dinner—(*Closed*)

Friday, March 20, 2020

8:30 a.m. Travel to Site Visit Location
Breakfast
9:00 a.m. The PI and Team's Response to Critical Feedback (*Closed*)
10:00 a.m. Site Review Team Prepares Site Visit Report (*Closed*)
Working Lunch Provided
2:30 p.m. Presentation of Site Visit Report to Principal Investigator (*Closed*)

[FR Doc. 2020–04337 Filed 3–2–20; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for International Science and Engineering; 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: Proposal Review Panel for Office of International Science and Engineering—PIRE: Science of Design for Societal-Scale Cyber-Physical Systems (10749)—Site Visit.

Date and Time: April 2, 2020, 7:00 a.m.–8:30 p.m.; April 3, 2020, 7:00 a.m.–4:30 p.m.

Place: Vanderbilt University, 2201 West End Ave., Nashville, TN 37235.

Type of Meeting: Part-open.

Contact Person: Cassandra Dudka, PIRE Program Manager, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone 703/292–7250.

Purpose of Meeting: NSF site visit to conduct a review during year 3 of the five-year award period. To conduct an in-depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda: See attached.

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site review will include information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 27, 2020.

Crystal Robinson,

Committee Management Officer.

National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314

Partnerships for International Research and Education (PIRE)

PIRE Site Visit Agenda

Day 1

7:00 a.m.–8:00 a.m. Travel to site review location, breakfast

8:00 a.m.–10:00 a.m. Introductions

PIRE Rationale and Goals

Research

10:00 a.m.–10:20 a.m. NSF Executive Session/Break (Closed)

Administration, Management, and Budget

Facilities and Physical Infrastructure

12:00 p.m.–12:30 p.m. NSF Executive Session (Closed)

12:30 p.m.–1:30 p.m. Lunch—Discussion with Students (NSF, Reviewers and students)

1:30 p.m.–3:00 p.m. Integrating Research and Education

Developing Human Resources

Integrating Diversity

3:00 p.m.–3:30 p.m. NSF Executive Session/Break (Closed)

3:30 p.m.–4:15 p.m. Partnerships

4:15 p.m.–5:15 p.m. Wrap up

5:15 p.m.–6:15 p.m. Executive Session/Break—Develop Critical Feedback for PI (Closed)

6:15 p.m. Critical Feedback Provided to PI (Closed)

6:30 p.m.–8:30 p.m. NSF Executive Session/Working Dinner (Closed)

Day 2

7:00 a.m.–8:00 a.m. Travel to site visit location, breakfast

8:00 a.m.–9:00 a.m. Institutional Support: Meeting with administrators and investigators

9:00 a.m.–10:00 a.m. Summary: PIRE Team Response to reviewers' findings (Closed)

10:00 a.m.–4:00 p.m. Site Review Team Prepares Site Visit Report (Closed)

(Working Lunch Provided)

4:00 p.m.–4:30 p.m. Presentation of Site Visit Report to Principal Investigator (Closed)

[FR Doc. 2020–04338 Filed 3–2–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0047]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of one amendment request. The amendment request is for Watts Bar Nuclear Plant (WBN), Unit 2. For this amendment request, the NRC proposes to determine that it involves no significant hazards consideration. Because this amendment request contains sensitive unclassified non-safeguards information (SUNSI) an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Comments must be filed by April 2, 2020. A request for a hearing must be filed by May 4, 2020. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by March 13, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0047. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2242, email: *Paula.Blechman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0047, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0047.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The WBN Unit 2 amendment request is available in ADAMS under Accession No. ML19283G119.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2020–0047, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly

disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notice of an amendment containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for the amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an

imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where

you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Tennessee Valley Authority (TVA), Docket No. 50–391, Watts Bar Nuclear Plant (WBN), Unit 2, Rhea County, Tennessee

Date of amendment request: October 10, 2019. A publicly-available version is in ADAMS under Accession No. ML19283G119.

Description of amendment request: This amendment request contains SUNSI. The amendment would increase the WBN Unit 2 authorized core power level from 3411 megawatts thermal (MWt) to 3459 MWt (*i.e.,* an increase of approximately 1.4 percent rated thermal power (RTP)), based on the use of the Caldon® Leading Edge Flow Meter (LEFM®) CheckPlus System. The amendment would also revise WBN Unit 2 Technical Specification (TS) 1.1, ''Definitions,'' to account for the increase in RTP, and TS 5.9.5b, ''Core Operating Limits Report (COLR),'' to state the RTP that may be used when feedwater flow measurement is provided by the LEFM, and to add the Caldon Topical Reports for LEFMs to the list of reference documents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed amendment changes the RTP for WBN Unit 2 from 3411 MWt to 3459 MWt; an increase of approximately 1.4%RTP. TVA's evaluations have shown that all structures, systems, and components (SSCs) are capable of performing their design function at the uprated power of 3459 MWt. A review of station accident analyses found that all acceptance criteria are still met at the uprated power of 3459 MWt.

The radiological consequences of operation at the uprated power conditions have been assessed. The proposed power uprate does not affect release paths, frequency of release, or the analyzed reactor core fission product inventory for any accidents previously evaluated in the Updated Final Safety Analysis Report. Analyses performed to assess the effects of mass and energy releases remain valid and bounded by accident analysis values. The acceptance criteria for radiological consequences continue to be met at the uprated power level.

The proposed change does not involve any change to the design or functional requirements of the safety and support systems. That is, the increased power level neither degrades the performance of, nor increases the challenges to any safety systems assumed to function in the plant safety analysis.

While power level is an input to accident analyses, it is not an initiator of accidents. The proposed change does not affect any accident precursors and does not introduce any accident initiators. The proposed change does not impact the usefulness of the Surveillance Requirements in evaluating the operability of required systems and components. Additionally, evaluation of the proposed TS changes demonstrates that the availability of equipment and systems required to prevent or mitigate the radiological consequences of an accident is not affected.

Therefore, the proposed amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced because of the proposed change. The use of the previously installed Cameron (formerly Caldon, Inc.) LEFM CheckPlus System had been previously analyzed for WBN Unit 2, and failures of the system will continue to have no adverse effect on any safety-related system or any SSCs required for transient mitigation. SSCs previously required for the mitigation of a transient continue to be capable of fulfilling their intended design functions. The proposed change has no adverse effect on any safety-related system or component and does not change the performance or integrity of any safety-related system.

The proposed change does not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operation at the uprated power level does not create any new accident initiators or precursors. Credible malfunctions remain bounded by existing accident analyses of record.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Although the proposed amendment increases the WBN Unit 2 operating power level, the unit retains its margin of safety because it is only increasing power by the amount equal to the reduction in uncertainty in the heat balance calculation. The margins of safety associated with the power uprate are those pertaining to core thermal power. These include fuel cladding, reactor coolant system pressure boundary, and containment barriers. Analyses demonstrate that the current design basis continues to be met after the measurement uncertainty recapture power uprate. Components associated with the reactor coolant system pressure boundary structural integrity, including pressure-temperature limits, vessel fluence, and pressurized thermal shock are bounded by the current analyses. Systems will continue to operate within their design parameters and remain capable of performing their intended safety functions.

The current WBN Unit 2 safety analyses, including the design basis radiological accident dose calculations, bound the proposed power uprate.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Tennessee Valley Authority, Docket No. 50–391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good

cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 12th of February, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2020–03190 Filed 3–2–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from November 1, 2019 to November 30, 2019.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during November 2019.

Schedule B

No Schedule B Authorities to report during November 2019.

Schedule C

The following Schedule C appointing authorities were approved during November 2019.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE.	Risk Management Agency	Policy Advisor	DA200015	11/13/2019
	Office of Communications	Press Assistant	DA190211	11/19/2019
	Office of the Secretary	Legislative Correspondent	DA200017	11/13/2019
		Special Assistant and Advisor	DA200016	11/19/2019
	Office of the Under Secretary for Food Safety.	Staff Assistant	DA200020	11/25/2019
DEPARTMENT OF COMMERCE	Minority Business Development Agency.	Special Assistant	DC190153	11/04/2019
	Office of the Deputy Secretary	Special Advisor	DC190148	11/04/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the General Counsel	Senior Counsel	DC190152	11/04/2019
		Counsel	DC200004	11/22/2019
DEPARTMENT OF DEFENSE	Washington Headquarters Services.	Defense Fellow	DD200023	11/20/2019
		Advance Officer	DD200039	11/26/2019
DEPARTMENT OF EDUCATION	Office of the General Counsel	Confidential Assistant	DB200004	11/14/201911/
		Attorney Advisor	DB200007	19/2019
Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB200013		11/26/2019
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Director of Intergovernmental and External Affairs.	DE200013	11/07/2019
	Office of Economic Impact and Diversity.	Special Advisor	DE200026	11/20/2019
		Senior Advisor	DE200027	11/20/2019
	Office of Management	Deputy Director of Scheduling	DE200016	11/04/2019
		Deputy Director of Operations for Scheduling.	DE200017	11/14/2019
		Advance Lead	DE200021	11/15/2019
	Office of the Secretary	Special Assistant	DE200015	11/05/2019
EXPORT-IMPORT BANK	Office of the Chief of Staff	Deputy Chief of Staff	EB200007	11/04/2019
FEDERAL HOUSING FINANCE AGENCY.	Office of the Director	Assistant Chief of Staff	HA200001	11/05/2019
		Deputy Chief of Staff	HA200002	11/14/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Centers for Medicare and Medicaid Services.	Senior Advisor	DH200003	11/07/2019
	Office of Global Affairs	Senior Advisor	DH200015	11/05/2019
		Special Representative for Global Women's Health.	DH200004	11/07/2019
		Chief of Staff and Senior Advisor	DH200007	11/07/2019
	Office of the Assistant Secretary for Legislation.	Director of Congressional Liaison	DH200018	11/13/2019
	Office of the Assistant Secretary for Public Affairs.	Advisor—Strategic Communications.	DH200010	11/05/201911/
		Deputy Speechwriter	DH200009	06/2019
	Office of the Secretary	Deputy White House Liaison	DH200016	11/05/2019
DEPARTMENT OF HOMELAND SECURITY.	Office of Partnership and Engagement.	Partnership and Engagement Specialist.	DM200036	11/26/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Policy Development and Research.	Special Assistant	DU200015	11/22/2019
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Deputy Director, Office of Advance.	DI200012	11/22/2019
DEPARTMENT OF JUSTICE	Office of Legal Policy	Senior Counsel	DJ200006	11/15/2019
	Office of Antitrust Division	Counsel	DJ190242	11/26/2019
DEPARTMENT OF LABOR	Office of Congressional and Intergovernmental Affairs.	Regional Representative	DL200019	11/15/2019
		Senior Legislative Officer	DL200028	11/22/2019
	Office of Labor Management Standards.	Policy Advisor	DL200022	11/19/2019
	Office of the Secretary	Speechwriter	DL200027	11/13/2019
		Deputy Director of Scheduling	DL200029	11/19/2019
OFFICE OF PERSONNEL MANAGEMENT.	President's Commission on White House Fellowships.	Deputy Director	PM200003	11/04/2019
	Office of the Director	Senior Advisor	PM200007	11/19/2019
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	Director of Scheduling	SB200002	11/22/2019
DEPARTMENT OF STATE	Bureau of Western Hemisphere Affairs.	Special Assistant	DS200015	11/12/2019
	Office of Global Women's Issues	Special Advisor	DS200008	11/14/2019
	Office of Policy Planning	Special Assistant	DS190126	11/22/2019
	Office of the Secretary	Staff Assistant	DS200012	11/13/2019
		Senior Advisor	DS200016	11/26/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Administrator	Director of Public Affairs	DT200023	11/04/2019
		Director of Governmental Affairs	DT200027	11/07/2019
	Office of the Assistant Secretary for Administration.	Special Assistant	DT200029	11/12/2019
	Office of the Assistant Secretary for Governmental Affairs.	Senior Governmental Affairs Officer.	DT200018	11/12/2019
		Special Assistant	DT200025	11/13/2019
	Office of the Assistant Secretary for Transportation Policy.	Special Assistant	DT200001	11/08/2019
		Senior Advisor for Public Outreach and Communications.	DT200031	11/13/2019
	Office of the Deputy Secretary	Special Assistant	DT200002	11/14/2019
		Executive Assistant	DT200026	11/19/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Public Affairs	Press Secretary	DT200030	11/15/2019
	Office of the Secretary	Senior Assistant for Scheduling and Advance.	DT200028	11/12/2019
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Economic Policy).	Special Advisor	DY200011	11/12/2019
	Secretary of the Treasury	Special Advisor	DY200012	11/12/2019
	Office of the Assistant Secretary (Public Affairs).	Director, Public Affairs (Terrorism and Financial Intelligence).	DY200014	11/20/2019
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant	DV200011	11/20/2019

The following Schedule C appointing authorities were revoked during November 2019.

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF AGRICULTURE.	Farm Service Agency	State Executive Director—South Dakota.	DA180075	11/14/2019
		State Executive Director—Georgia	DA180031	11/15/2019
	Office of Communications	Press Assistant	DA190047	11/23/2019
	Office of the Secretary	Special Assistant and Advisor	DA190199	11/23/2019
	Office of the Under Secretary for Rural Development.	Chief of Staff	DA180100	11/15/2019
		Policy Advisor	DA180261	11/15/2019
	Risk Management Agency	Policy Advisor	DA180198	11/23/2019
	Rural Business Service	Confidential Assistant	DA190171	11/18/2019
DEPARTMENT OF COMMERCE	Office of the Assistant Secretary Legislative and Intergovernmental Affairs.	Associate Director for Legislative Affairs.	DC180188	11/09/2019
	Minority Business Development Agency.	Confidential Assistant	DC190003	11/09/2019
	Office of Public Affairs	Special Advisor for Communications.	DC180169	11/08/2019
	Office of the Deputy Secretary	Senior Advisor	DC190015	11/09/2019
		Special Assistant	DC190012	11/23/2019
	Office of the General Counsel	Special Advisor to the General Counsel.	DC190038	11/08/2019
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs).	Special Assistant to the Assistant Secretary of Defense for Manpower and Reserve Affairs.	DD170215	11/23/2019
	Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).	Special Assistant to the Assistant Secretary of Defense (Acquisition and Sustainment).	DD190009	11/23/2019
	Office of the Deputy Under Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant to the Deputy Assistant Secretary of Defense (East Asia).	DD190003	11/30/2019
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant to the Deputy Assistant Secretary of Defense (East Asia).	DD190004	11/30/2019
DEPARTMENT OF EDUCATION	Office of Communications and Outreach.	Confidential Assistant	DB190065	11/22/2019
	Office of Special Education and Rehabilitative Services.	Confidential Assistant	DB190098	11/23/2019
DEPARTMENT OF ENERGY	Loan Programs Office	Senior Advisor	DE190145	11/01/2019
	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Legislative Affairs Advisor	DE180147	11/09/2019
	Office of Management	Deputy Staff Secretary	DE190067	11/09/2019
	Office of Economic Impact and Diversity.	Senior Advisor on Minority Business.	DE180140	11/23/2019
		Special Assistant	DE180151	11/23/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of Administration for Children and Families.	Advisor	DH180134	11/09/2019
		Director of Legislative Affairs	DH190057	11/29/2019
	Office for Civil Rights	Senior Advisor	DH170343	11/22/2019
	Office of Global Affairs	Advisor	DH180239	11/09/2019
		Chief of Staff	DH190044	11/09/2019
		Senior Advisor	DH190043	11/09/2019
	Office of the Assistant Secretary for Legislation.	Advisor	DH190035	11/09/2019

Agency name	Organization name	Position title	Request No.	Date vacated
	Office of the Assistant Secretary for Preparedness and Response.	Senior Advisor	DH190054	11/22/2019
	Office of the Assistant Secretary for Public Affairs.	Assistant Speechwriter	DH190050	11/09/2019
		Content Strategy and Marketing Associate.	DH190168	11/22/2019
		Special Assistant	DH180250	11/30/2019
	Office of the Secretary	Special Advisor	DH190118	11/09/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Deputy Secretary	Special Assistant	DU180091	11/08/2019
	Office of Policy Development and Research.	Deputy Assistant Secretary for Policy Development.	DU180089	11/16/2019
DEPARTMENT OF JUSTICE	Office of Civil Division	Senior Counsel	DJ190055	11/15/2019
DEPARTMENT OF LABOR	Office of Congressional and Intergovernmental Affairs.	Chief of Staff	DL180014	11/23/2019
	Office of the Assistant Secretary for Policy.	Counsel and Policy Advisor	DL190017	11/23/2019
	Office of the Secretary	Special Assistant	DL180079	11/23/2019
DEPARTMENT OF STATE	Bureau of Arms Control, Verification and Compliance.	Senior Advisor	DS180060	11/23/2019
	Bureau of Counterterrorism	Special Assistant	DS180011	11/23/2019
	Bureau of Western Hemisphere Affairs.	Special Assistant	DS170156	11/23/2019
	Office of Global Women's Issues	Special Assistant	DS180039	11/23/2019
	Office of Policy Planning	Writer—Editor (Speechwriter)	DS180072	11/09/2019
	Office of the Counselor	Senior Advisor	DS180063	11/09/2019
	Office of the Secretary	Writer-Editor (Chief Speechwriter)	DS180087	11/09/2019
		Staff Assistant	DS180086	11/23/2019
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Senior Advance Representative	DI180048	11/30/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Assistant Secretary for Research and Technology.	Special Assistant for Research and Technology.	DT190105	11/07/2019
	Office of Public Affairs	Digital Media Manager	DT190107	11/07/2019
	Chief Information Officer	Special Assistant	DT180037	11/30/2019
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Congressional and Legislative Affairs.	Special Assistant	DV170062	11/23/2019
	Office of Public Affairs	Press Secretary	DV190078	11/30/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	Special Assistant to the Associate Administrator for the Office of Congressional and Intergovernmental Relations.	EP180067	11/09/2019
	Office of the Associate Administrator for Policy.	Special Advisor for Policy and Economics.	EP190051	11/09/2019
	Office of the Administrator	Advance Associate	EP190074	11/22/2019
GENERAL SERVICES ADMINISTRATION.	Office of Strategic Communication	Speechwriter	GS190028	11/17/2019
OFFICE OF MANAGEMENT AND BUDGET.	Office of the General Counsel	Deputy to the General Counsel for Oversight.	BO190005	11/09/2019
OFFICE OF PERSONNEL MANAGEMENT.	President's Commission on White House Fellowships.	Deputy Director, President's Commission on White House Fellowships.	PM190020	11/09/2019

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–04272 Filed 3–2–20; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from October 1, 2019 to October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during October 2019.

Schedule B

No Schedule B Authorities to report during October 2019.

Schedule C

The following Schedule C appointing authorities were approved during October 2019.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE.	Office of the Secretary	White House Liaison	DA200005	10/22/2019
		Confidential Assistant	DA200010	10/29/2019
	Office of the Assistant Secretary for Congressional Relations.	Policy and Congressional Advisor	DA200008	10/25/2019
	Rural Housing Service	State Director—Louisiana	DA200007	10/25/2019
DEPARTMENT OF COMMERCE	Minority Business Development Agency.	Special Assistant	DC190170	10/04/2019
		Senior Advisor	DC200005	10/25/2019
	Office of Legislative and Intergovernmental Affairs.	Associate Director for Legislative Affairs.	DC190155	10/10/2019
		Intergovernmental Affairs Specialist.	DC190156	10/10/2019
		Legislative Affairs Specialist	DC190154	10/11/2019
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Confidential Assistant	DC190171	10/17/2019
	Office of the General Counsel	Counsel	DC190166	10/11/2019
		Director of Operations for Special Projects.	DC190159	10/24/2019
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant	DD190210	10/16/2019
	Office of the Deputy Under Secretary for Policy.	Special Assistant	DD200011	10/18/2019
DEPARTMENT OF THE AIR FORCE.	Office of Assistant Secretary Air Force for Acquisition.	Personal and Confidential Assistant.	DF200001	10/24/2019
DEPARTMENT OF EDUCATION	Office of the General Counsel	Attorney Adviser (Deputy Special Counsel).	DB190132	10/02/2019
	Office for Civil Rights	Attorney Adviser (Special Counsel)	DB190133	10/02/2019
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Congressional and Intergovernmental Affairs.	Deputy Assistant Secretary for Senate Affairs.	DE200006	10/07/2019
		Legislative Affairs Advisor	DE200008	10/28/2019
	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Advisor	DE200004	10/08/2019
	Office of the Assistant Secretary for Environmental Management.	Chief of Staff	DE190207	10/07/2019
	Office of Economic Impact and Diversity.	Chief of Staff	DE200003	10/09/2019
	Office of Management	Director of Operations	DE200009	10/28/2019
	Office of Public Affairs	Senior Content Creator	DE190208	10/08/2019
	Office of Scheduling and Advance	Director of Scheduling	DE190203	10/07/2019
	Office of the Secretary	Special Assistant	DE200002	10/07/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Assistant Administrator for Air and Radiation.	Executive Assistant for the Office of Air and Radiation.	EP200009	10/22/2019
	Office of the Associate Administrator for Policy.	Senior Advisor for Science and Policy.	EP190128	10/01/2019
		Associate Chief of Staff for the Office of Policy.	EP200004	10/07/2019
		Policy Assistant	EP200001	10/17/2019
	Office of the Executive Secretariat	Special Advisor	EP200005	10/24/2019
	Office of the General Counsel	Attorney-Advisor (General)	EP190143	10/04/2019
EXPORT-IMPORT BANK	Office of the Chairman	Assistant	EB200002	10/10/2019
		Special Advisor and Deputy Scheduler (2).	EB200004	10/25/2019
			EB200006	10/29/2019
	Office of Communications	Deputy Press Secretary	EB200005	10/31/2019
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Health.	Advisor	DH190255	10/02/2019
	Office of Administration for Children and Families.	Policy Advisor	DH190266	10/09/2019
		Advisor	DH190120	10/31/2019
	Office of the Assistant Secretary for Legislation.	Senior Advisor	DH200008	10/31/2019
DEPARTMENT OF HOMELAND SECURITY.	Cybersecurity and Infrastructure Security Agency (CISA).	Special Assistant	DM200022	10/25/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Policy Advisor	DM200011	10/29/2019
	Federal Emergency Management Agency.	Deputy Press Secretary	DM190315	10/29/2019
	Office of Countering Weapons of Mass Destruction (CWMD).	Senior Advisor	DM200019	10/25/2019
	Office of the Assistant Secretary for Policy.	Confidential Assistant	DM200002	10/17/2019
	Office of the Assistant Secretary for Public Affairs.	Assistant Press Secretary	DM190319	10/03/2019
	Office of the Chief of Staff	Advance Representative (2)	DM190301	10/01/2019
			DM200024	10/25/2019
		Special Assistant	DM200028	10/29/2019
	Office of the United States Citizenship and Immigration Services.	Special Assistant	DM190314	10/03/2019
	Office of the United States Customs and Border Protection.	Special Assistant	DM200016	10/29/2019
	Office of the United States Immigration and Customs Enforcement.	Special Advisor	DM200021	10/29/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Public Affairs	Director of Strategic Communications.	DU190128	10/01/2019
DEPARTMENT OF THE INTERIOR.	Office of the Assistant Secretary—Land and Minerals Management.	Counselor—Land and Minerals Management.	DI200005	10/29/2019
DEPARTMENT OF JUSTICE	Office of Civil Rights Division	Counsel (2)	DJ190214	10/09/2019
			DJ190228	10/22/2019
	Office of Legal Policy	Senior Counsel	DJ190245	10/17/2019
	Office of the Attorney General	Director of Scheduling	DJ190238	10/24/2019
	Office of the Deputy Attorney General.	Counsel	DJ190244	10/24/2019
DEPARTMENT OF LABOR	Office of Employee Benefits Security Administration.	Senior Policy Advisor	DL190184	10/11/2019
	Office of Congressional and Intergovernmental Affairs.	Regional Representative (3)	DL190157	10/01/2019
			DL200010	10/11/2019
			DL200011	10/11/2019
	Office of Federal Contract Compliance Programs.	Senior Policy Advisor	DL200013	10/11/2019
	Office of the Secretary	Executive Secretary	DL200014	10/24/2019
		Special Assistant	DL200018	10/31/2019
NATIONAL CREDIT UNION ADMINISTRATION.	Office of the Board	Director, Office of External Affairs and Communications/Deputy Chief of Staff.	CU200002	10/15/2019
	Office of Public and Congressional Affairs.	Senior Advisor for Communications and Engagement.	CU200003	10/24/2019
NATIONAL TRANSPORTATION SAFETY BOARD.	Office of Board Members	Confidential Assistant	TB200001	10/18/2019
OFFICE OF MANAGEMENT AND BUDGET.	Office of Health Division	Confidential Assistant	BO200003	10/17/2019
	Natural Resource Programs	Confidential Assistant	BO200004	10/25/2019
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Legislative Affairs	Public Affairs Specialist (Program Support).	QQ190015	10/07/2019
		Deputy Assistant Director, Office of Legislative Affairs.	QQ200001	10/07/2019
OFFICE OF PERSONNEL MANAGEMENT.	Office of the Director	Director of Advance and Speechwriter.	PM200005	10/25/2019
SMALL BUSINESS ADMINISTRATION.	Office of Investment and Innovation.	Special Assistant	SB190032	10/04/2019
DEPARTMENT OF STATE	Bureau of Administration	Special Assistant	DS200013	10/31/2019
	Bureau of Arms Control, Verification, and Compliance.	Senior Advisor	DS200014	10/31/2019
	Bureau of Economic and Business Affairs.	Special Advisor	DS200001	10/08/2019
	Bureau of Legislative Affairs	Legislative Management Officer	DS190129	10/09/2019
	Office of Policy Planning	Writer-Editor (Speechwriter)	DS200007	10/31/2019
	Office of the Chief of Protocol	Protocol Officer (Ceremonials)	DS200005	10/10/2019
	Office of the Secretary	Senior Advisor (2)	DS200002	10/08/2019
			DS200003	10/08/2019
		Special Advisor	DS200011	10/31/2019
	Office of the Under Secretary for Management.	Special Assistant	DS200009	10/29/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Administrator	Special Assistant	DT190126	10/10/2019

Agency name	Organization name	Position title	Authorization No.	Effective date
		Senior Governmental Affairs Officer.	DT200019	10/28/2019
	Office of the Associate Administrator for Highway Policy and Governmental Affairs.	Associate Administrator for Policy and Governmental Affairs.	DT200003	10/16/2019
	Office of the Executive Secretariat	Special Assistant	DT190125	10/07/2019
	Immediate Office of the Administrator.	Director of Governmental, International and Public Affairs.	DT200005	10/29/2019
	Office of Pipeline and Hazardous Materials Safety Administration.	Senior Policy Advisor	DT200008	10/16/2019
DEPARTMENT OF THE TREASURY.	Office of the Under Secretary for International Affairs.	Special Advisor	DY190120	10/01/2019
	Office of the Assistant Secretary for Financial Markets.	Special Advisor	DY200005	10/29/2019
UNITED STATES INTERNATIONAL TRADE COMMISSION.	Office of Commissioner Stayin	Staff Assistant (Legal)	TC200001	10/22/2019
	Office of Commissioner Schmidtlein.	Staff Assistant (Legal)	TC200003	10/22/2019
DEPARTMENT OF VETERANS AFFAIRS.	Office of the General Counsel	Special Assistant (Attorney Advisor).	DV200003	10/11/2019

The following Schedule C appointing authorities were revoked during October 2019.

Agency name	Organization name	Position title	Request No.	Date vacated
COMMODITY FUTURES TRADING COMMISSION.	Office of the Chief Economist	Senior Advisor	CT190007	10/18/2019
DEPARTMENT OF AGRICULTURE.	Office of the Secretary	Senior Advisor to the Secretary	DA180222	10/04/2019
	Farm Service Agency	State Executive Director	DA180230	10/15/2019
	Office of the Under Secretary for Food Safety.	Confidential Assistant	DA180148	10/31/2019
DEPARTMENT OF COMMERCE	Office of Advance, Scheduling and Protocol.	Director of Advance, Scheduling and Protocol.	DC190060	10/25/2019
	Bureau of Industry and Security	Senior Advisor	DC190055	10/26/2019
	Office of the General Counsel	Special Advisor	DC190072	10/27/2019
	Office of Legislative and Intergovernmental Affairs.	Confidential Assistant	DC180165	10/31/2019
OFFICE OF THE SECRETARY OF DEFENSE.	Office of the Secretary of Defense	Advance Officer	DD180134	10/12/2019
	Office of the Under Secretary of Defense (Policy).	Special Assistant	DD180140	10/26/2019
	Washington Headquarters Services.	Defense Fellow (2)	DD190058	10/19/2019
			DD180114	10/05/2019
	Office of the Deputy Under Secretary for Policy.	Special Assistant	DD190171	10/05/2019
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (2)	DD180118	10/26/2019
			DD190070	10/26/2019
DEPARTMENT OF THE ARMY	Office of the Assistant Secretary of Army (Installations, Energy and Environment).	Special Assistant	DW180003	10/31/2019
DEPARTMENT OF EDUCATION	Department of Education	Special Assistant (Supervisory)	DB190063	10/12/2019
	Office for Civil Rights	Attorney Advisor	DB190073	10/12/2019
	Office of the General Counsel	Attorney Advisor	DB190099	10/12/2019
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Assistant	DE180160	10/12/2019
	Office of the Assistant Secretary for Fossil Energy.	Senior Advisor for Regional Economic Development.	DE180098	10/12/2019
	Office of the Assistant Secretary for International Affairs.	Special Assistant	DE190041	10/12/2019
	Office of Science	Senior Advisor	DE180129	10/12/2019
	Office of the Secretary	Special Assistant to the Staff Secretary.	DE190057	10/12/2019

Agency name	Organization name	Position title	Request No.	Date vacated
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Financial Resources.	Director of Congressional Relations.	DH190037	10/12/2019
		Special Assistant	DH190069	10/26/2019
	Office of the Assistant Secretary for Legislation.	Director of Congressional Liaison	DH190034	10/17/2019
	Office of the Assistant Secretary for Public Affairs.	Advisor—Strategic Communications.	DH190068	10/11/2019
		Director of Communication Strategy and Campaigns.	DH180236	10/17/2019
	Office of the Secretary	Briefing Book Coordinator and Policy Advisor.	DH190098	10/12/2019
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Administration	Advance Coordinator	DU190020	10/26/2019
	Office of Public Affairs	Deputy Assistant Secretary for Public Affairs.	DU180094	10/31/2019
		Director of Strategic Communications.	DU180064	10/31/2019
DEPARTMENT OF JUSTICE	Office of Antitrust Division	Counsel	DJ180049	10/15/2019
DEPARTMENT OF LABOR	Office of Public Affairs	Chief of Staff	DL190069	10/12/2019
		Press Assistant	DL180057	10/12/2019
DEPARTMENT OF STATE	Bureau of Legislative Affairs	Special Assistant	DS180070	10/12/2019
	Bureau of Education and Cultural Affairs.	Special Assistant	DS180071	10/22/2019
	Bureau of Economic and Business Affairs.	Special Assistant	DS180056	10/26/2019
	Office of the Under Secretary for Management.	Staff Assistant	DS190084	10/26/2019
	Bureau of Western Hemisphere Affairs.	Senior Advisor	DS190023	10/31/2019
DEPARTMENT OF THE TREASURY.	Department of the Treasury	Assistant Executive Secretary	DY180012	10/13/2019
DEPARTMENT OF TRANSPORTATION.	Office of the Assistant Secretary for Governmental Affairs.	Governmental Affairs Officer	DT180089	10/26/2019
		Special Assistant	DT180042	10/26/2019
	Office of the Under Secretary of Transportation for Policy.	Senior Policy Advisor	DT190104	10/26/2019
DEPARTMENT OF VETERANS AFFAIRS.	Office of the Assistant Secretary for Public and Intergovernmental Affairs.	Special Assistant/Deputy Press Secretary.	DV180065	10/07/2019
ENVIRONMENTAL PROTECTION AGENCY.	Office of the General Counsel	Attorney Advisor (General) (2)	EP190038	10/12/2019
			EP180080	10/13/2019
	Office of Public Affairs	Writer (Speeches)	EP190068	10/31/2019
EXPORT-IMPORT BANK	Office of the Chief of Staff	Executive Secretary	EB190007	10/12/2019
GENERAL SERVICES ADMINISTRATION.	National Capital Region	Special Assistant to the Regional Administrator.	GS190027	10/12/2019
OFFICE OF MANAGEMENT AND BUDGET.	Natural Resource Programs	Confidential Assistant	BO190004	10/12/2019
	Office of Health Division	Confidential Assistant	BO190014	10/26/2019
	Office of the Director	Confidential Assistant	BO180028	10/26/2019
OFFICE OF NATIONAL DRUG CONTROL POLICY.	Office of Legislative Affairs	Legislative Analyst	QQ190008	10/12/2019
	Office of Public Affairs	Public Affairs Specialist (Program Support).	QQ180004	10/12/2019
OFFICE OF PERSONNEL MANAGEMENT.	President's Commission on White House Fellowships.	Confidential Assistant to the Director.	PM190038	10/26/2019

(Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.)

Alexys Stanley,

Regulatory Affairs Analyst, Office of Personnel Management.

[FR Doc. 2020–04273 Filed 3–2–20; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88285; File No. SR–CFE–2020–002]

Self-Regulatory Organizations; Cboe Futures Exchange, LLC; Notice of Filing of Proposed Rule Change Relating To Exchange Jurisdiction

February 26, 2020.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 14, 2020 Cboe Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'')[2] on February 14, 2020.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The Exchange proposes to clarify and amend CFE's rule provisions relating to Exchange jurisdiction. The scope of this filing is limited solely to the application of the proposed rule change to security futures that may be traded on CFE. Although no security futures are currently listed for trading on CFE, CFE may list security futures for trading in the future. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE 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. CFE 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

CFE Rule 308 (Consent to Exchange Jurisdiction) governs the Exchange's jurisdiction. Rule 308(c) currently provides that any Person initiating or executing a transaction on or subject to the rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Exchange and agrees to be bound by and comply with the rules of the Exchange in relation to such transactions, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes. The cover page to the CFE Rulebook repeats this language from Rule 308(c). CFE's rules refer to any Person subject to Rule 308(c) as a Market Participant.

CFTC Regulation 38.151(a)[3] provides that prior to granting any member or market participant access to its markets, a designated contract market (''DCM'') must require that the member or market participant consent to its jurisdiction. CFE originally adopted Rule 308(c) in order to comply with CFTC Regulation 38.151(a).[4]

The proposed rule change clarifies and amends CFE's rule provisions relating to Exchange jurisdiction.

First, CFE proposes to revise CFE Rule 308(c) and amend the cover page of the CFE Rulebook to clarify that any futures commission merchant, broker-dealer, introducing broker, associated person, or foreign Person performing a similar role, that charges a commission or fee in connection with a transaction on or subject to the rules of the Exchange also expressly consents to the Exchange's jurisdiction (and thus is a Market Participant under CFE rules).

The proposed rule change furthers the Exchange's compliance with CFTC Regulation § 38.151(a)[5] by clarifying the scope of the Exchange's jurisdiction in relation to intermediaries. Between when a customer enters an order and its actual execution, the order may be routed through multiple different broker-dealers, futures commission merchants, or introducing brokers before execution. The language of the proposed rule change clarifies that if there is a third party involved in the order routing process that receives a commission, it is still subject to the Exchange's jurisdiction even if that party is a not a customer of the ultimate execution firm. The proposed rule change was developed by the Joint Compliance Committee, and the Exchange understands that other DCMs also are adopting proposed rule changes that contain the same or similar language.[6]

Second, CFE is proposing to amend the definition of the term ''Person'' included in Chapter 1 of the CFE Rulebook. CFE's rules currently define ''Person'' to mean ''any natural person, association, partnership, limited liability company, joint venture, trust or corporation.'' CFE proposes to amend this definition to add ''sole proprietorship'' to the list included in the definition and to add ''any other type of entity or organization'' to the end of this list to make clear that the definition of ''Person'' encompasses other potential types of entities or organizations that may not be specifically enumerated in the current list under the definition. These proposed changes serve to clarify the meaning and scope of the term ''Person'' as used throughout CFE's rules, including in particular within CFE's rule provisions relating to Exchange jurisdiction.

Third, CFE is proposing to revise Rule 308 to delete current Rule 308(e)(i). Rule 308(e)(i) provides that every Person in the chain of custody of an order submitted to CFE that is not a CFE Trading Privilege Holder (''TPH'') or Authorized Trader of a TPH, commencing with the original initiation of the order until its receipt by CFE, shall be deemed to be a Market Participant. This provision was recently added to CFE's rules and was intended to provide the same type of clarification as is intended by the provision that CFE is now adding to Rule 308(c) in

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] 17 CFR 38.151(a).

[4] *Id.*

[5] *Id.*

[6] The Joint Compliance Committee (''JCC'') is a voluntary, cooperative organization comprised of members who are self-regulatory organizations registered under the CEA. The JCC operates through its members to protect market integrity within and across the members' markets. It provides a forum to share information and ideas on regulatory topics of interest, as well as identify issues within the industry or elsewhere that may impact their markets, members, or self-regulatory responsibilities. CFTC staff representing the CFTC Division of Market Oversight Market Compliance Section also participate in JCC meetings.

conjunction with the same or similar proposed rule changes being made by other DCMs. To further consistency with the jurisdictional rules of other DCMs and to avoid any potential ambiguity that may be created by having two differently worded provisions intended to accomplish the same result, CFE is deleting Rule 308(e)(i). Because CFE is deleting Rule 308(e)(i), CFE is changing the rule number for current Rule 308(e)(ii) to Rule 308(e)(i) and is changing the rule number for current Rule 308(e)(iii) to Rule 308(e)(ii) without changing the text of either rule provision.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(1)[8] and 6(b)(5)[9] in particular, in that it is designed:

- To enable the Exchange to enforce compliance by its Market Participants with the provisions of the rules of the Exchange,
- 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 a national market system,
- and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would strengthen CFE's ability to carry out its responsibilities as a self-regulatory organization by providing further clarity and guidance with regard to provisions of the Exchange's rules that relate to trading conduct by Market Participants. In particular, the proposed rule change would clarify the definition of Person for purposes of, among other things, applying CFE's rule provisions relating to Exchange jurisdiction and would further clarify when intermediaries become subject to the Exchange's jurisdiction. Accordingly, the proposed rule change enhances the Exchange's ability to enforce compliance with its rules and to protect the market and participants in the market from abusive practices. In addition, the Exchange believes that the proposed rule change will promote just and equitable principles of trade because it would apply equally to all Market Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE 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, in that the proposed rule change will enhance CFE's ability to carry out its responsibilities as a self-regulatory organization. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory in that it would apply equally to all Market Participants.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become operative on March 2, 2020. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[10]

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–CFE–2020–002 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–CFE–2020–002. 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–CFE–2020–002, and should be submitted on or before March 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04286 Filed 3–2–20; 8:45 am]

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88284; File No. SR–NYSEArca–2019–39]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E

February 26, 2020.

I. Introduction

On June 12, 2019, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act

of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rule 8.201–E and to list and trade shares (''Shares'') of the United States Bitcoin and Treasury Investment Trust (''Trust'') under NYSE Arca Rule 8.201–E. The proposed rule change was published for comment in the **Federal Register** on July 1, 2019.[3] On August 12, 2019, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5]

On September 24, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On October 4, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[8] The Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register** on October 21, 2019.[9] And on December 20, 2019, the Commission designated a longer period for Commission action on the proposed rule change.[10]

This order disapproves the proposed rule change, as modified by Amendment No. 1. The Commission concludes that NYSE Arca has not met its burden under the Exchange Act and the Commission's Rules of Practice to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5), and, in particular, the requirement that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [11]

When considering whether NYSE Arca's proposal to list the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same standard used in its orders considering previous proposals to list commodity-based exchange-traded products (''ETPs''), including bitcoin [12]-based commodity trusts and bitcoin-based trust issued receipts.[13] As the Commission has explained, exchanges that list ETPs can meet their obligations under Exchange Act Section 6(b)(5) by demonstrating that there is a comprehensive surveillance-sharing agreement with a regulated market of significant size relating to the underlying assets.[14] Neither NYSE Arca nor the Sponsor challenges this standard.

The standard requires such surveillance-sharing agreements since they ''provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' [15] The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.[16] The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.[17]

In the context of this standard, the terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86195 (June 25, 2019), 84 FR 31373 (''Original Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 86631, 84 FR 42028 (Aug. 16, 2019). The Commission designated September 29, 2019, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 87071, 84 FR 51646 (Sept. 30, 2019) (''Order Instituting Proceedings'').

[8] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-39/srnysearca201939.htm.*

[9] *See* Securities Exchange Act Release No. 87301 (Oct. 15, 2019), 84 FR 56219 (''Notice''). Comments received are available at *https://www.sec.gov/comments/sr-nysearca-2019-39/srnysearca201939.htm.*

[10] *See* Securities Exchange Act Release No. 87813, 84 FR 71993 (Dec. 30, 2019).

[11] 15 U.S.C. 78f(b)(5).

[12] Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''Bitcoin Blockchain.'' The Bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. *See, e.g.,* Notice, 84 FR at 56222.

[13] *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''Winklevoss Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 (Oct. 16, 2019) (''Bitwise Order''). *See also* Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (''SolidX Order''). The Commission also notes that orders were issued by delegated authority on the following matters, which are under review before the Commission: Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (NYSEArca–2017–139) (''ProShares Order''); Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E, Securities Exchange Act Release No. 83912 (Aug. 22, 2018), 83 FR 43912 (Aug. 28, 2018) (SR–NYSEArca–2018–02) (''Direxion Order''); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (''GraniteShares Order'').

[14] *See* Winklevoss Order, 83 FR at 37580. *See also id.* at 37592 n.202 and accompanying text (discussing previous Commission approvals of commodity-trust ETPs); GraniteShares Order, 83 FR at 43925–27 nn.35–39 and accompanying text (discussing previous Commission approvals of commodity-futures ETPs). The Commission has stated that it considers two markets that are members of the Intermarket Surveillance Group to have a comprehensive surveillance-sharing agreement with one another, even if they do not have a separate bilateral surveillance-sharing agreement. *See* Winklevoss Order, 83 FR at 37580 n.19.

[15] Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998) (''NDSP Adopting Release''). *See also* Winklevoss Order, 83 FR at 37594; ProShares Order, 83 FR at 43936; Direxion Order, 83 FR at 43914; GraniteShares Order, 83 FR at 43924; Bitwise Order, 84 FR 55383.

[16] *See* NDSP Adopting Release, 63 FR at 70959.

[17] *See* Winklevoss Order, 83 FR at 37592–93; Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), *available at https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm.*

market.[18] A surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because a person attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.''

Consistent with this standard, for the commodity-trust ETPs approved to date for listing and trading, there has been in *every* case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (''ISG'') membership in common with, that market.[19] Moreover, the Commission notes that surveillance-sharing agreements have been consistently present whenever it has approved the listing and trading of derivative securities, even where the underlying securities were also listed on national securities exchanges—such as options based on an index of stocks traded on a national securities exchange—and were thus subject to the Commission's direct regulatory authority.[20]

Sponsors of proposed bitcoin-based ETPs in particular have attempted to demonstrate that other means besides surveillance-sharing agreements will be sufficient to prevent fraudulent and manipulative acts and practices, including that the bitcoin market as a whole or the relevant underlying bitcoin market is ''uniquely'' and ''inherently'' resistant to manipulation.[21] For example, the Winklevoss Order addressed an assertion that ''bitcoin and bitcoin [spot] markets'' generally, as well as one bitcoin trading platform specifically, have unique resistance to fraud and manipulation; and the Bitwise Order addressed the assertion that prices from at least certain bitcoin trading platforms (''the 'real' bitcoin spot market as opposed to the 'fake' and non-economic bitcoin spot market'') possessed such unique resistance.[22] While the listing exchanges there failed to satisfy their burden to demonstrate the validity of these contentions, the Commission agreed that if a listing exchange could establish that the underlying market inherently possessed a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets, it would not necessarily need to enter into a surveillance-sharing agreement with a regulated significant market.[23] Such resistance to fraud and manipulation must be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.[24]

Here, Wilshire Phoenix Funds, LLC (''Sponsor'') would base the pricing mechanism for the proposed ETP on the Chicago Mercantile Exchange (''CME'') CF Bitcoin Reference Rate (''CME CF BRR'' or ''Bitcoin Reference Rate''). As discussed further below, the Bitcoin Reference Rate is derived from trade prices of bitcoin on certain bitcoin spot platforms (''Constituent Platforms''). NYSE Arca and the Sponsor contend that the proposal satisfies the Commission's standard, as set forth in its prior orders, because (1) the segment of the bitcoin spot market represented by the spot bitcoin platforms that contribute to the Bitcoin Reference Rate is uniquely and inherently resistant to manipulation; and (2) NYSE Arca has entered into a surveillance-sharing agreement with a regulated bitcoin market of significant size.[25] NYSE Arca also asserts that approval of the proposal is consistent with Section 6(b)(5) of the Exchange Act because it would protect investors and the public interest.[26]

In the analysis that follows, the Commission examines whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act by addressing in Section III.B.1 assertions that the relevant bitcoin market inherently possesses a unique resistance to manipulation; addressing in Section III.B.2 assertions that NYSE Arca has entered into a surveillance-sharing agreement with a regulated market of significant size related to bitcoin; and addressing in Section III.C assertions that the proposal is consistent with the protection of investors and the public interest. The Commission concludes that NYSE Arca has not established that the relevant bitcoin market possesses a resistance to manipulation that is unique beyond that of traditional security or commodity markets such that it is inherently resistant to manipulation. The Commission further concludes that NYSE Arca has not established that an actor trying to manipulate the proposed ETP would be reasonably likely to trade in the CME bitcoin futures market. And the Commission concludes that NYSE Arca has not established that it has a surveillance-sharing agreement with the Constituent Platforms or that the Constituent Platforms constitute a regulated market, such that it has established that it has entered into a surveillance-sharing agreement with a regulated market of significant size with respect to bitcoin.

The Commission emphasizes that its disapproval of this proposed rule change does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment. Rather, the Commission is disapproving this proposed rule change because, as

[18] *See* Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants. *See id.*

[19] *See* Winklevoss Order, 84 FR at 37593–94.

[20] *See* Bitwise Order, 84 FR at 55386, 55390 (citing Winklevoss Order, 84 FR at 37593); Securities Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR–Amex–93–28) (order approving listing of options on American Depository Receipts). The Commission has also required a surveillance-sharing agreement in the context of index options even when (i) all of the underlying index component stocks were either registered with the Commission or exempt from registration under the Exchange Act; (ii) all of the underlying index component stocks traded in the U.S. either directly or as ADRs on a national securities exchange; and (iii) effective international ADR arbitrage alleviated concerns over the relatively smaller ADR trading volume, helped to ensure that ADR prices reflected the pricing on the home market, and helped to ensure more reliable price determinations for settlement purposes, due to the unique composition of the index and reliance on ADR prices. *See* Securities Exchange Act Release No. 26653 (Mar. 21, 1989), 54 FR 12705, 12708 (Mar. 28, 1989) (SR–Amex–87–25) (stating that ''surveillance-sharing agreements between the exchange on which the index option trades and the markets that trade the underlying securities are necessary'' and that ''[t]he exchange of surveillance data by the exchange trading a stock index option and the markets for the securities comprising the index is important to the detection and deterrence of intermarket manipulation.''). And the Commission has required a surveillance-sharing agreement even when approving options based on an index of stocks traded on a national securities exchange. *See* Securities Exchange Act Release No. 30830 (June 18, 1992), 57 FR 28221, 28224 (June 24, 1992) (SR–Amex–91–22) (stating that surveillance-sharing agreements ''ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses'').

[21] *See* Winklevoss Order, 84 FR at 37580, 37582–91; *see also* Bitwise Order, 84 FR at 55383, 55385–406.

[22] *See id.*

[23] *See id.* The Commission has also recognized that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. Winklevoss Order, 84 FR at 37580. The Commission is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

[24] *See supra* notes 19 and 20.

[25] *See* Notice, 84 FR at 56225–26.

[26] *See id.* at 56230.

discussed below, NYSE Arca has not met its burden to demonstrate that its proposal is consistent with the requirements of Exchange Act Section 6(b)(5).

Finally, the Commission recognizes that over time, bitcoin-related markets may develop in a way that would make it possible for a bitcoin-based ETP to satisfy the requirements of the Exchange Act. For example, existing or newly created bitcoin futures markets that are regulated may achieve significant size, and an ETP listing exchange may be able to demonstrate in a proposed rule change that it will be able to address the risk of fraud and manipulation by sharing surveillance information with a regulated market of significant size related to bitcoin, as well as, where appropriate, with the relevant spot markets underlying such bitcoin derivatives. Should these circumstances develop, or conditions otherwise change in a manner that affects the Exchange Act analysis, the Commission would then have the opportunity to consider whether a particular bitcoin-based ETP would be consistent with the requirements of the Exchange Act.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

As described in detail in the Notice, NYSE Arca proposes to amend NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares on the Exchange,[27] and to list and trade Shares of the Trust under NYSE Arca Rule 8.201–E, as proposed to be amended.

Proposed Amendments to NYSE Arca Rule 8.201–E

NYSE Arca Rule 8.201–E(c)(1) currently states that Commodity-Based Trust Shares are issued by a trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and may be redeemed in the same specified minimum number by a holder for the quantity of the underlying commodity. NYSE Arca proposes to amend Rule 8.201–E(c)(1) to provide that Commodity-Based Trust Shares may be issued and redeemed for the underlying commodity and/or cash. NYSE Arca further proposes to amend Rule 8.201–E(c)(2) to state that the term ''commodity'' is defined in Section 1(a)(9) of the Commodity Exchange Act.

Proposal To List and Trade Shares of the Trust

The Shares would be issued by the Trust, a Delaware statutory trust. The Trust would operate pursuant to a trust agreement between the Sponsor and Delaware Trust Company. UMB Bank N.A. would act as custodian for the Trust's cash and U.S. treasury assets (''Cash and Treasury Custodian''), UMB Fund Services, Inc. would act as administrator of the Trust, and Broadridge Corporate Issuer Solutions, Inc. would act as the transfer agent for the Trust's Shares. Coinbase Custody Trust Company, LLC would act as the Bitcoin custodian for the Trust (''Bitcoin Custodian'').[28]

The investment objective of the Trust would be for the Shares to closely reflect the Bitcoin Treasury Index (''Index''), less the Trust's liabilities and expenses. The Trust would have no assets other than (a) bitcoin and (b) short-term U.S. Treasury securities with a maturity of less than one year (''T-Bills''). The Trust would also hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust. Bitcoin would be held by the Bitcoin Custodian on behalf of the Trust, and T-Bills and U.S. dollars would be held by the Cash and Treasury Custodian on behalf of the Trust. The amount of bitcoin and T-Bills held by the Trust would be determined by the Index.[29]

The Index is calculated and published by Solactive AG (''Index Calculation Agent'').[30] The level of the Index is published on each business day at approximately 5:00 p.m. Eastern time and has two components: (1) A notional component representing bitcoin (''Bitcoin Component''); and (2) a notional component representing T-Bills (''Treasury Component''). On a monthly basis, the Index rebalances its weighting of the Bitcoin Component and the Treasury Component utilizing a mathematically derived passive rules-based methodology that is based on the daily volatility of the ''Bitcoin Price.'' The Bitcoin Price, which will be the price of bitcoin used to determine the weighting of the Bitcoin component and the Treasury Component of the Index, as well as the value of bitcoin held by the Trust, would be based on the Bitcoin Reference Rate. Following the calculation of the weighting of the components of the Index, the Trust would rebalance its holdings in bitcoin and T-Bills in order to closely replicate the Index.[31]

According to the proposal, the Trust may offer and sell Shares from time to time through underwriters, placement agents, or distributors, or such other means as the Sponsor may determine. The Sponsor also reserves the right to issue Shares of the Trust from time to time through direct placements. In addition, upon at least five business days' prior written notice, a shareholder may redeem all or a portion of its Shares on the last business day of each calendar month. All redemptions will be based on the net asset value (''NAV'') of Shares submitted for redemption, determined as of the last business day of the applicable calendar month. In general, redemptions would be deemed to occur on a ''first-in first-out'' basis among Shares held by a particular shareholder.[32]

III. Discussion

A. The Applicable Standard for Review

The Commission must consider whether NYSE Arca's proposal is consistent with the Exchange Act. Section 6(b)(5) of the Exchange Act requires, in relevant part, that the rules of a national securities exchange be designed ''to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [33] Under the Commission's

[27] NYSE Arca Rule 8.201–E defines the term ''Commodity-Based Trust Shares'' as a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust, which will deliver to the redeeming holder the quantity of the underlying commodity.

[28] *See* Notice, 84 FR at 56221.

[29] *See id.*

[30] According to the Exchange, the Index is a passive, rules-based index, and the Index Calculation Agent provides calculation services only. The Index Calculation Agent is not affiliated with the Sponsor and has represented that it and its employees are subject to market abuse laws and that the Index Calculation Agent has established and maintains processes and procedures to prevent the use and dissemination of material, non-public information regarding the Index. *See* Notice, 84 FR at 56222 n.17.

[31] *See id.* at 56222.

[32] *See id.* at 56224. Further details regarding the Trust and the Shares, including investment strategies, calculation of the NAV and indicative fund value, creation and redemption procedures, and additional background information about bitcoins and the bitcoin network, among other things, can be found in the Notice and the registration statement filed with the Commission on Form S–1/A (File No. 333–229187) under the Securities Act of 1933 (''Registration Statement''), as applicable.

[33] 15 U.S.C. 78f(b)(5). Pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2), the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act. Exchange Act Section 6(b)(5) states that an exchange shall not be registered as a national securities exchange unless the Commission

Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [34]

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[35] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[36] Moreover, ''unquestioning reliance'' on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.[37]

B. Whether NYSE Arca Has Met Its Burden To Demonstrate That the Proposal Is Designed To Prevent Fraudulent and Manipulative Acts and Practices

1. Assertions That the Bitcoin Market Is Inherently or Uniquely Resistant to Manipulation

In analyzing whether NYSE Arca has met its burden to demonstrate that its proposal is consistent with Exchange Act Section 6(b)(5), the Commission first examines whether the record supports the Sponsor's assertions that the segment of the bitcoin spot market that the Sponsor asserts is relevant for purposes of the proposed ETP is inherently resistant to manipulation and fraudulent activity, such that a surveillance-sharing agreement with a regulated market of significant size is unnecessary. To do so, the Commission assesses whether the record establishes that the relevant segment of the bitcoin spot market possesses unique means to resist manipulation that are novel beyond those protections found in traditional securities or commodities markets.

NYSE Arca and the Sponsor do not contest the general presence of manipulation in the bitcoin spot market; however, the Sponsor states that, for purposes of the proposed ETP, the relevant segment of the bitcoin spot market is composed of the Constituent Platforms and that an assessment of the trading activity on these platforms supports a conclusion that they are inherently resistant to manipulation.[38] In addition, the Sponsor asserts that the regulation of the Constituent Platforms further establishes they are inherently resistant to manipulation.[39] The Sponsor also states that the Bitcoin Reference Rate, which serves as the proposed ETP's bitcoin pricing mechanism, is inherently resistant to manipulation [40] and that certain features of the proposed ETP establish its inherent resistance to manipulation.[41]

The Commission concludes that the record does not establish that the segment of the bitcoin spot market made up of the Constituent Platforms is inherently resistant to manipulation, and therefore does not support the claim that the relevant underlying bitcoin market is inherently and uniquely resistant to manipulation such that the Commission should dispense with the need to require NYSE Arca to enter into a surveillance-sharing agreement with a regulated market of significant size. While mechanisms such as the use of the Bitcoin Reference Rate serve to mitigate the potential for manipulation of the proposed ETP, none of the Sponsor's assertions suggest that the underlying market possesses any unique measures to resist manipulation that are not present in other security or commodity markets, where the Commission has long concluded that surveillance-sharing agreements are necessary even when listing a derivative security whose underlying components are securities listed on national securities exchanges. Importantly, even if the Sponsor and NYSE Arca established each of the contentions addressed below, such assertions would render the proposed ETP as based on the relevant underlying bitcoin market no more resistant to manipulation than derivative products based on traditional commodities or securities markets. Thus, the record does not establish that NYSE Arca may satisfy Section 6(b)(5) of the Exchange Act without entering into a surveillance-sharing agreement with a regulated market of significant size.

(a) Assertions About the Nature of the Bitcoin Spot Market

(i) Assertions Regarding Trading Characteristics

(A) Representations Made and Comments Received

The Sponsor asserts that, when determining whether the market for the asset underlying the proposed ETP is inherently resistant to manipulation, the relevant ''market'' is the segment of the bitcoin spot market formed by the Constituent Platforms, and that this spot market segment is inherently resistant to manipulation.[42] The Sponsor states that its own analysis and an analysis performed by CME both show that the Constituent Platforms consistently exhibit prices that are closely aligned.[43] The Sponsor asserts that this data implies the presence of market participants on the Constituent Platforms that are maintaining uniform pricing across the Constituent Platforms through the near-simultaneous buying and selling of bitcoin on different platforms to take advantage of any temporary price dislocations between those platforms (*i.e.,* market arbitrage).[44] As a result, according to the Sponsor, a would-be manipulator that places a trade on a Constituent Platform would often see any price dislocation eliminated by arbitrageurs that bring bitcoin prices on that platform in line with bitcoin prices on the other Constituent Platforms.[45] NYSE Arca also asserts that the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any Constituent Platform would

determines that ''[t]he rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.'' 15 U.S.C. 78(f)(b)(5).

[34] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[35] *See id.*

[36] *See id.*

[37] *Susquehanna Int'l Group, LLP* v. *Securities and Exchange Commission,* 866 F.3d 442, 447 (D.C. Cir. 2017) (''Susquehanna'').

[38] *See* Notice, 84 FR at 56224–25; Wilshire Phoenix Submission II at 3–4, 8; Registration Statement at 32.

[39] *See* Wilshire Phoenix Submission II at 6–7, 12–13.

[40] *See* Wilshire Phoenix Submission I at 5.

[41] *See* Notice, 84 FR at 56228; Wilshire Phoenix Submission II at 28–29.

[42] *See* Notice, 84 FR at 56225; Letter from Wilshire Phoenix Funds, LLC (Dec. 18, 2019) (''Wilshire Phoenix Submission II'') at 4–5. NYSE Arca, the Sponsor, and other commenters may refer to the spot trading of bitcoin on ''exchanges.'' The platforms that trade bitcoin in the bitcoin spot market are not registered with the Commission as national securities exchanges. *See* 15 U.S.C. 78e, 78f.

[43] *See* Wilshire Phoenix Submission II at 8. *See also* Notice, 84 FR at 56225 (stating that, according to analysis performed by the Sponsor, price discovery is substantially similar among each of the Constituent Platforms).

[44] *See* Wilshire Phoenix Submission II at 8.

[45] *See* Wilshire Phoenix Submission II at 8.

likely require a large amount of capital to maintain a significant presence on the Constituent Platforms and thus outweigh trading by arbitrageurs who are potentially eliminating any pricing differences across platforms.[46] NYSE Arca further states, in describing the Sponsor's analysis, that none of the Constituent Platforms exhibit a statistically significant average difference from the Bitcoin Reference Rate.[47] The Constituent Platforms also show, according to NYSE Arca, a substantially similar degree of price volatility.[48] Therefore, the Sponsor and NYSE Arca assert that the Sponsor's data supports the conclusion that robust arbitrage trading and sufficient liquidity provision occurs among the Constituent Platforms, which would reduce the possibility of manipulation in that segment of the bitcoin market.[49]

In addition, the administrator of the Bitcoin Reference Rate, CF Benchmarks, Ltd. (''CF Benchmarks''), conducted an analysis of how closely the Constituent Platforms tracked each other during the period January 2018 through September 2019.[50] CF Benchmarks states that the analysis showed an average variance of between 0.000% and 0.008% when a single Constituent Platform was omitted, and that this analysis seems to support NYSE Arca's assertion that there is substantially similar price discovery among the Constituent Platforms.[51] In addition, CF Benchmarks states that it conducted an analysis of the correlation of prices observed among Constituent Platform pairs on a per minute basis during the Bitcoin Reference Rate's observation window over the previous twelve months.[52] According to CF Benchmarks, this analysis showed mean correlations from 85.45% to 90.72% and median correlations from 90.25% to 94.73%, and these results indicate that the correlation is very strong, which therefore supports NYSE Arca's view that the degree of price volatility is substantially similar.[53] The Sponsor also asserts that CF Benchmarks' analysis supports the Sponsor's conclusions regarding arbitrage and liquidity, which could reduce the likelihood of manipulation on the Constituent Platforms.[54]

The Sponsor also states that it is widely acknowledged that numerous markets have historically been subject to manipulation by ''bad actors'' and that, despite continual efforts by regulators and other market participants, it is highly unlikely that all such ''bad actors'' and manipulation attempts can be fully mitigated in markets, including in the bitcoin markets.[55] NYSE Arca and the Sponsor cite to the Commission's previous disapproval of proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts, and note that the Commission has expressed concern that the bitcoin market at issue in such proposals may be subject to manipulation.[56] In addition, as NYSE Arca states, the Sponsor recognizes that some of the Commission's concerns are that a significant portion of bitcoin trading occurs on unregulated platforms and that there is a concentration of a significant number of bitcoin in the hands of a small number of holders.[57] NYSE Arca asserts that these aspects are not unique to bitcoin and are present in a number of markets, including commodity markets.[58]

Several other commenters also address manipulation in the bitcoin market. One commenter states that ''[t]here is no doubt'' that the bitcoin market is insecure and manipulated, even with the recent introduction of a physically-settled futures product.[59] Another commenter asserts that the proposal should be rejected because it is highly risky to build an ETP on bitcoin.[60] A third commenter states that the proposal has not comprehensively or convincingly addressed the issues surrounding manipulation in the bitcoin market.[61]

(B) Analysis

The record does not establish that the segment of the bitcoin spot market made up of the Constituent Platforms is inherently and uniquely resistant to manipulation. The Sponsor and other commenters state that manipulation is present in the spot bitcoin market generally.[62] The Trust's Registration Statement concedes that ''the price of Bitcoin may be influenced by fraud and manipulation for a number of reasons,'' including that ''many Bitcoin spot markets are not regulated or supervised by a government agency.''[63] The Trust's Registration Statement also states that a ''bad actor could manipulate the Bitcoin Blockchain to adversely affect an investment in the Shares . . . if such a bad actor were to obtain control of more than fifty percent (50%) of the processing power on the Bitcoin Network.''[64] And the Trust's Registration Statement recognizes that it is ''reasonably likely'' that ''a small group of early Bitcoin adopters hold a significant proportion of the Bitcoin that has thus far been created,'' ''[t]here are no regulations in place that would prevent a large holder of Bitcoin from selling their Bitcoin,'' and that such sales could ''affect the price of Bitcoin.''[65]

NYSE Arca and the Sponsor also do not contest the presence of possible sources of fraud and manipulation in the bitcoin spot market generally that the Commission has raised in previous orders, which have included (1) ''wash'' trading, (2) persons with a dominant position in bitcoin manipulating bitcoin pricing, (3) hacking of the bitcoin network and trading platforms, (4) malicious control of the bitcoin network, (5) trading based on material,

[46] *See* Notice, 84 FR at 56225. *See also* Wilshire Phoenix Submission II at 7–8 (asserting that the capital necessary to maintain a significant presence on the Constituent Platforms renders manipulative trading prohibitively expensive).

[47] *See* Notice, 84 FR at 56225. NYSE Arca also states that, during one Bitcoin Reference Rate observation window, the volume of bitcoin trading among the five Constituent Platforms ranged from 10.7% to 33.1%. *See id.*

[48] *See* Notice, 84 FR at 56225 (stating that the standard deviation of the difference of prices at 4:00 p.m. London time on the Constituent Platforms was 1.12% to 1.13% and that when prices deviate from the Bitcoin Reference Rate, 86.5% of the time they deviate in the same direction).

[49] *See* Wilshire Phoenix Submission II at 9. *See also* Notice, 84 FR at 56225.

[50] *See* Letter from CF Benchmarks LTD (Oct. 28, 2019) (''CF Benchmarks Letter'') at 5.

[51] *See* CF Benchmarks Letter at 5–6. This analysis also showed a maximum variance of between 0.049% and 1.079% when one of the Constituent Platforms was omitted. *See id.* at 6.

[52] *See id.* at 6.

[53] *See* CF Benchmarks Letter at 6.

[54] *See* Wilshire Phoenix Submission II at 9.

[55] *See* Wilshire Phoenix Submission II at 3. *See also* Notice, 84 FR at 56224 (stating that the Sponsor acknowledges that numerous markets have historically been subject to manipulation).

[56] *See* Notice, 84 FR at 56224; Wilshire Phoenix Submission II at 3.

[57] *See* Notice, 84 FR at 56225.

[58] *See* Notice 84 FR at 56225 (comparing bitcoin context to the trading of gold bullion on unregulated OTC markets and citing statistics that a significant percentage of gold is held by a relatively small number of holders).

[59] *See* Letter from Jenny Thompson (Oct. 12, 2019) (''Thompson Letter'').

[60] *See* Letter from Robert Musgrove (Oct. 12, 2019).

[61] *See* Letter from Avinash Shenoy (Oct. 16, 2019) (stating that there are similar problems in the traditional market).

[62] *See supra* notes 55, 59–61, and accompanying text (discussing comments regarding bitcoin's susceptibility to manipulation).

[63] Registration Statement at 32 (also stating that additional reasons include that ''certain platforms may lack critical system safeguards, including customer protections; volatile market price swings or flash crashes; cyber risks, such as hacking customer wallets; and/or platforms selling from their own accounts and putting customers at an unfair disadvantage''). *See also* Registration Statement at 18–19 (stating that the ''Trust may be the target of malicious cyber-attacks'').

[64] Registration Statement at 26. *See also supra* note 57 and accompanying text.

[65] Registration Statement at 29. *See also id.* at 49 (''because the Bitcoin Blockchain records ownership of Bitcoin by reference to the unique addresses of each Bitcoin 'wallet,' a certain pseudo-anonymity of ownership is created'').

non-public information, including the dissemination of false and misleading information, (6) manipulative activity involving Tether, and (7) fraud and manipulation at Mt. Gox, a bitcoin trading platform.[66] Instead, NYSE Arca and the Sponsor focus their analysis on the Constituent Platforms, which the Sponsor asserts represent a segment of the bitcoin spot market that is inherently resistant to manipulation.[67]

Importantly, however, the record does not demonstrate that these possible sources of fraud and manipulation in the broader bitcoin spot market do not affect the Constituent Platforms that represent a slice of the bitcoin spot market.[68] In the Bitwise Order, the Commission stated that, in the absence of a showing that fraudulent, manipulative, fake, or otherwise non-economic trading in the broader bitcoin market does not affect the smaller segment of the bitcoin market on which the proposed ETP was based, the listing exchange and the proposal's sponsor ''will not be able to establish that the identified [segment of the] bitcoin market is uniquely resistant to fraud and manipulation, because prices based on fraudulent and manipulative activity on platforms with fake or non-economic volume could be used to affect prices on the identified . . . platforms.'' [69] Similarly, with the current proposal, to the extent that fraudulent and manipulative trading on the broader bitcoin market could influence prices or trading activity on the Constituent Platforms, the Constituent Platforms would not be inherently resistant to manipulation.

NYSE Arca, the Sponsor, and CF Benchmarks discuss evidence of a correlation of bitcoin prices among the Constituent Platforms,[70] but do not address whether or not there is any lead/lag relationship between prices on the Constituent Platforms and prices on other bitcoin spot market platforms or where price formation occurs as between the Constituent Platforms and the rest of the spot market.[71] Absent any evidence about the relationship between the Constituent Platforms and the rest of the spot market, as in the Bitwise Order, NYSE Arca and the Sponsor cannot establish that the Constituent Platforms are uniquely resistant to manipulation.

In addition, the record does not contain any evidence that demonstrates that the asserted effectiveness of arbitrage in the identified segment of the spot bitcoin market would, by itself, provide unique resistance to manipulation sufficient to do away with the need for a surveillance-sharing agreement with a significant, regulated market.[72] In the Bitwise Order, the Commission stated that its reliance on surveillance-sharing agreements for derivative securities products has not been limited to ETPs based on commodities, but has also extended to equity options based on securities listed on national securities exchanges.[73] Accordingly, even efficient price arbitrage may not eliminate the need for surveillance-sharing agreements. As in the Bitwise Order, there is no evidence in the record here that arbitrage in the Constituent Platforms is of such unique effectiveness that it would essentially insulate the proposed ETP from attempts at manipulation.[74]

Moreover, the record does not demonstrate that arbitrage among the Constituent Platforms is as ''robust'' as the Sponsor claims. The Sponsor and CF Benchmarks (the administrator of the Bitcoin Reference Rate) provide certain metrics regarding price correlations, spread, and volatility,[75] but these figures alone present a selective and incomplete analysis. The record does not provide any evidence about how these figures compare to other markets or how they might vary over time. Absent such context, the Commission concludes that these figures represent an insufficient basis upon which to justify a conclusion about a relevant market's inherent resistance to manipulation. Further, even if the record demonstrated that the quality of arbitrage and the depth of liquidity on the Constituent Platforms made manipulation more difficult or costly than it would be otherwise, that would, as the Commission stated in the Bitwise Order, speak to providing some resistance to manipulation. However, the presence of these factors would not be sufficient to establish a unique resistance to manipulation that would justify dispensing with the standard surveillance-sharing agreement with a significant, regulated market.[76]

(ii) Assertions Regarding Regulation of the Constituent Platforms

(A) Representations Made and Comments Received

NYSE Arca and the Sponsor assert that each of the Constituent Platforms is regulated by various federal, state, and international regulators that impose a variety of obligations designed to, among other things, protect the Constituent Platforms from fraud and manipulation.

NYSE Arca states that all of the Constituent Platforms are registered with the U.S. Department of the Treasury's Financial Crimes Enforcement Network (''FinCEN'') as money services businesses (''MSB''); three of the five Constituent Platforms have obtained state money transmitter licenses; and the other two Constituent Platforms are operated by trust companies chartered by the State of New York, which subjects them to New York anti-money-laundering (''AML'') requirements and enables them to operate in other states without separate money transmitter licenses.[77] NYSE Arca and the Sponsor state that, as MSBs, the Constituent Platforms must fully comply with U.S. Bank Secrecy Act (''BSA'') and AML requirements, which include developing, implementing, and maintaining an

[66] *See supra* note 56 and accompanying text; Winklevoss Order, 83 FR at 37585–86; Bitwise Order, 84 FR at 55391 n.140, 55402 & n.331 (discussing pending litigation against a bitcoin trading platform for fraudulent conduct relating to Tether). *See also* Winklevoss Order, 83 FR at 37584–86 (discussing potential types of manipulation in the bitcoin spot market); Bitwise Order, 84 FR at 55383 (stating that the sponsor of the proposed ETP presented an analysis of the bitcoin spot market that asserts that 95% of the spot market is dominated by fake and non-economic activity, such as wash trades), 55391 (discussing possible sources of fraud and manipulation in the bitcoin spot market). The Commission has also noted that fraud and manipulation in the bitcoin spot market could persist for a significant duration. *See* Bitwise Order, 84 FR at 55405 & n.379.

[67] *See supra* note 42. The Commission notes that an academic paper, the ''Griffin-Shams Paper,'' suggesting that the price of bitcoin was manipulated with Tether, that the Commission cited in the Winklevoss Order and the Bitwise Order has recently been updated. *See* Griffin, John M. and Shams, Amin, *Is Bitcoin Really Un-Tethered?* (October 28, 2019), *available at https://ssrn.com/abstract=3195066. See also* Winklevoss Order, 83 FR at 37585–86; Bitwise Order, 84 FR at 55405 n.379.

[68] In fact, NYSE Arca or the Sponsor did not discuss the percentage of overall bitcoin spot market trading volume conducted on the Constituent Platforms nor did they attempt to verify previously established spot market volume figures showing the percentage of trading conducted on the Constituent Platforms. *See, e.g.,* Bitwise Order, 84 FR at 55393.

[69] Bitwise Order, 84 FR at 55398.

[70] *See supra* notes 43–54 and accompanying text.

[71] Reinforcing the Commission's conclusion, a recent study provides a preliminary indication that a significant degree of bitcoin price formation may occur on spot market platforms other than the Constituent Platforms. *See* An Analysis of Price Discovery in Bitcoin Spot Markets (Jan. 15, 2020), *available at https://medium.com/digitalassetresearch/an-analysis-of-price-discovery-in-bitcoin-spot-markets-7563fbf1c890.*

[72] *See* Bitwise Order, 84 FR at 55390.

[73] *See* Bitwise Order, 84 FR at 55390 (citing Winklevoss Order, 84 FR at 37593; Securities Exchange Act Release No. 33555 (Jan. 31, 1994), 59 FR 5619, 5621 (Feb. 7, 1994) (SR–Amex–93–28) (order approving listing of options on American Depository Receipts)). *See also supra* note 20 and accompanying text.

[74] *See* Bitwise Order, 84 FR at 55391.

[75] *See supra* notes 43, 48, 50–53 and accompanying text.

[76] *See* Bitwise Order, 84 FR at 55391.

[77] *See* Notice, 84 FR at 56227 n.61.

effective AML program.[78] NYSE Arca represents that the Sponsor concludes that the presence of robust AML and know-your-customer (''KYC'') policies and procedures should lead to robust trading data and may inhibit trading on the Constituent Platforms that is intended to manipulate the Bitcoin Price.[79]

In addition, the Sponsor asserts that by virtue of being Constituent Platforms for calculation of the Bitcoin Reference Rate, the CME and, in turn, the Commodity Futures Trading Commission (''CFTC'') oversee the activity on the Constituent Platforms in a manner that renders them inherently resistant to manipulation. The Sponsor states that the CME CF Oversight Committee (''CME Committee'') determines the membership of platforms used to calculate the Bitcoin Reference Rate.[80] NYSE Arca states that, according to the Sponsor, CME's criteria for each of the Constituent Platforms requires that the platform facilitate spot trading of the relevant cryptocurrency against the corresponding fiat currency (''Relevant Pair'') and make trade data and order data available through an Automatic Programming Interface (''API'') with sufficient reliability, detail, and timeliness.[81] In addition, (1) the platform's Relevant Pair spot trading volume must meet minimum thresholds; (2) the platform must publish policies to ensure fair and transparent market conditions at all times and have processes in place to identify and impede illegal, unfair, or manipulative trading practices; (3) the platform must not impose undue barriers to entry or restrictions on market participants, and utilizing the platform must not expose market participants to undue credit risk, operational risk, legal risk, or other risks; (4) the platform must comply with applicable law and regulation, including, but not limited to, capital markets regulations, money transmission regulations, client money custody regulations, KYC regulations, and AML regulations; and (5) the platform must cooperate with inquiries and investigations of regulators and CF Benchmarks upon request and must execute data-sharing agreements with CME.[82] Furthermore, the Sponsor asserts that, as an additional protection from fraud and manipulation, the Constituent Platforms are required to maintain transparent and accurate trade and order data, and that compliance with this requirement is under the oversight of the CME Committee.[83]

The Sponsor also states that CF Benchmarks, among other things, must establish appropriate monitoring processes and procedures designed to identify any breaches of its practice standards and any attempted manipulation or manipulative behavior and report any such incidents in a timely manner.[84] The Sponsor states that pursuant to this authority, Constituent Platforms must make trade and order data available through an API with sufficient reliability, detail, and timeliness to meet CF Benchmarks' standards.[85] Furthermore, according to the Sponsor, Constituent Platforms must have processes to detect and prevent manipulative trading.[86]

Adherence to the membership eligibility criteria is monitored by CF Benchmarks and the CME Committee, and the CME Committee may remove or suspend a Constituent Platform from the Bitcoin Reference Rate in the event such criteria are not being met.[87] According to the Sponsor, the CME Committee was established to protect the integrity of the methodology and calculation process, and is responsible for reviewing and ''providing challenge on'' all aspects of the methodology and calculation process and providing effective oversight of CF Benchmarks as it relates to the Bitcoin Reference Rate, including CF Benchmarks' manipulation surveillance.[88] In addition, the CME Committee is responsible for reviewing reports on any complaints or concerns regarding the Bitcoin Reference Rate's relevance, resistance to manipulation, ''replicability,'' transparency and/or compliance with the applicable methodology, and overseeing the related investigation and remedial actions, if any.[89] As such, the Sponsor states that the CME Committee is responsible for reviewing and enforcing CF Benchmarks' manipulation surveillance and enforcement as it relates to the Constituent Platforms.[90]

The Sponsor further asserts that the CME, as a designated contract market (''DCM''), is required, among other things, to ensure appropriate mechanisms to surveil, detect, and share information regarding any manipulation or price distortion on its market.[91] The Sponsor states that the CME uses a combination of real-time monitoring, position limits, and information-sharing agreements with underlying cash markets to prevent and detect manipulative practices.[92] In addition, the Sponsor states that as part of the CFTC staff's heightened review of CME bitcoin futures, CME, among other things, monitors data from cash markets with respect to price settlements and other bitcoin prices more broadly, and identifies anomalies and disproportionate moves in the cash markets as compared to the futures markets.[93] Lastly, NYSE Arca and the Sponsor assert that the CFTC, by virtue of its oversight of the CME, has anti-fraud and anti-manipulation authority over the spot bitcoin markets, including the Constituent Platforms.[94]

Finally, the Sponsor states that surveillance of the Constituent Platforms is further reinforced by the UK Financial Conduct Authority's (''FCA'') oversight of CF Benchmarks and CF Benchmarks' obligations as a benchmark administrator under European Union regulations.[95] According to the Sponsor, under the EU Benchmark Regulation (''EU BMR''), CF Benchmarks must establish adequate systems and effective controls to detect any attempted manipulation on each of the Constituent Platforms and report

[78] *See id.* at 56227; *see also* Wilshire Phoenix Submission II at 12. According to the Sponsor, recent guidance issued by the Financial Action Task Force (''FATF'') also requires the Constituent Platforms to comply with AML regulations. *See* Wilshire Phoenix Submission II at 6, 12.

[79] *See* Notice, 84 FR at 56227 n.64.

[80] *See* Wilshire Phoenix Submission II at 6.

[81] *See* Notice, 84 FR at 56227.

[82] *See* Notice, 84 FR at 56227. *See also* Wilshire Phoenix Submission II at 7. NYSE Arca states that the CME monitors the Constituent Platforms to ensure compliance with its criteria and removed two platforms in April 2017 for failing to meet its criteria. *See* Notice, 84 FR at 56227 n.60.

[83] *See* Wilshire Phoenix Submission II at 7.

[84] *See* Wilshire Phoenix Submission II at 6, 16.

[85] *See id.* at 5, 7.

[86] *See id.* at 5, 6. The Sponsor argues that such rules, and the review of such rules by CF Benchmarks, are comparable to those used by a national securities exchanges or the futures exchanges associated with the assets underlying the commodity-trust ETPs approved to date. *See id.* at 14.

[87] *See* Wilshire Phoenix Submission II at 6, 15.

[88] *See* Wilshire Phoenix Submission II at 16–17.

[89] *See* Wilshire Phoenix Submission II at 17.

[90] *See* Wilshire Phoenix Submission II at 17.

[91] *See* Wilshire Phoenix Submission II at 23. The Sponsor asserts that a DCM may not list a contract that is readily susceptible to manipulation and that, pursuant to the Commodity Exchange Act, ''a DCM must establish, monitor and enforce rules of trading on its contract market, including access requirements, terms and conditions for trading, and rules prohibiting manipulation on the contract market.'' *See* Wilshire Phoenix Submission II at 23.

[92] *See* Wilshire Phoenix Submission II at 23–24.

[93] *See id.* at 24.

[94] *See* Notice, 84 FR at 56226 n.43; Wilshire Phoenix Submission II at 12–13.

[95] *See* Wilshire Phoenix Submission II at 17 (further noting that CF Benchmarks was authorized by the United Kingdom FCA and was granted permission to carry on the regulated activity of administering a benchmark, and that, as a result, CF Benchmarks is subject to regulatory oversight by the FCA).

any such attempts to the FCA.[96] The Sponsor argues that, like the Commission's regulation of national securities exchanges, the requirements of the EU BMR are designed to detect and deter manipulation on the Constituent Platforms and that, by requiring CF Benchmarks to establish procedures to identify and report such manipulation to the FCA, the EU BMR increases market surveillance and deters would-be manipulators by mandating information sharing through governmental oversight of the Bitcoin Reference Rate.[97] According to the Sponsor, the EU BMR also fosters information flow, cooperation, and coordination between the Constituent Platforms, CME, and ultimately NYSE Arca.[98]

(B) Analysis

The record does not demonstrate that the level of regulation present with respect to the Constituent Platforms makes that segment of the bitcoin spot market inherently and uniquely resistant to fraud and manipulation. The Sponsor concedes that, despite the efforts of regulators or other market participants, bad actors and manipulation attempts may continue to exist in the bitcoin markets.[99] The Sponsor likewise admits that the price of bitcoin may be influenced by fraud and manipulation because, among other things, ''many bitcoin spot markets are not regulated or supervised by a government agency,'' and because ''certain platforms may lack critical system safeguards, including customer protections.'' [100]

In addition, the record establishes that the level of regulation on the Constituent Platforms is not equivalent to the obligations and oversight of national securities exchanges or futures exchanges. While the Sponsor points to the Constituent Platforms' registrations with FinCEN as money services businesses, and two Constituent Platforms that are chartered by New York, the Commission stated in the Bitwise Order that there are substantial differences between FinCEN and New York state regulation compared to the Commission's regulation of the national securities exchanges.[101] For example, while there may be some overlap,[102] national securities exchanges are also, among other things, required to have rules that are ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.'' [103] Moreover, national securities exchanges must file proposed rules with the Commission regarding certain material aspects of their operations,[104] and the Commission has the authority to disapprove any such rule that is not consistent with the requirements of the Exchange Act.[105] Thus, national securities exchanges are subject to Commission oversight of, among other things, their governance, membership qualifications, trading rules, disciplinary procedures, recordkeeping, and fees.[106]

The Commission finds that the Constituent Platforms are materially different. While the Sponsor asserts that various regulatory entities require the Constituent Platforms to adopt certain policies and processes, such requirements are fundamentally different from the Exchange Act's requirements for national securities exchanges, and it is unclear the extent to which a federal regulator must approve or disapprove of the rules of the Constituent Platforms and directly oversee their implementation and enforcement. Thus, the Exchange Act explicitly tasks the Commission with the responsibility of ensuring that the rules of a national securities exchange, as an SRO, are fully responsive to regulatory needs and that there is no decrement between regulatory needs and SRO performance.[107] Currently, there is no regulatory authority that maintains similar obligations with respect to any policies or processes adopted by bitcoin spot trading platforms. Furthermore, unlike national

[96] *See* Wilshire Phoenix Submission II at 13. According to CF Benchmarks, any cases of suspected benchmark manipulation are escalated through the appropriate regulatory channels in accordance with its obligations under EU BMR. *See* CF Benchmarks Letter at 5.

[97] *See* Wilshire Phoenix Submission II at 13.

[98] *See* Wilshire Phoenix Submission II at 13.

[99] *See* Wilshire Phoenix Submission II at 3. The Sponsor acknowledges that any of the foregoing issues ''may adversely affect an investment in the Shares.'' *See id. See also* Registration Statement at 26 (acknowledging that a bad actor may be able to, among other things, alter the bitcoin blockchain on which the bitcoin network and most bitcoin transactions rely, control, exclude, or modify the ordering of bitcoin transactions, ''double-spend'' its own bitcoin (*i.e.,* spend the same bitcoin in more than one transaction) and prevent the confirmation of other users' transactions).

[100] Registration Statement at 32.

[101] *See* Bitwise Order, 84 FR at 55392 (''[t]here are substantial differences between the NYSDFS and FinCEN regulation versus the Commission's regulation of the national securities exchanges.''). The Commission notes that AML and KYC policies and procedures have been referenced in other bitcoin-based ETP proposals as a purportedly alternative means by which such ETPs would be uniquely resistant to manipulation. *See, e.g.,* Bitwise Order, 84 FR at 55386 n.55 & 55390. The Commission concludes here that such AML and KYC policies and procedures do not serve as a substitute for, and are not otherwise the dispositive factor in the analysis regarding, the importance of having a surveillance-sharing agreement with a regulated market of significant size relating to bitcoin. For example, AML and KYC policies and procedures do not substitute for the sharing of information about market trading activity or clearing activity, and do not substitute for regulation of national securities exchanges.

[102] *See CFTC* v. *McDonnell,* 287 F. Supp. 3d 213, 220–23, 228 (E.D.N.Y.), adhered to on denial of reconsideration, 321 F. Supp. 3d 366 (E.D.N.Y. 2018).

[103] 15 U.S.C. 78f(b)(5).

[104] 17 CFR 240.19b–4(a)(6)(i).

[105] Section 6 of the Exchange Act, 15 U.S.C. 78f, requires national securities exchanges to register with the Commission and requires an exchange's registration to be approved by the Commission, and Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), requires national securities exchanges to file proposed rules changes with the Commission and provides the Commission with the authority to disapprove proposed rule changes that are not consistent with the Exchange Act. DCMs (commonly called ''futures markets'') registered with and regulated by the CFTC must comply with, among other things, a similarly comprehensive range of regulatory principles and must file rule changes with the CFTC. *See, e.g.,* Designated Contract Markets (DCMs), CFTC, *available at http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/index.htm.*

[106] *See* Winklevoss Order, 83 FR at 37597. The Commission notes that the NYSDFS has issued ''guidance'' to supervised virtual currency business entities, stating that these entities must ''implement measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing.'' *See* Maria T. Vullo, Superintendent of Financial Services, NYSDFS, *Guidance on Prevention of Market Manipulation and Other Wrongful Activity* (Feb. 7, 2018), *available at https://www.dfs.ny.gov/docs/legal/industry/il180207.pdf.* The NYSDFS recognizes that its ''guidance is not intended to limit the scope or applicability of any law or regulation'' (*id.*), which would include the Exchange Act. The Commission further notes that nothing in the record evidences whether the Constituent Platforms have complied with this NYSDFS guidance. FinCEN's guidance regarding the application of its regulations to digital assets notes that its guidance does not ''affect the obligations of any of the participants described herein under other regulatory frameworks,'' for example, obligations under ''federal securities law.'' FinCEN Guidance No. FIN–2019–G001: Application of FinCEN's Regulation to Certain Business Models Involving Convertible Virtual Currencies, at 24 n.75 (May 9, 2019), *available at https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf. See also* FinCEN Guidance No. FIN–2013–G001: Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, at 1 n.1 (Mar. 18, 2013), *available at https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf* (noting that FinCEN's guidance ''should not be interpreted as a statement by FinCEN about the extent to which [certain] activities comport with other federal or state statutes, rules, regulations, or orders'').

[107] *See* 15 U.S.C. 78s(b). *See also* S. Rep. No. 94–75, at 30 (1975).

securities exchanges, the Constituent Platforms are not SROs and therefore do not have authority to impose discipline upon their participants. Accordingly, the Commission maintains that the level of regulation on the Constituent Platforms, as asserted by the Sponsor, is not equivalent to the obligations and oversight of national securities exchanges, and the Commission likewise rejects the Sponsor's factual assertion that this level of regulation present with respect to the Constituent Platforms makes that segment of the bitcoin spot market inherently or uniquely resistant to fraud and manipulation.

As to the Sponsor's contention that the self-certification of bitcoin futures establishes the oversight of the Constituent Platforms by the CFTC, as an initial matter, the Commission observed in the Winklevoss Order, the CFTC's statutory authority to review new derivative products differs substantially from the Commission's authority, under Section 19(b) of the Exchange Act,[108] with respect to the review of proposed rule changes by SROs.[109] For example, while there are ''limited grounds'' for the CFTC to take affirmative action to stay new product self-certifications,[110] the Commission must, to approve a proposed rule change, make an affirmative finding that the proposed rule change is consistent with the Exchange Act, with the burden of demonstrating consistency with the Exchange Act resting with the SRO proposing the rule change.[111] The Commission is also mindful that the primarily institutional markets that the CFTC supervises are materially different from the securities markets in which many retail investors participate directly.[112] The Exchange Act's requirements for SROs, who serve as ''front-line'' regulators in the protection of retail investors,[113] to establish rules that protect investors and promote the public interest reflects the extent of such retail participation in our public equity markets. In contrast, the CFTC acknowledges that ''[m]ost participants in the futures markets are commercial or institutional commodities producers or consumers'' and ''[t]rading commodity futures and options is a volatile, complex and risky venture that is rarely suitable for individual investors or 'retail customers.' '' [114] The Commission concludes that the Sponsor's assertions that oversight by the CFTC establishes that the Constituent Platforms are regulated markets are not supported by the record. While the Commission recognizes that the CFTC maintains some jurisdiction over the bitcoin spot market, under the Commodity Exchange Act, the CFTC does not have regulatory authority over bitcoin spot trading platforms, including the Constituent Platforms.[115] Except in certain limited circumstances, bitcoin spot trading platforms are not required to register with the CFTC, and the CFTC does not set standards for, approve the rules of, examine, or otherwise regulate bitcoin spot markets.[116] As the CFTC itself stated, while the CFTC ''has an important role to play,'' U.S. law ''does not provide for direct, comprehensive Federal oversight of underlying Bitcoin or virtual currency spot markets.'' [117] Based on the foregoing differences in the types and levels of regulations governing the bitcoin spot market, the Commission cannot conclude that the record has adequately demonstrated that the level of regulation present with respect to the Constituent Platforms' segment of the bitcoin spot market renders such segment of the spot market inherently or uniquely resistant to fraud and manipulation.

The Commission similarly is not persuaded by the Sponsor's assertions that oversight by CF Benchmarks establishes that the Constituent Platforms are regulated markets. CF Benchmarks—the administrator of the Bitcoin Reference Rate—does not itself exercise governmental regulatory authority. Rather, CF Benchmarks is a registered, privately-held company in England.[118] CF Benchmarks' relationship with the Constituent Platforms is based on the Constituent Platforms' participation in the determination of CF Benchmarks' reference rates, such as the Bitcoin Reference Rate. While CF Benchmarks is regulated by the FCA as a benchmark administrator, FCA regulations do not extend to the Constituent Platforms by virtue of their trade prices serving as the input data underlying the Bitcoin Reference Rate.[119]

According to the Sponsor, the oversight performed by CF Benchmarks of the Constituent Platforms is contractual in nature and is for the purpose of CF Benchmarks satisfying its obligations under EU regulations designed to ensure the accuracy and integrity of benchmarks.[120] Such oversight serves a fundamentally different purpose as compared to the regulation of national securities exchanges and the mandates of the Exchange Act, because, as the Sponsor explains, the purpose of oversight by a benchmark administrator is to ensure that the data provided to calculate the benchmark rate accurately reflects the prices that were traded, or available to trade, on trading venues.[121] While the Commission recognizes that this may be an important function in ensuring the integrity of reference rates, such requirements do not imbue either CF Benchmarks or the Constituent Platforms with regulatory authority similar to that the Exchange Act confers upon SROs such as national securities exchanges.[122]

The Sponsor also asserts that CF Benchmarks reviews the ''rules'' (meaning policies and procedures, rather than regulatory obligations) of the Constituent Platforms in a manner comparable to the Commission's oversight of national securities exchanges. However, neither the Sponsor nor NYSE Arca has provided evidence establishing matters such as the specific regulatory requirements applicable to the Constituent Platforms' rules, the process for codifying such

[108] 15 U.S.C. 78s(b).

[109] *See* Winklevoss Order, 83 FR at 37587.

[110] *See* CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets (Jan. 4, 2018) at 2, *available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/backgrounder_virtualcurrency01.pdf* (''Virtual Currency Backgrounder''). *See also* Winklevoss Order, 83 FR at 37587.

[111] *See supra* notes 33–34 and accompanying text. *Compare* 7 U.S.C. 7a–2(c) *and* 17 CFR 40.6 *with* 15 U.S.C. 78(b)(1) *and* 17 CFR 240.19b–4.

[112] *See* Winklevoss Order, 83 FR at 37587.

[113] *See* Securities Exchange Act Release No. 12737 (Aug. 25, 1976), 41 FR 38847, 38854 (Sept. 13, 1976); Securities Exchange Act Release No. 50699 (Nov. 18, 2004), 69 FR 71126, 71132 (Dec. 8, 2004).

[114] Futures Market Basics, CFTC, *available at http://www.cftc.gov/ConsumerProtection/EducationCenter/FuturesMarketBasics/index.htm. See also* Winklevoss Order, 83 FR at 37587.

[115] *See* Written Testimony of J. Christopher Giancarlo, Chairman, Commodity Futures Trading Commission, Before the Senate Banking Committee (Feb. 6, 2018) (''Giancarlo Testimony''), *available at https://cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo37.*

[116] *See* Winklevoss Order, 83 FR at 37599.

[117] *See* Winklevoss Order, 83 FR at 37599 n.288.

[118] *See https://www.cfbenchmarks.com/legal* (stating that CF Benchmarks is authorized and regulated by the UK FCA as a registered Benchmark Administrator (FRN 847100) under the EU BMR, and further noting that CF Benchmarks is a member of the Crypto Facilities group of companies which is in turn a member of the Payward, Inc. group of companies, and Payward, Inc. is the owner and operator of the Kraken Exchange, a venue that facilitates the trading of cryptocurrencies). The Commission notes that the Kraken Exchange is a source of input data for CF Benchmarks indices and is one of the Constituent Platforms underlying the Bitcoin Reference Rate.

[119] CF Benchmarks is also not required to apply certain provisions of EU benchmark regulation to the Constituent Platforms because the Bitcoin Reference Rate's input data is not ''contributed.'' *See* Benchmark Statement, at 4 *available at https://www.cryptofacilities.com/cms/storage/resources/cme-cf-benchmark-statement.pdf.*

[120] *See supra* note 95 and accompanying text.

[121] *See infra* note 207 and accompanying text.

[122] See 15 U.S.C. 78f(b).

rules, the requirement of a regulatory body to approve or disapprove rules pursuant to a statutory mandate, and the ability of Constituent Platforms and regulatory authorities to enforce such rules.[123] National securities exchanges are entities that possess governmental authority such that they must carry out their self-regulatory responsibilities effectively and fairly while protecting investors and promoting the public trust.[124] Accordingly, the Exchange Act subjects the rules of national securities exchanges to the same standards of policy justification as those which apply to the Commission and also specifically requires the Commission to approve or disapprove rules in accordance with articulated statutory mandates.[125] The record does not establish that, due to CF Benchmarks' oversight, the Constituent Platforms are subject to a regulatory regime that includes, at a minimum, requirements comparable to these core elements of national securities exchange regulation such that Constituent Platforms are regulated markets.

Furthermore, because the purported oversight by CF Benchmarks, does not represent a unique measure to resist manipulation beyond mechanisms that exist in securities or commodities markets, the record does not establish that the Constituent Platforms are inherently resistant to manipulation such that it would justify dispensing with a surveillance-sharing agreement with a significant, regulated market.[126] Other commodity-based and equity index ETPs approved by the Commission for listing and trading utilize reference rates or indices administered by similar benchmark administrators and the Commission did not dispense with the need for a surveillance-sharing agreement with a significant, regulated market in those instances.[127] Thus, while measures such as those represented by the Sponsor may facilitate detection or perhaps even deterrence of fraud and manipulation, they do not render those markets inherently or uniquely resistant to manipulation.

The Commission also notes that NYSE Arca has not stated that it has entered into surveillance-sharing agreements with each of the individual Constituent Platforms that utilize surveillance tools. Moreover, even if NYSE Arca did enter into such agreements, it is not clear what ability NYSE Arca would have to compel the sharing of surveillance data, and NYSE Arca has not established that it would be able to compel such sharing. Unlike national securities exchanges, the bitcoin spot platforms are not self-regulatory organizations, and therefore do not have authority to impose discipline upon their participants.

The Commission thus concludes that the record does not demonstrate that the current oversight of the Constituent Platforms renders the bitcoin spot market uniquely resistant to manipulation, such that a surveillance-sharing agreement with a significant, regulated market would not be needed to adequately deter and detect fraud and manipulation.

(b) Assertions About the Design of the Bitcoin Reference Rate (the CME CF BRR)

(i) Representations Made and Comments Received

The Sponsor asserts that the Bitcoin Reference Rate methodology makes the Bitcoin Reference Rate inherently resistant to manipulation.[128] The Sponsor and NYSE Arca state that CME's own analysis and an independent examination of the Bitcoin Reference Rate methodology support this assertion.[129] In particular, NYSE Arca and the Sponsor state that the Bitcoin Reference Rate aggregates the bitcoin-to-U.S. dollar trade flow of its Constituent Platforms during a one-hour calculation window, partitions that window into twelve, five-minute intervals, calculates a volume-weighted median price for each partition, and then calculates an equally-weighted average of the volume-weighted median of all partitions.[130] The Sponsor argues that, because of these design choices, influencing the Bitcoin Reference Rate would require price manipulation on multiple exchanges over an extended period of time, which, according to the Sponsor, would be unreasonably costly and operationally intensive.[131] Further, NYSE Arca states that the Bitcoin Reference Rate's use of a volume-weighted average median price, determined over twelve five-minute windows in a specific 60-minute period, and the capital necessary to maintain a significant presence on any Constituent Platform would make any attempted manipulation of the Bitcoin Reference Rate unlikely.[132]

In addition, CF Benchmarks states that, while ''[a]ll benchmarks are susceptible to manipulation,'' the design of the Bitcoin Reference Rate methodology provides several benefits related to manipulation resistance.[133] According to CF Benchmarks, the use of partitions, as well as the use of equal-weighting instead of volume-weighting among the partitions, limits the influence of individual trades of large size or a cluster of trades in a short period of time because such trades would only influence the level of the

[123] *See* Registration Statement at 31–32 (describing the Sponsor's own acknowledgement of the lack of regulation and transparency with respect to bitcoin spot markets, specifically noting that many bitcoin spot markets ''are not regulated or supervised by a government agency,'' and that ''certain platforms may lack critical system safeguards, including customer protections'').

[124] 15 U.S.C. 78f(b)(5). *See also* S. Rep. No. 94–75, at 29–30 (1975).

[125] 15 U.S.C. 78s(b).

[126] *See also supra* notes 101–107 and accompanying text finding that the purported oversight by NYSDFS and FinCEN does not establish that the Constituent Platforms are inherently or uniquely resistant to manipulation.

[127] *See, e.g.,* Securities Exchange Act Release No. 80840 (June 1, 2017) 82 FR 26534 (June 7, 2017) (NYSEArca–2017–33) (approving the listing and trading of shares of the Euro Gold Trust, Pound Gold Trust, and the Yen Gold Trust); Securities Exchange Act Release No. 83046 (Apr. 13, 2018) 83 FR 17462 (Apr. 19, 2018) (Nasdaq–2018–012) (approving the listing and trading of shares of an exchange-traded fund that seeks to track an equity index, the CBOE Russell 2000 30-Delta BuyWrite V2 Index).

[128] The Sponsor provided the Commission with a written presentation at a meeting on October 16, 2019. *See* Commission Staff Memorandum to File re: Meeting with Wilshire Phoenix, Mayer Brown LLP, NYSE Arca, Inc., and Seward & Kissel LLP (Oct. 16, 2019) (attaching Presentation to the Commission by Wilshire Phoenix (''Wilshire Phoenix Submission I'')), *available at https://www.sec.gov/comments/sr-nysearca-2019-39/srnysearca201939-6297119-193433.pdf. See* Wilshire Phoenix Submission I at 5. According to the Sponsor, development of the Bitcoin Reference Rate relied on recognized best principles for financial benchmarks and the expert oversight committee oversees the scope of the Index to ensure it remains relevant and robust. *See* Wilshire Phoenix Submission I at 5.

[129] *See* Wilshire Phoenix Submission I at 8 (citing Wilshire Phoenix Submission I at Appendix 1); Notice, 84 FR at 56225 (citing Andrew Paine and William J. Knottenbelt, *Analysis of the CME CF Bitcoin Reference Rate and Real Time Index,* Section 2.2.2, Oct. 2016, *available at https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf* (''Paine & Knottenbelt'')). The Sponsor includes in its first submission an analysis of the Bitcoin Reference Rate written by the CME Group that describes the Bitcoin Reference Rate and its methodology, and analyzes the degree to which Bitcoin Reference Rate is representative of the underlying spot market that it tracks. *See* Wilshire Phoenix Submission I at 11–57.

[130] *See* Notice, 84 FR at 56223, 56225; Wilshire Phoenix Submission I at 5.

[131] *See* Wilshire Phoenix Submission I at 5. *See also* Notice, 84 FR at 56225 (citing Paine & Knottenbelt, Section 2.2.2) (''The chosen specification makes the [Bitcoin Reference Rate] highly resistant against manipulation. . . . Influencing the [Bitcoin Reference Rate] would therefore require price manipulation . . . over an extended period of time.'''); Wilshire Phoenix Submission I at 12.

[132] *See* Notice, 84 FR at 56225. The Sponsor asserts that the interconnectivity required to be eligible to be a Constituent Platform, combined with the volume and depth of liquidity among the Constituent Platforms and capital necessary to maintain a significant presence on the Constituent Platforms, makes manipulation prohibitively expensive because a would be manipulator would need to influence multiple platforms. *See* Wilshire Phoenix Submission II at 8.

[133] *See* CF Benchmarks Letter at 3–4.

volume-weighted mean for the partition or partitions in which they were conducted and as such would not have undue influence on the overall benchmark price.[134]

CF Benchmarks also asserts that, due to the Bitcoin Reference Rate methodology ''certain types of manipulative trading would have little or no impact on the level of the [Bitcoin Reference Rate].'' [135] As examples, CF Benchmarks states that the influence of a single large volume trade placed during the observation window would be confined due to the averaging component of the methodology, and that the influence of twelve large-volume trades placed in each five-minute partition during the observation window would be nullified due to the use of volume-weighted means.[136] CF Benchmarks further asserts that, to be sure to have a meaningful impact on the Bitcoin Reference Rate, a trader would need to be responsible for more than 50% of the volume of a partition through trades executed at a significant deviation to the prevailing price, for a period of 45 minutes—in other words, for nine of the twelve partitions—to overcome the averaging effect of the methodology.[137] CF Benchmarks estimates that the capital required to manipulate the Bitcoin Reference Rate would likely exceed $20 million, and asserts that the presence of arbitrageurs would likely require the commitment of additional capital depending on the degree of impact the manipulator sought to make.[138] CF Benchmarks also asserts that a manipulator would need to maintain a significant presence across all Constituent Platforms.[139]

In addition, according to CF Benchmarks, use of the Bitcoin Reference Rate would mitigate against potential manipulation that could arise if an alternative pricing source or index used a wider set of markets and trading pairs that did not offer the traceability of the Bitcoin Reference Rate.[140] CF Benchmarks states that only manipulation of the bitcoin-U.S. dollar markets operated by the Constituent Platforms can impact the integrity of the Bitcoin Reference Rate, because the benchmark exclusively uses transaction data in bitcoin-U.S. dollar trading pairs from the Constituent Platforms and does not use transaction data from transactions conducted in parallel markets, such as bitcoin trading against ''stablecoins'' or other cryptocurrencies.[141]

(ii) Analysis

The Commission concludes that NYSE Arca and the Sponsor have not demonstrated that the design of the Bitcoin Reference Rate makes the underlying market of the proposed ETP inherently and uniquely resistant to manipulation. The Commission recognizes that the Bitcoin Reference Rate is the U.S. dollar rate used to settle the CME's cash-settled bitcoin futures contracts, and that the Commodity Exchange Act and CFTC regulations require futures contracts and their cash-settlement processes to not be ''readily susceptible to manipulation.'' [142] The Commission does not assert that the Bitcoin Reference Rate fails to meet that standard. Rather, the Commission finds that the record does not establish that the underlying market is uniquely and inherently resistant to manipulation such that it would be consistent with the Exchange Act for NYSE Arca to dispense with entering into a surveillance-sharing agreement with a regulated market of significant size.

The Commission's conclusion on this point is consistent with the CFTC's actions with respect to bitcoin futures products. CFTC regulations require a designated contract market (DCM) like CME's cash-settled bitcoin futures market to enter into information-sharing agreements with settlement rate providers to detect and deter manipulative behavior.[143] Specifically with respect to bitcoin futures products, the CFTC further requires such DCMs to enter into information-sharing agreements with spot market platforms that make up the underlying settlement price index to allow DCMs access to pertinent trade and trader data.[144] Accordingly, in the case of bitcoin futures products, not only has the CFTC employed its traditional standards of entering into information-sharing agreements with settlement rate providers, but it also has required DCMs to enter into data-sharing agreements with spot market platforms to facilitate the detection and deterrence of manipulative behavior.

The Commission concludes that the CFTC's heightened review specific to bitcoin futures, including the information-sharing requirements that it imposes despite the use of the Bitcoin Reference Rate, underscore that the Bitcoin Reference Rate does not possess unique characteristics such that a surveillance-sharing agreement would not be necessary to list the proposed ETP in a manner that satisfies the requirements of the Exchange Act.[145] While the methodologies of the Bitcoin Reference Rate could provide protections that mitigate the potential effects of certain types of manipulation, as identified by CF Benchmarks, the Commission concludes that neither the evidence in the record, nor the actions of the CFTC, establish that either the Bitcoin Reference Rate or the relevant segment of the bitcoin spot market maintains a unique resistance to manipulation such that there would be no need to enter into a surveillance-sharing agreement with a regulated significant market to detect and deter fraudulent and manipulative activity.[146]

In any event, the Commission is unpersuaded that CF Benchmarks' assertions about the Bitcoin Reference

[134] *See* CF Benchmarks Letter at 4. CF Benchmarks also cites the use of volume-weighted medians (instead of volume-weighted means), the arithmetic mean of the partitions, and equal weighting of Constituent Platforms as preventing the undue influence of trades at outlier prices or large trades and the ability of potential manipulators from targeting one platform. *See id.* In addition, CF Benchmarks states that the Bitcoin Reference Rate methodology will identify a Constituent Platform with trades over a certain deviation from the volume-weighted median and exclude transactions from such Constituent Platform from the benchmark calculation. *See id.* at 5.

[135] CF Benchmarks Letter at 2.

[136] *See* CF Benchmarks Letter at 2–3.

[137] *See* CF Benchmarks Letter at 3.

[138] *See* CF Benchmarks Letter at 3.

[139] *See* CF Benchmarks Letter at 3. *Cf.* Notice, 84 FR at 56225.

[140] *See* CF Benchmarks Letter at 1–2.

[141] *See id.* at 1. CF Benchmarks states that bitcoin-U.S. dollar markets rely on traditional banking operators to facilitate deposits and withdrawals of U.S. dollars, and that this facilitation requires disclosure of users' personal information. *See id.* at 1–2. According to CF Benchmarks, this disclosure requirement would act as a deterrent to manipulation that would likely be absent where alternative trading pairs that utilize ''stablecoins'' and other cryptocurrencies are utilized as input data to the calculations. *See id.* at 2. The term ''stablecoin'' is a marketing term broadly used in the industry to refer to a digital asset that purports to minimize price volatility. However, the Commission notes that the use of the term to refer to a digital asset does not mean that the asset does in fact exhibit stability. *See* Bitwise Order, 84 FR at 55389 n.101.

[142] 7 U.S.C. 7(d)(3); 17 CFR 38.200.

[143] *See* 17 CFR 38.253; Appendix C to Part 38 of CFTC's regulations.

[144] *See* Giancarlo Testimony; Virtual Currency Backgrounder at 3.

[145] *See* Giancarlo Testimony (explaining that heightened review included ''a set of enhanced monitoring and risk management steps'' to ensure that the bitcoin futures products and their cash-settlement processes were not readily susceptible to manipulation); Virtual Currency Backgrounder at 3 (listing the terms and conditions of heightened review, including DCMs entering into agreements with spot market platforms to allow access to trade and trader data).

[146] The Commission concludes that the methodologies of the Bitcoin Reference Rate as other means of preventing fraud and manipulation taken by itself or in combination with any of the other means described in this Order are not sufficient to dispense with the need for a comprehensive surveillance-sharing agreement with a regulated market of significant size relating to the underlying assets.

Rate's resistance to manipulation dispense with the need for the requisite surveillance-sharing agreement. As analyzed above in Section III.B.1.(a)(i)(B), the record does not establish that the Constituent Platforms are inherently or uniquely resistant to fraud and manipulation because the record does not address the influence of the broader bitcoin spot market—where various kinds of fraud and manipulation from a variety of sources may be present and persist for a substantial duration—on the Constituent Platforms.[147]

(c) Other Features of the Trust

(i) Representations Made and Comments Received

According to NYSE Arca, the Sponsor maintains that certain aspects of the Trust enhance its resistance to market manipulation. Specifically, NYSE Arca represents that the Trust was created as a way for market participants to gain reasonable exposure to bitcoin through a vehicle that mitigates the volatility that has historically been associated with bitcoin.[148] NYSE Arca states the Trust will have no assets other than (a) bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index, which is calculated and published by the Index Calculation Agent.[149] NYSE Arca asserts that T-Bills are among the most liquid and widely traded assets in the world and are deemed to be risk free.[150] According to the Sponsor, the selection of T-Bills as a constituent of the Trust will dampen the volatility of bitcoin as it relates to the Trust, and consequently the Shares.[151] The Sponsor states that, because bitcoin is not the only constituent of the Trust (and the other constituent, T-Bills, has historically been a stable and risk-free investment), any potential manipulation of the Trust and the Shares would be extremely difficult and therefore unlikely.[152]

The Sponsor also asserts that the ability of a holder of Shares to redeem only monthly affects the Shares' resistance to manipulation because (i) of the significant passage of time between when a redemption request must be submitted and when the redemption is priced and distributed and (ii) it limits the window during which someone could successfully manipulate the Shares in order to profit from such redemption.[153] The Sponsor further argues that this redemption method also reduces operational risk, counterparty risk, and other risks thus increasing investor protection.[154]

(ii) Analysis

NYSE Arca has not demonstrated that these additional features of the Trust, such as its T-Bills holdings and its redemption method, would render the relevant segment of the underlying bitcoin market uniquely resistant to manipulation, such that it would be consistent with the Exchange Act to dispense with the need for the listing exchange to enter into a surveillance-sharing agreement with a significant regulated market to detect and deter fraudulent and manipulative activity.

While the proposed ETP would hold T-Bills in addition to bitcoin, this aspect is insufficient to support a finding that the bitcoin held in the Trust would be inherently or uniquely resistant to manipulation. Previously disapproved bitcoin-based ETP proposals, including proposals to list and trade bitcoin futures-based ETPs, have contemplated holdings in similarly liquid instruments, such as government securities and cash.[155] There is nothing in the record to suggest that including holdings in assets more liquid than bitcoin would render the bitcoin assets to be inherently or uniquely resistant to manipulation, such that there would be no need for a surveillance-sharing agreement with a regulated market of significant size. Furthermore, even if the Sponsor were correct in its assertion that holding T-Bills might make the proposed ETP more resistant to volatility,[156] there is nothing in the record to suggest that the percentage of the Trust's holdings comprised of bitcoin would be of such size that it would meaningfully reduce the potential to manipulate the Trust.

With respect to redemption of the Shares, the Sponsor's assertions that the proposed ETP's redemption method positively affects the Shares' resistance to manipulation do not support a finding that the bitcoin held in the Trust would be inherently or uniquely resistant to manipulation. The proposed ETP's monthly redemption method is not novel. Previously, the Commission has approved the listing and trading of several commodity-based trust ETPs with a monthly redemption feature.[157] However, in each instance the Commission noted that the listing

[147] *See supra* note 66 and accompanying text.

[148] *See* Notice, 84 FR at 56228.

[149] *See id.*

[150] *See id.*

[151] *See id.*

[152] *See id.*

[153] *See* Wilshire Phoenix Submission II at 28–29. The Sponsor states that it is critical that the redemption order cutoff time, which is five (5) business days prior to the applicable redemption date, be prior to any of the daily valuation determination times of the assets of the Trust (*i.e.,* bitcoin and T-Bills). If this is not the case, the Sponsor asserts that a potential manipulator could redeem the Trust's Shares at the prior price at the time of the asset value determination versus the current trading price, which would allow the potential manipulator to reap a benefit to the detriment of others. If the redemption order cut-off is properly set before any asset value determination times, then there is no possibility of redeeming Shares of the Trust after any of the asset valuation times, regardless of when NAV itself is actually published. The Sponsor concludes that this is accomplished in the Trust's case because the redemption order cut-off is five (5) business days before the determination of the NAV on the redemption date. *See* Wilshire Phoenix Submission II at 27.

[154] *See* Wilshire Phoenix Submission II at 29.

[155] *See, e.g.,* SolidX Order, 82 FR at 16247 (describing the holdings to include bitcoin and cash); Notice of Filing of Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF Under NYSE Arca Rule 8.200–E, Commentary .02, Securities Exchange Act Release No. 82350 (Dec. 19, 2017), 82 FR 61100, 61102 (Dec. 26, 2017) (SR–NYSEArca–2017–139) (describing the holdings to include, in addition to bitcoin futures contracts, cash or cash equivalents and/or U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities); Notice of Filing of Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E, Securities Exchange Act Release No. 82532 (Jan. 18, 2018), 83 FR 3380, 3383 (Jan. 24, 2018) (SR–NYSEArca–2018–02) (describing the holdings to include, in addition to bitcoin futures contracts, cash or cash equivalents, such as U.S. Treasury Securities or other high credit quality short-term fixed-income or similar securities); and Notice of Filing of a Proposed Rule Change To List and Trade Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, a Series of the GraniteShares ETP Trust, Under Rule 14.11(f)(4), Trust Issued Receipts, Securities Exchange Act Release No. 82484 (Jan. 11, 2018), 83 FR 2704, 2705–06 (Jan.18, 2018) (SR–CboeBZX–2018–001) (describing the holdings to include, in addition to bitcoin futures contracts, cash and cash equivalents).

[156] *See supra* note 151 and accompanying text.

[157] *See, e.g.,* Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 82448 (Jan. 5, 2018), 83 FR 1428 (Jan. 11, 2018) (SR–NYSEArca–2017–131) (''Gold and Silver Order''); Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (''Platinum and Palladium Order''); Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To List and Trade Shares of the Sprott Physical Silver Trust, Securities Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615 (Oct. 12, 2010) (SR–NYSEArca–2010–84) (''Silver Order''); and Order Granting Approval of a Proposed Rule Change To List and Trade the Sprott Physical Gold Trust, Securities Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (''Gold Order'').

market had a surveillance-sharing agreement in place, or had common membership in ISG, with a regulated market of significant size related to the underlying commodity or commodities.[158] Moreover, establishing a period of time, whether it be significant or not, between the time of receipt of the redemption request and the time of pricing of the redemption is not a unique feature that would distinguish the proposed ETP from other bitcoin-related ETP proposals where the Commission likewise did not find the underlying market to be inherently or uniquely resistant to manipulation.[159]

2. Assertions That NYSE Arca Has Entered Into a Surveillance-Sharing Agreement With a Regulated Market of Significant Size

The Commission next examines whether the record supports the assertion by NYSE Arca and the Sponsor that NYSE Arca has entered into a surveillance-sharing agreement with a regulated market of significant size by virtue of NYSE Arca's surveillance-sharing agreement with the CME bitcoin futures market.[160] As was the case in the Bitwise Order, based on the common membership of NYSE Arca and CME in the ISG,[161] NYSE Arca has the equivalent of a comprehensive surveillance-sharing agreement with CME.[162] While the Commission recognizes that the CFTC regulates the CME futures market,[163] the record does not, as explained further below, establish that the CME bitcoin futures market is a ''market of significant size'' in the context of the proposed ETP.[164]

In addition, the Sponsor points to the group of Constituent Platforms as providing an avenue for the proposal to satisfy the requirement that NYSE Arca enter into a surveillance-sharing agreement with a regulated market of significant size.[165] According to NYSE Arca, while it has not entered into a surveillance-sharing agreement with any spot bitcoin platform, each Constituent Platform has entered into a data-sharing agreement with CME.[166] The Sponsor asserts that CME can share any information that it receives from the Constituent Platforms with NYSE Arca.[167] However, as discussed below, this arrangement does not satisfy the standard articulated by the Commission in its prior orders that the listing exchange for a proposed ETP may satisfy its obligations under Section 6(b)(5) of the Exchange Act by entering into bilateral surveillance-sharing agreements with regulated markets of significant size relating to underlying assets.[168] Moreover, the record does not support a conclusion that the regulation of the Constituent Platforms is comparable to the obligations and oversight of national securities exchanges or futures exchanges.[169] Given that the record does not establish that NYSE Arca has a surveillance-sharing agreement with the Constituent Platforms or that the Constituent Platforms constitute a ''regulated market,'' the Commission does not reach the question of whether the Constituent Platforms represent a market of significant size.

(a) Representations Made and Comments Received

(i) CME as a Regulated Market of Significant Size

NYSE Arca and the Sponsor assert that the CME bitcoin futures market is a regulated market of significant size with which NYSE Arca has a surveillance-sharing agreement.[170] NYSE Arca and the Sponsor assert that the CME bitcoin futures market is a market of significant size because it is the main market for bitcoin futures and compares favorably to other markets that were deemed to be markets of significant size in previous approvals of commodity-based trust ETPs.[171] In particular, the Sponsor argues that the size of the bitcoin futures market as a percentage of bitcoin spot trading represented by trading on the Constituent Platforms is larger than the size of the gold futures market as a percentage of the gold OTC market.[172] According to NYSE Arca, the Sponsor also represents that the volume of the bitcoin futures market is comparable with volumes on other markets deemed to be markets of significant size in a previous approval order by the Commission.[173]

[158] *See, e.g.,* Gold and Silver Order, 83 FR at 1436 & n.43; Platinum and Palladium Order, 77 FR at 75240–21 n.21; Silver Order, 75 FR at 62621; and Gold Order, 75 FR at 6760 & n.18.

[159] *See, e.g.,* Notice of Filing of a Proposed Rule Change to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Winklevoss Bitcoin Shares Issued by the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 78262 (July 8, 2016), 81 FR 45554, 45569 (July 14, 2016) (SR–BatsBZX–2016–30) (describing the redemption settlement to be no more than five business days following the redemption order date).

[160] *See* Notice, 84 FR at 56225–26; Wilshire Phoenix Submission II at 19–24.

[161] *See* Notice, 84 FR at 56226; Wilshire Phoenix Submission II at 24.

[162] *See supra* note 14. *See also* Notice, 84 FR at 56226 & n.43; Wilshire Phoenix Submission II at 23–24.

[163] While the Commission recognizes that the CFTC regulates the CME, the CFTC is not responsible for direct, comprehensive regulation of the underlying bitcoin spot market. *See* Bitwise Order, 84 FR at 55410 n.456; Winklevoss Order, 83 FR at 37587, 37599.

[164] The Commission notes that the ICE Futures U.S. exchange began offering bitcoin futures contracts as of September 2019. *See* Bakkt Bitcoin (USD) Monthly And Daily Futures Contracts Trading to Begin on Monday, September 23, 2019, ICE Futures U.S. (Aug. 16, 2019), *available at https://www.theice.com/publicdocs/futures_us/exchange_notices/ICE_Futures_US_BTC_Launch2019_20190816.pdf* (last visited Jan. 14, 2020). However, the record contains no information about the volume of ICE Futures U.S.'s bitcoin futures product or whether the Sponsor has a relevant surveillance-sharing agreement with ICE Futures U.S. Also, the CME began offering options on bitcoin futures contracts as of January 13, 2020. See FAQ: CME Options on Bitcoin Futures (Oct. 29, 2019), *available at https://www.cmegroup.com/trading/cryptocurrency-indices/cme-options-bitcoin-futures-frequently-asked-questions.html.* Trading began after the comment period for this proposed rule change ended and there is no data in the record regarding such options trading.

[165] *See* Wilshire Phoenix Submission II at 11–19.

[166] *See* Notice, 84 FR at 56225 n.41. *See also* Wilshire Phoenix Submission II at 15 (stating that each Constituent Platform must enter into surveillance-sharing agreements with CME).

[167] *See* Wilshire Phoenix Submission II at 15–16.

[168] *See supra* notes 14, 19–20 and accompanying text. For a discussion about why the surveillance-sharing agreements between CME and the Constituent Platforms, along with NYSE Arca's and the CME's common membership in the ISG, do not suffice to make the spot bitcoin market inherently or uniquely resistant to manipulation, *see supra* Section III.B.1(a)(ii).

[169] *See supra* Section III.B.1(a)(ii). *See also* Winklevoss Order, 83 FR at 37597 (''The record, however, does not support a conclusion that the Gemini Exchange is a 'regulated market' comparable to a national securities exchange or to the futures exchanges that are associated with the underlying assets of the commodity-trust ETPs approved to date.''). For a discussion about why regulation of the Constituent Platforms does not suffice to make the spot bitcoin market inherently or uniquely resistant to manipulation, *see supra* Section III.B.1(a)(ii).

[170] *See* Notice, 84 FR at 56226; Wilshire Phoenix Submission II at 10–11, 19–24. NYSE Arca and the Sponsor state that NYSE Arca and the CME are both members of the ISG. *See* Notice, 84 FR at 56226; Wilshire Phoenix Submission II at 24. NYSE Arca and the Sponsor also state that the CME is regulated by the CFTC. *See* Notice, 84 FR at 56226; Wilshire Phoenix Submission II at 23–24.

[171] *See* Notice, 84 FR at 56226. NYSE Arca states that on September 12, 2019, the CME notified the CFTC that it was increasing the spot month position limits for bitcoin futures contracts from 1,000 to 2,000 net contracts, or a notionally deliverable quantity of 10,000 bitcoins. *See id.* at 56226 n.48.

[172] *See* Notice, 84 FR at 56226 (stating that in 2016 the daily trading volume of gold futures on the COMEX was $28.9 billion and the daily trading volume on gold OTC markets was $167.9 billion, for a ratio of 17.2%; and that from October 1, 2018 to March 31, 2019, the daily trading volume of bitcoin futures on the CME was $90.4 million and the daily trading volume of bitcoin-U.S. dollar spot was $149.5 million, for a ratio of 60.5%); Wilshire Phoenix Submission II at 19–20 (also stating the cited bitcoin-U.S. dollar spot volume is based on the Constituent Platforms).

[173] *See* Notice, 84 FR at 56226 n.56. The Sponsor made a third submission in which it sought to compare the size, liquidity, and transparency of the CME bitcoin futures market to other futures markets on which the underlying components of approved ETPs trade. *See* Letter from Marlon Q. Paz, Partner, Mayer Brown (Feb. 20, 2020) (''Wilshire Phoenix Submission III'').

The Sponsor acknowledges that the Commission's interpretation of the term ''market of significant size'' depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.[174] This interrelationship must be such that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would also have to trade on that market to successfully manipulate the ETP.[175] To demonstrate the existence of an interrelationship between the CME and the Constituent Platforms, the Sponsor states that it conducted an independent analysis of bitcoin price discovery and that this analysis, along with the findings of multiple publications, shows that the contribution from CME bitcoin futures to price formation is greater than the contribution from the Constituent Platforms and has increased over time.[176] Said another way, the Sponsor asserts that in most instances prices on the CME bitcoin futures market lead prices on the Constituent Platforms, and that this underscores that a would-be manipulator of the Trust would need to trade on the CME bitcoin futures market to successfully manipulate prices on the Constituent Platforms, which are used to price the Trust's bitcoin.[177]

The Sponsor states that for its analysis it has used CME bitcoin futures trades and the CME CF Bitcoin Real Time Index (''CME CF BRTI''), which is a real-time intraday spot rate constructed from the real-time spot prices on the Constituent Platforms.[178] According to the Sponsor, using a two-component model of futures and spot markets, the component share of CME bitcoin futures contracts as compared to the CME CF BRTI spot rate to bitcoin price formation was 62.69% in the second half of 2019, ''indicating that futures contracts contributed more to price formation than spot.'' [179]

The Sponsor asserts that its finding corroborates several recent journal articles that also have found that the CME bitcoin futures have a larger component share contribution to bitcoin price formation than the bitcoin spot market.[180] According to the Sponsor, this research confirms that the majority of price discovery for bitcoin takes place in the futures market.[181] The Sponsor states that research indicates that the bitcoin futures market often leads the spot market due to inherent leverage, low transaction costs, the absence of short-selling transactions, and greater transparency.[182] The Sponsor also states that research suggests that a majority of long run price information is derived from the futures market and that price movements in the futures market are often accompanied or followed by price movements of the spot market in the same direction.[183] And the Sponsor points to conclusions that the CME futures market has become a major driver of bitcoin spot prices and that high-volume trades from large institutional investor clients effectively arbitrage away spikes in the basis within seconds or minutes.[184]

In addition to the static time invariant approaches used in the research discussed above, the Sponsor cites research using a time-varying approach that it states confirms that bitcoin futures consistently lead the bitcoin spot market in price formation.[185] The authors of this research paper separately comment that their analysis of data from the CME and Cboe Futures Exchange (''CFE'') [186] from December 2017 through June/July 2019 found that the CME and CFE bitcoin futures prices generally cause the underlying spot prices.[187] This commenter states that with respect to CFE bitcoin futures, the futures market caused the underlying spot market prices between August/November 2018 and June 2019, and that there was no evidence of causality running from the spot market to the futures market.[188] This commenter further states that with respect to CME bitcoin futures, there was a very short causality episode that ran from spot prices to futures prices between March and June 2019, but that such episodes in which causality runs from the spot market to futures prices are short and occasionally bi-directional.[189] According to this commenter, except for some short periods, the ''overwhelming evidence'' is that bitcoin futures prices cause or lead bitcoin spot prices, as one would expect in an informationally efficient market.[190]

The Sponsor also asserts that trade volume and trade size can be determinants of price discovery, and that the Constituent Platforms have a higher average trade volume than the CME bitcoin futures market, while the average size of trades on the CME bitcoin futures market is much larger than the average size of trades on the

[174] *See id.* at 19.

[175] *See id.* at 19 (citing Winklevoss Order, 83 FR at 37594; Bitwise Order, 84 FR at 55410).

[176] *See* Wilshire Phoenix Submission II at 20–21.

[177] *See* Wilshire Phoenix Submission II at 23.

[178] *See* Wilshire Phoenix Submission II at 20. The Sponsor states that market data for bitcoin futures, the Bitcoin Reference Rate, and the CME CF BRTI are available via the CME DataMine market data facility. *See id.* at 20 n.90. The Sponsor also states that rolling futures trade prices and CME CF BRTI levels are aggregated into 1-minute intervals using the respective median value in each interval during trading hours, with previous values used if data is unavailable. *See id.*

[179] *See* Wilshire Phoenix Submission II at 21. The Sponsor states that the methodology that it has used to analyze the contribution of the futures and the spot markets to bitcoin price formation is based on the price discovery methodology utilized in other bitcoin price formation studies. *See id.* at 20–21 (citing Edwin Hu, *Securities and Exchange Commission Department of Economic Risk Analysis, Intentional Access Delays, Market Quality, and Price Discovery: Evidence from IEX Becoming an Exchange,* Mar. 15, 2019; S. Ozturk et al., *Intraday Price Discovery in Fragmented Markets,* 32 J. Fin. Markets 28 (2017); F. De Jong & P. Schotman, *Price discovery in fragmented markets,* 8 J. Fin. Econometrics 1 (2010); Jesus Gonzalo & Clive Granger, *Estimation of common long-memory components in cointegrated systems,* 13 J. Bus. & Econ. Stat. 27 (1995), *available at https://www.jstor.org/stable/1392518*).

[180] *See id.* (citing Bruce Mizrach & Saketh Aleti, *Bitcoin Spot and Futures Market Microstructure,* Sept. 24, 2019, *available at https://ssrn.com/abstract=3459111*) (''Mizrach & Aleti''); Carol Alexander & Daniel F. Heck, *Price Discovery, High-Frequency Trading and Jumps in Bitcoin Markets,* May 5, 2019, *available at https://ssrn.com/abstract=3383147* (''Alexander & Heck''); Oliver Entrop et al., *The Determinants of Price Discovery on Bitcoin Markets,* July 2019, *available at https://acfr.aut.ac.nz/_data/assets/pdf_file/0009/296424/B-Frijns-Bitcoin_Paper.pdf* (''Entrop et al.''); Burcu Kapar & Jose Olmo, *An analysis of price discovery between Bitcoin futures and spot markets,* 174 Econ. Letters 62 (2019), *available at https://www.sciencedirect.com/science/article/pii/S0165176518304440* (''Kapar & Olmo''); Erdinc Akyildirim et al., *The development of Bitcoin futures: Exploring the interactions between cryptocurrency derivatives,* Fin. Res. Letters, July 10, 2019, *available at https://www.sciencedirect.com/science/article/pii/S1544612319304714;* Athanasios P. Fassas et al., *Price discovery in bitcoin futures,* 52 Res. Int'l Bus. Fin. 101116 (2020), *available at https://www.sciencedirect.com/science/article/abs/pii/S0275531919305628*).

[181] *See id.* at 21–22. The Sponsor also asserts that its conclusions are consistent with research about price formation about futures and spot prices generally that often finds that the futures market leads price formation. *See id.* at 21.

[182] *See id.* at 22 (citing Alexander & Heck; Kapar & Olmo at 62–64).

[183] *See id.* at 22.

[184] *See id.*

[185] *See id.* (citing Yang Hu et al., *What Role Do Futures Markets Play in Bitcoin Pricing? Causality, Cointegration and Price Discovery From a Time-Varying Perspective,* Aug. 26, 2019, *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3442706*).

[186] The Commission notes that CFE ceased offering new bitcoin futures contracts as of March 2019. *See* New CFE Products Being Added in March 2019—Update, Cboe (Mar. 14, 2019), *available at https://markets.cboe.com/resources/product_update/2019/New-CFE-Products-Being-Added-in-March-2019-Update.pdf* (last visited Jan. 14, 2020).

[187] *See* Letter from Dr. Yang Hu, Dr. Greg (Yang) Hou, & Professor Les Oxley (Jan. 7, 2020).

[188] *See id.*

[189] *See id.*

[190] *See id.* This commenter also states that the bitcoin futures markets dominate the price discovery process using a time-varying version of an information share measure of two types, and that both types indicate that bitcoin price discovery takes place in the futures market rather than the spot market. *See id.*

Constituent Platforms.[191] According to the Sponsor, a relative number of small trades in a given bitcoin market is statistically insignificant for purposes of price discovery.[192] The Sponsor argues that the average trade size on the CME futures market facilitates its lead in price discovery versus the Constituent Platforms.[193] The Sponsor also states that the trading volume of the CME bitcoin futures market is higher than the trading volume on each Constituent Platform when considered individually, and that this also facilitates price discovery within the futures market.[194]

(ii) Constituent Platforms as a Regulated Market of Significant Size

The Sponsor also asserts that the Constituent Platforms constitute a regulated market of significant size and that surveillance-sharing agreements are in place to give NYSE Arca the ability to obtain the information necessary to detect and deter market manipulation.[195] The Constituent Platforms compose a market of significant size, according to the Sponsor, because there is a reasonable likelihood that a would-be manipulator would have to trade on the Constituent Platforms to successfully manipulate the Shares.[196] The Sponsor states that trading data from the Constituent Platforms is used to derive the Bitcoin Reference Rate and the Bitcoin Reference Rate is used by the Trust to value the Trust's bitcoin assets.[197] Therefore, according to the Sponsor, the most direct way to attempt to manipulate the Shares is to manipulate the Constituent Platforms and thereby manipulate the price of bitcoin utilized by the Trust to value its assets.[198] The Sponsor further states that potential countervailing forces in the CME futures market make it more difficult to manipulate the Constituent Platforms, and therefore a would-be manipulator would likely need to trade in the CME bitcoin futures market and on the Constituent Platforms.[199]

The Sponsor asserts that the Constituent Platforms are regulated because each of the Constituent Platforms uses established, non-discretionary methods under which orders interact with each other and buyers and sellers entering such orders must agree to these terms, and each of the Constituent Platforms is regulated by federal and state regulators.[200] The Sponsor states that the Constituent Platforms are each registered with FinCEN as an MSB, and that as a result the Constituent Platforms must fully comply with BSA and AML requirements.[201] According to the Sponsor, the CFTC has jurisdiction to police fraud and manipulation in the cash or spot markets, including the Constituent Platforms, and the CME has executed contracts with the Constituent Platforms to explicitly adhere to the regulations.[202] The Sponsor states that the Constituent Platforms are subject to regulatory oversight by the FCA because CF Benchmarks is a registered benchmark administrator under the EU BMR, and CF Benchmarks has executed contracts with the Constituent Platforms to explicitly adhere to those regulations, which include requirements designed to detect manipulation of a benchmark.[203] With respect to the rules concerning the processes of the Constituent Platforms, the Sponsor states that these rules must be in line with CME standards for inclusion in the reference rate calculation.[204] The Sponsor states that these non-discretionary rules explicitly address manipulation and fraudulent activity, and that these rules and the review of such rules by CF Benchmarks are comparable to those used by national securities exchanges or the futures exchanges associated with the underlying assets of the commodity-trust ETPs approved to date.[205]

The Sponsor states that to be eligible for consideration as a Constituent Platform, a platform must comply with specific eligibility criteria established by CF Benchmarks, which provides each Constituent Platform with all material trade information, including information that can identify customers placing trades.[206] The Sponsor states that the Constituent Platforms must make trade data and order book data available to CF Benchmarks, have controls and processes in place against, among other things, market abuse, and ensure that the data provided to CF Benchmarks accurately represents the prices that were available or traded on their trading venues at the relevant times.[207] CF Benchmarks and the CME Committee, according to the Sponsor, monitor each Constituent Platform for continued compliance with these requirements.[208]

The Sponsor and NYSE Arca also state that each Constituent Platform is required to enter into data-sharing agreements with the CME.[209] The Sponsor states that, through these surveillance-sharing agreements, the

[191] *See* Wilshire Phoenix Submission II at 22–23.

[192] *See id.* at 23.

[193] *See id.*

[194] *See id.*

[195] *See* Wilshire Phoenix Submission II at 10–19. *See also* Notice, 84 FR at 56226 (asserting that the CME bitcoin futures market alone or as a group of markets together with the Constituent Platforms is a ''market of significant size'').

[196] *See* Wilshire Phoenix Submission II at 12.

[197] *See* Wilshire Phoenix Submission II at 12; Notice, 84 FR at 56227.

[198] *See* Wilshire Phoenix Submission II at 12; Notice, 84 FR at 56227. *See also* Notice, 84 FR at 56227 n.57 (stating that manipulating the Bitcoin Reference Rate must entail manipulating the price data at one or more Constituent Platforms).

[199] *See* Wilshire Phoenix Submission II at 12.

[200] *See* Wilshire Phoenix Submission II at 12.

[201] *See* Wilshire Phoenix Submission II at 12. *See also supra* notes 77–79 and accompanying text. The Sponsor also states that this is consistent with recent FATF guidance that directs certain platforms, including the Constituent Platforms, to comply with AML regulations. *See* Wilshire Phoenix Submission II at 12. *See also supra* note 78.

[202] *See* Wilshire Phoenix Submission II at 12–13. *See also supra* notes 91–94 and accompanying text.

[203] *See* Wilshire Phoenix Submission II at 13. *See also supra* notes 95–98 and accompanying text.

[204] *See* Wilshire Phoenix Submission II at 13. *See also id.* at 16–17 (stating that the CME Committee is responsible for overseeing the Bitcoin Reference Rate's methodology and calculation process and providing effective oversight of CF Benchmarks as it relates to the Bitcoin Reference Rate, and that the scope of this oversight includes CF Benchmarks' manipulation surveillance).

[205] *See id.* at 13–14.

[206] *See* Wilshire Phoenix Submission II at 14 (stating that a platform must (i) have policies in place that ensure fair and transparent market conditions at all times; (ii) have processes in place to identify and impede illegal, unfair, or manipulative trading practices; and (iii) comply with applicable laws and regulations, including regulations concerning capital markets, money transmission, client money custody, KYC, and AML). *See also id.* at 16 (stating that CF Benchmarks is independently tasked with overseeing each Constituent Platform for potential manipulation and that that this responsibility includes establishing appropriate monitoring processes and procedures to identify attempted manipulation or manipulative behavior and reporting any such incidents to the CME Committee in a timely manner).

[207] *See* Wilshire Phoenix Submission II at 14–15. *See also id.* at 18–19. The Sponsor asserts that the ability of a Constituent Platform to fully share relevant trade data, not just with CF Benchmarks, but also publicly, is an integral factor on whether to include a platform as a Constituent Platform for purposes of the Bitcoin Reference Rate. *See id.* at 15.

[208] *See* Wilshire Phoenix Submission II at 15. NYSE Arca states that the BRR Calculation Agent receives trading data from the Constituent Platforms through its API, noting that ''[CF Benchmarks] will have primary responsibility for all of the following in respect of Bitcoin Pricing Products: . . . Establishing appropriate monitoring processes and procedures designed to identify any breaches of these Practice Standards and any attempted manipulation or manipulative behavior and reporting any such incidents to the [CME Committee] in a timely manner.'' *See* Notice, 84 FR at 56227 n.58.

[209] *See* Notice, 84 FR at 56227 (stating that the Constituent Platforms must also cooperate with inquiries and investigations of regulators and CF Benchmarks and submit each of its clients to its KYC procedures); Wilshire Phoenix Submission II at 15. The Sponsor asserts that this requirement of cooperation would allow NYSE Arca to directly request from each Constituent Platform any information that may be relevant to detecting potential manipulation. *See* Wilshire Phoenix Submission II at 17.

CME receives information related to customer identification, trade data, order book data, and other relevant information and data.[210] Thus, the Sponsor and NYSE Arca assert that the CME can effectively share any information that it receives from the Constituent Platforms with NYSE Arca and this arrangement satisfies the requirement that a listing exchange have surveillance-sharing agreements in place with such markets.[211]

Moreover, the Sponsor asserts that the Commission, the CFTC, and the FCA have a long-standing history of consultation, cooperation, and information sharing in relation to the securities markets.[212] As such, the Commission, according to the Sponsor, would be able to access any information regarding an attempt at manipulating the Constituent Platforms by requesting such information from the FCA.[213]

(iii) Whether Trading in the ETP Would Be the Predominant Influence on Prices in the Relevant Market

The second component of the Commission's interpretation of the term ''market of significant size'' is that it is unlikely that trading in the ETP would be the predominant influence on prices in the market of significant size.[214] NYSE Arca and the Sponsor assert that it is unlikely that the Trust would be the predominant influence on prices in the identified markets of significant size.[215] The Sponsor asserts that the three critical factors it used to arrive at this conclusion are the events causing the Trust to buy or sell bitcoin, the frequency with which it will do so, and the composition of assets of the Trust.[216]

First, NYSE Arca and the Sponsor state that the Trust will only buy and sell bitcoin in connection with the issuance of Shares, the redemption of Shares by holders, or potentially in connection with monthly balancing of the Trust's assets.[217] NYSE Arca and the Sponsor state that the Trust will not buy or sell bitcoin as a result of trading of the Shares on NYSE Arca.[218] The Sponsor asserts that it structured the Trust in this manner to limit any effect the Trust could potentially have on the underlying market.[219]

Second, NYSE Arca and the Sponsor state that the Trust will only redeem Shares and rebalance the Trust on limited occasions and will not have a daily or continuous effect, or be the predominant influence, on CME bitcoin futures prices or prices on the Constituent Platforms.[220]

Third, NYSE Arca and the Sponsor state that the Trust's assets consist of bitcoin and T-Bills and that the presence of T-Bills reinforces that the Trust would not be the predominant influence on prices in the CME bitcoin futures market or on the Constituent Platforms.[221] According to NYSE Arca, the Sponsor notes that even if it was possible to influence the price of bitcoin or the Bitcoin Reference Rate through trading shares of the Trust, the influence of such trades would be muted by the presence of the T-Bills held by the Trust.[222] The Sponsor asserts that the Trust and Shares of the Trust are imperfect substitutes for bitcoin pricing due to the Trust's T-Bills component, and that therefore prices of the Shares would not be an appropriate or accurate proxy for the pricing of stand-alone bitcoin on the Constituent Platforms or the CME bitcoin futures market.[223] The Sponsor states that the impact of any issuance of Shares on the identified markets will be muted relative to the value of the Shares issued because only a portion of the cash received in connection with the issuance would be used to purchase bitcoin.[224] The Sponsor also states that the Trust's allocation of its bitcoin and T-Bill assets will change on a monthly basis based on the allocations determined by the Index, based on the realized volatility of the Bitcoin Reference Rate; therefore, trading in the Shares will not have a direct effect on the re-allocation of the Index and thus will not have an impact on the determination of the Trust to buy or sell bitcoin in connection with such rebalancing.[225]

(b) Analysis

The record before the Commission does not demonstrate that NYSE Arca has entered into a surveillance-sharing agreement with a regulated market of significant size related to the underlying assets. As stated in the Winklevoss Order, as well as the Bitwise Order and Commission orders considering bitcoin-related trust issued receipts, the Commission's interpretation of the term ''market of significant size'' depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.[226] This interrelationship must be such that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would also have to trade on that market to successfully manipulate the ETP.[227] Thus, a surveillance-sharing agreement must be entered into with a ''significant market'' to assist in detecting and deterring manipulation of the ETP, because a person attempting to manipulate the ETP is reasonably likely to also engage in trading activity on that ''significant market.'' NYSE Arca and the Sponsor do not challenge this standard.

The Commission first considers assertions by NYSE Arca and the Sponsor that the CME bitcoin futures market constitutes such a market and concludes that the record does not demonstrate that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP, nor does it demonstrate that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in that market. The Commission then considers assertions regarding the Constituent Platforms. NYSE Arca has not entered into a surveillance-sharing agreement with any Constituent Platform and the record does not demonstrate that the regulation of the Constituent Platforms is sufficient to constitute a ''regulated market.'' Therefore, the Commission concludes that NYSE Arca's relationship with the Constituent

[210] *See* Wilshire Phoenix Submission II at 15.

[211] *See* Wilshire Phoenix Submission II at 16. *See also* Notice, 84 FR at 56227 (stating that CME and NYSE Arca would be able, in the case of any suspicious trades, to discover all material trade information including the identities of the customers placing the trades).

[212] *See* Wilshire Phoenix Submission II at 18 (stating that the FCA is obligated to take appropriate steps to cooperate with oversees regulators, including the Commission).

[213] *See* Wilshire Phoenix Submission II at 18.

[214] *See supra* note 18 and accompanying text.

[215] *See* Notice, 84 FR at 56228; Wilshire Phoenix Submission II at 25.

[216] *See* Wilshire Phoenix Submission II at 25.

[217] *See* Notice, 84 FR at 56228; Wilshire Phoenix Submission II at 25.

[218] *See* Notice, 84 FR at 56228 (asserting that trading the Shares will therefore not influence the price of bitcoin); Wilshire Phoenix Submission II at 25.

[219] *See* Wilshire Phoenix Submission II at 25.

[220] *See* Notice, 84 FR at 56228; Wilshire Phoenix Submission II at 25 (stating that the Trust will redeem Shares and rebalance its assets monthly, with a requirement on a holder of Shares to submit a notice of redemption at least five business days prior to the redemption date, and the Trust will only issue Shares in offerings that will occur from time to time).

[221] *See* Notice, 84 FR at 56228; Wilshire Phoenix Submission II at 25.

[222] *See* Notice, 84 FR at 56228.

[223] *See* Wilshire Phoenix Submission II at 25.

[224] *See* Wilshire Phoenix Submission II at 25.

[225] *See* Wilshire Phoenix Submission II at 26. The Sponsor states that the more volatility that bitcoin exhibits, the lower the ration of bitcoin to T-Bills in the Index, and the fewer the amount of bitcoin that the Trust would buy in connection with rebalancing. *See id.*

[226] *See* Winklevoss Order, 83 FR at 37594; Bitwise Order, 84 FR at 55410; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43925; Direxion Order, 83 FR at 43914.

[227] *See supra* note 18 and accompanying text.

Platforms likewise does not satisfy the standard through which the listing exchange for a proposed ETP may satisfy its obligations under Section 6(b)(5) of the Exchange Act.

(i) CME as a Regulated Market of Significant Size

(A) Reasonable Likelihood

Regarding the CME bitcoin futures market, while the Commission recognizes that the CFTC regulates the CME futures market, the evidence that NYSE Arca and the Sponsor present, including that concerning the relative size of the bitcoin futures market and the relationship between prices in the spot and futures markets, does not, as explained further below, establish that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would also have to trade on the CME to successfully manipulate the ETP. Therefore, the record does not establish that the CME bitcoin futures market constitutes a ''market of significant size'' in the context of the proposed ETP.

The Sponsor's assertions about the size of the bitcoin futures market, either as compared to the size of the segment of the spot market composed of the Constituent Platforms or as compared to the futures market for other commodities, do not establish that the bitcoin futures market is significant.[228] As stated above, the Commission's interpretation of the term ''market of significant size'' depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.[229] The Sponsor's assertions regarding the size of the CME bitcoin futures market, either in an absolute sense or in relation to other futures markets that underlie existing ETPs, are not sufficient to establish an interrelationship between the CME bitcoin futures market and the proposed ETP.[230]

Likewise, the Sponsor's comparisons to approvals of ETPs that hold futures contracts and for which the listing exchanges entered into surveillance-sharing agreements with regulated, significant markets trading those futures contracts are inapposite and do not establish the CME bitcoin futures market's significance.[231] First, in the approval orders cited by the Sponsor the Commission noted a number of factors supporting its findings that surveillance-sharing agreements were in place with significant regulated markets. For example, the approval order for the AirShares EU Carbon Allowances Fund stated ''the Exchange has an information sharing agreement in place with ICE Futures for the purpose of providing information in connection with trading in, or related to, futures contracts traded on ICE Futures.'' [232] In the case of the iShares GSCI Commodity-Indexed Trust the Commission specifically addressed whether the futures on which the ETP was based, which were futures on an index of well-established commodity futures, were illiquid or susceptible to manipulation and concluded, as the Sponsor concedes, that the requirements of Exchange Act Section 6(b)(5) had been met because, among other things, the ETP's listing exchange had a comprehensive surveillance-sharing agreement not only with the regulated market for the index futures, but also with the regulated markets for the component futures.[233] And as concerns the Breakwave Dry Bulk Shipping ETF, the Commission specifically found, as the Sponsor also concedes, that the exchange would be able to ''share surveillance information with a significant regulated market for trading futures on dry bulk freight.'' [234] Second, unlike the ETPs that were the subject of the approvals cited by the Sponsor, the proposed ETP would hold bitcoin as assets, not futures contracts, and the comparisons made by the Sponsor do not establish that an actor attempting to manipulate the price of the proposed ETP's assets would be reasonably likely to trade in the regulated bitcoin futures market.

The evidence in the record also does not support a conclusion that price formation on the CME bitcoin futures market leads the bitcoin spot market in such a manner that the CME bitcoin futures market is a ''market of significant size.'' As the Commission has previously stated, establishing a lead-lag relationship between the bitcoin futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism.[235] In particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.

While the Sponsor asserts that its analysis indicates ''that futures contracts contributed more to price formation than spot,'' the Sponsor has not provided sufficient details supporting this conclusion, and unquestioning reliance by the Commission on representations in the record is an insufficient basis for approving a proposed rule change in circumstances where, as here, the proponent's assertion would form such an integral role in the Commission's analysis and the assertion is subject to several challenges.[236] For example, the Sponsor has not provided sufficient information explaining its underlying analysis, including detailed information on the analytic methodology used, the specific time period analyzed, or any information that would enable the Commission to evaluate whether the findings are statistically significant or time varying.

In addition, the Sponsor has not assessed the possible influence that spot market platforms not included among

[228] *See supra* notes 171–173. The Sponsor asserts that the trading volume on the CME bitcoin futures market is greater than the EUA futures market underlying the AirShares EU Carbon Allowances Fund. *See* Wilshire Phoenix Submission III at 2. Wilshire Phoenix Submission III is improperly focused on the absolute size of the futures market and the length of existence of the futures market for purposes of establishing its significance.

[229] *See supra* note 226.

[230] *See* Bitwise Order, 84 FR at 55410.

[231] *See* Wilshire Phoenix Submission III at 2–4 (citing to Securities Exchange Act Release No. 57838 (May 20, 2008), 73 FR 30649 (May 28, 2008) (SR–NYSEArca–2008–09) (order approving listing of shares of the AirShares EU Carbon Allowances Fund); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372 (June 26, 2006) (SR–NYSE–2006–17) (order approving listing of shares of iShares GSCI Commodity-Indexed Trust); Securities Exchange Act Release No. 82390 (Dec. 22, 2017), 82 FR 61625 (Dec. 28, 2017) (SR–NYSEArca–2017–107) (order approving listing of shares of the Breakwave Dry Bulk Shipping ETF).

[232] 73 FR at 30652.

[233] *See* 71 FR at 36379. The Commission distinguished the iShares GSCI Commodity-Indexed Trust in previous orders concerning proposals to list bitcoin-based trust issued receipts. *See* GraniteShares Order, 83 FR at 43927 n.39; Direxion Order, 83 FR at 43916 n.40; ProShares Order, 83 FR at 43938 n.37. The Sponsor also asserts that it was ''highly likely'' that trading in this ETP would be a predominant influence on the price of the index futures. *See* Wilshire Phoenix Submission III at 3 n.13. However, the Sponsor offers no data or evidence to support this contention. And in any event, the Commission in that previous order rejected such a contention. *See* 71 FR at 36379.

[234] *See* 82 FR at 61633–34. The Commission distinguished the Breakwave Dry Bulk Shipping ETF in a previous order concerning a proposal to list bitcoin-based trust issued receipts. *See* GraniteShares Order, 83 FR at 43930 n.87. The Sponsor also asserts that as compared to the CME bitcoin futures market, the freight futures market is conducted through ''a largely unregulated network of brokers.'' *See* Wilshire Phoenix Submission III at 3–4. However, the Commission specifically noted in the approval order that all freight futures are listed and cleared through a number of regulated futures exchanges, including the CME. *See* 82 FR at 61629.

[235] *See* Bitwise Order, 84 FR at 55411.

[236] *See Susquehanna,* 866 F.3d at 447.

the Constituent Platforms may have on the proposed ETP's pricing mechanism. The record does not demonstrate that the Sponsor addressed whether or not there is any lead/lag relation between prices on the Constituent Platforms and prices on other bitcoin spot market platforms or where price formation occurs as between the Constituent Platforms and the rest of the spot market.[237] The Commission thus cannot agree with the Sponsor's assertion that its analysis demonstrates that it is reasonably likely that a would-be manipulator of the proposed ETP would transact on the CME bitcoin futures market absent additional information supporting such an assertion.

The academic literature on the lead-lag relationship between bitcoin spot and futures markets is unsettled.[238] Contrary to the Sponsor's assertion, the academic evidence on this topic is, in fact, mixed, and thus the Commission cannot conclude—based solely on the papers cited by the Sponsor in relatively new markets—that it is reasonably likely that a would-be manipulator of the proposed ETP would transact on the CME bitcoin futures market.

Furthermore, the findings of the papers cited by the Sponsor are responsive to choices made regarding time period, futures contracts, spot market platforms, spot market prices, and analytic methodologies that do not sufficiently establish the general proposition that the CME bitcoin futures market leads the spot market such that the CME bitcoin futures market is ''significant'' for purposes of this proposal. Indeed, the findings of the cited studies run counter to those of other studies that have analyzed the lead-lag relationship between the bitcoin spot and futures markets. For example, a study on this topic that was published in a peer reviewed journal found that the spot market price leads the CME futures price.[239] A working (that is, nonpublished and non-peer reviewed) paper cited by the Sponsor for the proposition that the futures market prices lead the spot market surmises that its findings differ from this published study because of choices regarding the particular spot prices and futures contracts used in the two analyses.[240] However, another working paper cited by the Sponsor followed a similar approach, yet arrived at a different conclusion, finding that price discovery measures vary significantly over time without one market being clearly dominant over the other.[241] Moreover, this second working paper found that the spot market was the leading market during the months at the end of the sample period, which concluded in March of 2019.[242] The documented time variation from this study also limits the reliability of the findings of another working paper cited by the Sponsor which used only two months of data to support its results.[243] This data choice limits the applicability of its results to other time periods. The Commission concludes that, in light of the mixed results found in these academic studies, the Sponsor has not demonstrated that the bitcoin futures market constitutes a market of significant size.[244]

In addition, none of the papers cited by the Sponsor assesses the possible influence that spot market platforms not included among the Constituent Platforms may have on bitcoin prices on the Constituent Platforms or the bitcoin futures prices. Specifically, the papers cited by the Sponsor do not address whether or not there is any lead/lag relation between prices on the Constituent Platforms in particular and prices on other bitcoin spot market platforms or where price formation occurs as between the Constituent Platforms and the rest of the spot market.[245] Accordingly, the Commission cannot conclude that the papers cited by the Sponsor establish that it is reasonably likely that a would-be manipulator of the proposed ETP would transact on the CME bitcoin futures market.

Similarly, neither the Sponsor, nor NYSE Arca, has provided sufficient data to support their contentions that comparative trade volumes and trade sizes between the CME bitcoin futures market and the Constituent Platforms are evidence that prices on the bitcoin futures market lead the relevant spot markets.[246] For example, the Sponsor neither provided any explanation nor otherwise demonstrated that comparatively larger average trade sizes suggest that one market's prices lead those of another. Thus, the evidence provided concerning trade volumes and trade sizes does not demonstrate that the futures market leads the relevant segment of the spot market such that it would establish a reasonable likelihood that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism.

Finally, the Commission is not persuaded by the Sponsor's citations to academic studies about the interrelationship of spot and futures markets for *other* asset classes,[247] because NYSE Arca has the burden of showing that the relevant market at issue here—the bitcoin futures market—is of significant size.

(B) Predominant Influence

The record similarly does not establish that NYSE Arca has satisfied the second aspect of the assessment of significance, as NYSE Arca and the Sponsor have not sufficiently supported the Sponsor's assertions that it is unlikely that trading in the proposed ETP would become the predominant influence on prices in either the Constituent Platforms or the CME bitcoin futures market.[248] The Sponsor's assertions about the potential effect of issuances or redemptions on trading in the bitcoin spot market are speculative and the Sponsor has not provided any analysis to support its assertions concerning, for example, whether it is possible for issuances or redemptions to be of such size that it would be the

[237] *See supra* note 71 and accompanying text.

[238] *See infra* notes 239–244 and accompanying text.

[239] *See* D. Baur & T. Dimpfl, *Price discovery in Bitcoin spot or futures?,* 39 J. Futures Mkts. 803 (2019).

[240] *See* Alexander & Heck at 24.

[241] *See* Entrop et al. Figure 1 of this working paper shows that price discovery measures of the spot market fluctuate between 15% and more than 80%. Such a fluctuation could suggest that the market has not yet found its natural equilibrium.

[242] *See id.* at 2. The record does not include evidence to explain why, because this shift occurred at the end of the study period, it would not indicate a shift toward prices in the spot market leading the futures market that would be expected to persist into the future.

[243] *See* Mizrach & Aleti.

[244] The Commission notes that two other papers cited by the Sponsor utilize daily spot market prices, as opposed to intraday prices. *See* Kapar & Olmo; Hu et al. In seeking to draw conclusions regarding which market leads price discovery, studies based on daily price data may not be able to distinguish which market incorporates new information faster, because the time gap between two consecutive observations in the data samples could be longer than the typical information processing time in such markets. The Sponsor has not provided evidence to support the assertion that daily price data is sufficiently able to capture information flows in the bitcoin market. Furthermore, one study that used daily trading data found inconclusive evidence that futures prices lead bitcoin spot market prices. For example, for a period of time spanning over 20% of the study, prices in the bitcoin spot market led futures market prices. Such time inconsistency in the direction of price discovery could suggest that the market has not yet found its natural equilibrium. Moreover, this period spanned the end of the study period and the record does not include evidence to explain why this would not indicate a shift towards prices in the spot market leading the futures market that would be expected to persist into the future. *See supra* notes 187–190 and accompanying text.

[245] *See supra* note 71 and accompanying text.

[246] *See supra* notes 191–194.

[247] *See supra* note 181.

[248] *See supra* notes 215–225 and accompanying text.

predominant influence on prices in the Constituent Platforms. Moreover, in the Trust's Registration Statement, the Sponsor acknowledges that its buying activity, as a result of issuances or rebalances, as well as its selling activity, as a result of redemptions or rebalances, may cause the price of bitcoin to increase or decrease.[249] Furthermore, the Sponsor states that because there is no limit on the number of bitcoin that the Trust may acquire, growth of the Trust could have an impact on the supply and demand of bitcoin.[250] Thus, the Commission cannot conclude based on the Sponsor's statements that its trading in the ETP would not be the predominant influence on prices in the Constituent Platforms absent any evidence or analysis in support of the Sponsor's assertions.

The Commission is also not persuaded by the Sponsor's assertions that the proposed ETP would not be the predominant influence on prices in the relevant market because the Trust will only purchase or sell bitcoin at certain specified dates, as opposed to on a daily or continuous basis, and pursuant to specific Index allocations. As stated in the Winklevoss Order, this component of the interpretation of significance concerns the influence on prices from trading in the proposed ETP, which is broader than just trading by the proposed ETP. While the Trust might only transact in the bitcoin market on certain specified dates, the proposed ETP will be traded in the secondary market in the interim. The record does not establish the potential effect of the ETP's trade prices on prices for either bitcoin or bitcoin futures. For example, the Sponsor does not provide any data or analysis about the potential effect the quotations or trade prices of the proposed ETP might have on market-maker quotations in bitcoin futures contracts and whether those effects would constitute a predominant influence on the prices of those futures contracts.

Lastly, the Sponsor asserts that, because the Trust will also hold T-Bills it is an imperfect substitute for bitcoin pricing and that its impact on bitcoin markets will be muted. But this assertion is not supported by evidence or analysis regarding the value and size of the Trust's bitcoin holdings and whether that may likely be the predominant influence on prices notwithstanding that the Trust will also own T-Bills. Irrespective of the weighting of the Trust's two components, there is no cap on the notional amount of bitcoin that the Trust may hold. The record does not include any analysis regarding whether the notional amount of bitcoin held by the Trust would be of such size that it would be the predominant influence on prices in the underlying market. To that end, the Commission reiterates that the Sponsor states that, because there is no limit on the number of bitcoin the Trust may acquire, growth of the Trust could have an impact on the supply and demand of bitcoin.[251]

Thus, the Commission cannot conclude that, based on the current record, the CME bitcoin futures market is a ''market of significant size,'' such that NYSE Arca would be able to rely on surveillance-sharing with the CME to provide sufficient protection against fraudulent and manipulative acts and practices.

(ii) Constituent Platforms as a Regulated Market of Significant Size

The Commission is not persuaded by the Sponsor's contention that NYSE Arca has satisfied the requirements of Section 6(b)(5) of the Exchange Act because the Constituent Platforms constitute a regulated market of significant size and the CME, as well as other entities, can obtain information regarding trading activity on the Constituent Platforms and then share that information with NYSE Arca pursuant to NYSE Arca's surveillance-sharing agreement with the CME, or through other means. As discussed above, the Commission concludes that the record does not establish that the Constituent Platforms are subject to a level of regulation comparable to that of a national securities exchange or to futures exchanges, and as such, the Constituent Platforms do not constitute a regulated market.[252]

Furthermore, even if the Constituent Platforms were ''regulated,'' the record would not support a conclusion that NYSE Arca has demonstrated that it has satisfied Section 6(b)(5) of the Exchange Act because NYSE Arca concedes that it has not entered into bilateral surveillance-sharing agreements with the Constituent Platforms. NYSE Arca represents that it has entered into surveillance-sharing agreements with the CME, through which the Sponsor asserts would be able to obtain certain information from the Constituent Platforms by virtue of data-sharing agreements the CME has entered into with the Constituent Platforms.[253] As the Commission has previously stated, a surveillance-sharing agreement with a regulated, significant market facilitates the ETP listing exchange's ability to obtain the necessary information to detect and deter such manipulative misconduct.[254] Here, NYSE Arca has not entered into bilateral surveillance-sharing agreements with the Constituent Platforms and therefore NYSE Arca lacks a surveillance-sharing agreement that could be sufficient to satisfy the requirements of the Exchange Act as set forth in the Winklevoss Order.

The Commission is also not convinced by the Sponsor's assertion that the Constituent Platforms must make trade data and order book data publicly available in order for the platform to be included in the Bitcoin Reference Rate.[255] Trade data and order book data only represent a small subset of the information that the Commission has said represent the hallmarks of a surveillance-sharing agreement.[256] For example, the Constituent Platforms do not make information regarding clearing activity or customer identity publicly available. Accordingly, the record does not establish that NYSE Arca would have access to necessary information to detect and deter fraudulent and manipulative activity through the data that the Sponsor asserts is publicly available.

Furthermore, a surveillance-sharing agreement with the spot bitcoin platforms at issue here would not be a sufficient substitute for such an agreement with a futures market, because the spot platforms at issue here lack the ability of a self-regulatory organization to discipline its members to compel compliance with surveillance-sharing requirements.[257] Accordingly, the Commission cannot conclude that a surveillance-sharing agreement between NYSE Arca and CME satisfies the requirements of the Exchange Act if the regulated market of significant size is not, in fact, the CME, but rather is the Constituent Platforms.

The Commission also is not persuaded by the Sponsor's assertions that NYSE Arca has satisfied the requirements of the Exchange Act by virtue of the Commission's ability to obtain information from other Federal and international regulators.[258] First, the requirements of Section 6(b)(5) of

[249] *See* Registration Statement at 31.

[250] *See id.* at 32.

[251] *See id.*

[252] *See supra* Section III.B.1(a)(ii)(B) for a discussion of the Commission's conclusion that the Constituent Platforms are not regulated in a manner equivalent to that of a national securities exchange or a futures exchange.

[253] *See supra* note 211 and accompanying text.

[254] *See* Winklevoss Order, 83 FR at 37549.

[255] *See supra* note 207.

[256] *See* Winklevoss Order, 83 FR at 37592–93.

[257] *See* Bitwise Order, 84 FR at 55393, 55411 n.478.

[258] *See supra* note 213.

the Exchange Act apply to the rules of national securities exchanges. As the Commission previously explained, MOUs with foreign or domestic regulators are tools to assist the Commission in performing its regulatory functions, not a mechanism for the Commission to assume an SRO's obligations under the Exchange Act.[259] Accordingly, the relevant obligation for a surveillance-sharing agreement resides with the listing exchange, not the Commission. When a listing exchange enters into a surveillance-sharing agreement, such agreement establishes the exchange's ability to obtain relevant information to detect and deter manipulation in furtherance of the listing exchange's obligation to ensure that its rules are designed to prevent fraudulent and manipulative acts and practices. Absent evidence in the record demonstrating that the listing exchange has satisfied its obligations, the Commission cannot approve a proposed ETP for listing and trading on a national securities exchange. Second, the Commission's ability to obtain information from other regulators is not a factor that affects whether an exchange needs to enter into a surveillance-sharing agreement with a regulated market of significant size for purposes of detecting and deterring fraud or manipulation. Indeed, in prior instances where the Commission has relied on the existence of surveillance-sharing agreements in approving ETPs, the Commission's ability to obtain relevant information from other regulatory authorities was not impeded.

Thus, because (1) the Constituent Platforms are not ''regulated markets'' and (2) because NYSE Arca has not entered into a surveillance-sharing agreement with the Constituent Platforms, the Commission does not reach the question of whether the Constituent Platforms constituent a market of significant size.

The Commission recognizes that, over time, bitcoin-related markets—including bitcoin futures markets—may continue to grow and develop. Should circumstances or conditions change in a manner that affects the Exchange Act analysis, the Commission would then have an opportunity to consider whether such a bitcoin ETP would be consistent with the requirements of the Exchange Act.[260]

C. Whether NYSE Arca Has Met Its Burden To Demonstrate That the Proposal Is Consistent With the Protection of Investors and the Public Interest

NYSE Arca contends that, if approved, its ETP would protect investors and the public interest, but the Commission finds that NYSE Arca has not made such a showing on the current record. The Commission must consider any potential benefits in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act. And because NYSE Arca has not demonstrated that its proposed rule change is designed to prevent fraudulent and manipulative acts and practices, the Commission must disapprove the proposal.

1. Representations Made and Comments Received

The Sponsor asserts that the Trust was formed to provide retail investors with access to bitcoin through a regulated and transparent investment vehicle.[261] The Sponsor states that investors in the Trust will receive full disclosure about the Trust; that the Trust was created to mitigate the volatility of bitcoin; that the Trust's structure provides an understandable, efficient, and cost-effective investment product; that the Trust will utilize qualified custodians and its bitcoin assets will be covered by the Bitcoin Custodian's fidelity insurance; that investors in the Trust will be able to trade the Shares on NYSE Arca and hold them through accounts with Commission-registered broker-dealers; and that any adviser or broker who recommends the Shares to a client will be required to undertake a suitability analysis.[262] The Sponsor also asserts that the Trust's monthly redemption schedule increases investor protection by reducing operational risk, counterparty risk, and other risks.[263]

A commenter states that introducing a digital-asset related ETP that would be traded on national securities exchanges will benefit the bitcoin spot market by improving price discovery, reducing volatility, and diminishing the potential for manipulation and money laundering to affect bitcoin's price.[264] The same commenter also asserts that the ability of market participants to engage in short selling with respect to digital asset ETPs would bring more information about their intrinsic value into the market—which would result in a more fair and orderly market.[265] This commenter also states that U.S.-traded digital asset ETPs would facilitate the development of U.S.-traded derivatives such as options and futures, and that these additional hedging tools would permit even more information to be incorporated in digital asset prices.[266]

2. Analysis

As it has in disapproving previous proposals for bitcoin-related ETPs, the Commission acknowledges that, as compared to trading in unregulated bitcoin spot markets, trading a bitcoin-based ETP on a national securities exchange may provide some additional protection to investors, but the Commission must consider this potential benefit in the broader context of whether the proposal meets each of the applicable requirements of the Exchange Act.[267] Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must disapprove a proposed rule change filed by a national securities exchange if it does not find that the proposed rule change is consistent with the applicable requirements of the Exchange Act—including the requirement under Section 6(b)(5) that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.[268] Thus, even if a proposed rule change would provide certain benefits to investors and the markets, the proposed rule change may still fail to meet other requirements under the Exchange Act.

For the reasons discussed above, NYSE Arca has not met its burden of demonstrating that the proposal is consistent with Exchange Act Section 6(b)(5),[269] and, accordingly, the Commission must disapprove the proposal.[270]

D. Proposed Amendments to NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

Rule 8.201–E(c)(1) currently states that Commodity-Based Trust Shares

[259] *See* Winklevoss Order, 83 FR at 37591.

[260] *See supra* at p.8; Winklevoss Order, 83 FR at 37580; Bitwise Order, 84 FR at 55411.

[261] *See* Wilshire Phoenix Submission I at 6. *See also* Notice, 84 FR at 56225.

[262] *See* Wilshire Phoenix Submission I at 6–7.

[263] *See* Wilshire Phoenix Submission II at 28–29.

[264] *See* Letter from James J. Angel (Dec. 15, 2019) (''Angel Letter'') at 2, 6–7.

[265] *See* Angel Letter at 6.

[266] *See* Angel Letter at 6.

[267] *See* Winklevoss Order, 83 FR at 37602; GraniteShares Order, 83 FR at 43931; ProShares Order, 83 FR at 43941; Direxion Order, 83 FR at 43919; Bitwise Order, 84 FR at 55413.

[268] *See* 15 U.S.C. 78s(b)(2)(C).

[269] 15 U.S.C. 78f(b)(5).

[270] In disapproving the proposed rule change, as modified by Amendment No. 1, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). For the reasons discussed throughout, the Commission is disapproving the proposed rule change because it does not find that the proposed rule change is consistent with the Exchange Act.

may be issued and redeemed for the underlying commodity. NYSE Arca proposes to amend this rule to also allow issuances and redemptions in cash, or in a combination of the underlying commodity and cash.[271] Rule 8.201–E(c)(2) currently states that the term ''commodity'' is defined in Section 1(a)(4) of the Commodity Exchange Act. NYSE Arca proposes to update the reference for the definition of the term ''commodity'' to Section 1(a)(9) of the Commodity Exchange Act.[272]

1. Representations Made and Comments Received

NYSE Arca states that the Commission has previously approved listing and trading on NYSE Arca of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash in whole or in part.[273] NYSE Arca states that it believes that such an alternative would allow a trust issuing Commodity Based Trust Shares to structure the procedures for issuance and redemption of shares in a manner that may provide operational efficiencies and accommodate investors who may wish to deliver or receive cash rather than the underlying commodity.[274] NYSE Arca further asserts that the proposed change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.[275]

With regard to its proposed change to Rule 8.201–E(c)(2), NYSE Arca states that the change in cross-reference to the definition of ''commodity'' in the Commodity Exchange Act is to reflect an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[276]

2. Analysis

The Commission is disapproving the proposed rule change, as modified by Amendment No. 1, on the basis that NYSE Arca has not demonstrated that its proposal to list and trade the Shares is consistent with Section 6(b)(5) of the Exchange Act. As such, in this order the Commission does not reach the question of whether these proposed amendments to Rule 8.201–E are consistent with the Exchange Act.

[271] *See* Notice, 84 FR at 56220.

[272] *See id.* at 56221.

[273] *See id.* at 56220 & n.11.

[274] *See id.* at 56220.

[275] *See id.*

[276] *See id.* at 56221.

E. Other Comments

Comment letters also addressed the general nature and uses of bitcoin;[277] the state of development of bitcoin as a digital asset;[278] the inherent value of, and risks of investing in, bitcoin;[279] the desire of investors to gain access to bitcoin through an ETP;[280] the volatility of the spot price of bitcoin and the potential volatility of the price of the ETP;[281] the legitimacy or enhanced regulatory protection that Commission approval of the proposed ETP might confer upon bitcoin as a digital asset;[282] the potential impact of Commission approval of the proposed ETP on the price of bitcoin and on bitcoin markets;[283] the level of fees proposed by the Sponsor;[284] the role of the U.S. in promoting innovation through bitcoin;[285] and the bitcoin network's effect on the environment.[286] Ultimately, however, additional discussion of these topics beyond that included above is unnecessary, as they do not further bear on the basis for the Commission's decision to disapprove the proposal.

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–NYSEArca–2019–39, as modified by Amendment No. 1, is disapproved.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04294 Filed 3–2–20; 8:45 am]

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[277] *See* Angel Letter at 3.

[278] *See id.* at 14; Letter from Alex Heuer (Oct. 16, 2019); Letter from James Williams (Dec. 19, 2019).

[279] *See, e.g.,* Angel Letter; Thompson Letter; Letter from Alastair Holdsworth (Dec. 20, 2019).

[280] *See, e.g.,* Angel Letter; Letter from Scott Page (July 5, 2019) (''Page Letter'').

[281] *See, e.g.,* Notice, 84 FR at 56228.

[282] *See, e.g.,* Angel Letter; Page Letter.

[283] *See, e.g.,* Angel Letter.

[284] *See, e.g.,* Letter from Avinash Shenoy (May 22, 2019).

[285] *See, e.g.,* Page Letter.

[286] *See* Thompson Letter.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88292; File No. SR–ISE–2020–06]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7

February 26, 2020.

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 February 12, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend the Exchange's Pricing Schedule at Options 7, as described further below.

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 amend the Exchange's Pricing Schedule at Options 7 with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

objective of attracting additional volume to the Exchange in Non-Select Symbols,[3] where the Exchange has seen less activity than it has in Select Symbols.[4] Each change is described in detail below.

The Exchange initially filed the proposed rule change on February 3, 2020 (SR–ISE–2020–03). On February 12, 2020, the Exchange withdrew that filing and submitted this filing.

Marketing Fee

By way of background, the Exchange administers a marketing fee program that helps Market Makers [5] establish marketing fee arrangements with Electronic Access Members (''EAMs'') in exchange for those EAMs routing some or all of their order flow to the Market Maker.[6] This program is funded through a fee of $0.70 per contract, which is paid by the Market Maker for each regular Priority Customer [7] contract executed in Non-Select Symbols.[8]

In connection with the proposed fee changes to the regular Non-Select Symbol pricing schedule described below, the Exchange proposes to set this marketing fee to $0.00 per contract. The Exchange believes that the proposed fee change will ensure that the total fees paid by Market Makers for regular executions in Non-Select Symbols will remain at a level the Exchange believes is appropriate. The Exchange also proposes in Options 7, Section 6.E to add language that makes clear no marketing fees will be charged with the proposed changes. In particular, the Exchange will add that no marketing fees are charged for Select and Non-Select Symbols. If the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

Non-Select Regular Order Pricing

As set forth in Options 7, Section 3, the Exchange currently charges the following transaction fees for regular orders in Non-Select Symbols (excluding index options): [9] $0.25 per contract for Market Maker orders, $0.20 per contract for Market Maker orders sent by EAMs, and $0.72 per contract for Non-Nasdaq ISE Market Maker,[10] Firm Proprietary [11]/Broker-Dealer,[12] and Professional Customer [13] orders. The Exchange applies the foregoing fees to regular transactions regardless of whether the order adds or removes liquidity on ISE. The Exchange currently does not charge a fee for regular Priority Customer orders in Non-Select Symbols.

The Exchange now proposes to replace the existing fee structure with a maker/taker pricing model where all market participants (except Priority Customers) will be assessed a uniform per contract ''maker'' fee for Non-Select Symbol executions that add liquidity on the Exchange, and a separate per contract ''taker'' fee for Non-Select Symbol executions that remove liquidity.[14] Generally speaking, the proposed maker fees will be slightly lower than the proposed taker fees in order to incentivize Members to increase their liquidity adding activity in Non-Select Symbols. The Exchange also proposes to charge all market participants higher taker fees for trades executed against Priority Customer Orders. The Exchange further proposes to provide a significant maker rebate for Priority Customer orders in Non-Select Symbols, and to continue assessing no taker fees for such orders.

In light of the proposed changes to charge consistent maker/taker fees across all non-Priority Customer orders, the Exchange proposes to remove the separate pricing for Market Maker orders sent by EAMs from the Non-Select Symbol pricing schedule in Options 7, Section 3, and instead specify that the Market Maker fees in Non-Select Symbols will also apply to the Market Maker orders sent by EAMs.[15] With this change, the Exchange also proposes to reduce the current fee assessed to Market Makers for Crossing Orders [16] (except PIM orders) from $0.25 to $0.20 per contract, which would align this fee with the fee currently charged to Market Maker orders sent by EAMs, and to all other non-Priority Customer orders. The Exchange currently charges Market Makers (including Market Maker orders sent by EAMs) the same fee for PIM orders and for Responses to Crossing Orders,[17] and those fees will remain unchanged with this proposal.

Accordingly, the new Non-Select Symbol pricing in Options 7, Section 3 will be as follows:

Market participant	Maker rebate/ fee	Taker fee	Fee for crossing orders except PIM orders	Fee for PIM Orders	Fee for responses to crossing orders except PIM orders	Fee for responses to PIM orders
Market Maker	$0.70	$0.72	$0.20	$0.10	$0.50	$0.35

[3] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols.

[4] ''Select Symbols'' are options overlying all symbols listed on the Exchange that are in the Penny Pilot Program.

[5] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[6] The marketing fee is rebated proportionally to the Members that paid the fee such that on a monthly basis the market fee fund balance administered by the Primary Market Maker for a Group of options established under Options 2, Section 3(b) does not exceed $100,000 and the marketing fee fund balance administered by a preferenced Competitive Market Maker for such a Group does not exceed $100,000. A preferenced Competitive Market Maker that elects not to administer a fund will not be charged the marketing fee. The Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month. *See* Options 7, Section 6.E.

[7] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq ISE Options 1, Section 1(a)(37).

[8] The Exchange does not charge Market Makers a marketing fee for regular Priority Customer contracts in Select Symbols. Furthermore, the marketing fee is currently waived for NDX, NQX, MNX, Flash Orders and for Complex Orders in all symbols.

[9] Specifically, for all executions in regular NDX and NQX orders, the Exchange charges the applicable index options fees in Options 7, Section 5 instead.

[10] A ''Non-Nasdaq ISE Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange.

[11] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account.

[12] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account.

[13] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer.

[14] As discussed later in this filing, the Exchange will also introduce a Market Maker Plus program for Non-Select Symbols whereby qualifying Market Makers would receive a discounted fee or rebate in lieu of paying the proposed maker fee if they meet the proposed tier threshold requirements.

[15] This is similar to the approach for Select Symbols today. *See* Options 7, Section 3, note 8.

[16] A ''Crossing Order'' is an order executed in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Price Improvement Mechanism (PIM) or submitted as a Qualified Contingent Cross order. For purposes of the Pricing Schedule, orders executed in the Block Order Mechanism are also considered Crossing Orders.

[17] ''Responses to Crossing Order'' is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM.

Market participant	Maker rebate/ fee	Taker fee	Fee for crossing orders except PIM orders	Fee for PIM Orders	Fee for responses to crossing orders except PIM orders	Fee for responses to PIM orders
Non-Nasdaq ISE Market Maker (FarMM)	0.70	0.72	0.20	0.10	0.50	0.35
Firm Proprietary/Broker-Dealer	0.70	0.72	0.20	0.10	0.50	0.35
Professional Customer	0.70	0.72	0.20	0.10	0.50	0.35
Priority Customer	(0.86)	0.00	0.00	0.00	0.50	0.35

As noted above, the proposed taker fees set forth in the table will apply to orders that trade against non-Priority Customer orders. When trading against Priority Customer orders, the Exchange proposes to charge a higher taker fee. Specifically, non-Priority Customer orders will be charged a taker fee of $1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a taker fee of $0.86 per contract for trades executed against a Priority Customer.[18]

As it relates to the new Priority Customer maker rebate, the Exchange also proposes to offer Members an additional rebate of $0.14 per contract if they execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume[19] per day in a given month.[20] The Exchange notes that the proposed volume calculation includes all regular order Priority Customer volume that adds or removes liquidity in Non-Select Symbols on the Exchange, except for volume executed as Crossing Orders and Responses to Crossing Orders. Thus, Members that transact in greater Non-Select Symbol Priority Customer volume on the Exchange (whether by adding or removing liquidity) may be eligible to receive rebates up to $1.00 per contract on their Priority Customers regular orders in Non-Select Symbols that add liquidity to ISE.

Lastly, the Exchange proposes to stipulate that for Priority Customer orders adding liquidity in Non-Select Symbols, there will be no fee charged or rebate provided when trading against Priority Customer complex orders that leg into the regular order book.[21] Today, the Exchange does not charge any fee to Priority Customer complex orders in Non-Select Symbols that leg into the regular market and trade with resting interest on the regular order book, which may include resting Priority Customer orders. As such, the Exchange believes it is appropriate to not charge a fee or provide a rebate to a Non-Select Symbol Priority Customer order resting on the regular order book when the Non-Select Symbol Priority Customer order legs out of the complex order book and interacts with such interest.

Market Maker Plus in Non-Select Symbols

The Exchange currently operates a Market Maker Plus program for regular orders in Select Symbols that provides tiered rebates to Market Makers based on time spent quoting at the national best bid or offer (''NBBO'').[22] This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select Symbols. Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above.[23] If a Market Maker would qualify for a different Market Maker Plus tier in each of the two successive periods described above, then the lower of the two Market Maker Plus tier rebates shall apply to all contracts.[24] A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, will be excluded in calculating whether a Market Maker qualifies for this rebate. A Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 rebate in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. This rebate will be the applicable Tier 2 rebate reduced by $0.08 per contract.

The Exchange believes that the Market Maker Plus program has been successful overall in encouraging better market quality and making the Exchange a more attractive market for Select Symbols. Accordingly, the Exchange proposes to replicate this success for Non-Select Symbols by introducing a Market Maker Plus program with substantially similar qualifications in order to promote and encourage liquidity in those particular symbols. Specifically, Market Makers that achieve Market Maker Plus Tiers 1–3 as proposed below for executions in Non-Select Symbols (excluding index options) will be assessed the following maker fee or rebate instead of paying the $0.70 per contract maker fee as proposed above:[25]

Market maker plus tier (specified percentage)	Maker fee/ rebate
Tier 1 (80% to less than 90%)	$0.50
Tier 2 (90% to less than 98%)	0.30
Tier 3 (98% or greater)	(0.40)

The Market Maker Plus Tier 3 rebate will be provided if the qualifying Market Maker trades against non-Priority Customer orders. Qualifying

[18] *See* proposed Options 7, Section 3, note 3.

[19] ''Customer Total Consolidated Volume'' means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

[20] *See* proposed Options 7, Section 3, note 15.

[21] *See* proposed Options 7, Section 3, note 18.

[22] *See* Options 7, Section 3, note 5.

[23] Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium.

[24] Market Makers may enter quotes in a symbol using one or more unique, exchange assigned identifiers—*i.e.,* badge/suffix combinations. Market Maker Plus status is calculated independently based on quotes entered in a symbol for each of the Market Maker's badge/suffix combinations, and the highest tier achieved for any badge/suffix combination quoting that symbol applies to executions across all badge/suffix combinations that the member uses to trade in that symbol. Only badge/suffix combinations quoting a minimum of ten trading days within the month will be used to determine whether the Market Maker Plus status has been met and the specific tier to be applied to the Market Maker's performance for that month.

[25] As with all Non-Select Symbol pricing in Options 7, Section 3, the proposed Market Maker Plus program will not apply to NDX and NQX options, and the Exchange will charge the applicable index options fees in Options 7, Section 5 instead.

Market Makers that trade against Priority Customer orders will be charged a Market Maker Plus Tier 3 fee of $0.10 per contract instead of receiving the Tier 3 rebate.[26]

The Exchange also proposes to amend the existing Market Maker Plus provisions throughout to provide that Market Makers that meet these qualifications will be assessed the applicable *fee* or rebate. Lastly, the Exchange proposes to amend the language around the reduced Tier 2 incentive currently provided to qualifying Market Makers in Select Symbols, and expand these provisions to cover the proposed fees in the Non-Select Market Maker Plus program. The Exchange proposes to specify that for Select Symbols, this rebate will continue to be the applicable Tier 2 rebate reduced by $0.08 per contract. For Non-Select Symbols, this fee will be the Tier 2 fee increased by $0.08 per contract.

Market Maker Discount Tiers in Non-Select Symbols

Today, as set forth in Options 7, Section 6.D, Market Makers that execute a monthly volume of 250,000 contracts or more in regular Non-Select Symbol orders are entitled to a discounted rate of $0.20 per contract instead of paying the regular $0.25 per contract fee. The Market Maker discount tiers were originally adopted to incentivize greater Market Maker activity in Non-Select Symbols. With the introduction of the new Market Maker Plus program for Non-Select Symbols as described above, the Exchange now proposes to eliminate the Market Maker discount tiers.

Flash Orders

With the introduction of the maker/taker fee structure proposed above for Non-Select Symbols, the Exchange proposes to amend how Flash Orders will be charged under this proposal. By way of background, a ''Flash Order'' is an order that is exposed at the NBBO by the Exchange to all Members for execution, as provided under Supplementary Material .02 to Options 5, Section 2. Today, Flash Orders are assessed the applicable taker fee for the initiation of a Flash Order and the applicable maker rebate (only for Market Makers that qualify for Market Maker Plus) or maker fee for responses to the Flash Order. Thus, for the initiation of a Flash Order in Select Symbols, the Exchange currently assesses a taker fee of $0.45 per contract for Market Maker orders (including Market Maker orders sent by an EAM), $0.46 per contract for all other non-Priority Customer orders, and $0.41 per contract for Priority Customer orders. For responses to a Flash Order in Select Symbols, the Exchange currently assesses a maker fee of $0.11 per contract for all non-Priority Customer orders and no fee for Priority Customer orders.[27] As it relates to Flash Orders in Non-Select Symbols, because the Exchange does not currently differentiate between maker and taker fees for Non-Select Symbol executions, Members today are charged the same fee for initiating and responding to a Flash Order. Specifically, the fee is $0.25 per contract for Market Maker orders, $0.20 per contract for Market Maker orders sent by EAMs, $0.72 per contract for all other non-Priority Customer orders, and $0.00 per contract for Priority Customer orders. In addition to the aforementioned fees and rebates, the Exchange also pays a credit of $0.05 per contract to a market participant that responds to a Flash Order in Select or Non-Select Symbols which executes against a Priority Customer.

With the introduction of the maker/taker fee structure proposed above for Non-Select Symbols, the Exchange now proposes to charge the applicable taker fee for initiating Flash Orders in Non-Select Symbols. The fee for initiating Flash Orders will therefore increase from $0.25 to $0.72 per contract for Market Makers and from $0.20 to $0.72 for Market Maker orders sent by EAMs.[28] The initiating fee, as proposed, will remain the same for all other market participants, ($0.72 per contract for all other non-Priority Customer orders, and $0.00 per contract for Priority Customer orders).

In addition, the Exchange proposes to charge all non-Priority Customer responses to Flash Orders in Non-Select Symbols a flat fee of $0.25 per contract, and not charge a fee for Priority Customer responses. The flash response fee will therefore remain the same for Market Maker orders, except Market Maker orders sent by EAMs will see an increase from $0.20 to $0.25 per contract. For all other non-Priority Customers, the flash response fee in Non-Select Symbols will decrease from $0.72 per contract to $0.25 per contract. Lastly, for Priority Customers, the flash response fee will remain the same at $0.00 per contract.

The Exchange will continue to charge the applicable Select Symbol taker fee for initiating Flash Orders in those symbols, which taker fees are not changing under this proposal. Similarly, the Exchange will continue to charge the applicable Select Symbol maker rebate or fee for responses to Flash Orders in those symbols, which maker pricing will remain the same under this proposal. Accordingly, the Exchange proposes to amend the existing Flash Order provisions to differentiate pricing for Select Symbols and Non-Select Symbols where applicable.[29] Lastly, the Exchange proposes to remove the $0.05 credit discussed above for both Select and Non-Select Symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[30] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[31] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are consistent with the Act in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its

[26] *See* proposed Options 7, Section 3, note 6.

[27] In addition, the maker fee is currently $0.11 for Market Makers, except that (i) Market Makers that qualify for Market Maker Plus would not pay this fee if they meet the applicable tier thresholds set forth in note 5 of Options 7, Section 3, and would instead receive a rebate based on the Market Maker Plus tier for which they qualify; (ii) no fee will be charged or rebate provided when trading against non-Priority Customer complex orders that leg into the regular order book; and (iii) a $0.15 per contract would apply instead of the $0.11 per contract maker fee or applicable Market Maker Plus rebate when trading against Priority Customer complex orders that leg into the regular order book.

[28] As discussed earlier in this filing, the Exchange is proposing to remove the distinction between Non-Select Symbol pricing for Market Makers and for Market Maker orders sent by EAMs.

[29] *See* proposed Options 7, Section 3, note 17. The Exchange will also make technical changes to replace the ''Section I'' references therein and to the definition of Flash Order in Options 7, Section 1 to ''Section 3.'' The Exchange will also amend the first two sentences of note 17 to correct a typo and for better readability.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(4) and (5).

market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [32]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [33]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Marketing Fee

The Exchange believes that it is reasonable to set the marketing fee to $0.00 per contract because the Exchange has proposed changes to its Non-Select Symbol pricing that will result in Market Makers paying higher maker/taker fees than today.[34] Eliminating the marketing fee will keep total execution costs down when Market Makers trade against regular Priority Customer orders in Non-Select Symbols. The Exchange also believes that the proposed fee change is equitable and not unfairly discriminatory as no Market Makers would be charged a marketing fee under this proposal. The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to add the language proposed in Options 7, Section 6.E as it will make clear that no marketing fees will be charged for Select and Non-Select Symbols with the proposed changes, and that if the Exchange determines to charge a marketing fee in the future, it will do so pursuant to a rule filing.

Non-Select Regular Order Pricing

The Exchange believes that the proposed change to adopt the maker/taker pricing model for regular Non-Select Symbol orders as described above is reasonable as it is designed to increase its liquidity and opportunities for all members to trade on the Exchange. Generally, the proposed changes will replace the existing fees with a new maker/taker fee structure where market participants other than Priority Customers are charged a fee based on whether the market participant adds or removes liquidity. Priority Customer orders, meanwhile, will be eligible for highly competitive maker rebates or assessed no taker fees.[35] With these changes, all market participants will also be charged a higher taker fee for trades executed against Priority Customers. For the reasons discussed in the following paragraphs, the Exchange believes that the proposed fee structure will be beneficial to market participants and will encourage an active and liquid market in Non-Select Symbols on ISE.

Under the proposed pricing structure, all non-Priority Customer orders will be charged a uniform base execution fee for adding liquidity (*i.e.,* maker fee of $0.70 per contract) and for removing liquidity (*i.e.,* taker fee of $0.72 per contract). The Exchange believes that the proposed pricing is set at levels that will encourage market participants to increase their Non-Select Symbol activity, especially activity that adds liquidity, on the Exchange. While Market Makers, including Market Maker orders sent by EAMs, will be charged higher fees than the fees currently assessed, the Exchange believes that the increased fees are appropriate to offset the proposed significant Priority Customer maker incentives (as described below).[36] Furthermore, the Exchange believes that all market participants will benefit from additional liquidity created by the Priority Customer rebates.

In addition, Priority Customer orders will be eligible for free executions for removing liquidity and paid a rebate of $0.86 per contract for adding liquidity. Members will also have the opportunity to receive an additional $0.14 rebate if they execute more than 0.06% of Regular Order Non-Select Symbol Priority Customer Volume (excluding Crossing Orders and Responses to Crossing Orders) calculated as a percentage of Customer Total Consolidated Volume per day in a given month, for a total rebate of up to $1.00 per contract.[37] Crossing Orders and Responses to Crossing Orders will be excluded from the proposed volume calculation as this type of order flow is subject to separate pricing, with various incentives currently provided to Members that trade in the Exchange's crossing mechanisms.

The Exchange is proposing to base the additional Priority Customer maker incentive on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. This would allow the volume calculation to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. In addition, by basing the proposed volume calculation on Priority Customer regular order volume that adds or removes liquidity in Non-Select Symbols on the Exchange, the Exchange is seeking to incentivize Members to increase market participation in Non-Select Symbols to qualify for the additional rebate. The Exchange believes that the significant rebate incentives it is proposing to provide for Priority Customer orders, taken together with the $0.00 per contract taker fee, will incentivize Members to bring Priority Customer order flow in Non-Select Symbols, thereby creating additional liquidity to the benefit of all market participants and investors that trade on the Exchange.

With respect to the increased taker fees for trades executed against a Priority Customer, the Exchange believes that the proposed fees are appropriate as they are designed to offset the proposed maker rebate.[38] As described above, Priority Customers will be offered significant maker incentives.

[32] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[33] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[34] As discussed above, the Non-Select Symbol fee for Market Makers will increase from $0.25 to $0.70 per contract (maker fee) and to $0.72 per contract (taker fee).

[35] Furthermore, as discussed below for Market Maker Plus, Market Makers will be eligible to qualify for substantially lower fees or receive a rebate based on their contribution to the market.

[36] *See supra* note 35. Non-Select Symbol fees are currently $0.25 per contract for Market Makers, and $0.20 per contract for Market Maker orders sent by EAMs.

[37] As discussed above, all regular Priority Customer order volume that adds or removes liquidity in Non-Select Symbols on the Exchange is included in the proposed volume calculation, except for volume executed as Crossing Orders and Responses to Crossing Orders.

[38] As discussed above, non-Priority Customers will be charged a taker fee of $1.10 per contract when trading against Priority Customers instead of the $0.72 taker fee. Priority Customers will be charged a taker fee of $0.86 per contract when trading against Priority Customers instead of receiving free executions.

The Exchange believes that Members will benefit from the additional liquidity created by the Priority Customer rebates, and it is therefore appropriate to charge an increased taker fee for trades executed against a Priority Customer. The Exchange notes that other options exchanges, including for example its affiliate Nasdaq GEMX, charge higher taker fees when the counterparty is a Priority Customer.[39]

The Exchange also believes that it is reasonable to stipulate that for Priority Customer orders adding liquidity in Non-Select Symbols, there will be no fee charged or rebate provided when trading against Priority Customer complex orders that leg into the regular order book. As discussed above, the Exchange currently does not charge any fee to Priority Customer complex orders in Non-Select Symbols that leg into the regular market and trade with resting interest on the order book, which may include resting Priority Customer orders. As such, the Exchange believes it is reasonable to not charge a fee or provide a rebate to a Non-Select Symbol Priority Customer order resting on the regular order book when the Non-Select Symbol Priority Customer order legs out of the complex order book and interacts with such interest.

The Exchange believes that the proposed maker/taker pricing model in Non-Select Symbols is equitable and not unfairly discriminatory as all non-Priority Customer orders will be assessed consistent maker/taker fees under the Exchange's proposal, regardless of market participant category. The Exchange believes it is equitable and not unfairly discriminatory to charge a lower fee (or no fee), or to offer a rebate, for Priority Customer orders as the Exchange has historically offered lower execution fees or rebates to those market participants. Furthermore, Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow.

Lastly, the Exchange believes it is reasonable to no longer differentiate the pricing between Market Makers and Market Maker orders sent by EAMs in light of the foregoing changes to adopt a more standardized maker/taker pricing model across all non-Priority Customers. With this change, both market participant categories will be charged the same fees across all Non-Select Symbol orders, including Crossing Orders and Responses to Crossing Orders. As discussed above, the current fees for PIM Orders and Responses to Crossing Orders are already consistent across both market participant categories, except the fee for all other Crossing Orders. The Exchange therefore believes it is reasonable to decrease this fee for Market Makers as with this change Market Makers will be charged the same fee as Market Maker orders sent by EAMs as well as all other non-Priority Customer orders. The Exchange further believes that the proposed changes to remove the separate pricing for Market Maker orders sent by EAMs are equitable and not unfairly discriminatory as the proposed fees for this category will now be consistent with other non-Priority Customer fees.

Market Maker Plus in Non-Select Symbols

The Exchange believes that it is reasonable to adopt the Market Maker Plus program for Non-Select Symbols in the manner discussed above as this program is designed to encourage better market quality and make ISE a more attractive market for Non-Select Symbols, similar to the existing Market Maker Plus program for Select Symbols. Under the proposed program, Market Makers would be rewarded for providing liquidity in Non-Select Symbols with discounted fees or a rebate if the Market Maker achieves a higher Market Maker Plus tier based on time spent quoting at the NBBO.[40] The Exchange believes that it is reasonable to offer these fee incentives to Market Makers that add liquidity because Market Makers provide an important function to the market when they provide liquidity to other market participants through their displayed quotes. The Exchange believes that incentivizing Market Makers to provide liquidity through the proposed Market Maker Plus program will create additional displayed liquidity in Non-Select Symbols, and increase opportunities for market participants to trade, which benefits all market participants in the quality of order interaction.

The Exchange believes that the proposed program is reasonable because it is structured similarly to the existing program for Select Symbols. As proposed, the Market Maker Plus Tier qualifications for Non-Select Symbols, especially proposed Tier 2 and Tier 3, will be slightly more stringent than the existing tiers for Select Symbols.[41] Because Non-Select Symbols generally tend to trade less frequently and may have wider NBBOs than Select Symbols, the Exchange believes the proposed tier qualifications are set at appropriate levels that Market Makers could potentially achieve if they choose to engage in the program.

The Exchange believes that it is reasonable to reduce the incentives for Market Makers that qualify for Tier 3 under the proposed Market Maker Plus program if they trade against Priority Customer orders to help offset the significantly competitive maker/taker pricing proposed above for Priority Customers.[42] Nonetheless, the proposed Tier 3 incentives will still be higher than the proposed incentives in Tier 1 and Tier 2, even if the qualifying Market Maker trades against a Priority Customer, thereby ensuring that the proposed program will be attractive to participating Market Makers.

The Exchange believes that it is reasonable to provide a reduced incentive in Non-Select Symbols to Market Makers who do not qualify for any Market Maker Plus tiers in a given month, but qualified for Market Maker Plus Tier 2 or higher in at least four of the previous six months. The Exchange provides a similar reduced rebate today for Select Symbols that is the applicable Tier 2 rebate reduced by $0.08 per contract. Because the proposed Tier 2 incentive for Non-Select Symbols will be a fee instead of a rebate, the Exchange believes it is appropriate to offer a reduced incentive that is the Tier 2 fee increased by $0.08 per contract. Similar to the existing reduced rebate for Select Symbols, the Exchange believes that this change will preserve the intent of the Market Maker Plus program to reward strong liquidity providers, and avoids penalizing participants while continuing to require Market Makers to quote significantly at the NBBO.

The Exchange believes that the proposed Market Maker Plus program is equitable and not unfairly discriminatory as all Market Makers can qualify for the same incentives under the proposed program. Furthermore, the

[39] *See* Nasdaq GEMX Pricing Schedule at Options 7, Section 3, note 16.

[40] As discussed above, this discounted fee or rebate will be provided in lieu of the base maker fee of $0.70 per contract.

[41] For instance, the qualifications for the Market Maker Plus Tiers in Select Symbols (other than SPY, QQQ, IWM, AMZN, FB, and NVDA) are 85% to less than 95% for Tier 2, and 95% or greater for Tier 3. In Non-Select Symbols, Tier 2 will be 90% to 98%, and Tier 3 will be 98% or greater.

[42] As proposed, qualifying Market Makers that trade against Priority Customers will be assessed a fee of $0.10 per contract in Tier 3 instead of receiving the $0.40 rebate that would be provided to qualifying Market Makers that trade against non-Priority Customers.

Exchange believes it is equitable and not unfairly discriminatory to offer these rebates to only Market Makers because Market Makers, and in particular Market Makers that achieve Market Maker Plus status as proposed, are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not.

Market Maker Discount Tiers in Non-Select Symbols

The Exchange believes that it is reasonable to eliminate the Market Maker discount tiers set forth in Options 7, Section 6.D. Because the objective of the new Market Maker Plus program for Non-Select Symbols, as discussed above, is to incentivize higher Market Maker activity in Non-Select Symbols, similar to the discounted fee today, the Exchange believes it is no longer necessary to offer the current incentive alongside the new Market Maker Plus program. The Exchange believes that eliminating the Market Maker discount tiers is equitable and not unfairly discriminatory as it will apply uniformly to all similarly situated market participants.

Flash Orders

The Exchange believes that the proposed Flash Orders changes are reasonable as they specify how the Exchange will charge Members for Flash Orders with the introduction of maker/taker pricing in Non-Select Symbols. Under the Exchange's proposal, all non-Priority Customers will be charged a uniform taker fee of $0.72 per contract for initiating Flash Orders in Non-Select Symbols, and a flat fee of $0.25 per contract for responses to Flash Orders in Non-Select Symbols. Priority Customers will continue to receive free executions in Non-Select Symbols, regardless of initiating or responding to a Flash Order. As discussed above, the pricing for the initiation and response to Flash Orders in Select Symbols will remain unchanged for all market participant types under this proposal.

The Exchange believes that the proposed pricing for initiating and responding to Flash Orders in Non-Select Symbols is equitable and not unfairly discriminatory as the proposed fees would be more standardized across non-Priority Customer market participant types. Furthermore, the Exchange believes that it is equitable and not unfairly discriminatory to continue charging no fees to Priority Customers for the initiation and response to Flash Orders in Non-Select Symbols for the same reasons discussed above for the proposed Priority Customer maker/taker pricing—*i.e.,* because Priority Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities.

The Exchange believes it is reasonable to eliminate the $0.05 per contract flash credit. The Exchange previously adopted this credit to encourage Members to participate in the flash auction by responding to a Priority Customer Flash Order. The Exchange no longer believes that this incentive is necessary with the proposed changes to charge non-Priority Customers a lower response fee of $0.25 per contract, and is therefore removing it. The Exchange also believes that the proposed removal of this credit is equitable and not unfairly discriminatory as it will apply uniformly to all market participants. As proposed, no market participant will be eligible for a flash credit.

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.

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. The Exchange believes that all of the changes proposed above will incentivize market participants to direct liquidity in Non-Select Symbols to the Exchange. While some aspects of the proposal apply directly to Market Makers (through the new Market Maker Plus program) and Priority Customers (through rebates or free executions under the proposed maker/taker pricing model), the Exchange believes that the proposed changes taken together will fortify and encourage activity, especially liquidity adding activity, in Non-Select Symbols. As noted above, all market participants will benefit from any increase in market activity that the proposal effectuates.

In terms of inter-market competition, the Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[43] and Rule 19b–4(f)(2)[44] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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:

[43] 15 U.S.C. 78s(b)(3)(A)(ii).

[44] 17 CFR 240.19b–4(f)(2).

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–2020–06 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–2020–06. 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–2020–06 and should be submitted on or before March 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04290 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88293; File No. SR–GEMX–2020–04]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 3, Titled Regular Order Fees and Rebates

February 26, 2020.

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 February 12, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend GEMX's Pricing Schedule. Specifically, the Exchange proposes to amend Options 7, Section 3, titled ''Regular Order Fees and Rebates.''

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

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, titled ''Regular Order Fees and Rebates.'' Specifically, GEMX proposes to amend the Qualifying Tier Thresholds in Table 1.

The Exchange originally filed the proposed pricing changes on February 3, 2020 (SR–GEMX–2020–01). On February 12, 2020, the Exchange withdrew that filing and submitted this filing.

Today, GEMX has 4 tiers as part of its Qualifying Tier Thresholds in Table 1 of Options 7, Section 3 as follows:

Qualifying Tier Thresholds

TABLE 1

Tier	Total affiliated member ADV	Priority customer maker ADV
Tier 1	0–99,999	0–19,999.
Tier 2	100,000–224,999, or executes 1% to less than 2% of Customer Total Consolidated Volume	20,000–99,999.
Tier 3	225,000–349,999, or executes 2% to less than 3% of Customer Total Consolidated Volume	100,000–149,999.
Tier 4	350,000 or more, or executes 3% or greater of Customer Total Consolidated Volume	150,000 or more.

All market participants can qualify for Tiers 1 through 4, provided they meet the requisite volume thresholds specified in Table 1 above. The maker and taker fees for all market participants represented in Table 1, displayed above, are dependent on qualifying for a particular tier. With respect to these tiers, the highest tier threshold attained applies retroactively in a given month to all eligible traded contracts and applies to all eligible market participants. All eligible volume from affiliated Members will be aggregated in determining applicable tiers, provided there is at least 75% common ownership between the Members as reflected on each Member's Form BD, Schedule A.

The Exchange proposes to amend the current Qualifying Tier Thresholds for Non-Priority Customers by replacing the ADV thresholds with total industry

[45] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

percentage thresholds for the Total Affiliated Member.[3] Specifically, the Exchange proposes that a Member would be eligible for Tier 1 if it executes less than 0.65% [4] of Customer Total Consolidated Volume.[5] A Member would be eligible for Tier 2 if it executes 0.65% to less than 1.5% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes 1.5% to less than 2.50% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes 2.5% or greater of Customer Total Consolidated Volume. The Exchange notes by way of comparison that the proposed new percentage tiers for Non-Priority Customer are equivalent in terms of requisite volume to the current tiers.

The Exchange also proposes to amend the current Qualifying Tier Thresholds by replacing the ADV thresholds with total industry percentage thresholds with respect to tier volumes for Members that submit Priority Customer maker orders.[6] Specifically, the Exchange proposes that a Member would be eligible for Tier 1 if it executes Priority Customer maker volume of less than 0.10% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes Priority Customer maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes Priority Customer maker Volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes Priority Customer maker volume of 1.20% or greater of Customer Total Consolidated Volume. The Exchange notes that the proposed new percentage for Priority Customer maker 1–3 tiers are equivalent in terms of requisite volume to the existing tiers. Priority maker Tier 4 requires additional volume to meet the proposed criteria of 1.20% of Customer Total Consolidated Volume, which is approximately 180,000 contracts per day, as compared to a current ADV of 150,000 contracts.

The Exchange is proposing to amend these volume requirements to align with increasing Member activity on GEMX over time. The Exchange believes that Members will not be impacted by this proposal with the exception of the Tier 4 Priority Customer maker tier, which is more stringent as a result of this proposal.[7] While the Tier 4 Priority Customer tier is more stringent, the proposed pricing is intended to continue to reward Members that submit Priority Customer order flow to the Exchange and thereby increase liquidity and trading opportunities for all Members. The Total Affiliated Member % of Customer Total Consolidated Volume category, as proposed and described below, includes all volume executed on the Exchange in all symbols and order types, as is the case today. The maker/taker fees will remain the same for all Member orders [8] regardless of the tier achieved.

Finally, the Exchange proposes to amend the notes within Options 7, Section 3, which follow the Qualifying Tier Thresholds, to replace the term ''ADV'' with ''% of Customer Total Consolidated Volume'' to conform the text to the amendments proposed herein.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [11]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of options venues to which market participants may direct their order flow. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange's proposal to amend the current Qualifying Tier Thresholds for Non-Priority Customers by replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member is consistent with the

[3] As proposed, the Total Affiliated Member % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms. *See* proposed Pricing Schedule at Options 7, Section 3.

[4] For example, 0.65% of Customer Total Consolidated Volume is approximately 100,000 contracts per day.

[5] As proposed, for purposes of measuring Total Affiliated Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. *See* proposed Pricing Schedule at Options 7, Section 3.

[6] As proposed, the Priority Customer maker % of Customer Total Consolidated Volume category includes all Priority Customer volume that adds liquidity in all symbols. *See* proposed Pricing Schedule at Options 7, Section 3.

[7] Based on 2019 participant tier qualifications, the Exchange anticipates that market participants will continue to qualify for the Tier 4 Priority Customer maker tier, notwithstanding the additional volume requirements.

[8] The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

Act.[13] The Exchange is proposing to base Tiers 1 through 4 on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange's tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the proposed tiers may change in any given month due to increases or decreases in industry volume, the Exchange believes that the proposed tier requirements are set at appropriate levels. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements. The Exchange is proposing to effectively equalize the volume thresholds with the current Qualifying Tier Thresholds so that the Exchange may continue to align the tier requirements with GEMX's anticipated growth as a venue (and corresponding increased Member activity) over time. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements and therefore the Exchange does not anticipate any impact to Non-Priority Customers as a result of replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member.

The Exchange's proposal to amend the current Qualifying Tier Thresholds for Priority Customers makers by replacing the ADV thresholds with total industry percentage thresholds for the Total Affiliated Member is consistent with the Act.[14] The Exchange is proposing to base Tiers 1 through 4 on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the Exchange's tiers to be calibrated to current market volumes rather than requiring the same amount of volume regardless of market conditions. While the amount of volume required by the proposed tiers may change in any given month due to increases or decreases in industry volume, the Exchange believes that the proposed tier requirements are set at appropriate levels. These proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements for Tier 1 through 3 and therefore the Exchange does not anticipate any impact to Members that submit Priority Customer maker orders as a result of replacing the ADV thresholds with total industry percentage thresholds. However, with this proposal, Priority Customer Tier 4 is more stringent than the current tier level. Despite the increased volume amount to qualify for proposed Priority Customer Tier 4 of 1.20% of Customer Total Consolidated Volume, which is approximately 180,000 contracts per day as compared to a current ADV of 150,000 contracts, the maker/taker tiered fee structure is intended to continue to reward Members to bring more order flow to the Exchange and thereby increase liquidity and trading opportunities for all Members. Overall, the Exchange is proposing to effectively equalize the volume thresholds with the current Qualifying Tier Thresholds so that the Exchange may continue to align the tier requirements with GEMX's anticipated growth as a venue (and corresponding increased Member activity) over time.

The Exchange's proposal to amend the current Non-Priority Customer and Priority Customer maker Qualifying Tier Thresholds is equitable and not unfairly discriminatory. The proposed tiers will be applied uniformly to all market participants, respectively. Furthermore, the Exchange believes that the qualifying tier thresholds are equitable and not unfairly discriminatory as all market participants may qualify for a higher tier by executing the required volume of contracts, either through the Member or its affiliates, as is the case today. The Exchange believes that Members will not be impacted by this proposal, with the exception of the Tier 4 Priority Customer maker. With this proposal, Tier 4 Priority Customers will be required to submit a greater amount of order flow to qualify for proposed Tier 4 as compared to today (1.20% of Customer Total Consolidated Volume is approximately 180,000 contracts per day as compared to a current ADV of 150,000 contracts). Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. Further, the maker/taker fees will remain the same for all Member orders [15] regardless of the tier achieved.

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.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition. The Exchange's proposal to amend the current Non-Priority Customer and Priority Customer Qualifying Tier Thresholds do not impose an undue burden on intramarket competition. The tiers will be applied uniformly to all market participants. Furthermore, all market participants may qualify for a higher tier by executing the required volume of contracts, either through the Member or its affiliates, as is the case today. These

[13] The Exchange proposes that a Member would be eligible for Tier 1 if it executes less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes 0.65% to less than 1.5% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes 1.5% to less than 2.50% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes 2.5% or greater of Customer Total Consolidated Volume. As proposed, for purposes of measuring Total Affiliated and/or Appointed Member % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

[14] The Exchange proposes that a Member would be eligible for Tier 1 if it executes Priority Customer maker volume of less than 0.10% of Customer Total Consolidated Volume. A Member would be eligible for Tier 2 if it executes Priority Customer maker volume of 0.10% to less than 0.65% of Customer Total Consolidated Volume. A Member would be eligible for Tier 3 if it executes Priority Customer maker Volume of 0.65% to less than 1.20% of Customer Total Consolidated Volume. Finally, a Member would be eligible for Tier 4 if it executes Priority Customer maker volume of 1.20% or greater of Customer Total Consolidated Volume.

[15] The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

proposed percentage of industry volume tier requirements are no more stringent than the current ADV requirements, with the exception of the Tier 4 Priority Customer maker. With this proposal, Tier 4 Priority Customers will be required to submit a greater amount of order flow to qualify for the current Tier 4. Priority Customer orders bring valuable liquidity to the market which liquidity benefits other market participants. As to the remainder of the proposed tiers, the Exchange does not anticipate any impact to market participants as a result of replacing the ADV thresholds with total industry percentage thresholds. Finally, the maker/taker fees will remain the same for all Member orders [16] regardless of the tier achieved. For the foregoing reasons, the Exchange does not believe that its proposal will have an undue burden on 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[17] and Rule 19b–4(f)(2) [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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–2020–04 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–2020–04. 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–2020–04 and should be submitted on or before March 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04291 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[16] The Exchange is not proposing to amend any GEMX maker or taker fees within Options 7, Section 3 for Penny and Non-Penny Symbols.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88286; File No. SR–Phlx–2020–05]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 7 Related to Order Types and Times-in-Force Provisions

February 26, 2020.

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 February 14, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend Options 3, Section 7, ''Electronic Acceptance of Quotes and Orders'' and Options 8, Section 32, ''Certain Types of Floor-Based (Non-System) Orders Defined,'' to permit the Exchange to determine the availability of order types and time-in-force provisions.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Options 3, Section 7, ''Electronic Acceptance of Quotes and Orders'' and Options 8, Section 32, ''Certain Types of Floor-Based (Non-System) Orders Defined,'' to provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis. This proposed change is based on the rules of Cboe BZX Exchange, Inc. (''BZX Options''),[3] Rule 21.1, Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.1,[4] Cboe Exchange, Inc. (''Cboe'') Rule 5.6 [5] and Cboe C2 Exchange, Inc. (''C2'') Rule 6.10(a).[6] The Exchange proposes to also amend the title of Options 3, Section 7 from ''Electronic Acceptance of Quotes and Orders'' to ''Types of Orders and Order and Quote Protocols'' and the title of Options 8, Section 32 from ''Certain Types of Floor-Based (Non-System) Orders Defined,'' to ''Types of Floor-Based (Non-System) Orders'' to reflect the information in these rules.

The Exchange proposes to add rule text at the beginning of Options 3, Section 7 and Options 8, Section 32 which states, ''The Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis.'' The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule is consistent with BZX Options Rule 21.1, EDGX Options Rules 21.1(d) and 21.1(f), Cboe Rule 5.6 and C2 Rule 6.10(a), each of which provides these exchanges with the same flexibility. The Exchange intends to file rule changes to adopt this rule across all Nasdaq affiliated markets.

This rule change will not permit the Exchange to discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

The Exchange would issue an Options Trader Alert to provide notification to Participants that a change is being made to the availability or unavailability of a certain order type or time-in-force. The Exchange notes that in the event of System disruption, the Exchange would notify Participants of the unavailability of any order type and would also provide notification when that order type was available once the disruption was resolved.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of 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 of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis. This flexibility would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to address the specific characteristics of different classes and different market conditions. The Exchange believes that this proposal serves to protect investors by ensuring that the appropriate order types and times-in-force are tailored to the different class characteristics and by mitigating risks associated with changing market conditions.[9] The Exchange would issue a notification to Participants to provide them notice that a change is being made to the availability or unavailability of a certain order type or time-in-force before implementing the change. In the event of a System issue, the Exchange believes that it is consistent with the Act to temporarily not offer a certain order type to ensure the proper executions of transactions within the System thereby protecting investors and the public interest. The Exchange anticipates that exercising its ability to temporarily not offer order types would be infrequent.

Adding this provision on all Nasdaq affiliated markets will ensure consistency between the Exchange rules and that of its affiliates and would remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade, as well as foster cooperation and coordination with persons engaged in facilitating transactions in securities. The proposed rule change provides the Exchange with the same flexibility currently permitted on BZX Options, EDGX Options, Cboe and C2. The Exchange believes that this consistency promotes market participants' understanding of the rules across the multiple affiliated exchanges and promotes a fair and orderly national options market system. The Exchange also notes that the proposed change is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as it has previously been filed with the Commission.

The Exchange's proposal is not unfairly discriminatory because the Exchange will not discriminate among market participants when determining which order types and times-in-force

[3] BZX Options Rule 21.1(d), Definitions, provides ''The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis.''

BZX Options Rule 21.1(f), Definitions, provides ''The term ''Time in Force'' means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders.''

[4] EDGX Options Rule 21.1, Definitions, provides, ''The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders.''

[5] Cboe Rule 5.6, Availability of Orders, provides, ''Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types are available on a class-by-class and system-by-system basis.''

[6] C2 Rule 6.10(a), Availability of Orders, provides, ''*Availability.* Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange may also determine to temporarily not offer an order type or a time-in-force based on a System issue.

provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition, as the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition because the proposed change provides the Exchange with substantially the same flexibility as the rules of other exchanges.[10] Therefore, the Exchange believes that the proposed rule change will allow it to make determinations regarding the availability of orders that will enable it to remain competitive as markets and market conditions evolve.

The Exchange's proposal does not impose an undue burden on competition because the Exchange's proposal will uniformly make certain order types and time-in-force, respectively, available on a class or System basis for market participants.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may 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 so that the proposed rule change may become operative immediately. The Exchange notes that waiver of the operative delay will allow Phlx to exercise immediately the same flexibility to make certain order types available or unavailable as BZX Options, EDGX Options, Cboe, and C2. The Exchange states that this flexibility would serve to protect investors and the public interest by mitigating risks associated with changing market conditions. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–05 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–Phlx–2020–05. 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 offices 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–Phlx–2020–05, and should be submitted on or before March 24, 2020.

[10] *See* notes 4–6 above.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04287 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–180, OMB Control No. 3235–0247]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form N–8B–4.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–8B–4 (17 CFR 274.14) is the form used by face-amount certificate companies to comply with the filing and disclosure requirements imposed by Section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)). Among other items, Form N–8B–4 requires disclosure of the following information about the face-amount certificate company: Date and form of organization; controlling persons; current business and contemplated changes to the company's business; investment, borrowing, and lending policies, as well as other fundamental policies; securities issued by the company; investment adviser; depositaries; management personnel; compensation paid to directors, officers, and certain employees; and financial statements. The Commission uses the information provided in the collection of information to determine compliance with Section 8(b) of the Investment Company Act of 1940.

Form N–8B–4 and the burden of compliance have not changed since the last approval. Each registrant files Form N–8B–4 for its initial filing and does not file post-effective amendments to Form N–8B–4.[1] Commission staff estimates that no respondents will file Form N–8B–4 each year. There is currently only one existing face-amount certificate company, and no face-amount certificate companies have filed a Form N–8B–4 in many years. No new face-amount certificate companies have been established since the last OMB information collection approval for this form, which occurred in 2017. Accordingly, the staff estimates that, each year, no face-amount certificate companies will file Form N–8B–4, and that the total burden for the information collection is zero hours. Although Commission staff estimates that there is no hour burden associated with Form N–8B–4, the staff is requesting a burden of one hour for administrative purposes. Estimates of the burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

The information provided on Form N–8B–4 is mandatory. The information provided on Form N–8B–4 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 27, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04348 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[1] Pursuant to Section 30(b)(1) of the Act (15 U.S.C. 80a–29), each respondent keeps its registration statement current through the filing of periodic reports as required by Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) and the rules thereunder. Post-effective amendments are filed with the Commission on the face-amount certificate company's Form S–1. Hence, respondents only file Form N–8B–4 for their initial registration statement and not for post-effective amendments.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88294; File No. SR–ISE–2020–07]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 7 Related to Order Types and Times-in-Force Provisions

February 26, 2020.

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 February 14, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend Options 3, Section 7, ''Types of Orders'' to permit the Exchange to determine the availability of order types and time-in-force provisions.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Options 3, Section 7, ''Types of Orders'' to provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis. This proposed change is based on the rules of Cboe BZX Exchange, Inc. (''BZX Options''),[3] Rule 21.1, Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.1,[4] Cboe Exchange, Inc. (''Cboe'') Rule 5.6 [5] and Cboe C2 Exchange, Inc. (''C2'') Rule 6.10(a).[6] The Exchange proposes to also amend the title of the rule from ''Types of Orders'' to ''Types of Orders and Order and Quote Protocols'' to reflect the information in the rule.

The Exchange proposes to add rule text at the beginning of Options 3, Section 7 which states, ''The Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis.'' The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule is consistent with BZX Options Rule 21.1, EDGX Options Rules 21.1(d) and 21.1(f), Cboe Rule 5.6 and C2 Rule 6.10(a), each of which provides these exchanges with the same flexibility. The Exchange intends to file rule changes to adopt this rule across all Nasdaq affiliated markets.

This rule change will not permit the Exchange to discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

The Exchange would issue an Options Trader Alert to provide notification to Participants that a change is being made to the availability or unavailability of a certain order type or time-in-force. The Exchange notes that in the event of System disruption, the Exchange would notify Participants of the unavailability of any order type and would also provide notification when that order type was available once the disruption was resolved.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of 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 of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis. This flexibility would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to address the specific characteristics of different classes and different market conditions. The Exchange believes that this proposal serves to protect investors by ensuring that the appropriate order types and times-in-force are tailored to the different class characteristics and by mitigating risks associated with changing market conditions.[9] The Exchange would issue a notification to Participants to provide them notice that a change is being made to the availability or unavailability of a certain order type or time-in-force before implementing the change. In the event of a System issue, the Exchange believes that it is consistent with the Act to temporarily not offer a certain order type to ensure the proper executions of transactions within the System thereby protecting investors and the public interest. The Exchange anticipates that exercising its ability to temporarily not offer order types would be infrequent.

Adding this provision on all Nasdaq affiliated markets will ensure consistency between the Exchange rules and that of its affiliates and would remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade, as well as foster cooperation and coordination with persons engaged in facilitating transactions in securities. The proposed rule change provides the Exchange with the same flexibility currently permitted on BZX Options, EDGX Options, Cboe and C2. The Exchange believes that this consistency promotes market participants' understanding of the rules across the multiple affiliated exchanges and promotes a fair and orderly national options market system. The Exchange also notes that the proposed change is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as it has previously been filed with the Commission.

The Exchange's proposal is not unfairly discriminatory because the Exchange will not discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type

[3] BZX Options Rule 21.1(d), Definitions, provides ''The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis.''

BZX Options Rule 21.1(f), Definitions, provides ''The term ''Time in Force'' means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders.''

[4] EDGX Options Rule 21.1, Definitions, provides, ''The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders.''

[5] Cboe Rule 5.6, Availability of Orders, provides, ''Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types are available on a class-by-class and system-by-system basis.''

[6] C2 Rule 6.10(a), Availability of Orders, provides, ''*Availability.* Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange may also determine to temporarily not offer an order type or a time-in-force based on a System issue.

would not be available for any market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition, as the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition because the proposed change provides the Exchange with substantially the same flexibility as the rules of other exchanges.[10] Therefore, the Exchange believes that the proposed rule change will allow it to make determinations regarding the availability of orders that will enable it to remain competitive as markets and market conditions evolve.

The Exchange's proposal does not impose an undue burden on competition because the Exchange's proposal will uniformly make certain order types and time-in-force, respectively, available on a class or System basis for market participants.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may 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 so that the proposed rule change may become operative immediately. The Exchange notes that waiver of the operative delay will allow ISE to exercise immediately the same flexibility to make certain order types available or unavailable as BZX Options, EDGX Options, Cboe, and C2. The Exchange states that this flexibility would serve to protect investors and the public interest by mitigating risks associated with changing market conditions. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2020–07 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–2020–07. 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 offices 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–2020–07, and should be submitted on or before March 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04292 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* notes 4–6 above.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–501, OMB Control No. 3235–0559]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 203A–2(e)

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 203A–2(e),[1] which is entitled ''Internet Investment Advisers,'' exempts from the prohibition on Commission registration an internet investment adviser who provides investment advice to all of its clients exclusively through computer software-based models or applications, termed under the rule as ''interactive websites.'' [2] These advisers generally would not meet the statutory thresholds currently set out in section 203A of the Advisers Act [3]—they do not manage $25 million or more in assets and do not advise registered investment companies, or they manage between $25 million and $100 million in assets, do not advise registered investment companies or business development companies, and are required to be registered as investment advisers with the states in which they maintain their principal offices and places of business and are subject to examination as an adviser by such states.[4] Eligibility under rule 203A–2(e) is conditioned on an adviser maintaining in an easily accessible place, for a period of not less than five years from the filing of Form ADV,[5] a record demonstrating that the adviser's advisory business has been conducted through an interactive website in accordance with the rule.[6]

This record maintenance requirement is a ''collection of information'' for PRA purposes. The Commission believes that approximately 181 advisers are registered with the Commission under rule 203A–2(e), which involves a recordkeeping requirement of approximately four burden hours per year per adviser and results in an estimated 724 of total burden hours (4 × 181) for all advisers.

This collection of information is mandatory, as it is used by Commission staff in its examination and oversight program in order to determine continued Commission registration eligibility for advisers registered under this rule. Responses generally are kept confidential pursuant to section 210(b) of the Advisers Act.[7] Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) The accuracy of the Commission's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 27, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04352 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 17 CFR 275.203A–2(e).

[2] Included in rule 203A–2(e) is a limited exception to the interactive website requirement which allows these advisers to provide investment advice to fewer than 15 clients through other means on an annual basis. 17 CFR 275.203A–2(e)(1)(i). The rule also precludes advisers in a control relationship with an SEC-registered internet adviser from registering with the Commission under the common control exemption provided by rule 203A–2(b) (17 CFR 275.203A–2(b)). 17 CFR 275.203A–2(e)(1)(iii).

[3] 15 U.S.C. 80b–3a(a).

[4] *Id.*

[5] The five-year record retention period is a similar recordkeeping retention period as imposed on all advisers under rule 204–2 of the Advisers Act. See rule 204–2 (17 CFR 275.204–2).

[6] 17 CFR 275.203A–2(e)(1)(ii).

[7] 15 U.S.C. 80b–10(a).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–473, OMB Control No. 3235–0530]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 32a–4

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 32(a)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a 31(a)(2)) (''Act'') requires that the selection of a registered management investment company's or registered face-amount certificate company's (collectively, ''funds'') independent public accountant be submitted to shareholders for ratification or rejection. Rule 32a–4 under the Investment Company Act (17 CFR 270.32a–4) exempts a fund from this requirement if, among other things, the fund has an audit committee consisting entirely of independent directors. The rule permits continuing oversight of a fund's accounting and auditing processes by an independent audit committee in place of a shareholder vote.

Among other things, in order to rely on rule 32a–4, a fund's board of directors must adopt an audit committee charter and must preserve that charter, and any modifications to the charter, permanently in an easily accessible place. The purpose of these conditions is to ensure that Commission staff will be able to monitor the duties and responsibilities of an audit committee of a fund relying on the rule.

Commission staff estimates that on average the board of directors takes 15 minutes to adopt the audit committee charter. Commission staff has estimated that with an average of 8 directors on

the board,[1] total director time to adopt the charter is 2 hours. Combined with an estimated ½ hour of paralegal time to prepare the charter for board review, the staff estimates a total one-time collection of information burden of 2½ hours for each fund. Once a board adopts an audit committee charter, the charter is preserved as part of the fund's records. Commission staff estimates that there is no annual hourly burden associated with preserving the charter in accordance with this rule.[2]

Because virtually all existing funds have now adopted audit committee charters, the annual one-time collection of information burden associated with adopting audit committee charters is limited to the burden incurred by newly established funds. Commission staff estimates that fund sponsors establish approximately 90 new funds each year,[3] and that all of these funds will adopt an audit committee charter in order to rely on rule 32a–4. Thus, Commission staff estimates that the annual one-time hour burden associated with adopting an audit committee charter under rule 32a–4 is approximately225 hours.[4]

When funds adopt an audit committee charter in order to rely on rule 32a–4, they also may incur one-time costs related to hiring outside counsel to prepare the charter. Commission staff estimates that those costs average approximately $1,500 per fund. [5] As noted above, Commission staff estimates that approximately 90 new funds each year will adopt an audit committee charter in order to rely on rule 32a–4. Thus, Commission staff estimates that the ongoing annual cost burden associated with rule 32a-4 in the future will be approximately $135,000.[6]

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collections of information required by rule 32a–4 are necessary to obtain the benefits of the rule. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimates of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 27, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04351 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate is based on staff experience and on discussions with a representative of an entity that surveys funds and calculates fund board statistics based on responses to its surveys.

[2] This estimate is based on staff experience and discussions with funds regarding the hour burden related to maintenance of the charter.

[3] This estimate is based on the average number of notifications of registration on Form N–8A filed from2017 2019.

[4] This estimate is based on the following calculation: (2.5 burden hours for establishing charter × 90 new funds = 225 burden hours).

[5] Costs may vary based on the individual needs of each fund. However, based on the staff's experience and conversations with outside counsel that prepare these charters, legal fees related to the preparation and adoption of an audit committee charter usually average $1500 or less. The Commission also understands that model audit committee charters are available, which reduces the costs associated with drafting a charter.

[6] This estimate is based on the following calculations: ($1500 cost of adopting charter × 90 newly established funds = $135,000).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, March 4, 2020 at 10:00 a.m.

CHANGES IN THE MEETING: The Open Meeting scheduled for Wednesday, March 4, 2020 at 10:00 a.m. has been changed to Wednesday, March 4, 2020 at 11:00 a.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: February 28, 2020.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–04433 Filed 2–28–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–231, OMB Control No. 3235–0229]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form N–17D–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 17(d) (15 U.S.C. 80a–17(d)) of the Investment Company Act of 1940 (''Act'') authorizes the Commission to adopt rules that protect funds and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act (17 CFR 270.17d–1) prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Paragraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (''investments'') made by a small business investment company (''SBIC'') and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 (17 CFR 270.17d–2) designates Form N–17D–1 (17 CFR 274.200) (''form'') as the form for reports required by rule 17d–1.

SBICs and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an

opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBICs and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

There is one SBIC that may file the form annually.[1] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. Most of the information requested on the form should be readily available to the SBIC or the affiliated bank in records kept in the ordinary course of business, or with respect to the SBIC, pursuant to the recordkeeping requirements under the Act. Commission staff estimates that it should take approximately one hour for an accountant or other professional to complete the form.[2] The estimated total annual burden of filling out the form is 1 hour, at an estimated total annual cost of $216.[3] The Commission will not keep responses on Form N–17D–1 confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 27, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04349 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[1] As of October 22, 2019, one SBIC was registered with the Commission.

[2] This estimate of hours is based on past conversations with representatives of SBICs and accountants that have filed the form.

[3] The estimated wage figure is based on published rates for Senior Accountants ($216). The $216/hour figure for a Senior Account is from Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–187, OMB Control No. 3235–0211]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 18f–1 and Form N–18f–1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 18f–1 (17 CFR 270.18f–1) enables a registered open-end management investment company (''fund'') that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(f)). A fund relying on the rule must file Form N–18F–1 (17 CFR 274.51) to notify the Commission of this election. The Commission staff estimates that 22 funds file Form N–18F–1 annually, and that each response takes one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 22 hours. The estimated burden hours associated with rule 18f–1 and Form 18F–1 have decreased by 16 hours from the current allocation of 38 hours. This decrease is due to a decrease in the estimated number of investment companies filing Form N–18F–1 annually. There is no external cost associated with this collection of information.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 18f–1 is necessary to obtain the benefits of the rule. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 27, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04350 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88291; File No. SR–MRX–2020–04]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 7 Related to Order Types and Times-in-Force Provisions

February 26, 2020.

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 February 14, 2020, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend Options 3, Section 7, ''Types of Orders'' to permit the Exchange to determine the availability of order types and time-in-force provisions.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Options 3, Section 7, ''Types of Orders'' to provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis. This proposed change is based on the rules of Cboe BZX Exchange, Inc. (''BZX Options''),[3] Rule 21.1, Cboe EDGX Exchange, Inc. (''EDGX Options'') Rule 21.1,[4] Cboe Exchange, Inc. (''Cboe'') Rule 5.6 [5] and Cboe C2 Exchange, Inc. (''C2'') Rule 6.10(a).[6] The Exchange proposes to also amend the title of the rule from ''Types of Orders'' to ''Types of Orders and Order and Quote Protocols'' to reflect the information in the rule.

The Exchange proposes to add rule text at the beginning of Options 3, Section 7 which states, ''The Exchange may determine to make certain order types and time-in-force, respectively, available on a class or System basis.'' The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule is consistent with BZX Options Rule 21.1, EDGX Options Rules 21.1(d) and 21.1(f), Cboe Rule 5.6 and C2 Rule 6.10(a), each of which provides these exchanges with the same flexibility. The Exchange intends to file rule changes to adopt this rule across all Nasdaq affiliated markets.

This rule change will not permit the Exchange to discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

The Exchange would issue an Options Trader Alert to provide notification to Participants that a change is being made to the availability or unavailability of a certain order type or time-in-force. The Exchange notes that in the event of System disruption, the Exchange would notify Participants of the unavailability of any order type and would also provide notification when that order type was available once the disruption was resolved.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of 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 of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis. This flexibility would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to

[3] BZX Options Rule 21.1(d), Definitions, provides ''The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis.''

BZX Options Rule 21.1(f), Definitions, provides ''The term ''Time in Force'' means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders.''

[4] EDGX Options Rule 21.1, Definitions, provides, ''The term ''Order Type'' shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders.''

[5] Cboe Rule 5.6, Availability of Orders, provides, ''Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types are available on a class-by-class and system-by-system basis.''

[6] C2 Rule 6.10(a), Availability of Orders, provides, ''*Availability.* Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

address the specific characteristics of different classes and different market conditions. The Exchange believes that this proposal serves to protect investors by ensuring that the appropriate order types and times-in-force are tailored to the different class characteristics and by mitigating risks associated with changing market conditions.[9] The Exchange would issue a notification to Participants to provide them notice that a change is being made to the availability or unavailability of a certain order type or time-in-force before implementing the change. In the event of a System issue, the Exchange believes that it is consistent with the Act to temporarily not offer a certain order type to ensure the proper executions of transactions within the System thereby protecting investors and the public interest. The Exchange anticipates that exercising its ability to temporarily not offer order types would be infrequent.

Adding this provision on all Nasdaq affiliated markets will ensure consistency between the Exchange rules and that of its affiliates and would remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade, as well as foster cooperation and coordination with persons engaged in facilitating transactions in securities. The proposed rule change provides the Exchange with the same flexibility currently permitted on BZX Options, EDGX Options, Cboe and C2. The Exchange believes that this consistency promotes market participants' understanding of the rules across the multiple affiliated exchanges and promotes a fair and orderly national options market system. The Exchange also notes that the proposed change is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as it has previously been filed with the Commission.

The Exchange's proposal is not unfairly discriminatory because the Exchange will not discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition, as the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition because the proposed change provides the Exchange with substantially the same flexibility as the rules of other exchanges.[10] Therefore, the Exchange believes that the proposed rule change will allow it to make determinations regarding the availability of orders that will enable it to remain competitive as markets and market conditions evolve.

The Exchange's proposal does not impose an undue burden on competition because the Exchange's proposal will uniformly make certain order types and time-in-force, respectively, available on a class or System basis for market participants.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may 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 so that the proposed rule change may become operative immediately. The Exchange notes that waiver of the operative delay will allow MRX to exercise immediately the same flexibility to make certain order types available or unavailable as BZX Options, EDGX Options, Cboe, and C2. The Exchange states that this flexibility would serve to protect investors and the public interest by mitigating risks associated with changing market conditions. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[9] The Exchange may also determine to temporarily not offer an order type or a time-in-force based on a System issue.

[10] *See* notes 4–6 above.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2020–04 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–2020–04. 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 offices 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–2020–04, and should be submitted on or before March 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04289 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88288; File No. SR–NASDAQ–2020–009]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market LLC ("NOM") Rules at Options 3, Section 7

February 26, 2020.

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 February 14, 2020, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 The Nasdaq Options Market LLC ("NOM") Rules at Options 3, Section 7, "Types of Orders and Quote Protocols" to permit the Exchange to determine the availability of order types and time-in-force provisions.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Options 3, Section 7, "Types of Orders and Quote Protocols" to provide that the Exchange may determine which order types and times-in-force provisions are available on a class or system basis. This proposed change is based on the rules of Cboe BZX Exchange, Inc. ("BZX Options"),[3] Rule 21.1, Cboe EDGX Exchange, Inc. ("EDGX Options") Rule 21.1,[4] Cboe Exchange, Inc. ("Cboe") Rule 5.6 [5] and Cboe C2 Exchange, Inc. ("C2") Rule 6.10(a).[6] The Exchange proposes to also amend the title of the rule from "Types of Orders and Quote Protocols" to "Types of Orders and Order and Quote Protocols" to reflect the information in the rule.

The Exchange proposes to add rule text at the beginning of Options 3, Section 7 which states, "The Exchange may determine to make certain order

[3] BZX Options Rule 21.1(d), Definitions, provides "The term "Order Type" shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (l) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class or system basis."

BZX Options Rule 21.1(f), Definitions, provides "The term "Time in Force" means the period of time that the System will hold an order, subject to the restrictions set forth in paragraph (j) below with respect to bulk messages submitted through bulk ports, for potential execution. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Times-in-Force are available on a class, system, or trading session basis. Rule 21.20 sets forth the Times-in-Force the Exchange may make available for complex orders."

[4] EDGX Options Rule 21.1, Definitions, provides, "The term "Order Type" shall mean the unique processing prescribed for designated orders, subject to the restrictions set forth in paragraph (j) below with respect to orders and bulk messages submitted through bulk ports, that are eligible for entry into the System. Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following Order Types are available on a class, system, or trading session basis. Rule 21.20 sets forth the Order Types the Exchange may make available for complex orders."

[5] Cboe Rule 5.6, Availability of Orders, provides, "Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types are available on a class-by-class and system-by-system basis."

[6] C2 Rule 6.10(a), Availability of Orders, provides, "*Availability.* Unless otherwise specified in the Rules or the context indicates otherwise, the Exchange determines which of the following order types, Order Instructions, and Times-in-Force are available on a class, system, or trading session basis. Rule 6.13 sets forth the order types, Order Instructions, and Times-in-Force the Exchange may make available for complex orders."

types and time-in-force, respectively, available on a class or System basis.'' The purpose of this rule change is to provide the Exchange with appropriate flexibility to address different trading characteristics, market models, and the investor base of each class, as well as to handle any System issues that may arise and require the Exchange to temporarily not accept certain order types. This rule is consistent with BZX Options Rule 21.1, EDGX Options Rules 21.1(d) and 21.1(f), Cboe Rule 5.6 and C2 Rule 6.10(a), each of which provides these exchanges with the same flexibility. The Exchange intends to file rule changes to adopt this rule across all Nasdaq affiliated markets.

This rule change will not permit the Exchange to discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

The Exchange would issue an Options Trader Alert to provide notification to Participants that a change is being made to the availability or unavailability of a certain order type or time-in-force. The Exchange notes that in the event of System disruption, the Exchange would notify Participants of the unavailability of any order type and would also provide notification when that order type was available once the disruption was resolved.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of 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 of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed rule change would provide the Exchange with the flexibility to determine the availability of order types and times-in-force on a class and System basis. This flexibility would remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to address the specific characteristics of different classes and different market conditions. The Exchange believes that this proposal serves to protect investors by ensuring that the appropriate order types and times-in-force are tailored to the different class characteristics and by mitigating risks associated with changing market conditions.[9] The Exchange would issue a notification to Participants to provide them notice that a change is being made to the availability or unavailability of a certain order type or time-in-force before implementing the change. In the event of a System issue, the Exchange believes that it is consistent with the Act to temporarily not offer a certain order type to ensure the proper executions of transactions within the System thereby protecting investors and the public interest. The Exchange anticipates that exercising its ability to temporarily not offer order types would be infrequent.

Adding this provision on all Nasdaq affiliated markets will ensure consistency between the Exchange rules and that of its affiliates and would remove impediments to and perfect the mechanism of a free and open market and promote just and equitable principles of trade, as well as foster cooperation and coordination with persons engaged in facilitating transactions in securities. The proposed rule change provides the Exchange with the same flexibility currently permitted on BZX Options, EDGX Options, Cboe and C2. The Exchange believes that this consistency promotes market participants' understanding of the rules across the multiple affiliated exchanges and promotes a fair and orderly national options market system. The Exchange also notes that the proposed change is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as it has previously been filed with the Commission.

The Exchange's proposal is not unfairly discriminatory because the Exchange will not discriminate among market participants when determining which order types and times-in-force provisions are available on a class or system basis. The Exchange's proposal allows the Exchange to make certain order types and time-in-force, respectively, available on a class or System basis uniformly for all market participants. For example, if the Exchange determined to make a certain order type unavailable, that order type would not be available for any market participant.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intra-market competition, as the proposed rule change will apply in the same manner to all order types and/or times-in-force, as the Exchange determines, for all Participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition because the proposed change provides the Exchange with substantially the same flexibility as the rules of other exchanges.[10] Therefore, the Exchange believes that the proposed rule change will allow it to make determinations regarding the availability of orders that will enable it to remain competitive as markets and market conditions evolve.

The Exchange's proposal does not impose an undue burden on competition because the Exchange's proposal will uniformly make certain order types and time-in-force, respectively, available on a class or System basis for market participants.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange may also determine to temporarily not offer an order type or a time-in-force based on a System issue.

[10] *See* notes 4–6 above.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may 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 so that the proposed rule change may become operative immediately. The Exchange notes that waiver of the operative delay will allow Nasdaq to exercise immediately the same flexibility to make certain order types available or unavailable as BZX Options, EDGX Options, Cboe, and C2. The Exchange states that this flexibility would serve to protect investors and the public interest by mitigating risks associated with changing market conditions. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–009. 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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2020–009, and should be submitted on or before March 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04288 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88283; File No. SR–CboeBZX–2020–018]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow the Franklin Liberty International Aggregate Bond Fund To Hold Certain Instruments in a Manner That May Not Comply With the Generic Listing Requirements of Rule 14.11(i)

February 26, 2020.

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 February 13, 2020, Cboe BZX Exchange, Inc. (''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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to allow the Franklin Liberty International Aggregate Bond Fund (the ''Fund'') of the Franklin Templeton ETF Trust (the ''Trust'') to hold certain instruments in a manner that may not comply with Rule 14.11(i) (''Managed Fund Shares'').

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 shares of the Fund (the ''Shares'') are currently listed and traded on the Exchange pursuant to the generic listing standards applicable to Managed Fund Shares under Rule 14.11(i) (the ''Generic Listing Standards'') and began trading on June 1, 2018. While the Fund currently meets all of the Generic Listing Standards, Franklin Templeton Investment Management Limited, the Fund's investment adviser (the ''Adviser''), and Franklin Advisers, Inc., the Fund's sub-adviser (the ''Sub-Adviser'' and collectively with the Adviser, the ''Advisers'') would like to increase the flexibility of the Fund's holdings in a way that might not meet such requirements. As such, the Exchange submits this proposal in order to allow the Shares to continue listing and trading on the Exchange while holding over-the-counter (''OTC'') Currency Derivatives, as defined below, in a manner that may not comply with Exchange Rule 14.11(i)(4)(C)(v) [3] of the Generic Listing Standards.

The Shares are offered by the Franklin Templeton ETF Trust, which was established as a Delaware statutory trust on October 9, 2015. Franklin Templeton Investment Management Limited acts as adviser to the Fund. Franklin Advisers, Inc. acts as sub-adviser to the Fund. The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission on behalf of the Fund.[4]

Exchange Rule 14.11(i)(7) 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 and maintain 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.[5] In addition, Exchange Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. The Exchange notes that the Advisers are not registered as broker-dealers but are affiliated with a broker-dealer and have implemented and will maintain a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser or the 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 such broker-dealer affiliate, as applicable, 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.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

While the Fund seeks to hold both exchange-listed derivatives and OTC derivatives, it does not seek an exemption for its holdings in exchange-listed derivatives under Rule 14.11(i)(4)(C)(iv). Specifically, the Exchange submits this proposal in order to allow the Fund to hold only OTC Currency Derivatives, as defined below, in a manner that does not comply with Exchange Rule 14.11(i)(4)(C)(v).[6] Otherwise, the Fund will comply with all other listing requirements on an initial and continued listing basis under the Generic Listings Standards.

Franklin Liberty International Aggregate Bond Fund

As set forth in the Registration Statement, the Fund is an actively managed exchange-traded fund that will seek total investment return consisting of a combination of interest income and capital appreciation. When choosing investments for the Fund, the Advisers allocate the Fund's assets based upon their assessment of changing market, political and economic conditions. The Advisers consider various factors, including evaluation of interest rates, currency exchange rate changes and credit risks.

The Fund seeks to achieve its investment objective by investing, under Normal Market Conditions,[7] at least 80% of its net assets in bonds [8] and investments that provide exposure to bonds.[9] The Fund invests predominantly in fixed and floating-rate

[3] Rule 14.11(i)(4)(C)(v) provides that a fund's portfolio may, on both an initial and continuing basis, hold OTC derivatives, including forwards, options, and swaps on commodities, currencies and financial instruments (*e.g.,* stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing, however the aggregate gross notional value of OTC derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures).

[4] *See* Registration Statement for the Trust (File Nos. 333–208873 and 811–23124). The Exchange notes that the Trust will file a Form 497 Supplement to its Registration Statement in connection with the proposed changes contained herein.

[5] 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 its 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.

[6] In particular, the Fund may not meet the requirement under Exchange Rule 14.11(i)(4)(C)(v) that the aggregate gross notional value of OTC currency derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures).

[7] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In response to adverse market, economic, political, or other conditions, the Fund reserves the right to invest in U.S. government securities, other money market instruments (as defined below), and cash, without limitation, as determined by the Advisers. In the event the Fund engages in these temporary defensive strategies that are inconsistent with its investment strategies, the Fund's ability to achieve its investment objectives may be limited.

[8] For purposes of this proposal, the term ''bonds'' include debt obligations of any maturity, such as bonds, notes, bills and debentures.

[9] As noted in the Fund's prospectus, derivatives that provide exposure to bonds may be used to satisfy the Fund's 80% policy.

bonds issued by governments, government agencies and governmental-related or corporate issuers located outside the U.S. The Fund may also invest in securities or structured products that are linked to or derive their value from another security, asset or currency of any nation. The Fund may invest in debt securities of any maturity or duration. Although the Fund may buy bonds rated in any category, including securities in default, it focuses on ''investment grade'' bonds.[10] The Fund may only invest up to 20% of its total assets in bonds that are rated below investment grade or, if unrated, determined by the Advisers to be of comparable quality.

Currently, under Normal Market Conditions, the Fund holds only the following instruments:

- Fixed income instruments; [11]
- Cash and Cash Equivalents; [12]
- Exchange-listed currency futures;
- Interest rate/bond futures;
- Equity securities and investments including convertible securities, preferred stock, warrants, and rights;
- Depository receipts;
- Securities of other investment companies, including ETFs;
- Deliverable currency forwards;
- Non-deliverable currency forwards; and
- OTC interest rate swap agreements.

As stated previously, the Fund's holdings set forth above meet all of the generic listing standards of rule 14.11(i)(4)(C)(v). Thus, the OTC interest rate swap agreements noted above will not exceed 20% of the weight of the portfolio (including gross notional exposures).

However, the Advisers now seek to manage the Fund's currency risk by hedging substantially all of the Fund's foreign currency exposure in its portfolio (the ''Currency Hedge''), up to a 100% hedge.[13] Under Normal Market Conditions,[14] the Fund will primarily achieve the Currency Hedge by using OTC deliverable and non-deliverable currency forwards and exchange-listed currency futures. In certain conditions, the Fund may also achieve the Currency Hedge by using exchange-listed currency options, including exchange-listed and OTC options on currency futures, OTC synthetic non-deliverable currency forwards, currency swaps, and OTC currency options (collectively, with OTC deliverable and non-deliverable currency forwards and exchange-listed currency futures, referred to as the ''Currency Derivatives'').

As noted above, all of the Fund's holdings will meet the Generic Listing Standards with the exception of its holdings in OTC Currency Derivatives, which may not meet the requirement under Rule 14.11(i)(4)(C)(v) that prevents the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).

Precedent and Policy Discussion

As described above, the Fund will meet all of the Generic Listing Standards except as it may relate to its holdings in OTC Currency Derivatives, which will be used, in conjunction with its holdings in exchange-listed Currency Derivatives, to achieve its Currency Hedge.[15] The Exchange believes that this proposal does not raise any substantive issues for the Commission to review because there are numerous instances in which the Commission has approved the listing and trading of series of Managed Fund Shares that employ substantially similar hedging strategies,[16] especially when compared to the Hedged ADR Approval Order. Specifically, the Hedged ADR Approval Order approved the listing and trading of eighteen series of Managed Fund Shares (the ''Hedged ADR Funds''), each of which consisted of only two components: (i) A single ADR; and (ii) OTC currency swaps used to hedge against fluctuations in the exchange rate between the U.S. dollar and the local currency of the foreign security underlying the ADR. In addition to not meeting Rule 14.11(i)(4)(C)(v) related to the OTC derivatives used to hedge currency exposure, each series of the Hedged ADR Funds also did not meet the concentration [17] and diversity [18] requirements related to their respective equity holdings. Stated another way, the Fund is proposing to implement a Currency Hedge using similar instruments as the Hedged ADR Funds, but does not require the additional relief from the fixed income concentration [19] and diversity [20] requirements holdings portion of the Generic Listing Standards that was necessary (as it pertained to equity holdings) for the Hedged ADR Funds to list and trade. While the Fund intends to use primarily OTC deliverable and non-deliverable currency forwards and exchange-listed currency futures to hedge its currency

[10] ''Investment grade'' bonds refer to issues rated in the top four rating categories at the time of purchase by at least one independent rating agency, such as Standard & Poor's (S&P®) or Moody's Investors Service (Moody's) or, if unrated, determined by the Fund's Advisers to be of comparable quality.

[11] As provided in Rule 14.11(i)(4)(C)(ii), the term ''fixed income'' securities are debt securities that are notes, bonds, debentures, or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. To the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted shall meet the criteria of Rule 14.11(i)(4)(C)(ii) after converting.

[12] As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[13] The Fund expects to primarily invest its net assets in fixed and floating-rate bonds issued by governments, government agencies and governmental-related or corporate issuers located outside the U.S. The Fund expects that the gross notional value of the Currency Hedge would be equal to the value of the unhedged currency exposure associated with its primary holdings, which would be approximately 50% of the weight of the portfolio (including gross notional exposures).

[14] *See* Exchange Rule 14.11(i)(3)(E).

[15] The Exchange notes that the Fund's holdings in exchange-listed derivatives will meet the requirements set forth in Exchange Rule 14.11(i)(4)(C)(iv).

[16] *See* Securities Exchange Act Release Nos. 84143 (September 14, 2018), 83 FR 47659 (September 20, 2018) (SR–CboeBZX–2018–019) (order approving the listing and trading of eighteen series of Managed Fund Shares that allowed each series to hedge its foreign equity position with up to 50% gross notional exposure to OTC currency swaps) (the ''Hedged ADR Approval Order''); 85474 (March 29, 2019), 84 FR 13371 (April 4, 2019) (SR–CboeBZX–2019–019); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (SR–NYSEArca–2018–75) (order approving the listing and trading of a series of Managed Fund Shares that may hold up to 50% of the aggregate gross notional value of the fund's portfolio in OTC derivatives for the purpose of reducing currency, interest rate, credit, or duration risk, in addition to allowing the fund to hold an additional 20% of non-hedging OTC derivatives); 82591 (January 26, 2018) 83 FR 4707 (February 1, 2018) (SR–BatsBZX–2017–54) (the ''Inflation Hedged Fund'') (order approving the listing and trading of a series of Managed Fund Shares that could gain up to 50% gross notional exposure to OTC derivatives in order to hedge against inflation in the fund's portfolio); and 83363 (June 1, 2018), 83 FR 26531 (June 7, 2018) (SR–CboeBZX–2018–036) (notice of filing and immediate effectiveness of a proposal to allow the Inflation Hedged Fund to increase its potential exposure to OTC derivative instruments from 50% to 60% of the fund's gross notional value).

[17] *See* Rule 14.11(i)(4)(C)(i)(a)(3).

[18] *See* Rule 14.11(i)(4)(C)(i)(a)(4).

[19] *See* Rule 14.11(i)(4)(C)(ii)(c).

[20] *See* Rule 14.11(i)(4)(C)(ii)(d).

risk rather than currency swaps, the policy concerns surrounding the fact that the Fund will not meet Rule 14.11(i)(4)(C)(v) are the same, and those concerns are mitigated for the same reasons, as discussed below.

The Exchange believes that, while the portfolio of the Fund might not meet Rule 14.11(i)(4)(C)(v), the policy issues that the rule is intended to address are otherwise mitigated by the structure and purpose of the Currency Hedge within the Fund.[21] Specifically, the Exchange believes that the policy issues that Rule 14.11(i)(4)(C)(v) is intended to address are mitigated by the way that the Fund will use OTC Currency Derivatives. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract. While the Currency Hedge positions taken by the Fund may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge.[22] The Fund will attempt to limit counterparty risk in OTC derivatives by: (i) Entering into such contracts only with counterparties the Advisers believe are creditworthy; (ii) limiting the Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

Availability of Information

As noted above, the Fund will each comply with the requirements for Managed Fund Shares related to Disclosed Portfolio, Net Asset Value, and the Intraday Indicative Value. Additionally, the intra-day, closing and settlement prices of the component fixed income securities will be readily available from the securities exchanges on which such securities are traded, as well as published or other public sources, or online information services such as Bloomberg or Reuters. Intraday price quotations on the OTC Currency Derivatives are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for cash equivalents will be available from major market data vendors. The Fund's Disclosed Portfolio will be available on the issuer's website (*https://www.franklintempleton.com/*) free of charge. The Fund's website will include the prospectus and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. 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. The Exchange has appropriate rules to facilitate trading in the shares during all trading sessions.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Fund on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Fund through the Exchange will continue to be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. 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 surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting proceedings under Rule 14.12. The Exchange may obtain information regarding trading in the Fund via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[23] in general and Section 6(b)(5) of the Act[24] 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposal is consistent with Rule 6(b)(5) of the Act in that is designed to prevent fraudulent and manipulative acts and practices because the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address, specifically Rule 14.11(i)(4)(C)(v) related to OTC holdings, are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. Specifically, the Exchange believes that the policy issues that Rule 14.11(i)(4)(C)(v) is intended to address are mitigated by the way that the Fund will use OTC Currency Derivatives. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract. As noted above, while the Currency Hedge positions that might be taken by the Fund may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. The Fund will attempt to limit counterparty risk in OTC derivatives by: (i) Entering into such contracts only with counterparties the Advisers believe are creditworthy; (ii) limiting the Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

The Exchange also notes that there are numerous instances in which the Commission has approved the listing and trading of series of Managed Fund

[21] As described above, the Fund expects to invest in excess of 80% of its net assets in bonds and investments that provide exposure to bonds in a manner that will comply with the Generic Listing Standards.

[22] Based on statistics reported by the Bank for International Settlements, there is significant liquidity in the spot market. See ''Turnover of OTC foreign exchange instruments, by currency'' available at: *https://stats.bis.org/statx/srs/table/d11.3.*

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

Shares that employ nearly identical or substantially similar hedging strategies.[25] Specifically, the Hedged ADR Approval Order approved the listing and trading the Hedged ADR Funds, each of which consisted of only two components: (i) A single ADR; and (ii) OTC currency swaps used to hedge against fluctuations in the exchange rate between the U.S. dollar and the local currency of the foreign security underlying the ADR. In addition to not meeting Rule 14.11(i)(4)(C)(v) related to the OTC currency swaps used to hedge currency exposure, each series of the Hedged ADR Funds also did not meet the concentration [26] and diversity [27] requirements related to their respective equity holdings. Stated another way, the Fund is proposing to implement a Currency Hedge using similar instruments as the Hedged ADR Funds, but do not require the additional relief from the fixed income concentration [28] and diversity [29] requirements holdings portion of the Generic Listing Standards that was necessary (as it pertained to equity holdings) for the Hedged ADR Funds to list and trade.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Fund on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Fund through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Fund. The Trust, on behalf of the Fund, has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

As described above, the Exchange may obtain information regarding trading in the Fund via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional series of Managed Fund Shares that 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31] Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [32] and Rule 19b–4(f)(6) thereunder.[33]

A proposed rule change filed under Rule 19b–4(f)(6) [34] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[35] the Commission may 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 to allow the Fund to fully implement its Currency Hedge without unnecessary delay. The Exchange states that the Fund is proposing to implement a Currency Hedge using similar instruments as the Hedged ADR Funds, and that waiver of the 30-day operative delay would more quickly facilitate the Advisers' ability to fully implement its Currency Hedge, which would enhance competition among market participants to the benefit of investors and the marketplace. The Commission believes that the proposal raises no substantive issues and that therefore waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change 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

[25] *See* Securities Exchange Act Release Nos. 84143 (September 14, 2018), 83 FR 47659 (September 20, 2018) (SR–CboeBZX–2018–019) (order approving the listing and trading of eighteen series of Managed Fund Shares that allowed each series to hedge its foreign equity position with up to 50% gross notional exposure to OTC currency swaps) (the ''Hedged ADR Approval Order''); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (SR–NYSEArca–2018–75) (order approving the listing and trading of a series of Managed Fund Shares that may hold up to 50% of the aggregate gross notional value of the fund's portfolio in OTC derivatives for the purpose of reducing currency, interest rate, credit, or duration risk, in addition to allowing the fund to hold an additional 20% of non-hedging OTC derivatives); 82591 (January 26, 2018) 83 FR 4707 (February 1, 2018) (SR–BatsBZX–2017–54) (the ''Inflation Hedged Fund'') (order approving the listing and trading of a series of Managed Fund Shares that could gain up to 50% gross notional exposure to OTC derivatives in order to hedge against inflation in the fund's portfolio); and 83363 (June 1, 2018), 83 FR 26531 (June 7, 2018) (SR–CboeBZX–2018–036) (notice of filing and immediate effectiveness of a proposal to allow the Inflation Hedged Fund to move increase its potential exposure to OTC derivative instruments from 50% to 60% of the fund's gross notional value).

[26] *See* Rule 14.11(i)(4)(C)(i)(a)(3).

[27] *See* Rule 14.11(i)(4)(C)(i)(a)(4).

[28] *See* Rule 14.11(i)(4)(C)(ii)(c).

[29] *See* Rule 14.11(i)(4)(C)(ii)(d).

[30] 15 U.S.C. 78s(b)(3)(A)(iii).

[31] 17 CFR 240.19b–4(f)(6).

[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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).

[36] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–018, and should be submitted on or before March 24, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–04285 Filed 3–2–20; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 200.30–3(a)(12)

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before April 2, 2020.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Under the Surety Bond Guarantee (SBG) Program, SBA guarantees bid, payment, and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and, thereby, assists small businesses in obtaining greater access to contracting opportunities. SBA's guarantee is an agreement between a surety and SBA that SBA will assume a certain percentage of the Surety's loss should a contractor default on the underlying contract.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–04317 Filed 3–2–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16300 and #16301; ARKANSAS Disaster Number AR–00108]

Administrative Declaration of a Disaster for the State of Arkansas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Arkansas dated 02/21/2020.

Incident: Severe Storms and Tornadoes.

Incident Period: 01/10/2020 through 01/11/2020.

DATES: Issued on 02/21/2020.

Physical Loan Application Deadline Date: 04/21/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 11/23/2020.

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: Ashley.

Contiguous Counties:

Arkansas: Bradley, Chicot, Drew, Union.

Louisiana: Morehouse, Union.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.000
Homeowners without Credit Available Elsewhere	1.500

	Percent
Businesses with Credit Available Elsewhere	7.750
Businesses without Credit Available Elsewhere	3.875
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.875
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16300 C and for economic injury is 16301 0.

The States which received an EIDL Declaration # are Arkansas, Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: February 21, 2020.

Jovita Carranza,

Administrator.

[FR Doc. 2020–04304 Filed 3–2–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Privacy Act System of Records Entitled Small Business Investment Company Information System (SBA #40); Correction

AGENCY: U.S. Small Business Administration.

ACTION: Notice; correction.

SUMMARY: The Small Business Administration published a Privacy Act System of Records Notice in the **Federal Register** of September 5, 2019 proposing a new system of records SBA #40 to its inventory of records system. Notice documented that the SBA is in the process of modernizing its technology supporting the Small Business Investment Company (SBIC) program. This modernization will further enhance the SBA's regulatory oversight and risk management of the SBIC program using modern private equity and alternative investment analytics and tools.

The published notice indicated the name of the system as the ''Small Business Investment Company Information System (SBICIS),'' but should have indicated the correct system name of ''Investment Information System (IIS).''

FOR FURTHER INFORMATION CONTACT: Marja Maddrie, 202–205–6980.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of September 5, 2019, in FR doc 84–172 on page 46769, in the second column under the heading ''Summary'', first sentence, correct the sentence to read: ''. . . entitled Investment Information System (SBA #40) to its inventory . . .''

Third column, under the heading, ''System Name and Number'', correct first line sentence to read: ''Investment Information System (IIS), #40.''

The changes listed below are throughout the document under the headings: ''Purposes of the System'' and ''Policies and Practices for Retrieval of Records''.

Every reference within the document that specifies ''SBICIS'', language should be updated to: ''IIS.''

Marja Maddrie,

Business Operations Officer, Office of Investment and Innovation.

[FR Doc. 2020–04298 Filed 3–2–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 02/72–0636 issued to AEA Investors Small Business Fund LP said license is hereby declared null and void.

United States Small Business Administration

Dated: January 28, 2020.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–04303 Filed 3–2–20; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/79–0445 issued to Celerity Partners SBIC, L.P. said license is hereby declared null and void.

United States Small Business Administration

Dated: January 28, 2020.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2020–04306 Filed 3–2–20; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16304 and #16305; NEW YORK Disaster Number NY–00190]

Administrative Declaration of a Disaster for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 02/25/2020.

Incident: Severe Storms, Flooding and Straight-Line Winds.

Incident Period: 10/31/2019 through 11/01/2019.

DATES: Issued on 02/25/2020.

Physical Loan Application Deadline Date: 04/27/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 11/25/2020.

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: Essex, Herkimer, Oneida.

Contiguous Counties:

New York: Clinton, Franklin, Fulton, Hamilton, Lewis, Madison, Montgomery, Oswego, Otsego, Saint Lawrence, Warren, Washington.

Vermont: Addison, Chittenden.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.000
Homeowners without Credit Available Elsewhere	1.500
Businesses with Credit Available Elsewhere	7.750
Businesses without Credit Available Elsewhere	3.875
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.875
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16304 6 and for economic injury is 16305 0.

The States which received an EIDL Declaration # are New York, Vermont.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: February 25, 2020.

Jovita Carranza,

Administrator.

[FR Doc. 2020–04305 Filed 3–2–20; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice:11057]

Cultural Property Advisory Committee; Notice of Meeting

AGENCY: Department of State.

ACTION: Notice of meeting.

SUMMARY: We are issuing this notice to announce the location, date, time, and agenda for the next meeting of the Cultural Property Advisory Committee.

DATES: April 15, 2020, 9:00 a.m. to 5:00 p.m. (EST). The Cultural Property Advisory Committee will hold an open session on April 15, 2020, at 2:30 p.m. (EST). It will last approximately one hour.

Participation: You may participate in the open session electronically by Zoom. To participate, visit *http://culturalheritage.state.gov* for information on how to access the meeting. Please submit any request for reasonable accommodation not later than April 1, 2020, by contacting the Bureau of Educational and Cultural Affairs at *culprop@state.gov.* It may not be possible to accommodate requests made after that date. *Comments:* The Committee will review your written comment if it is received by April 1, 2020, at 11:59 p.m. (EDT). You are not required to submit a written comment in order to make an oral comment in the open session.

ADDRESSES: The public will participate electronically by Zoom. The Committee members will meet at the U.S. Department of State, Annex 5, 2200 C St. NW, Washington, DC.

Written Comments: You may submit written comments in two ways, depending on whether they contain privileged or confidential information:

▪ *Electronic Comments:* For ordinary comments, please use *http://www.regulations.gov,* enter the docket [DOS–2020–0011] and follow the prompts to submit your comments.

▪ *Paper Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send submissions to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA–5 Floor 5, 2200 C St. NW, Washington, DC, 20522–0505.

FOR FURTHER INFORMATION CONTACT: For general questions concerning the meeting, contact Allison Davis, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, by phone (202–632–6301), or email (*culprop@state.gov*).

SUPPLEMENTARY INFORMATION: In accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (''the Act''), the Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') (19 U.S.C. 2605(e)(2)). The Act describes the Committee's responsibilities. A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review the request by the Government of the Republic of Costa Rica seeking import restrictions on archaeological material.

Open Session Participation: The Committee will hold an open session of the meeting to receive oral public comments on the Costa Rica request on Wednesday, April 15, 2020, from 2:30 p.m. to approximately 3:30 p.m. (EST). We have provided specific instructions on how to participate or observe the open session at *http://culturalheritage.state.gov.* You do not need to register to observe the open session. You do not have to submit written comments to make an oral comment in the open session. But if you do wish to speak, you must request to be scheduled by April 8, 2020, via email (*culprop@state.gov*) in order to be assigned a slot. Please submit your name and organizational affiliation in this request. The open session will start with a brief presentation by the Committee, after which you should be prepared to answer questions on any written statements you may have submitted. Finally, you may provide additional oral comments for a maximum of five (5) minutes per participant, time permitting. Due to time constraints, it may not be possible to accommodate all who wish to speak.

Written Comments: If you do not wish to participate in the open session but still wish to make your views known, you may submit written comments for the Committee's consideration. Submit non-privileged and non-confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) regarding the request from Costa Rica using the *Regulations.gov* website (listed in the ''COMMENTS'' section above) not later than April 1, 2020, at 11:59 p.m. (EDT). For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send comments to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA–5 Floor 5, 2200 C St. NW, Washington, DC, 20522–0505. In all cases, your written comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). We request that any party soliciting or aggregating written comments received from other persons for submission to the Department inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed. Written comments submitted in electronic form are not private. We will post the comments at *http://www.regulations.gov.* Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential

within the meaning of 19 U.S.C. 2605(i)(1)).

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–04327 Filed 3–2–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice:11058]

Notice of Receipt of Request From the Government of the Republic of Costa Rica Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice of receipt of request from Costa Rica for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Allison Davis, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202–632–6301; *culprop@state.gov.*

SUPPLEMENTARY INFORMATION: The Government of the Republic of Costa Rica made a request to the Government of the United States on December 2, 2019, under Article 9 of the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.* Costa Rica's request seeks U.S. import restrictions on archaeological material representing Costa Rica's cultural patrimony. Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), notification of the request is hereby published. A public summary of Costa Rica's request and information about U.S. implementation of the 1970 UNESCO Convention will be available at the Cultural Heritage Center website: *http://culturalheritage.state.gov.*

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–04331 Filed 3–2–20; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36346]

Wisconsin Central Ltd.—Operation Exemption—Hallett Dock No. 5 In Duluth, Minn.

On November 8, 2019, Wisconsin Central Ltd. (WCL) [1] filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 to operate a rail/water dock facility, known as Hallett Dock No. 5 (the Dock), in Duluth, Minn., after WCL acquires the Dock from its current noncarrier owner, Hallett Dock Company (Hallett). (*See* WCL Exemption Pet. 1.) Concurrently, WCL filed a petition for establishing a procedural schedule that included a request for expedited consideration of its exemption petition. (*See* WCL Scheduling Pet. 1–2.)

In a decision served on November 22, 2019, the Board instituted a proceeding under 49 U.S.C. 10502(b). No comments opposing WCL's petitions were filed.[2] For the reasons discussed below, the Board will grant WCL's exemption petition for authority to operate over the Dock trackage as described below.

Background

The Dock is a ground-level rail/water bulk commodity transfer and storage dock facility that occupies a total of approximately 100 acres of property and includes a 2,400-foot vessel berth, two ship loaders, a railcar unloader, a dry storage building, approximately 9,000 feet of rail trackage on the Dock itself, and approximately 6,300 feet of adjacent railcar holding tracks along the shore line. (WCL Exemption Pet. 3.) Hallett currently conducts its own switching operations at the Dock, utilizing its own locomotive and crews for, among other things, water-to-rail transfers of limestone, rail-to-water transfers of blast furnace trim and bentonite, and shipments of small volumes of taconite and salt. (*Id.* at 3–4.) The Dock is directly served by WCL and BNSF Railway Company (BNSF) and is open to Canadian Pacific Railway/Soo Line Railroad Company and Union Pacific Railroad Company via a BNSF reciprocal switch. (*Id.* at 4.) WCL estimates that it moves approximately 90% of the Dock's rail traffic volume. (*Id.*)

WCL states that, in response to Hallett's decision to sell the Dock, it entered into an Asset Purchase Agreement, dated as of November 8, 2019, with Hallett to acquire the Dock and ensure its continued operation. (*Id.* at 4–5.) WCL states that continued operation of the Dock is vital to its customers and to WCL's ability to fulfill its commitments to handle their traffic. (*Id.* at 5.) WCL further asserts that the proposed transaction ''will preserve operation of Hallett Dock No. 5 under WCL ownership[,]'' (*id.*), and ''will bring the dock within the Board's jurisdiction as part of the national rail network,'' (*id.* at 16). Two shippers have stated their support for WCL's objective. (*See* U.S. Steel Corp. Letter 1 (noting the Dock's importance to United States Steel Corporation's supply chain and urging Board to approve WCL's petition); WCL Request 4, Dec. 17, 2019 (letter from shipper Cleveland-Cliffs Inc. stating the Dock's importance to its supply chain).)

WCL further states that it ''does not intend to implement significant changes in the railcar handling and commodity transfer and storage currently conducted at [the Dock].'' (WCL *Exemption Pet.* 5.) Similarly, WCL ''expects to retain most if not all'' of Hallett's existing employees who operate the Dock. (*Id.*) WCL intends to operate the Dock ''as an open dock, with transfer and handling services equally available to any interested parties as capacity and existing customer commitments permit during shipping season.'' (*Id.*)

Discussion and Conclusions

Under 49 U.S.C. 10901, a rail carrier may not operate an extended or additional railroad line without the prior approval of the Board. However, under 49 U.S.C. 10502(a), the Board must exempt a transaction or service from regulation upon finding that: (1) Regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 10901 is not necessary here to carry out the rail transportation policy. The proposed transaction would ensure continued rail/water operations at the Dock. As such, the proposed transaction would, among other things, ensure the continuation of a sound rail transportation system with effective

[1] WCL is a wholly owned, indirect subsidiary of Canadian National Railway Company. (*See* WCL Exemption Pet. 2 (citing *Can. Nat'l Ry.—Control—Wis. Cent. Transp. Corp.,* 5 S.T.B. 890 (2001)).)

[2] WCL initially requested a procedural schedule with an effective date for the exemption of March 27, 2020, to permit implementation of the transaction in time for the start of the Lake Superior shipping season in April. (*See* WCL Scheduling Pet. 2–3.) On December 17, 2019, WCL filed a request for the Board to further expedite its decision.

competition among rail carriers (49 U.S.C. 10101(4)) and foster sound economic conditions in transportation and ensure effective competition (49 U.S.C. 10101(5)). Further, an exemption from the application process would expedite regulatory action (49 U.S.C. 10101(2)), reduce regulatory barriers (49 U.S.C. 10101(7)), and provide for the expeditious handling and resolution of this proceeding (49 U.S.C. 10101(15)). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of this transaction is not needed to protect shippers from the abuse of market power. There would be no loss of rail competition and no adverse change in the competitive balance in the transportation market, as WCL would continue operations at the Dock that are currently provided by Hallett. Nor would there be a change in the level of service to any shippers because WCL does not intend to implement significant changes to operations and intends to fulfill Hallett's existing contractual arrangements for Dock services and to make services available to any interested parties as capacity allows.[3] (*See* WCL Exemption Pet. at 5.) Moreover, WCL's ownership and operation of the Dock will be subject to WCL's obligations as a common carrier. No shippers have objected to the transaction, and two have stated their support.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, labor protective conditions may not be imposed on transactions under 49 U.S.C. 10901. *See* 49 U.S.C. 10901(c).

WCL states that the proposed transaction will not result in changes in existing rail carrier operations or existing operations at the Dock that would exceed the applicable thresholds of 49 CFR 1105.7(e)(4) or (5). Therefore, under 49 CFR 1105.6(c), this transaction is categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service, WCL has indicated no plans to alter railroad properties 50 years old or older, and any abandonment of service would be subject to Board jurisdiction.

As noted above, WCL seeks expedited consideration so that it can commence operation of the Dock in advance of the Lake Superior shipping season. For that reason, the exemption will be effective March 27, 2020, petitions to stay will be due by March 9, 2020, and petitions for reconsideration and petitions to reopen will be due by March 17, 2020.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts WCL's operation of Hallett Dock No. 5 from the prior approval requirements of 49 U.S.C. 10901.
2. Notice of the exemption will be published in the **Federal Register**.
3. The exemption will be effective on March 27, 2020.
4. Petitions to stay must be filed by March 9, 2020. Petitions for reconsideration and petitions to reopen must be filed by March 17, 2020.

Decided: February 26, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2020–04275 Filed 3–2–20; 8:45 am]

BILLING CODE 4915–01–P

[3] Because the Board concludes that regulation is not needed to protect shippers from the abuse of market power, it is unnecessary to determine whether the proposed transaction is limited in scope. *See* 49 U.S.C. 10502(a).

SURFACE TRANSPORTATION BOARD

[Docket No. EP 558 (Sub-No. 23)]

Railroad Cost of Capital—2019

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroad industry's 2019 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2019. The decision solicits comments on the following issues: The railroads' 2019 current cost of debt capital; the railroads' 2019 current cost of preferred equity capital (if any); the railroads' 2019 cost of common equity capital; and the 2019 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due by March 30, 2020. Statements of the railroads are due by April 20, 2020. Statements of other interested persons are due by May 11, 2020. Rebuttal statements by the railroads are due by June 1, 2020.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The decision in this proceeding is posted at *www.stb.gov.*

Authority: 49 U.S.C. 10704(a).

Decided: February 26, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–04360 Filed 3–2–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2020 Competitive Funding Opportunity; Helping Obtain Prosperity for Everyone (HOPE)

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for approximately $8.5 million in fiscal year (FY) 2020 funds under the Helping Obtain Prosperity for Everyone (HOPE) Program (*CFDA#20.505*). Funds will be awarded competitively for planning, engineering, or development of technical or financing plans for projects eligible that assist areas of persistent poverty. FTA may award additional funds if they are made available to the program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the GRANTS.GOV ''APPLY'' function by 11:59 p.m. Eastern Time on May 4, 2020. Prospective applicants should initiate the process by promptly registering on the *GRANTS.GOV* website to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *http://transit.dot.gov/howtoapply* and in the ''FIND'' module of *GRANTS.GOV*.

The *GRANTS.GOV* funding opportunity ID is *FTA–2020–011–TPE–HOPE.* Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Charles Goodman, FTA Office of Planning and Environment, 202–366–1944, or *Charles.goodman@dot.gov.*

SUPPLEMENTARY INFORMATION:

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A. Program Description

The HOPE Program provides funds to eligible entities defined as eligible recipients or subrecipients under 49 U.S.C. 5307, 49 U.S.C. 5310 or 49 U.S.C. 5311 and are in areas of persistent poverty. Funds were appropriated pursuant to Division H of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) and will be awarded through a competitive process, as described in this notice. FTA will award grants to eligible applicants for planning, engineering, or development of technical, or financing plans for projects eligible under Chapter 53 of Title 49 U.S.C. Applicants are encouraged to work with non-profits or other entities of their choosing to develop an eligible project. An eligible project for this Notice of Funding Opportunity is defined as either a planning study, including a planning and environmental linkages study that advances the environmental analysis and review process as part of the metropolitan planning process, engineering study, technical study, or financial plan.

FTA encourages applicants to propose projects that may introduce innovative technologies or practices in support of FTA's Accelerating Innovative Mobility (AIM) initiative. FTA is focused on the introduction of new technology not commonly found within U.S. transit systems such as integrated fare payment systems that permit complete trips or advancements to propulsion systems. Resulting innovation activities may also include practices such as new public transportation operational models, financial or procurement arrangements, or value capture.

Rural transportation networks play a vital role in supporting our national economic vitality. Addressing the deteriorating conditions and disproportionately high fatality rates on our rural transportation infrastructure is of critical interest to the Department, as rural transportation networks face unique challenges in safety, infrastructure condition, and passenger and freight usage. Consistent with the R.O.U.T.E.S. Initiative (*https://www.transportation.gov/rural*), FTA encourages applicants to consider how the project will address the challenges faced by rural areas of persistent poverty.

B. Federal Award Information

The Further Consolidated Appropriations Act, 2020 appropriated $8.5 million for the HOPE Program. The FTA is announcing the availability of these funds through this notice.

The FTA will grant pre-award authority to incur costs for selected projects beginning on the date that project selections are announced. Funds are only available for projects that have not incurred costs prior to the selection of projects. Funds will remain available for obligation for three Federal fiscal years, not including the year in which the funds are allocated to projects. FTA anticipates the maximum grant awards will not exceed $850,000.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants for awards are States, tribes, and designated or direct recipients under 49 U.S.C. 5307, 49 U.S.C. 5310 or 49 U.S.C. 5311. Eligible sub-recipients include all otherwise eligible applicants.

State departments of transportation may apply on behalf of eligible applicants within their States. Applicants are encouraged to work with nonprofit organizations engaged in public transportation in areas of persistent poverty.

To be considered eligible, proposed projects must be in a county with 20 percent or more of the population living in poverty over the 30 years preceding the date of enactment of the Further Consolidated Appropriations Act, 2020 (December 20, 2019), as measured by the 1990 and 2000 decennial census and the most recent Small Area Income and Poverty Estimates, or from any census tract with a poverty rate of at least 20 percent as measured by the 2013–2017, 5-year data series available from the American Community Survey of the Census Bureau. The FTA has posted a table and maps of the Areas of Persistent Poverty that meet these criteria at *www.transit.dot.gov.* Eligible applicants must be able to demonstrate the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program.

As permitted by the Further Consolidated Appropriations Act, 2020, applicants to the HOPE Program may submit applications that include partnerships with non-profits that can assist with making projects low or no emissions. If an application that involves such a partnership is selected for funding, the competitive selection process will be deemed to satisfy the requirement for a competitive procurement under 49 U.S.C. 5325(a) for the named entities. Applicants are advised that any changes to the proposed partnership will require written FTA approval, must be consistent with the scope of the approved project, and may necessitate a competitive procurement.

2. Cost Sharing or Matching

The minimum federal share for projects selected under the HOPE Program is not less than 90 percent of the total project cost (*i.e.,* the local share will be no more than 10 percent of the total project cost, not 10 percent of the requested grant amount).

Eligible sources of local match include the following: Cash from non-Government sources other than revenues from providing public transportation services; revenues derived from the sale of advertising and concessions; amounts received under a service agreement with a State or local social service agency or private social service organization; revenues generated from value capture financing mechanisms; or funds from an undistributed cash surplus; replacement or depreciation cash fund or reserve; or new capital. In addition, transportation development credits or documentation of in-kind match may substitute for local match if identified in the application.

3. Eligible Projects

Under the HOPE Program, eligible projects are planning, engineering, or development of technical, or financing plans for projects eligible under Chapter 53 of title 49 U.S.C. For example, these activities may include planning, engineering, or development of technical, or financing plans for improved transit services, new transit routes, engineering for transit facilities and improvements to existing facilities, innovative technologies, low or no emission buses, or a new bus facility or intermodal center that supports transit services, integrated fare collections systems, or coordinated public transit human service transportation plans to improve transit service in an area of persistent poverty or to provide new service such as transportation for services to address the opioid epidemic. An eligible project also may be a planning and environmental linkages study that advances the environmental analysis and review process as part of the metropolitan planning process.

D. Application and Submission Information

1. Address

Applications must be submitted electronically through *GRANTS.GOV.* General information for submitting applications through *GRANTS.GOV* can be found at *https://www.transit.dot.gov/funding/grants/applying/applying-fta-funding* along with specific instructions for the forms and attachments required for submission. Mail and fax submissions will not be accepted. A complete proposal submission consists of two forms: The SF–424 Application for Federal Assistance (downloaded from *GRANTS.GOV*) and the supplemental form for the FY 2020 HOPE Program (downloaded from *GRANTS.GOV* or the FTA website at *www.transit.dot.gov*). Applicants also may attach additional supporting information. Failure to submit the information as required can delay or prevent review of the application.

2. Content and Form of Application Submission

A strong transportation network is critical to the functioning and growth of the American economy. The nation's industry depends on the transportation network to move the goods that it produces, and facilitate the movements of the workers who are responsible for that production. When the nation's transit systems, highways, railways, and ports function well, that infrastructure connects people to jobs, increases the efficiency of delivering goods and thereby cuts the costs of doing business, reduces the burden of commuting, and improves overall well-being.

A complete proposal submission consists of two forms: The SF–424 Application for Federal Assistance and the FY 2020 HOPE Program supplemental form. The supplemental form and any supporting documents must be attached to the ''Attachments'' section of the SF–424. A complete application must include responses to all sections of the SF–424 Application for Federal Assistance and the supplemental form, unless indicated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice.

The FTA will accept only one supplemental form per SF–424 submission. FTA encourages States and other applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If a State or other applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF–424 and supplemental form.

Applicants may attach additional supporting information to the SF–424 submission, including but not limited to letters of support, project budgets, fleet status reports or excerpts from relevant planning documents. Supporting documentation must be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as applicant name, Federal amount requested, local match amount, description of areas served, etc. may be requested in varying degrees of detail on both the SF–424 and Supplemental Form. Applicants must fill in all fields unless stated otherwise on the forms. Applicants should not place N/A or ''refer to attachment'' in lieu of typing in responses in the field sections. If information is copied into the supplemental form from another source, applicants should verify that pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields on the forms, and ensure that the federal and local amounts specified are consistent.

The SF–424 Mandatory Form and the Supplemental Form will prompt applicants for the required information, including:

a. Applicant name.

b. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.

c. Key contact information (including contact name, address, email address, and phone).

d. Congressional district(s) where project will take place.

e. Project information (including title, an executive summary, and type).

f. A detailed description of the need for the planning, engineering, or development of technical, or financial planning activities.

g. A detailed description of how the project will support the HOPE Program objectives.

h. Provide a line-item budget for the project, with enough detail to indicate the various key components of the comprehensive planning project.

i. Identify the Federal amount requested.

j. Document the matching funds, including amount and source of the match (may include local or private sector financial participation in the project). Describe whether the matching funds are committed or planned, and include documentation of the commitments.

k. A description of the technical, legal and financial capacity of the applicant.

l. An explanation of the scalability of the project.

m. Identify whether the project would be in a qualified opportunity zone designated pursuant to *26 U.S.C. 1400Z–1.*

n. Provide a schedule and process for the project that includes anticipated dates for incorporating the project into the region's unified planning work program, completing major tasks and substantial deliverables, and completing the project.

o. Describe how the proposed project advances the metropolitan transportation plan of the metropolitan planning organization or the statewide long range plan by the State department of transportation.

p. Propose performance criteria for the development and implementation of the HOPE planning activities.

q. Identify potential State, local or other impediments to the products of the HOPE work and its implementation, and how the work will address them.

r. Identify proposed actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing.

The FTA will not consider any additional materials submitted by applicants in its evaluation of proposals. The total length of the completed supplemental form and documentation of partnerships and funding commitments should be no more than 15 pages.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) Be registered in SAM before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. These requirements do not apply if the applicant has an exemption approved by FTA under Federal grants and agreements law (2 CFR 25.110(d)). The FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has

not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. All applicants must provide a unique entity identifier provided by SAM. SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *http://www.GRANTS.GOV* by 11:59 p.m. May 4, 2020. *GRANTS.GOV* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will only be considered under extraordinary circumstances not under the applicant's control. Mail and fax submissions will not be accepted.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV*: (1) Confirmation of successful transmission to *GRANTS.GOV*; and (2) confirmation of successful validation by *GRANTS.GOV*. FTA will then validate the application and will attempt to notify any applicants whose applications could not be validated. If the applicant does not receive confirmation of successful validation or a notice of failed validation or incomplete materials, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission. An application that is submitted at the deadline and cannot be validated will be marked as incomplete, and such applicants will not receive additional time to re-submit.

Any addenda that FTA releases on the application process will be posted at *https://www.transit.dot.gov.* Important: FTA urges applicants to submit their applications at least 96 hours prior to the due date to allow time to receive the validation messages and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website at *http://www.GRANTS.GOV.* Deadlines will not be extended due to scheduled maintenance or outages.

Applicants are encouraged to begin the registration process on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in the System for Award Management (SAM) is renewed annually and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions. Instructions on the *GRANTS.GOV* registration process are listed in Appendix A.

5. Funding Restrictions

Funds under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA award of a grant agreement until FTA has issued pre-award authority for selected projects.

6. Other Submission Requirements

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant indicates that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. The FTA may award a lesser amount whether a scalable option is provided.

E. Application Review Information

1. Criteria

The FTA will evaluate project proposals for the HOPE Program based on the criteria described in this notice. Projects will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found.

Consistent with the Department's R.O.U.T.E.S. Initiative (*https://www.transportation.gov/rural*), the Department recognizes that rural transportation networks face unique challenges. To the extent that those challenges are reflected in the merit criteria listed in this section, FTA will consider how the activities proposed in the application will address those challenges, regardless of the geographic location of those activities.

a. Demonstration of Need

Applications will be evaluated based on the quality and extent to which they demonstrate how the proposed activities will support planning, engineering, or development of technical, or financing plans that would result in a project eligible for funding under Chapter 53 of Title 49 U.S.C.

b. Demonstration of Benefits

Applications will be evaluated based on how well they describe how the proposed planning, engineering, or development of technical, or financing plans that address the existing condition of the transit system, improve the reliability of transit service for its riders, enhance access and mobility within the service area, or accelerate innovation in areas of persistent poverty.

System Condition: The FTA will evaluate the potential for the planning, engineering, or development of technical, or financing plans to lead to an improvement in the condition of the transit system in areas of persistent poverty.

Service Reliability: The FTA will evaluate the potential for the planning, engineering, or development of technical, or financing plans to lead to a reduction in the frequency of breakdowns or other service interruptions caused by the age and condition of the agency's bus fleet, and improve system reliability.

Enhanced Access and Mobility: The FTA will evaluate the potential for the planning, engineering, or development of technical, or financing plans to lead to improved access and mobility for the transit riding public, such as through increased reliability, improved headways, creation of new transportation choices or eliminating gaps in the current route network.

Accelerating Innovation: The FTA will evaluate the potential for the planning, engineering, or development of technical, or financing plans to accelerate the introduction of innovative technologies or practices such as integrated fare payment systems permitting complete trips or advancements to propulsion systems. Innovation can also include practices such as new public transportation operational models, financial or procurement arrangements, or value capture strategies.

Emissions Reductions: The FTA will evaluate the potential for the planning study, engineering study, or development of technical, or financing plans with a project partner to lead to reduced vehicle emissions as a potential outcome.

Barriers to Low Income Housing: FTA will evaluate the degree to which the planning study, engineering study, or technical or financial plans identify proposed actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing.

Regional Support: Applicants should provide evidence of regional or local support for the proposed project. Documentation may include support letters from local and regional planning organizations, local governmental officials, public agencies and/or non-profit or private sector partners attesting to the need for the project.

Improving Rural Transportation: Consistent with the Department's R.O.U.T.E.S. Initiative (*https://www.transportation.gov/rural*), the Department recognizes that rural transportation networks face unique challenges. To the extent that those challenges are reflected in the merit criteria listed in this section, FTA will consider how the activities proposed in the application will address those challenges, regardless of the geographic location of those activities.

c. Local Financial Commitment

Applicants must identify the source of the local cost share and describe whether such funds are currently available for the project or will need to be secured if the project is selected for funding. The FTA will consider the availability of the local cost share as evidence of local financial commitment to the project. Additional consideration will be given to those projects for which local funds have already been made available or reserved. Applicants should submit evidence of the availability of funds for the project, for example by including a board resolution, letter of support from the State or other documentation of the source of local funds such as a budget document highlighting the line item or section committing funds to the proposed project.

d. Project Implementation Strategy

The FTA will evaluate the strength of the work plan, schedule and process included in an application based on the following factors:

a. Extent to which the schedule contains sufficient detail, identifies all steps needed to implement the work proposed, and is achievable;

b. Extent of partnerships, including with non-public sector entities; and

c. The partnerships' technical capability to develop, adopt and implement the plans, based on FTA's assessment of the applicant's description of the policy formation, implementation, and financial roles of the partners, and the roles and responsibilities of proposed staff.

e. Technical, Legal and Financial Capacity

Applicants must demonstrate that they have the technical, legal and financial capacity to undertake the project. FTA will review relevant oversight assessments and records to determine whether there are any outstanding legal, technical or financial issues with the applicant that would affect the outcome of the proposed project. Applicants with outstanding legal, technical or financial compliance issues from an FTA compliance review or Federal Transit grant-related Single Audit finding must explain how corrective actions taken will mitigate negative impacts on the proposed project.

2. Review and Selection Process

In addition to other FTA staff that may review the proposals, a technical evaluation committee will evaluate proposals based on the published evaluation criteria. After applying the above criteria, the FTA Administrator will consider the following key Departmental objectives:

(A) Supporting economic vitality at the national and regional level;

(B) Utilizing alternative funding sources and innovative financing models to attract non-Federal sources of infrastructure investment;

(C) Identifying proposed actions that reduce regulatory barriers that unnecessarily raise the costs of housing development or impede the development of affordable housing;

(D) Undertake planning, engineering, technical studies, or financing plans for transit facilities or services in a qualified opportunity zone designated pursuant to *26 U.S.C. 1400Z–1*

(E) Using innovative approaches to improve safety and expedite project delivery; and

(F) Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.205 Federal awarding agency review of risk posed by applicants.

The FTA Administrator will determine the final selection of projects for program funding. In determining the allocation of program funds, FTA may consider geographic diversity, diversity in the size of the transit systems receiving funding, the applicant's receipt of other competitive awards, projects located in or that support public transportation service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z–1, the percentage of local share provided, and whether the project includes an innovative technology or practice.

F. Federal Award Administration Information

1. Federal Award Notice

Final project selections will be posted on the FTA website. Selected recipients should contact their FTA regional offices for additional information regarding allocations for projects under the HOPE Program.

At the time the project selections are announced, FTA will extend pre-award authority for the selected projects. There is no blanket pre-award authority for these projects before announcement.

2. Award Administration

The FTA anticipates that the maximum grant award will not exceed $850,000 which will enable FTA to fund as many meritorious projects as possible. Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, proposals that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable stand-alone projects that can be completed with the amount awarded.

3. Administrative Requirements

a. Pre-Award Authority

The FTA will issue specific guidance to recipients regarding pre-award

authority at the time of selection. The FTA does not provide pre-award authority for competitive funds until projects are selected and even then, there are Federal requirements that must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the FY 2019 Apportionment Notice published on July 3, 2019 which can be accessed at *https://www.govinfo.gov/content/pkg/FR-2019-07-03/pdf/2019-14248.pdf.*

b. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). Recipients of HOPE Program funding in urban areas are subject to the grant requirements of the Urbanized Area Formula Grant program (49 U.S.C. 5307), including those described in FTA Circular ''Urbanized Area Formula Program: Program Guidance and Application Instructions'' (FTA.C.9030.1E). Recipients of funding in rural areas are subject to the grant requirements described in the Formula Grants for Rural Areas Program (49 U.S.C. 5311), including those described in FTA Circular ''Formula Grants for Rural Areas: Program Guidance and Application Instructions'' (FTA.C.9040.1G). All recipients (urban and rural) must follow the Award Management Requirements as described in (FTA.C.5010.1E). Technical assistance regarding these requirements is available from each FTA regional office.

c. Disadvantaged Business Enterprise

The FTA requires that its recipients receiving planning, capital and/or operating assistance that will award prime contracts exceeding $250,000 in FTA funds comply with the Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26).

For more information on DBE requirements, please contact Scheryl Portee, the Office of the Chief Counsel, at 202–366–0840, email: *scheryl.portee@dot.gov.*

d. Standard Assurances

By submitting a grant application, the applicant assures that it will comply with all applicable federal statutes, regulations, executive orders, directives, FTA circulars and other federal administrative requirements in carrying out any project supported by the FTA grant. Further, the applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant, if it does not have current certifications on file.

4. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports in FTA's electronic grants management system. Recipients of funds made available through this NOFO are also required to regularly submit data to the National Transit Database.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact Mr. Charles Goodman via email at *Charles.goodman@dot.gov;* or by phone at 202–366–1944. A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. In addition, FTA will post answers to questions and requests for clarifications on FTA's website at *http://transit.dot.gov.* The FTA staff will also conduct a webinar for potential applicants to learn more about the program and submittal process

To ensure the receipt of accurate information about eligibility or the program, applicants with questions are encouraged to contact FTA directly, rather than through intermediaries or third parties.

H. Technical Assistance and Other Program Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section C. Complete applications must be submitted through *GRANTS.GOV* by 11:59 p.m. Eastern time on May 4, 2020. For assistance with *GRANTS.GOV* please contact *GRANTS.GOV* by phone at 1–800–518–4726 or by email at *support@grants.gov.* Contact information for FTA's regional offices can be found on FTA's website at *https://www.transit.dot.gov/about/regional-offices/regional-offices.*

K. Jane Williams,

Acting Administrator.

[FR Doc. 2020–04250 Filed 3–2–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0020]

Request for Comments of a Previously Approved Information Collection: United States Merchant Marine Academy Alumni Survey

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on November 4, 2019.

DATES: Comments must be submitted on or before April 2, 2020.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. John R. Ballard, (516) 726–5833, U.S. Merchant Marine Academy, Kings Point, NY 11024.

SUPPLEMENTARY INFORMATION:

Title: U.S. Merchant Marine Academy Alumni Survey.

OMB Control Number: 2133–0542.

Type of Request: Renewal of a Previously Approved Information Collection.

Background: The United States Merchant Marine Academy is an accredited federal service academy that confers BS and MS degrees. The Academy is expected to assess its educational outcomes and report those findings to its Regional Accreditation authority in order to maintain the institution's degree granting status. Periodic survey of alumni cohorts and analysis of the data gathered is a routine higher education assessment practice in the United States.

Respondents: Graduates of the U.S. Merchant Marine Academy.

Affected Public: U.S. Merchant Marine Academy Graduates.

Total Estimated Number of Responses: 600.

Frequency of Collection: Annually.

Estimated Time per Respondent: 0.25 Hrs.

Total Estimated Number of Annual Burden Hours: 150.

Public Comments Invited: Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93)

* * *

Dated: February 27, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–04311 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Notice of Funding Opportunity for Department of Transportation's PIDP Under the Further Consolidated Appropriations Act, 2020

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Notice of funding opportunity.

SUMMARY: The National Defense Authorization Act for Fiscal Year 2020 (NDAA) and the Further Consolidated Appropriations Act, 2020 (''FY 2020 Appropriations Act'' or the Act), authorized and appropriated $225 million for the Port Infrastructure Development Program (PIDP) to make grants to improve facilities within, or outside of and directly related to operations of coastal seaports, inland river ports, and Great Lakes ports. This notice announces the availability of funding for grants under this program and establishes selection criteria and application requirements. The Act directed that at least $200 million of the appropriated funds shall be for grants to coastal seaports or Great Lakes ports. Funds for the PIDP are to be awarded as discretionary grants on a competitive basis for projects that will improve the safety, efficiency, or reliability of the movement of goods into, out of, around, or within a port. All PIDP grant recipients must meet all applicable Federal requirements, including the Buy American Act. The purpose of this notice is to solicit grant applications for the PIDP.

DATES: Applications must be submitted by 8:00 p.m. E.D.T. on May 18, 2020.

ADDRESSES: Applications must be submitted through *Grants.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact the PIDP staff via email at *Ports@dot.gov,* or call Bob Bouchard, Director, Office of Port Infrastructure Development, at 202–366–5076. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, the Department of Transportation (DOT) may post answers to questions and requests for clarifications as well as information about webinars for further information at *www.maritime.dot.gov/PIDPgrants.*

SUPPLEMENTARY INFORMATION: Each section of this notice contains information and instructions relevant to the application process for the PIDP discretionary grants, and all applicants should read this notice in its entirety to prepare eligible and competitive applications. Selection criteria have been modified since the FY2019 PIDP program.

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A. Program Description

1. Overview

The PIDP was established under 46 U.S.C. 50302, which authorizes the Department of Transportation (DOT) to establish a port and intermodal improvement program for improving the safety, efficiency or reliability of the movement of goods through ports and intermodal connections to ports. To carry out a project under this program, the Department may provide grants for port and intermodal infrastructure-related projects. The Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94) appropriated $225 million to the PIDP to make discretionary grants to improve the safety, efficiency, or reliability of the movement of goods into, out of, around, or within coastal seaports, inland river ports, or Great Lakes ports.

The efficient movement of goods through ports and their intermodal connections depends on rural transportation networks. Consistent with the R.O.U.T.E.S. Initiative, the Department may consider how projects will address the challenges faced by rural areas under the PIDP.

2. Merit Criteria

This section of the notice describes the following three merit criteria that the Department intends to use to select FY 2020 PIDP awards:

(a) Effect on the Movement of Goods

Ports play a critical role in the movement of freight and goods throughout the country. As primary entry and exit points for imports and exports, ports are essential drivers of our economic growth and productivity. The international competitiveness of the United States' domestic industries, such as agriculture and energy, depends on safe and efficient cargo movements through our nation's coastal and inland ports, as well as their intermodal connectors. To prioritize investment in projects that support goods movement, the Department will evaluate the extent to which the project will improve the safety, efficiency, or reliability of the movement of goods through a port or intermodal connection to a port.

(b) Leverage of Federal Funding

The Department is committed to supporting the President's call for more infrastructure investment. That goal will not be achieved through Federal investment alone, but rather requires

States, local governments, and the private sector to maximize their own contributions. By emphasizing leveraging of Federal funding, the Department expects to expand the total resources being used to build and restore infrastructure, rather than have Federal dollars merely displace or substitute for State, local, and private funds. Among otherwise comparable applications, the Department will prioritize projects that maximize leverage of Federal funding.

(c) Net Benefits

A strong maritime transportation network is critical to the functioning and growth of the American economy, which depends on port and intermodal transportation networks to export the goods that it produces. When the nation's ports function well, that infrastructure increases the efficiency of moving goods and thereby cuts the costs of doing business, promotes exports, creates employment opportunities, and improves overall well-being. This merit criterion will measure the quantified benefits against the costs of the project. Among otherwise comparable applications, the Department will prioritize projects that maximize net benefits.

Section E.1 of this notice describes how the Department will evaluate these three merit criteria and consider other information when making award decisions, including compliance with domestic preference requirements, whether the project is located in an Opportunity Zone, and the project's alignment with the Department's R.O.U.T.E.S. initiative. Section D.2 describes how applicants should address each criterion in their application. Section C.3.ii describes determinations that the Department is required to affirmatively make for each project to be awarded.

B. Federal Award Information

1. Amount Available

DOT intends to award up to $225 million to projects that improve facilities within or connecting to coastal seaports, inland river ports, and Great Lakes ports. The FY 2020 Appropriations Act directed that at least $200 million of this amount be reserved for grants to coastal seaports or Great Lakes ports. The FY 2020 Appropriations Act allows up to two percent of the funds appropriated be available for necessary costs of grant administration. If the DOT does not receive sufficient qualified applications, it will award less than the amount available.

2. Award Size

The minimum PIDP award size is $1 million. Except as limited by the amount of available funding and the statutory restrictions on funding identified in Section B.3, there is no maximum award size.

3. Restrictions on Funding

The authorizing statute and appropriations provisions impose several additional restrictions on awards under this notice:

- No more than 25 percent of the available funds ($56.25 million) can be awarded to a single State.
- At least $200 million is reserved for coastal seaport projects or Great Lakes port projects as defined in Section H.3.
- $56.25 million is reserved for projects requesting *exactly* $10 million in PIDP funds.[1]
- No more than $22.5 million may be awarded for development phase activities that do not result in construction.

4. Availability of Funds

To ensure the funds are expended in a timely manner, the Department, to the extent possible, seeks to obligate PIDP funds by September 30, 2023. Obligation occurs when a selected applicant and DOT enter into a written grant agreement after the applicant has satisfied applicable administrative requirements, including transportation planning and environmental review requirements. The Department also seeks to expend funds within five years of obligation. As part of the review and selection process described in Section E.2., DOT will consider a project's likelihood to be ready for obligation of funds by September 30, 2023 and liquidation of these obligations within five years of obligation.

C. Eligibility Information

To be selected for a PIDP discretionary grant, an applicant must be an eligible applicant and the project must be an eligible project.

1. Eligible Applicants

An eligible applicant for a PIDP discretionary grants is a port authority, a commission or its subdivision or agent under existing authority, a State or political subdivision of a State or local government, a Tribal government, a public agency or publicly chartered authority established by one or more States, a special purpose district with a transportation function, a multistate or multijurisdictional group of entities, or a lead entity described above jointly with a private entity or group of private entities. Applicants must demonstrate that they have the authority to carry out the project and are encouraged to submit an assertion with citation of authority with their application.

2. Cost Sharing or Matching

This section of the notice describes cost share requirements for a PIDP Grant award. The Federal share of the costs for which an expenditure is made under a PIDP grant may not exceed 80 percent; however, the Secretary may waive these requirements for grant awards less than $10 million. Non-Federal sources include State funds originating from programs funded by State revenue, local funds originating from State or local revenue funded programs, or private funds. The application should demonstrate, such as through a commitment letter or other documentation, the sources of the non-Federal funds. Unless otherwise authorized by statute, State or local cost-share may not be counted as the non-Federal share for both the PIDP Grant award and another Federal grant program.

The Department will not consider previously incurred costs or previously expended or encumbered funds towards the matching requirement for any project. Matching funds are subject to the same Federal requirements described in Section F.2. as awarded funds.

As directed by statute, for the purpose of eligibility, the proceeds of Federal assistance under chapter 6 of Title 23, United States Code or sections 501 through 504 of the Railroad and Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210), as amended, shall be considered to be part of the non-Federal share of project costs if the loan is repayable from non-Federal funds, unless otherwise requested by the project sponsor.

In addition to these cost share requirements, cost share will be evaluated according to the ''Leverage of Federal Funding'' criterion described in Section E. Preference will be given to those projects that require a lower percentage Federal share of costs (see Section E.1.ii for information on how the Department will evaluate leverage). That section explains that the Department seeks applications for projects that maximize the non-Federal share.

[1] The Department has discretion to award an applicant less than an applicant requested. Therefore, an award to an applicant who requests exactly $10 million will be counted against the reserved $56.25 million even if that award is less than $10 million.

3. Other

a. Eligible Projects

Eligible projects for PIDP grants shall be located either within the boundary of a port, or outside the boundary of a port and directly related to port operations or to an intermodal connection to a port. Eligible projects are limited to:

a. Port gate improvements

b. road improvements both within and connecting to the port;

c. rail improvements both within and connecting to the port;

d. berth improvements (including but not limited to docks, wharves, piers, and dredging incidental to the improvement project);

e. fixed landslide improvements in support of cargo operations (such as silos, elevators, conveyors, container terminals, Ro/Ro structures including parking garages for intermodal freight transfer, warehouses including refrigerated facilities, lay down areas, transit sheds, and other such facilities);

f. utilities necessary for safe operations (including but not limited to lighting, stormwater, and other such improvements that are incidental to a larger infrastructure project); or

g. a combination of activities described above.

Projects addressing environmental mitigation measures, freight intelligent transportation systems, and digital infrastructure systems are eligible if those components support one of the eligible project types listed above. This program will not fund construction, reconstruction, reconditioning, or purchase of a vessel, nor any project within a small shipyard (as defined in 46 U.S. Code § 54101).

Development phase activities (including planning, feasibility analysis, revenue forecasting, environmental review, permitting, and preliminary engineering and design work) that support these capital projects are also eligible. However, the Department will prioritize funding for projects that propose to move into the construction phase within the grant's performance period. Accordingly, applications for only development phase activities will be less competitive than capital grants.

b. Determinations

Before selecting a project for award, the Department must make the following determinations under 46 U.S.C. 50302(c)(6)(A). Evidence that a project meets these determinations should be clearly indicated as outlined in Section D.

a. The project improves the safety, efficiency, or reliability of the movement of goods through a port or intermodal connection to the port. Refer to Section D for what to include in your application, and to Section E.1.a.i for how the Department will make this determination.

b. The project is cost effective. The Department will determine a project is cost effective if it estimates that the project's benefit-cost ratio is equal to or greater than one. Refer to Section E.1.a. iii for how the Department will make this determination.

c. The eligible applicant has the authority to carry out the project. Refer to Section E.2.b.i for how the Department will make this determination.

d. The eligible applicant has sufficient funding available to meet the matching requirements. The Department's determination of sufficient and available non-Federal matching funds will be based on the information provided in the project's Grant Funds, Sources and Uses of Project Funds section of the application (see Section D.2.III). Refer to Section E.2.b.ii for how the Department will make this determination.

e. The project will be completed without unreasonable delay. The application must demonstrate that the project will meet the timeline outlined in Section B.4. This eligibility requirement is separate from the Project Readiness Selection Criteria described in Section E.1.b. Refer to section E.2.b.iii for how the Department will make this determination.

f. The project cannot be easily and efficiently completed without Federal funding or financial assistance available to the project sponsor. The Department's determination will be based on the impacts to the project if Federal funding or financial assistance is unavailable for the project. Refer to Section E.2.b.iv for how the Department will make this determination.

c. Project Components

An application may describe a project that contains more than one component and may describe components that may be carried out by parties other than the applicant. The Department may award funds for a component, instead of the larger project, if that component (1) independently meets minimum award amounts described in Section B and all eligibility requirements described in Section C; (2) independently aligns well with the merit criteria specified in Section E; and (3) meets National Environmental Policy Act (NEPA) requirements with respect to independent utility. Independent utility means that the component will represent a transportation improvement that is usable, even if no other improvement is made in the area, and will be ready for intended use upon completion of that component's construction. All project components that are presented together in a single application must demonstrate a relationship or connection among them.

Applicants should be aware that, depending upon the relationship between project components and applicable Federal law, Federal funding of some project components may make other project components that have not received Federal funding subject to Federal requirements as described in Section F.2.

The Department strongly encourages applicants to identify in their applications the project components that have independent utility and separately detail costs and requested PIDP funding for those components. If the application identifies one or more independent project components, the application should clearly identify how each independent component addresses the merit criteria and produces benefits on its own, in addition to describing how the full proposal of which the independent component is a part addresses the criteria described in Section E.

Applicants that request exactly $10 million in order to be eligible for the relevant reserved funds may include project alternatives that could be awarded less than or greater than exactly $10 million. These applicants are requested to: (1) Expressly state the request amount alternative to $10 million, (2) describe the scope that would accompany that alternative request, (3) clearly indicate the budget and source of funds for the alternative request, and (4) provide sufficient information for the Department to assess the selection criteria for the alternative request.

d. Application Limit

Each lead applicant may submit no more than one application.

e. Definitions

Coastal port: A port on navigable waters of the United States or territories that are subject to the Corps of Engineers regulatory jurisdiction for oceanic and coastal waters under 33 CFR 329.12 or that is otherwise capable of receiving oceangoing vessels with a draft of at least 20 feet (other than a Great Lakes port).

Development Phase Activities: Planning, feasibility analysis, revenue forecasting, environmental review, permitting, and preliminary engineering and design work.

Great Lakes port: A port on the Great Lakes and their connecting and tributary waters as defined under 33 CFR 83.03(o)).

Rural area: An area located outside a 2010 Census-designated urbanized area.

D. Application and Submission Information

1. Address

Applications must be submitted to *Grants.gov.* Instructions for submitting applications can be found at *www.maritime.dot.gov/PIDPgrants* along with specific instructions for the forms and attachments required for submission.

2. Content and Form of Application Submission

The application must include the Standard Form 424 (Application for Federal Assistance), cover page, and the Project Narrative. More detailed information about the Project Narrative follows.

The Department recommends that the project narrative be prepared with standard formatting preferences (a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins, and the narrative text in one column only). The project narrative may not exceed 30 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 30-page limit are documents supporting assertions or conclusions made in the 30-page project narrative. Except for the benefit cost analysis, the Department does not consider support documentation or websites an essential part of the application and may not review supplemental materials as part of the application. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. Supporting documentation should be expressly dated. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports.

The Department recommends that the project narrative follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Project Description	See D.2.I.
II. Project Location	See D.2.II.
III. Grant Funds, Sources and Uses of all Project Funding.	See D.2.III.
IV. Selection Criteria	See D.2.VI.
a. Safety, Efficiency, or Reliability Improvements.	
b. Leveraging Non-Federal Funds.	
c. Net Benefits/Economic Vitality.	
V. Project Readiness	See D.2.V.
a. Technical Capacity.	
b. Environmental Approvals.	
c. Risk Mitigation.	
VI. Domestic Preference	See D.2.VI.

The project narrative should include the information necessary for the Department to determine that the project satisfies project requirements described in Sections B and C and to assess the criteria specified in Section E.1. In addition to a detailed statement of work, detailed project schedule, and detailed project budget, the project narrative should include a table of contents, maps and graphics, as appropriate, to make the information easier to review. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by the Department. The Department may ask any applicant to supplement data in its application, but expects applications to be complete upon submission. The Department may seek clarifying or additional information from applicants according to circumstances described in Section E.2. The Department recommends applications include the following content:

I. Project Description

The first section of the application should provide a concise description of the project, the challenges that it is intended to address, and how it will address those challenges. The project description should provide both a high-level overview of the overall project and a clear itemization of its major components. This section may discuss the project's history, including a description of any previously completed components. The applicant may use this section to place the project into a broader context of other transportation infrastructure investments being pursued by the project sponsor. This section should focus on eligibility and technical aspects of the project, but should not directly address the merit criteria.

II. Project Location

This section of the application should describe the project location, including a detailed geographical description of the proposed project, a map of the project's location and connections to existing transportation infrastructure, and geospatial data describing the project location. This section should also clearly identify whether the project is:

(a) located in a qualified opportunity zone [2] designated pursuant to 26 U.S.C. 1400Z–1,

(b) located in a rural area (as defined in Section C.3.e),

(c) a Great Lakes port project (as defined in Section C.3.e),

(d) a Coastal Port project (as defined in Section C.3.e),

III. Grant Funds, Sources, and Uses of Project Funds

This section of the application should describe the project's budget and leverage of non-Federal funds. The budget should not include any previously incurred expenses. At a minimum, this section should include:

(a) Project costs;

(b) For all funds to be used for eligible project costs, the source and amount of those funds;

(c) Documentation of funding commitments for non-Federal funds to be used for eligible project costs (documentation may be referenced and submitted as an appendix);

(d) For Federal funds to be used for eligible project costs, the amount, nature, and source of any required non-Federal match for those funds. Applicants should also refer to the Leverage of Federal Funding merit criterion in Section E.1.a.ii.

(e) A budget showing how each source of funds will be spent. The budget should show how each funding source will share in each major construction activity, and present that data in dollars and percentages. Funding sources should be grouped into three categories: non-Federal; PIDP; and other Federal. If the project contains individual components, the budget should separate the costs of each project component. If the project will be completed in phases, the budget should separate the costs of each phase. The budget detail should sufficiently demonstrate that the project satisfies the statutory cost-sharing requirements described in Section C.2.

In addition to the information enumerated above, this section should provide complete information on how all project funds may be used. For example, if a particular source of funds is available only after a condition is satisfied, the application should identify that condition and describe the applicant's control over whether it is satisfied. Similarly, if a particular source of funds is available for expenditure only during a fixed time period, the application should describe

[2] See *www.cdfifund.gov/Pages/Opportunity-Zones.aspx* for more information on opportunity zones.

that restriction. Complete information about project funds will ensure that the Department's expectations for award execution align with any funding restrictions unrelated to the Department, even if an award differs from the applicant's request. If a funding source is uncertain, the applicant should state that it is uncertain and describe the source of the uncertainty. Failure to document funding sources, as described in paragraph c), or failure to address uncertainty may prevent the Department from making the determination at section C.3.ii.d necessary to select the project for an award.

Applicants that request exactly $10 million with an alternative request should expressly state the request amount alternative to $10 million, and clearly indicate the budget and source of funds for the alternative request.

IV. Merit Criteria

This section should be structured to clearly address each of the following merit criteria in accordance with the Application Review guidance in Section E. Applicants that request exactly $10 million with an alternative request should describe the scope that would accompany that alternative request, and provide sufficient information for the Department to assess the selection criteria for the alternative request.

(a) Effect on the Movement of Goods

The application should contain information to assess the project's impact on safety, efficiency, or reliability of the movement of goods through a port or intermodal connection to a port. The application may, as part of this discussion, identify features the applicant will incorporate into the project and highlight specific benefits of the project (such as indicators of improved efficiency and reliability like reduced vessel and truck turn times; enhancements to or increases in system capacity; improved connectivity; decreases in the number, rate, and consequences of transportation-related accidents, serious injuries, and fatalities).

(b) Leverage of Federal Funding

While the Leveraging Criterion will be assessed according to the methodology described in Section E.1.a.ii, this section of the application may be used to include additional information that may strengthen the Department's understanding of the project sponsor's effort to improve non-Federal leverage.

(c) Net Benefits

This section describes the recommended approach for the completion and submission of a benefit cost analysis (BCA) as an appendix to the Project Narrative. The benefit-cost analysis itself should be provided as an appendix to the project narrative, but the results of the analysis should also be summarized in the Project Narrative directly.

The appendix should provide present value estimates of a project's benefits and costs relative to a no-build baseline. To calculate present values, applicants should apply a real discount rate (*i.e.,* the discount rate net of the inflation rate) of 7 percent per year to the project's streams of benefits and costs. The purpose of the BCA is to enable the Department to evaluate the project's cost-effectiveness by estimating a benefit-cost ratio and calculating the magnitude of net benefits for the project. The primary economic benefits from projects eligible for PIDP grants are likely to include savings in travel time costs, vehicle and port operating costs, and safety costs for both existing users of the improved facility and new users who may be attracted to it because of the project. Savings in infrastructure maintenance costs may also be quantified. Applicants may describe other categories of benefits in the BCA that are more difficult to quantify and value in economic terms, such as improving the reliability of travel times, while also providing numerical estimates of the magnitude and timing of each of these additional impacts wherever possible. Any benefits claimed for the project, both quantified and unquantified, should be clearly tied to the expected outcomes of the project.

The BCA should include the full costs of developing, constructing, operating, and maintaining the proposed project, as well as the expected timing or schedule for costs in each of these categories. The BCA may also consider the present discounted value of any remaining service life of the asset at the end of the analysis period. The costs and benefits that are compared in the BCA should also cover the same project scope, including the costs of other related projects on which the benefits of the PIDP project depend.

The BCA should carefully document the assumptions and methodology used to produce the analysis, including a description of the baseline, the sources of data used to project the outcomes of the project, and the values of key input parameters. Applicants should provide all relevant files used for their BCA, including any spreadsheet files (in their original format such as Excel) and technical memos describing the analysis (whether created in-house or by a contractor). The spreadsheets and technical memos should present the calculations in sufficient detail and transparency to allow the analysis to be reproduced by DOT evaluators. Detailed guidance for estimating some types of quantitative benefits and costs, together with recommended economic values for converting them to dollar terms and discounting to their present values, are available in the Department's guidance for conducting BCAs for projects seeking funding under the PIDP (*www.maritime.dot.gov/PIDPgrants*).

V. Project Readiness

During application evaluation, the Department may consider project readiness to assess the likelihood of a successful project. In that analysis, the Department will consider two evaluation ratings which include Technical Capacity and Environmental Risk. Technical Capacity will be reviewed for all eligible applications and will assess the recipients experience working with Federal agencies, previous experience with Port Infrastructure Development Grant awards, BUILD or INFRA awards, and the technical experience and resources dedicated to the project. Environmental Risk assessment analyzes the project's environmental approvals and likelihood of the necessary approval affecting project obligation. Risks do not disqualify projects from award, but competitive applications clearly and directly describe achievable risk mitigation strategies. A project with mitigated risks or with a risk mitigation plan is more competitive than a comparable project with unaddressed risks. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

(a) Technical Capacity

The applicant should provide information demonstrating technical capacity to implement the project based on experience and understanding of Federal requirements. This section may include a description of the applicant's history of delivering similar projects or experience completing a Federally supported project. The application should also demonstrate a project's feasibility or constructability and schedule, and how the design will comply with applicable Federal requirements.

(b) Environmental Risk

(1) Project Schedule

The applicant should include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals; start and completion of NEPA and other Federal environmental reviews and approvals including permitting; design completion; right of way acquisition; approval of plans, specifications and estimates; procurement; State and local approvals; project partnership and implementation agreements, including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that the project can begin construction quickly upon obligation of PIDP funds, and that the grant funds will be spent expeditiously once construction starts.

i. Information about the NEPA status of the project. The applicant should indicate the anticipated NEPA level of review for the project and describe any environmental analysis in progress or completed. This includes Categorical Exclusion, Environmental Assessment/ Finding of No Significant Impact, or Environmental Impact Statement/ Record of Decision. The applicant should review Maritime Administration Manual of Orders MAO 600–1 prior to submission. The application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all milestones and of the final NEPA determination. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements. If applicable, applicants should include a description of discussions with the appropriate Maritime Administration NEPA Coordinator in the Maritime Administration Office of Environment regarding the project's compliance with NEPA and other applicable Federal environmental reviews and approvals.

ii. Environmental Permits and Reviews. The application should demonstrate receipt (or reasonably anticipated receipt) of all environmental permits and approvals necessary, including Section 106 of the National Historical Preservation Act, 54 U.S.C. 306108, and Section 7 of the Endangered Species Act, 16 U.S.C. 1531, for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State, and local requirements and completion of the NEPA process.

iii. State and Local Approvals. The applicant should demonstrate receipt of State and local approvals on which the project depends, such as State and local environmental and planning. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project has broad public support.

iv. Information on reviews, approvals, and permits by other agencies. An application should indicate whether the proposed project requires reviews or approval actions by other agencies,[3] indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and should demonstrate compliance with any other applicable Federal, State, or local requirements, and when such approvals are expected. Applicants should provide a website link or other reference to copies of any reviews, approvals, and permits prepared.

v. A description of whether the project is dependent on, or affected by, U.S. Army Corps of Engineers investment and the U.S. Army Corps of Engineers planned activities as it relates to the project.

vi. Environmental studies or other documents, preferably through a website link, that describe in detail known project impacts, and possible mitigation for those impacts. This could include State NEPA analysis information as applicable.

(2) Assessment of Project Readiness Risks and Mitigation Strategies

The applicant should identify project risks, such as approval or permit delays, procurement delays, environmental uncertainties, increases in real estate acquisition costs, or lack of legislative approval, that affect the likelihood of successful project start and completion. The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks.

VI. Domestic Preference

This section should include a description of whether materials and manufactured products to be used in the project are produced or manufactured domestically. This section should also include an assessment of what, if any, materials or manufactured products would require an exception or waiver of the Buy American provisions described in section F.2 of this notice and the applicant's current efforts and planned future efforts to maximize domestic content. The content of this section of the application is particularly important for projects that propose the acquisition of heavy equipment (such as cranes) or bollard and fendering systems, which are often procured from foreign manufacturers. As described in Section E.1.c, failure to address Buy American compliance can affect whether an application is considered competitive for award and may prevent an award.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant must: (1) Be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Department may not make a PIDP Grant award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time Department is ready to make a PIDP grant award, the Department may determine that the applicant is not qualified to receive a PIDP grant award and use that determination as a basis for making a PIDP grant award to another applicant.

4. Submission Dates and Times

i. Deadline

Applications must be submitted by 8:00 p.m. EDT on May 18, 2020. The funding opportunity on *Grants.gov* will open by February 18, 2020.

To submit an application through *Grants.gov*, applicants must:

(1) Obtain a Data Universal Numbering System (DUNS) number;

(2) Register with the System for Award Management (SAM) at *www.SAM.gov;*

(3) Create a *Grants.gov* username and password; and

(4) Complete Authorized Organization Representative (AOR) registration in *Grants.gov*. The E-Business Point of Contact (POC) at the applicant's organization must respond to the registration email from *Grants.gov* and login at *Grants.gov* to authorize the applicant as the AOR. Please note that there can be more than one AOR for an organization.

[3] Projects that may impact protected resources such as wetlands, species habitat, cultural or historic resources require review and approval by Federal and State agencies with jurisdiction over those resources.

Please note that the *Grants.gov* registration process usually takes 2–4 weeks to complete and that the Department will not consider late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicantfaqs.html.* If applicants experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1(800) 518–4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. EST.

5. Consideration of Applications

Only applicants who comply with all submission deadlines described in this notice and electronically submit valid applications through *Grants.gov* will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

6. Late Applications

Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *Ports@dot.gov* prior to the application deadline with the user name of the registrant and details of the technical issue experienced. The applicant must provide:

(1) Details of the technical issue(s) experienced;

(2) Screen capture(s) of the technical issues(s) experienced along with corresponding *Grants.gov* ''Grant tracking number'';

(3) The ''Legal Business Name'' for the applicant that was provided in the SF–424;

(4) The AOR name submitted in the SF–424;

(5) The DUNS number associated with the application; and

(6) The *Grants.gov* Help Desk Tracking Number.

To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the various registration processes before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all instructions in this notice of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment. After the Department reviews all information submitted and contacts the *Grants.gov* Help Desk to validate reported technical issues, DOT staff will contact late applicants to approve or deny a request to submit a late application through *Grants.gov*. If the reported technical issues cannot be validated, late applications will be rejected as untimely.

E. Application Review Information

1. Criteria

a. Merit Criteria

This section specifies the merit criteria that the Department will use to evaluate and award applications for PIDP grants. Per the Act, the Secretary shall give substantial weight to the utilization of non-Federal contributions and the net benefits as determined by the cost-benefit analysis of the project. The Department encourages applicants to address each of the following criterion. Applicants that request exactly $10 million with an alternative request should provide sufficient information for the Department to assess the selection criteria for the alternative request.

i. Effect on the Movement of Goods

The Department will evaluate the extent to which the project will improve the safety, efficiency, or reliability of the movement of goods through a port or intermodal connection to a port. To address this criterion, the application must include a discussion about how the project improves the safety, efficiency or reliability of the movement of goods. For projects that positively improve the movement of goods the project will satisfy the determination listed under Section C.3.ii.a

ii. Leverage of Federal Funding

To maximize the impact of PIDP awards, the Department seeks to leverage PIDP funding with non-Federal contributions. To evaluate this criterion, the Department will assign a rating to each project based on the calculated non-Federal share of the project's future eligible project costs. The Department will sort project applications' non-Federal leverage percentage from high to low, and the assigned ratings will be based on quintile: Projects in the 80th percentile and above receive the highest rating; the 60th–79th percentile receive the second highest rating; 40th–59th, the third highest; 20th–39th, the fourth highest; and 0–19th, the lowest rating. This evaluation criterion is separate from the statutory cost share requirements for PIDP grants, which are described in Section C.2. Those statutory requirements establish the minimum permissible non-Federal share; they do not define a competitive PIDP project.

The project's non-Federal leverage percentage will be calculated based on the best available information provided by the applicant. In cases where the ultimate source of the funding is unclear, the funding will be treated as Federal for the purposes of this calculation.

For the purposes of evaluating leverage, proceeds of Federal assistance under chapter 6 of Title 23, United States Code or sections 501 through 504 of the Railroad and Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210), as amended, shall be considered to be part of the non-Federal share of project costs if the loan is repayable from non-Federal funds, unless otherwise requested by the project sponsor.

iii. Net Benefits

The Department will consider the costs and benefits of projects seeking PIDP funding. To the extent possible, the Department will rely on quantitative, data-supported analysis to assess how well a project addresses this criterion, including an assessment of the project's estimated benefit-cost ratio and net benefits based on the applicant-supplied BCA described in Section D.2.IV.c.

Based on the Department's assessment, the Department will group projects into ranges based on their estimated benefit costs ratio (BCR) and net present value (NPV), and assign a level of confidence associated with each project's assigned BCR and NPV ratings. The Department will use these ranges for BCR: Less than 1; 1–1.5; 1.5–3; and greater than 3. The Department will use these ranges for NPV: Less than $0; $0–$50,000,000; $50,000,000–$250,000,000; and greater than $250,000,000. The confidence levels are high, medium, and low. For projects that have a BCR greater than 1, the project will satisfy the determination in Section C.3.ii.b.

b. Project Readiness

The Department will consider significant risks to successful completion of a project, including risks associated with technical capacity, environmental review, permitting, and the applicant's overall capacity to manage project delivery. Risks do not disqualify projects from award, but competitive applications clearly and directly describe achievable risk mitigation strategies. A project with mitigated risks is more competitive than a comparable project with unaddressed risks.

c. Domestic Preference

The Department will consider whether an exception/waiver of the Buy American provisions will be necessary to complete the project. Among otherwise comparable applications, projects that depend on materials or manufactured products that do not comply with domestic preference requirements will be less competitive than projects that comply with those requirements. Among otherwise comparable applications that require exceptions or waivers, an application that presents an effective plan to maximize domestic content will be more competitive than one that does not. The Department will not award projects that likely need a waiver but present no plan to maximize domestic content.

d. Additional Considerations

i. Opportunity Zones

The Department will consider whether a project is located within a qualified opportunity zone [4] designated pursuant to 26 U.S.C. 1400Z–1. A project located in a qualified opportunity zone is more competitive than a similar project that is not located in a qualified opportunity zone.

ii. R.O.U.T.E.S

Consistent with the R.O.U.T.E.S. Initiative, the Department may consider how projects will address the challenges faced by rural areas under the Port Infrastructure Development Grant program. A project that effectively addresses those challenges is more competitive than a similar project that does not.

iii. Projects Awarded Less Than $10,000,000

For Department awards that are under $10 million, the Department will give priority consideration for ports that handled less than 10,000,000 short tons in 2017, as identified by the Army Corps of Engineers.

2. Review and Selection Process

a. Review Process

The PIDP evaluation consists of Intake, a Technical Review Phase, and a Senior Review phase, each of which are described below. During the Technical Review Phase, Department staff will analyze applications and provide ratings, consistent with the descriptions in this NOFO. If the project has not substantively changed from prior submissions to BUILD or other Department programs, staff may rely on previous analysis.

Based on this analysis, the Senior Review Team assembles a list of Projects for Consideration for selection by the Secretary based on the criteria described in Section E. The Secretary makes final selections based on the criteria described in Section E.

b. Determinations

The Department must make the following determinations under 46 U.S.C. 50302(c)(6)(A).

i. Authority To Carry Out the Project

If the applicant demonstrates that they have the authority to carry out the project by providing citations of authority, or other supporting documentation with their application, the project will satisfy the determination outlined in Section C.3.ii.c.

ii. Unreasonable Delay

If the application narrative and project schedule demonstrate that the project is reasonably expected to begin construction no later than 18 months after the date of obligation of funds for the project, and will be fully completed within five years of obligation, the project satisfies the determination outlined in Section C.3.ii.e.

iii. Sufficient Matching Funds

In assessing the availability of the proposed non-Federal financial commitments, the Department will consider the degree to which financing sources are dedicated to the proposed purposes and are highly likely to be available within the proposed project schedule. If the application narrative and project budget demonstrate that the applicant has sufficient funding available to meet the matching requirements, the project will satisfy the determination outlined in Section C.3.ii.d.

iv. Need for Financial Assistance

The Department will evaluate how well the project demonstrates that it cannot be easily and efficiently completed without Federal funding or financial assistance available to the project sponsor. If applications sufficiently describe the impacts on the project of federal funding or financial assistance being unavailable for the project, and show the project cannot be easily or efficiently completed without such assistance the project will satisfy the determination outlined in Section C.3.ii.f.

c. Additional Information

Throughout the review and selection process, the Department may seek additional information from an applicant related to project eligibility, whether the project can be completed with a reduced award, or data needed to complete project analysis.

3. Additional Information

Development phase grant applications will be evaluated against the same criteria as capital grant applications, and the Department will prioritize funding for projects that propose to move into the construction phase within the period of obligation. Accordingly, applications for development phase activities will be less competitive than capital grants.

Prior to grant obligation, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.205. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). An applicant may review information in FAPIIS and comment on any information about itself. The Department will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notice

Following the evaluation outlined in Section E, the Department will announce awarded projects by posting a list of selected projects at *www.maritime.dot.gov/PIDPgrants.* Notice of selection is not authorization to begin performance. Following that announcement, the Department will contact the point of contact listed in the SF 424 to initiate negotiation of the grant agreement for authorization.

PIDP grant funds will reimburse recipients after expenses are incurred. PIDP Transportation Grant recipients must adhere to applicable requirements and follow established procedures to receive reimbursement. Recipient of an award will not receive a lump-sum cash disbursement at the time of award announcement or obligation of funds. Unless authorized in writing by the Department, an expense incurred before

[4] See *www.cdfifund.gov/Pages/Opportunity-Zones.aspx* for more information on opportunity zones.

a grant agreement is executed will not be reimbursed.

2. Administrative and National Policy Requirements

PIDP grant funds will reimburse recipients after expenses are incurred. PIDP grant recipients must adhere to applicable requirements and follow established procedures to receive reimbursement. The recipient of an award will not receive a lump-sum cash disbursement at the time of award announcement or obligation of funds.

The Department will determine the period of performance for each award based on the specific project that was evaluated and selected. DOT will administer each PIDP Grant pursuant to a grant agreement with the grant recipient. Amounts awarded as a grant under this notice that are not expended by the grant recipient shall remain available to DOT for use for grants under this program.

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by the Department of Transportation at 2 CFR part 1201. Additionally, applicable Federal laws, Executive Orders, and any rules, regulations, and requirements of the Maritime Administration will apply to the projects that receive PIDP Grants awards.

As expressed in Executive Orders 13788 of April 18, 2017 and 13858 of January 31, 2019, it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States in the terms and conditions of Federal financial assistance awards. Consistent with the requirements of Section 410 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2020 (Pub. L. 116–94, div. H, December 20, 2019), the Buy American requirements of 41 U.S.C. 8301–8305 apply to funds made available under this notice and other expenditures within the scope of the award, and all grant recipients must apply, comply with, and implement all provisions of the Buy American Act and related provisions in the grant agreement when implementing PIDP Grant projects. If selected for an award, grant recipients will be required to obtain approval from the Department before applying any Buy American Act exception. To obtain that approval, grant recipients must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; statutory, regulatory, and public policy requirements, including without limitation, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients, in particular, must ensure that no concession agreements are denied or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Department determines that a recipient has failed to comply with applicable Federal requirements, the Department may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

Additionally, Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, U.S.C., apply to all projects receiving funds under this program, and apply to all parts of the project, whether funded with PIDP grant funds, other Federal funds, or non-Federal funds.

PIDP projects involving vehicle acquisition must involve only vehicles that comply with applicable Federal Motor Vehicle Safety Standards and Federal Motor Carriers Safety Regulations, or vehicles that are exempt from Federal Motor Vehicle Safety Standards or Federal Motor Carrier Safety Regulations in a manner that allows for the legal acquisition and deployment of the vehicle or vehicles.

3. Reporting

This section of the notice provides general information about the reporting requirements that accompany PIDP Grant funding. Potential applicants should review these requirements to ensure that they can satisfy them if they receive an award. A recipient's failure to timely submit required reports may result in termination of an award and a legal requirement for the recipient to return funding to the Department.

a. Progress Reporting on Grant Activities

Each applicant selected for PIDP Grants funding must submit quarterly progress reports and Federal Financial Reports (SF–425) to monitor project progress and ensure accountability and financial transparency in the PIDP.

b. Outcome Performance Reporting

Each applicant selected for PIDP Grant funding must collect information and report on the project's observed performance with respect to the relevant long-term outcomes that are expected to be achieved through construction of the project. Performance indicators will include formal goals or targets for a period determined by the Department. They will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the PIDP. To the extent possible, performance indicators used in the reporting will relate to at least one of the merit criteria defined in Section E and to a benefit estimated in the BCA. The Department expects that the level of performance will be consistent with estimates used in the applicant's BCA. Performance reporting continues for three years after project construction is completed, and the Department does not provide PIDP grant funding specifically for performance reporting. For each project selected for award, the Department, with input from the grant recipients, will identify the measures to be collected. Those measures and the reporting requirements will be formalized in the agreement obligating award funds for the project.

c. Port Performance Reporting

The Department is required to report annually on port performance (see Sec. 6314 of the FAST Act). To help the Department more accurately assess port performance, PIDP grant recipients will be required to enter a data sharing agreement to submit to the Department information where consistent data related to the project, particularly on cargo throughput, is not publicly available and difficult to collect from ports and port terminals. Data, which must originate from the port, that will be required as a condition of award may include some or all the following:

- Total capacity of inbound and outbound cargo
- Total volume of inbound and outbound cargo
- Average number of lifts per hour of containers by crane
- Average vessel turn time by vessel type
- Average cargo or container dwell time

- Port storage capacity and utilization
- Modal throughput statistics, including rail and truck turn times
- Types of cargo moved
- Presences and location of intermodal connectors
- Physical size of the terminals within the port boundaries
- Maximum authorized channel depth and maximum actual/current channel depth
- Schedule vessel arrivals (for use in determining vessel on-time performance)
- Berth utilization

Details and definitions on the data elements described above will be provided in the data sharing agreement with the Department.

d. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

For further information concerning this notice please contact the PIDP staff via email at *Ports@dot.gov,* or call or call Bob Bouchard, Director, Office of Port Infrastructure Development, at 202–366–5076. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, the Department will post answers to questions and requests for clarifications at *www.maritime.dot.gov/PIDPgrants.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact DOT directly, rather than through intermediaries or third parties, with questions. DOT may also conduct briefings on the PIDP Grants selection and award process upon request.

H. Other information

1. Protection of Confidential Business Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the applicant submits information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant must provide that information in a separate document, which the applicant may cross-reference from the application narrative or other portions of the application. For the separate document containing confidential information, the applicant must do the following: (1) State on the cover of that document that it ''Contains Confidential Business Information (CBI)''; (2) mark each page that contains confidential information with ''CBI''; (3) highlight or otherwise denote the confidential content on each page; and (4) at the end of the document, explain how disclosure of the confidential information would cause substantial competitive harm. DOT will protect confidential information complying with these requirements to the extent required under applicable law. If DOT receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this section, and ultimately determined to be confidential under § 7.29 will be exempt from disclosure under FOIA.

2. Publication/Sharing of Application Information

Following the completion of the selection process and announcement of awards, the Department intends to publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for the information properly marked as described in Section H.1., the Department may make application narratives publicly available or share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

Issued in Washington, DC, on February 24, 2020.

Elaine L. Chao,

Secretary.

[FR Doc. 2020–04309 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Announcement of Department of Transportation Portal for Guidance Documents

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the U.S. Department of Transportation's guidance portal. This guidance portal will provide convenient public access to the Department's guidance documents, ensure transparent use of guidance documents, and implement the Executive Order titled, ''Promoting the Rule of Law Through Improved Agency Guidance Documents.''

DATES: The guidance portal is accessible by the public on the date of publication of this notice. All DOT guidance documents remaining in effect will be found through the guidance portal.

FOR FURTHER INFORMATION CONTACT: Jill Laptosky, Office of Regulation, Office of the General Counsel, 202–493–0308, *Jill.Laptosky@dot.gov.* For technical questions related to information and technology, please contact Andrea Bouchard, Office of the Chief Information Officer, 202–366–9974, *Andrea.Bouchard@dot.gov.*

SUPPLEMENTARY INFORMATION: On October 9, 2019, the President signed Executive Order (E.O.) 13891, titled: ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' [1] Section 3(a) of the E.O. directs each Federal agency to establish or maintain on its website a single, searchable, indexed database that contains or links to all guidance documents in effect from that agency or its components. Guidance documents are defined by section 2(b) of the E.O. as an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation. The E.O. excludes from this definition rules promulgated pursuant to notice and comment under section 553 of title 5, United States Code, or

[1] 84 FR 55235 (Oct. 15, 2019).

similar statutory provisions; rules exempt from rulemaking requirements under section 553(a) of title 5, United States Code; rules of agency organization, procedure or practice; decisions of agency adjudications; internal guidance documents directed to the issuing agency or other agencies and that are not intended to have substantial future effect on the behavior of regulated parties; or internal executive branch legal advice or legal opinions addressed to executive branch officials. The Department defines ''guidance document'' in its regulations on guidance procedures at 49 CFR 5.25(c)–(d).

On October 31, 2019, the Office of Management and Budget (OMB) issued Memorandum M–20–02, titled: ''Guidance Implementing Executive Order 13891, Titled 'Promoting the Rule of Law Through Improved Agency Guidance Documents.' '' The memorandum requires Federal agencies to establish the database mandated by the E.O. no later than February 28, 2020. In addition, the memorandum asks agencies to publish in the **Federal Register** an announcement of the existence of that guidance portal.

Accordingly, this notice announces that DOT has established its guidance portal at *https://www.transportation.gov/guidance.* This is a single, searchable, indexed website that contains all of DOT's guidance documents currently in effect or links to sites of DOT component agencies that contains guidance documents for that component agency. To provide for ease of access by the public, all guidance documents located on, or linked from, this portal will be machine readable and can be indexed and searched by commonly used commercial search engines. Any guidance document that is not included on, or linked from, this guidance portal by February 28, 2020, will not be cited to, used, or relied on by DOT, including its component agencies, except to establish historical facts. Guidance documents available on or through the DOT guidance portal do not have the force and effect of law and are not meant to bind the public in any way. The guidance documents available on or through the DOT guidance portal are intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Issued in Washington, DC, on February 25, 2020.

Elaine L. Chao,

Secretary.

[FR Doc. 2020–04308 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. DOT–OST–2011–0170]

Notice of Submission of Proposed Information Collection to OMB

Agency Request for Revision of BTS Form 251 and Renewal of OMB Control Number 2138–0018: Part 250 of the Department's Economic Regulations—Oversales

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (Department) intention to renew and revise an Office of Management and Budget (OMB) control number as related to the Department's Bureau of Transportation Statistics (BTS) Form 251, *Report of Passengers Denied Confirm Space.* The Department has collected and published information regarding the industry's practice of overselling flights for over 40 years. In the past few years, there has been changes in the airline industry regarding how airlines handle oversale situations and denied boardings. For example, airlines have begun taking proactive steps to reduce the number of involuntary denied boardings including increasing the amount of compensation offered to passengers in exchange for voluntary changes to a passenger's itinerary. These changes have resulted in an overall reduction in the rate of denied boardings, but the practice still occurs and is an integral part of the airline industry. The Department is seeking to renew the current OMB control number and to revise and rename Form 251 to Form 250 to reduce the burden on airlines, better clarify the instructions for completing the form, and provide more relevant information to consumers.

DATES: Written comments should be submitted by May 4, 2020.

ADDRESSES: You may submit comments (identified by DOT Docket Number OST–2011–0170) through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Hand Delivery:* U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal Holidays. The telephone number is 202–366–9329.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Stuart Hindman, (202) 366–9342, *Stuart.Hindman@dot.gov*, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2138–0018.

Title: Report of Passengers Denied Confirmed Space Due to an Oversale Situation.

Type of Request: Request to Revise and Rename Form 251 and Renew OMB Control Number.

Abstract/Background: BTS Form 251 is a one-page report that U.S. reporting carriers submit to the Department on a quarterly basis. Among other things, the form contains the following information: 1) The number of passengers denied seats on flights that they hold confirmed spaces, either voluntarily or involuntarily, 2) the numbers of passengers involuntarily denied boarding (bumped passengers) who were and who were not provided alternate transportation, 3) the number of passengers voluntarily or involuntarily denied boarded who received compensation and the amounts of the compensation paid to them, and 4) the total number of enplanements at a U.S. airport relating to flights that are subject to the oversales rule. For the purpose of Form 251, reporting carriers are U.S. air carriers that account for at least .5 percent of domestic scheduled-service passenger revenues. These reporting carriers must submit Form 251 for all flights operated on aircraft with a designed passenger capacity of 30 or more seats which depart a U.S. airport. Carriers do not report data from inbound international flights to the United States because the protections of 14 CFR part 250 *Oversales* do not apply to these flights. In addition, reporting carriers must file a separate form for all scheduled flight segments originating in the United States which are operated by a codeshare partner of the reporting carrier that is a certificated air carrier or commuter air carrier using aircraft that have a designed passenger capacity of 30 or more seats, and marketed only under one U.S. carrier's code. As of January 1, 2020, there are 5 such reporting carriers.

Certain information collected from Form 251 is made available to the

public in the Department's monthly publication, the *Air Travel Consumer Report (ATCR),* at: *https://www.transportation.gov/individuals/aviation-consumer-protection/air-travel-consumer-reports.* The *ATCR* is a reliable and widely cited source of information for newspapers, magazines, and trade journals. The report allows the Department to monitor the level of oversales activities by each reporting carrier, their impact on passengers, and the effectiveness of the Department's oversales rule. A review of the data reveals that the overall involuntarily denied-boarding rates have been consistently decreasing in recent years while passenger enplanements are increasing. For example, compared to the annual involuntary denied boarding rate of 4.38 per 10,000 passengers in 1980, this rate has been reduced to .24 per 10,000 passengers in 2019. The publishing of the carriers' individual denied boarding rates has diminished the need for more intrusive regulation because the public availability of this information deters carriers from setting unreasonable overbooking rates—a market-based mechanism that is more efficient than direct regulation of those rates. In addition, a carrier's denied boarding rate provides an insight into that carrier's operational principles and customer service practices. For instance, a rapid sustained increase in the rate of denied boarding may indicate operational difficulties. Because the rate of denied boarding is released quarterly, travelers and travel agents concerned about being bumped can select carriers with lower incidences of denied boardings.

In 2016, the Department issued a final rule that, in part, revised the oversales reporting requirements. In conjunction with that rulemaking, on May 23, 2014, the Department published a 60-day FR Notice (79 FR 29970), and, on November 3, 2016, a 30-day FR notice (81 FR 76800) to renew and revise the OMB control number regarding oversales information collection (2138–0018). On October 12, 2017, OMB approved the control number authorizing these new collections of information until October 31, 2020. This 60-day notice serves to notify the public of the Department's intention to renew the OMB control number and to revise and BTS Form 251 to Form 250.

Based on changes in the industry involving how airlines handle oversale situations, the Department is proposing to revise and rename Form 251 to Form 250 to reduce the burden on the reporting carriers, to clarify form instructions, to resolve any inconsistencies among the data provided by reporting carriers, and to provide more relevant and helpful information to consumers. A line-by-line summary of the proposed changes to the form with an explanation for each change is below:

Form 250

- Title.
  - The current title of the form—''Report of Passengers Denied Confirmed Space''—is revised to ''Report of Passengers Denied Confirmed Space Due to an Oversale Situation'' and renamed to be ''Form 250''. This revision is intended to clarify that the form is meant to capture data relating to passengers denied boarding due to an oversale situation and not for other reasons such as safety, security, or health related reasons. Renaming the form to ''Form 250'' is intended to further clarify the applicability of the data to oversale situations and correspond to the appropriate part of Title 14 of the Code of Federal Regulations which addresses oversales, Part 250.
- Line 1.
  - Added ''from flights that were oversold'' to the leading sentence to reinforce that the form is intended to capture data from oversold flights.
  - In order to provide more complete and accurate regulation citations, changed the regulation citation in line 1(a) to ''§ 250.5(a)(2) or (b)(2)'' and added a regulation citation in lines 1(b) of ''§ 250.5(a)(3) or (b)(3)''.
- Line 2.
  - Added ''from flights that were oversold'' in the leading sentence to reinforce that the form is intended to capture data from oversold flights.
  - Reworded the contents in lines 2(a), 2(b), and 2(c) to ensure that the language in the form matches the regulatory text, listed order of exceptions to the denied boarding compensation rule found in 14 CFR 250.6, and included the applicable citation to section 250.6.
  - Moved the content of line 6 to line 2.
  - Rearranged the orders of lines 2(a), 2(b), 2(c), and 2(d).
- Line 3—no change.
- Line 4.
  - Added ''from an oversold flight'' to reinforce that the form is intended to capture data from oversold flights.
  - Added ''regardless of the type of compensation (*e.g.,* voucher, cash)'' to clarify that reporting carriers must report the actual number of all passengers who receive any type of compensation as a result of being denied boarding involuntarily.
- Line 5.
  - Added ''due to a potential oversale situation'' to reinforce that the form is intended to capture data from oversold flights.
- Line 6.
  - Moved the text in line 6 to line 2 so that all data relating to exceptions to the denied boarding compensation rule is on one line.
  - Moved the text from line 7 up to line 6 without any change.
- Line 7.
  - Moved the text from line 8 up to line 7 and added the regulation citation to ''§ 250.5(a)(2) or (b)(2)'' to line 7(a) and ''§ 250.5(a)(3) or (b)(3)'' to line 7(b) to complete the applicable regulatory citation.

Instructions to Form 250

- Instruction (A).
  - Added clarifying language to ensure reporting carriers are only reporting data relating to oversold flights operated by covered aircraft (*i.e.,* aircraft with 30 or more seats).
  - Added language related to the requirement for reporting carriers to submit a separate Form 250 for flights operated by a reporting marketing carrier's code-share partner if the code-share partner is also a reporting carrier.
- Instruction (B).
  - Added clarifying language to include the full citation to the applicable regulation to ensure that reporting carriers are properly reporting data on lines 1(a) and 1(b).
- Instruction (C)—no change.
- Instruction (D).
  - Added a new instruction D to clarify that reporting carriers must include on line 4 passengers who receive any type of compensation as a result of being denied boarding involuntarily from an oversold flight.
- Instruction (E).
  - Moved text from previous Instruction (D) to Instruction (E) without additional change.
- Instruction (F).
  - Moved text from previous Instruction (E) to Instruction (F) without additional change.
- Instruction (G).
  - Moved text from previous Instruction (F) to Instruction (G) and added clarifying language to ensure reporting carriers properly report only the amount of cash or cash-equivalent compensation provided to passengers denied boarding either voluntarily or involuntarily.
- Instruction (H).
  - Moved text from previous Instruction (G) to Instruction (H) without additional change.
- Instruction (I).
  - Moved text from previous Instruction (H) to Instruction (I) and include a new submission email address.

Copies of the proposed revisions to the form and its instructions are included in this notice.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501) requires a statistical agency to clearly identify information it collects for non-statistical purposes. The Departments hereby notifies the respondents and the public that it uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of the data in the Department's Air Travel Consumer Report and submission of the information to DOT agencies outside BTS for review, analysis, and possible use in regulatory, enforcement, and other administrative matters.

The Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to monetary penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

Requirement to Submit BTS Form 250 as related to oversold flights.

Respondents: U.S. air carriers that account for .5 percent of domestic scheduled-service passenger revenues for all flights operated on aircraft with a designed passenger capacity of 30 or more seats which depart a U.S. airport. We have identified 16 carriers meeting this threshold in 2020. Additionally, out of the 16 carriers, five reporting carriers must file a separate form for all scheduled flight segments originating in the United States which are operated by a codeshare partner of the reporting carrier that is a certificated air carrier or commuter air carrier using aircraft that have a designed passenger capacity of 30 or more seats, and marketed only under one U.S. carrier's code.

Number of Respondents: 16 (effective January 1, 2020)

Frequency: Four times a year

Estimated Total Burden on Respondents: 1144 hours

This estimate is based on the following information: [1]

FLIGHTS OPERATED BY REPORTING CARRIERS

[Form 250 for Flights They Operate]

Respondents	16
Quarterly Reports	4
Total Reports	64
Hours per Reports	16
Burden Hours	1024

CODESHARE FLIGHTS MARKETED BY REPORTING CARRIER

[Form 250 for Codeshare Flights They Market]

Respondents	5
Quarterly Reports	4
Total Reports	20
Hours per Reports	6
Burden Hours	120

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility, and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents without reducing the quality of the collected information, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Issued in Washington, DC on February 25, 2020.

Blane A. Workie,

Assistant General Counsel for Aviation Enforcement and Proceedings.

BILLING CODE P

[1] The burden estimate was based on a cost/benefits analysis conducted in 2016 as part of the Department's Final Rule on Enhancing Airline Passenger Protections III. *See, Regulatory Impact Analysis for Final Rule Enhancing Airline Passenger Protection III, October 18, 2016. https://www.regulations.gov/document?D=DOT-OST-2014-0056-0792.*

OMB No. 2138-0018
Expires 10-31-2020

U.S. Department of Transportation Bureau of Transportation Statistics

Report of Passengers Denied Confirmed Space Due to an Oversale Situation

This form should be mailed within 30 days after the calendar quarter to:
Office of Airline Information, BTS, U.S. Department of Transportation,
1200 New Jersey Ave., S.E., Washington, D.C. 20590-0001.

Name of Air Carrier: _____

OAG Carrier Code: _____

Quarter ended: _____

(See Instructions Below)

1.	Number of passengers who were denied boarding involuntarily from flights that were oversold, who qualified for denied boarding compensation, and: (a) were given alternate transportation within the meaning of § 250.5(a)(2) or (b)(2)	
	(b) were given alternate transportation within the meaning of § 250.5(a)(3) or (b)(3)	
2.	Number of passengers denied boarding involuntarily from flights that were oversold, who did not qualify for denied boarding compensation due to: (a) The passenger does not comply fully with the carrier's contract of carriage or tariff provisions regarding ticketing, reconfirmation, check-in, and acceptability for transportation (*see* § 250.6(a))	
	(b) substitution of aircraft of lesser capacity or due to weight/balance restrictions on an aircraft with a designed passenger capacity of 60 or fewer seats (*see* § 250.6(b))	
	(c) The passenger is offered accommodations or is seated in a section of the aircraft other than that specified on the ticket at no extra charge (*see* 250.6(c))	
	(d) The carrier arranges comparable air transportation or other transportation that is planned to arrive not later than 1 hour after the planned arrival time of the passenger's original flight or flights (*see* 250.6(d))	
3.	TOTAL NUMBER DENIED BOARDING INVOLUNTARILY	
4.	Number of passengers denied boarding involuntarily from an oversold flight who actually received compensation, regardless of the type of compensation (e.g., voucher, cash).	
5.	Number of passengers who volunteered to give up reserved space due to a potential oversale situation in exchange for a payment of the carrier's choosing.	
6.	Total Boardings	
7.	Amount of compensation paid to passengers who: (a) were denied boarding involuntarily and were given alternate transportation within meaning of § 250.5(a)(2) or (b)(2) (see item 1(a) above).	
	(b) were denied boarding involuntarily and were given alternate transportation within the meaning of § 250.5(a)(3) or (b)(3) (see item 1(b) above).	
	(c) volunteered for denied boarding (see item 5 above).	

I, _____, (Name and Title) of the above-named carrier, certify that the above report has been examined by me and to the best of my knowledge and belief is a true, correct, and complete report for the period stated.

_____ (Signature) _____ (Date)

BTS Form 250 **Formerly CAB, RSPA, and BTS Form 251**	Estimated burden — 1 to 16 hours with the average being 6 hours. Comments regarding reporting burden or any aspect of this data collection should be sent to this office.

BILLING CODE C

Form 250—Report of Passengers Denied Confirmed Space Due to an Oversale Situation

Instructions

(A) Air carriers that are submitting Airline Service Quality Performance Reports must submit Form 250, as it relates to flights which are oversold, on a quarterly basis for scheduled passenger flights operated by the reporting carriers with 30 or more seat aircraft, departing from a point within the United States.

For air transportation taking place on or after January 1, 2018, air carriers that are submitting Airline Service Quality Performance Reports must submit a separate Form 250 for flights marketed under only their carrier's code and operated by a code-share partner that is a certificated air carrier or commuter air carrier using aircraft that have a designed passenger capacity of 30 or more seats. Reports are due 30 days after the end of the quarter. No data are to be reported for inbound international flights that departed from a foreign point. (Data for a nonstop flight segment that departed from a U.S. point are to be reported even if that flight segment is part of a flight that originated outside

the United States). The reporting regulations are contained in 14 CFR part 250, *Oversales.*

(B) Line (1)(a) passengers given *alternate transportation within meaning of § 250.5(a)(2) or (b)(2)* means air transportation accepted by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's destination or first stopover more than one hour but less than 2 hours for domestic flight and more than one hour but less than 4 hours for international flights after the planned arrival time of the flight from which the passenger was denied boarding and is therefore entitled to compensation equal to 200% of the passenger's one-way fare. See 14 CFR 250.5(a)(2) and (b)(2).

Line (1)(b), *passengers given alternate transportation within the meaning of § 250.5(a)(3) or (b)(3),* means air transportation accepted by the passenger which, at the time the arrangement is made, is planned to arrive at the passenger's destination or first stopover two hours or more for domestic flights and 4 hours or more for international flights after the planned arrival time of the flight from which the passenger was denied boarding and is therefore entitled to compensation equal to 400% of the passenger's one-way fare. See 14 CFR 250.5(a)(3) and (b)(3). Passengers who were not offered or provided alternate transportation are entitled to compensation equal to 400% of the passenger's one-way fare as well and should also be included in Line (1)(b).

(C) *Total number denied boarding involuntarily* should equal the sum of lines 1 and 2. If not, attach notes explaining any discrepancy.

(D) Any passenger who receives any type of compensation as a result of being involuntarily denied boarding from an oversold flight, including cash, check, or travel voucher, should be included on Line 4.

(E) On line 5, a passenger who *volunteers* is a person who responds to the carrier's request for volunteers pursuant to 14 CFR 250.2b and willingly consents to exchange his or her confirmed reserved space for compensation of the carrier's choosing. Any passenger selected by the carrier for denied boarding in accordance with boarding priority other than a request for volunteers is considered to have been denied boarding *involuntarily*, whether or not the passenger accepts denied boarding compensation. In order to be classified as a volunteer, a passenger must have been given the option of taking the oversold flight for which he or she held a reservation.

(F) *Total Boardings* on line 7 includes only revenue passengers on flights for which confirmed reservations are offered. For international flights, *Total Boardings* include only revenue passengers on flight segments departing from a U.S. point that are subject to Part 250 and for which confirmed reservations are offered.

(G) Lines 8(a), (b) and (c), *compensation paid,* should include only cash or cash equivalent (*e.g.,* check or PayPal) to the persons described on the corresponding line; it should not include the actual or estimated value of any transportation vouchers provided to those passengers. Line 8 includes all cash or cash equivalent payments made to those passengers, *i.e.,* payments actually accepted by passengers, plus payments that are offered or mailed and not rejected. If a carrier does not provide cash or cash equivalent as voluntary denied boarding compensation, line 8(c) should be zero.

(H) Note on the report any abnormal conditions, such as strikes, having an impact on the results.

(I) Send reports to either: email *Form250.support@dot.gov,* fax 202 366–3383 or mail:

U.S. Department of Transportation

BTS/OAI, RTS–42

1200 New Jersey Avenue SE

Washington, DC 20590–0001

OMB No: 2138–0018

Expiration Date: 10/31/2020

Paperwork Reduction Act Burden Statement

○ A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2138–0018. Public reporting for Form 250, Report of Passengers Denied Confirmed Space Due to an Oversale Situation, is estimated to be approximately 10–16 hours per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. This is a consumer report which is released to the public. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: *OAI.ICCO@dot.gov.*

[FR Doc. 2020–04307 Filed 3–2–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, that the Advisory Committee on Disability Compensation (Committee) will meet on March 30—31, 2020. The Committee will meet in Conference Room 420H, located at 1800 G Street NW, Washington, DC 20006. The sessions will begin at 8:30 a.m. and adjourn at 4:00 p.m. EST each day. The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The agenda will include overview briefings on the VA Schedule for Rating Disabilities, the transition process for retiring and separating Reserve and National Guard members, and Individual Unemployability. Time will be allotted for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2-page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Janice Stewart, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Implementation Staff (211B), 810 Vermont Avenue NW, Washington, DC 20420 or email at *Janice.Stewart@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the screening process. Due to an increase in security protocols, you should allow an additional 30

minutes before the meeting begins. Routine escort will be provided until 8:00 a.m. each day. Any member of the public wishing to attend the meeting or seeking additional information should email Janice Stewart or call her at (202) 461–9023.

Dated: February 26, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–04245 Filed 3–2–20; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that a meeting of the Special Medical Advisory Group (the Committee) will be held on Friday, March 20, 2020 at the VA Pittsburgh Healthcare System, 4100 Allequippa Street, Pittsburgh, PA 15219, and at the Human Engineering Research Laboratories (HERL), 6425 Penn Avenue, Suite 400, Pittsburgh, PA 15206. The meeting is open to the public except when the Committee is conducting a tour of the medical center. Tours of VA Medical Centers (VAMC) are closed to protect Veterans' privacy and personal information in accordance with 5 U.S.C Sec. 552b(c)(6). The meeting session will follow the below schedule:

7:00 a.m. to 8:30 a.m. EST.	Closed to the Public—Tour at VAMC.
8:30 a.m. to 11:00 a.m. EST.	Open to the public—Meeting at VAMC.
12:00 p.m. to 2:30 p.m. EST.	Open to the Public—Tour and Meeting at HERL.

The purpose of the Committee is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Veterans Health Administration (VHA).

On March 20, 2020 the agenda for the meeting will include discussions regarding the VHA 2020 Goals, Precision Oncology and the Redesign of VHA Central Office.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to: Ms. Brenda R. Faas, Designated Federal Officer, Veterans Health Administration (10B), 810 Vermont Avenue NW, Washington, DC 20420 or by email at *VASMAGDFO@va.gov.* Comments will be accepted until close of business on March 13, 2020. In the communication, the writers must identify themselves and state the organization, association of person(s) they represent.

Any member of the public wishing to attend the meeting or seeking additional information should email *VASMAGDFO@va.gov* or call 202–461–7005, no later than close of business on March 13, 2020.

Dated: February 27, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–04300 Filed 3–2–20; 8:45 am]

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FEDERAL REGISTER

Vol. 85 Tuesday,

No. 42 March 3, 2020

Part II

Bureau of Consumer Financial Protection

12 CFR Part 1006

Debt Collection Practices (Regulation F); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB–2020–0010]

RIN 3170–AA41

Debt Collection Practices (Regulation F)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) proposes to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA) and currently contains the procedures for State application for exemption from the provisions of the FDCPA. On May 21, 2019, the Bureau published in the **Federal Register** a proposed rule (May 2019 Proposed Rule) that would prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA. This proposal supplements the May 2019 Proposed Rule by proposing to require debt collectors to make certain disclosures when collecting time-barred debts.

DATES: Comments must be received on or before May 4, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0010 or RIN 3170–AA41, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-NPRM-DebtCollection@cfpb.gov.* Include Docket No. CFPB–2020–0010 or RIN 3170–AA41 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Seth Caffrey, Courtney Jean, or Kristin McPartland, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

The Bureau proposes to amend Regulation F, which implements the FDCPA, to require debt collectors, as that term is defined in the FDCPA,[1] to make certain disclosures when collecting time-barred debts. Time-barred debts are debts for which the applicable statute of limitations has expired. The Bureau proposes to require a debt collector collecting a debt that the debt collector knows or should know is time barred to disclose: (1) That the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and (2) if the debt collector's right to bring a legal action against the consumer to collect the debt can be revived under applicable law, the fact that revival can occur and the circumstances in which it can occur. The Bureau proposes model language and forms that debt collectors could use to comply with the proposed disclosure requirements.

The Bureau proposes that the effective date of the final rule would be one year after the final rule is published in the **Federal Register**. The Bureau requests comment on this proposed effective date.

II. Background

A. In General

Statutes of limitations establish time limits for bringing suit on legal claims.[2] They serve several purposes.[3] First, statutes of limitations advance a defendant's interest in repose. That is, they reflect the legislative judgment that it is ''unjust to fail to put the adversary on notice to defend within a specified period of time.''[4] Second, statutes of limitations eliminate stale claims. That is, they protect defendants and the courts from having to deal with cases in which ''the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise.''[5] Third, statutes of limitations provide ''certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities.''[6]

A time-barred debt is a debt for which the applicable statute of limitations has expired. For most debts, State law supplies the applicable statute of limitations.[7] The length of the limitations period varies by State and debt type. Most statutes of limitations applicable to debt collection claims are between three and six years, although some are as long as 15 years.[8]

Currently, in most States, expiration of the statute of limitations, if raised by the consumer as an affirmative defense, precludes the debt collector from recovering on the debt through litigation,[9] but it does not extinguish the debt itself.[10] In these jurisdictions, a

[1] 15 U.S.C. 1692–1692p. This proposal would cover the same universe of debt collectors as the May 2019 Proposed Rule, *i.e.,* only FDCPA-covered debt collectors. 15 U.S.C. 1692a(6). Creditors therefore would only have to comply to the extent they are FDCPA-covered debt collectors.

[2] *See generally Lozano* v. *Montoya Alvarez,* 572 U.S. 1, 14 (2014).

[3] *See generally Rotella* v. *Wood,* 528 U.S. 549, 555 (2000) (identifying ''the basic policies of all limitations provisions'' as ''repose, elimination of stale claims, and certainty'').

[4] *United States* v. *Kubrick,* 444 U.S. 111, 117 (1979).

[5] *Id.*

[6] *Young* v. *United States,* 535 U.S. 43, 47 (2002) (quoting *Rotella,* 528 U.S. at 555).

[7] Federal law sometimes establishes the statute of limitations. For example, legal actions to recover certain telecommunications debt are subject to a statute of limitations set by Federal law. *See* 47 U.S.C. 415(a).

[8] *See* Fed. Trade Comm'n, *The Structure and Practices of the Debt Buying Industry,* at 42 (Jan. 2013), *https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf* (hereinafter FTC Debt Buying Report).

[9] As a result, many courts have held that suing or threatening to sue on time-barred debts is an unfair or deceptive practice under the FDCPA. *See, e.g., Pantoja* v. *Portfolio Recovery Assocs., LLC,* 852 F.3d 679, 683 (7th Cir. 2017) (noting that ''a debt collector violates the [FDCPA] by suing to collect a time-barred debt after the statute of limitations has run and bars the suit''); *Crawford* v. *LVNV Funding, LLC,* 758 F.3d 1254, 1259 (11th Cir. 2014) (''Federal circuit and district courts have uniformly held that a debt collector's . . . filing a time-barred suit in state court to recover [a time-barred] debt violates [the FDCPA].''). The Bureau's May 2019 Proposed Rule would prohibit debt collectors from suing or threatening to sue consumers to collect debts the debt collectors know or should know are time barred. *See* 84 FR 23274, 23327–29, 23403 (May 21, 2019).

[10] In Mississippi and Wisconsin, debts are extinguished when the applicable statute of limitations expires. *See* Miss. Code Ann. 15–1–3 (''The completion of the period of limitation

debt collector may use non-litigation means, such as letters and telephone calls, to collect a time-barred debt, as long as those means do not violate the FDCPA or other laws. As courts have recognized, a consumer who cannot be sued on a debt may still feel a moral obligation to pay.[11] In addition, a consumer may pay a time-barred debt believing that doing so will improve the consumer's credit report.[12]

In many States, a debt collector's right to sue on a time-barred debt can be ''revived'' if certain conditions are met. Revival extinguishes the consumer's right to raise expiration of the statute of limitations as an affirmative defense to litigation; that is, it revives the debt collector's right to sue to collect the debt. There are generally two circumstances in which State laws permit revival. First, in some States, a consumer's partial payment on a time-barred debt revives the debt collector's right to sue.[13] One possible theory underlying these laws is that a partial payment ''is an acknowledgement of the existence of the indebtedness, which raises an implied promise to continue the obligation and to pay the balance.'' [14] Second, in some States, a consumer's written acknowledgement of a time-barred debt revives the debt collector's right to sue.[15] One possible theory underlying these laws is that a written acknowledgement ''raises a new promise by the debtor to pay [the] existing debt'' and is ''enforceable because it is supported by the existing legal duty of the promisor.'' [16]

B. Market for Time-Barred Debt

As discussed in the May 2019 Proposed Rule, the debt collection industry includes creditors, third-party debt collectors, debt buyers, and a variety of service providers.[17] A creditor to whom a debt is owed may collect the debt itself, send the account to a third-party debt collector to recover on the debt in the third-party debt collector's name, or sell the debt to a debt buyer.[18] By the time a debt becomes time barred (*i.e.,* after three to six years for many debts) it may have been placed with multiple third-party debt collectors, or purchased and sold by multiple debt buyers.

The cost to purchase a debt generally decreases over time as the probability of recovering on the debt also decreases.[19] Because of their age and the general unavailability of litigation as a collection method, time-barred debts typically are available for purchase at a discount off face value.[20] In analyzing whether, and for what price, to purchase a portfolio of debts, debt buyers commonly consider the prevalence of time-barred debts in the portfolio.[21] The Bureau is unaware of any formal studies of the size of the market for collection of time-barred debts.[22]

C. Consumer Protection Concerns Regarding Collection of Time-Barred Debt

The collection of time-barred debt through non-litigation means can pose consumer protection concerns. Consumers unfamiliar with statutes of limitations may take away from a debt collector's attempt to collect a time-barred debt the misleading impression that the debt is legally enforceable—even if the debt collector does not explicitly threaten litigation. A consumer with the misimpression that a time-barred debt is enforceable in court may pay or prioritize that debt over another debt or expense, in the mistaken belief that doing so is necessary to avoid litigation. The consumer may, in turn, have less money to pay another debt on which the consumer can be sued, or to pay other expenses, such as household necessities. In the many States that permit revival, a consumer who makes a partial payment on a time-barred debt or acknowledges the debt in writing may revive the debt collector's right to sue.

Some States have attempted to address these consumer protection concerns by imposing disclosure requirements on debt collectors. In these jurisdictions, a debt collector may not collect a time-barred debt without disclosing to the consumer that the debt is time barred.[23] Although their wording varies, State-mandated time-barred debt disclosures typically inform the consumer that the law limits how long a consumer can be sued on a debt, and that the debt collector cannot or will not sue to collect the debt.[24] Some States also require debt collectors to disclose the circumstances in which the right to sue on a time-barred debt can be revived.[25]

prescribed to bar any action, shall defeat and extinguish the right as well as the remedy.''); Wis. Stat. Ann. 893.05 (''When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy.''). North Carolina prohibits a ''debt buyer'' from collecting or attempting to collect a debt when the debt buyer ''knows, or reasonably should know, that such collection is barred by the applicable statute of limitations.'' N.C. Gen. Stat. 58–70–115(4).

[11] *See, e.g., Pantoja,* 852 F.3d at 684 (''The creditor retains the right to appeal to the debtor to honor the debt out of a sense of moral obligation even if the legal obligation can no longer be enforced in court.''); *Buchanan* v. *Northland Grp., Inc.,* 776 F.3d 393, 399 (6th Cir. 2015) (''Legal defenses are not moral defenses . . . [a]nd a creditor remains free, in the absence of a bankruptcy order or something comparable preventing it from trying to collect the debt, to let the debtor know what the debt is and to ask her to pay it.''); *McMahon* v. *LVNV Funding, LLC,* 744 F.3d 1010, 1020 (7th Cir. 2014) (''[S]ome people might consider full debt re-payment a moral obligation, even though the legal remedy for the debt has been extinguished.'').

[12] Section 605(a)(4) of the Fair Credit Reporting Act generally establishes a seven-year period for reporting information about accounts placed for collection; after this period has elapsed, the debt generally cannot appear on a consumer report. 15 U.S.C. 1681c(a)(4). Because the statute of limitations on a debt collection claim is less than seven years in some States, it is possible for a time-barred debt to appear on a consumer's credit report.

[13] *See, e.g., Buchanan,* 776 F.3d at 399 (applying Michigan law).

[14] *Young* v. *Sorenson,* 121 Cal. Rptr. 236, 237 (Ct. App. 1975).

[15] *See, e.g., Pariot* v. *Portfolio Recovery Assocs., LLC,* No. 2:18–cv–09614–SJO, 2019 WL 2635586, at *3 (C.D. Cal. June 25, 2019) (applying California law).

[16] *United States* v. *Glens Falls Ins. Co.,* 546 F. Supp. 643, 645 (N.D.N.Y. 1982).

[17] *See* 84 FR 23274, 23276–77 (May 21, 2019).

[18] *Id.* at 23277.

[19] *See* FTC Debt Buying Report, *supra* note 8, at 23–24; Bureau of Consumer Fin. Prot., *Market Snapshot: Online Debt Sales,* at 11 (Jan. 2017), *https://www.consumerfinance.gov/documents/2249/201701_cfpb_Online-Debt-Sales-Report.pdf* (hereinafter CFPB Online Debt Sales Report).

[20] *See, e.g.,* FTC Debt Buying Report, *supra* note 8, at 23–24; CFPB Online Debt Sales Report, *supra* note 19, at 10.

[21] FTC Debt Buying Report, *supra* note 8, at 21.

[22] *See* David E. Reid, *Out-of-Statute Debt: What is a Smart, Balanced, and Responsible Approach,* at 5 n.6 (Receivables Mgmt. Ass'n Int'l, White Paper, 2015), *https://rmassociation.org/wp-content/uploads/2017/04/RMA_Whitepaper_OOS.pdf* (noting challenge of developing a reliable methodology for estimating size of time-barred debt market).

[23] *See, e.g.,* Cal. Civ. Code 1788.14(d); Conn. Gen. Stat. 36a–805(a)(14); Mass. Code Regs., tit. 940, 7.07(24); N.M. Admin. Code 12.2.12.9; N.Y. Comp. Codes R. & Regs., tit. 23, 1.3; N.C. Gen. Stat. 58–70–115(1); Tex. Fin. Code Ann. 392–307(e); 6 Vt. Code R. 031–004–Rule–CF 104.05; 6 Vt. Code R. 3–2–103:CP 104.05(a); W. Va. Code 46a–2–128(f).

[24] For example, California law requires debt collectors to disclose, in relevant part, the following in the first written communication with a debtor after the debt has become time barred: ''The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it.'' Cal. Civ. Code 1788.14(d).

[25] For example, New Mexico law provides, in relevant part, that it is an unfair or deceptive trade practice for a debt collector to collect or attempt to collect a debt that the debt collector knows or has reason to know is time barred unless the debt collector makes required time-barred debt and revival disclosures. New Mexico provides the following safe harbor disclosure:

We are required by New Mexico Attorney General rule to notify you of the following information. This information is not legal advice: This debt may be too old for you to be sued on it in court. If it is too old, you can't be required to pay it through a lawsuit. You can renew the debt and start the time for the filing of a lawsuit against you to collect the debt if you do any of the following: Make any payment of the debt; sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; sign a paper in which you give up (''waive'') your right to stop the debt collector from suing you in court to collect the debt.

Continued

Federal regulators also have highlighted the consumer protection concerns associated with time-barred debts. For example, the Federal Trade Commission (FTC) has published several reports on the debt collection industry, each recognizing the potential that consumers may be misled by the collection of time-barred debts.[26] In addition, the FTC and the Bureau have filed amicus briefs addressing the collection of time-barred debt.[27] The FTC and the Bureau also have brought enforcement actions against debt collectors who violated the FDCPA when collecting time-barred debts; the injunctive relief in those cases sometimes required the debt collector to make time-barred debt disclosures.[28]

Courts generally have agreed that a debt collector violates the FDCPA when its statements would mislead an unsophisticated consumer to believe that a time-barred debt is legally enforceable, regardless of whether the debt collector expressly threatens litigation.[29] In addition, courts generally have agreed that a debt collector can use disclosures to correct misleading impressions relating to a debt's enforceability and the possibility of revival that arise from the debt collector's attempt to collect a time-barred debt.[30] Some courts have found that a debt collector who seeks payment on a time-barred debt without disclosing the debt's unenforceability (and, where applicable, the possibility of revival) may violate the FDCPA, but whether a particular communication is misleading in violation of the FDCPA raises a question of fact.[31] Other courts have held that a debt collector who offers a settlement or seeks payment on a time-barred debt without disclosing the debt's unenforceability (and, where applicable, the possibility of revival) violates the FDCPA as a matter of law.[32] Some courts have provided debt collectors with model disclosure language,[33] while others have not.[34]

Given the current state of the law, some consumers may not receive a disclosure about the time-barred status of a debt in collection, while others may receive a disclosure containing language that varies based on jurisdiction. In addition, debt collectors may be unclear about their disclosure obligations when collecting time-barred debt through non-litigation means. The lack of clarity may be especially acute in jurisdictions where courts have not considered whether the law requires disclosures or have not provided model disclosure language. Even in jurisdictions with State-law disclosure requirements, debt collectors may not know whether providing such disclosures is sufficient to comply with the FDCPA.

III. The Rulemaking Process

Before publishing the May 2019 Proposed Rule, the Bureau engaged in outreach regarding numerous debt collection topics, including time-barred debt. The May 2019 Proposed Rule described the scope of that outreach, which also has informed the development of this proposed rule.[35] Of particular note, the Bureau has met with stakeholders including consumer advocates, debt collection trade associations, industry participants, academics with expertise in debt collection, Federal prudential regulators, and other Federal and State consumer protection regulators. The Bureau also has drawn on information gathered through the more formal outreach described below.

A. 2013 Advance Notice of Proposed Rulemaking

The Bureau issued an Advance Notice of Proposed Rulemaking (ANPRM) regarding debt collection in November 2013.[36] The ANPRM sought information about an array of debt collection practices, including the use of disclosures, such as time-barred debt disclosures, in debt collection. Among other things, the Bureau requested comment on whether a debt collector should be required to disclose that a debt is time barred; that the debt collector cannot lawfully sue to collect it; and that, if applicable under State law, a consumer's partial payment revives the debt collector's right to sue for the entire amount.[37]

The Bureau received more than 23,000 comments in response to the ANPRM, including nearly 400 non-form comments submitted by consumers, consumer advocates, debt collection industry participants and trade associations, legal groups including law school clinics, State Attorneys General, and other stakeholders. Some consumer advocates, legal groups, and State Attorneys General supported banning the collection of time-barred debts. Some consumer advocates, legal groups, and one industry commenter also supported prohibiting revival.

A number of commenters addressed the merits of time-barred debt disclosures. Consumer advocates and State Attorneys General supported disclosures that would inform consumers when debt collectors are collecting time-barred debt and, if applicable, about the possibility of revival. With a few exceptions, industry commenters generally opposed such disclosures. Some industry commenters favored a disclosure that would provide consumers general information about statutes of limitations but that would not require debt collectors to provide information about the time-barred status of particular debts.

B. Qualitative Consumer Testing

In 2014, the Bureau contracted with a third-party vendor, Fors Marsh Group (FMG), to assist with developing, and to conduct qualitative consumer testing of, debt collection disclosures for consumers, including disclosures regarding time-barred debt and revival. The Bureau sought insight into

N.M. Admin. Code 12.2.12.9. *See also, e.g.,* Mass Code Regs., tit. 94, 7.07(24); N.M. Admin. Code 12.2.12.9; N.Y. Comp. Codes R. & Regs., tit. 23, 1.3; N.C. Gen. Stat. 58–70–115(1); 6 Vt. Code R. 3–2–103:CP 104.05(a).

[26] *See* FTC Debt Buying Report, *supra* note 8, at 44–49; Fed. Trade Comm'n, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), at 22–31, *https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf;* Fed Trade Comm'n, *Collecting Consumer Debts: The Challenges of Change* (Feb. 2009), at 62–65, *https://www.ftc.gov/sites/default/files/documents/reports/collecting-consumer-debts-challenges-change-federal-trade-commission-workshop-report/dcwr.pdf.*

[27] *See, e.g.,* Brief of Amici Curiae, *Buchanan* v. *Northland Grp., Inc.,* No. 13–2523 (6th Cir. Mar. 5, 2014), *https://www.consumerfinance.gov/f/201403_cfpb_amicus-brief_buchanan-v-northland-group-inc.pdf;* Brief of Amici Curiae, *Delgado* v. *Capital Mgmt. Servs., LP,* No. 13–2030 (7th Cir. Aug. 14, 2013), *https://www.consumerfinance.gov/f/201309_cfpb_agency-brief_12-cv-04057.pdf.*

[28] *See, e.g., In re Encore Capital Grp., Inc.,* Bureau of Consumer Fin. Prot., File No. 2015–CFPB–0022 (Sept. 9, 2015), at 17; *In re Portfolio Recovery Assocs. LLC,* Bureau of Consumer Fin. Prot., File No. 2015–CFPB–0023 (Sept. 9, 2015), at 15; *United States* v. *Asset Acceptance, LLC,* No. 8:12–cv–182 (M.D. Fla. filed Jan. 30, 2012).

[29] *See, e.g., Holzman* v. *Malcolm S. Gerald & Assocs.,* 920 F.3d 1264, 1271 (11th Cir. 2019); *Tatis* v. *Allied Interstate, LLC,* 882 F.3d 422, 429 (3d Cir. 2018); *Daugherty* v. *Convergent Outsourcing Inc.,* 836 F.3d 507, 509 (5th Cir. 2016); *Buchanan* v. *Northland Grp., Inc.,* 776 F.3d 393, 398–99 (6th Cir. 2015).

[30] *See, e.g., Holzman,* 920 F.3d at 1272–73; *Pantoja* v. *Portfolio Recovery Assocs., LLC,* 852 F.3d 679, 685–86 (7th Cir. 2017); *Daugherty,* 836 F.3d at 513; *Buchanan,* 776 F.3d at 399–400.

[31] *See, e.g., Holzman,* 920 F.3d at 1269; *Daugherty,* 836 F.3d at 513; *Buchanan,* 776 F.3d at 397–99.

[32] *See, e.g., Pantoja,* 852 F.3d at 682–83, 685–86; *Manuel* v. *Merchants & Prof'l Credit Bureau, Inc.,* No. 1:18–cv–226–DAE, 2019 WL 3713750, at *9 (W.D. Tex. Aug. 5, 2019); *Schafer* v. *Allied Interstate LLC,* No. 1:17–cv–233, 2019 WL 2710272, at *10 (W.D. Mich. June 28, 2019).

[33] *See, e.g., Buchanan,* 776 F.3d at 400.

[34] *See, e.g., Tatis,* 882 F.3d at 430; *Pantoja,* 852 F.3d at 682–83, 685–86.

[35] 84 FR 23274, 23278–81 (May 21, 2019).

[36] 78 FR 67848 (Nov. 12, 2013).

[37] *Id.* at 67876.

consumers' understanding of time-barred debt and revival, as well as whether and how time-barred debt and revival disclosures might, if included on the validation notice, affect consumers' ability to make decisions. As described in the May 2019 Proposed Rule, the Bureau's qualitative testing took place during 2014 and 2015 and consisted of five focus group discussions and two rounds of 30 one-on-one interviews with consumers.[38]

The focus group discussions were designed to assess consumers' thoughts about debt collectors and debt collection, to evaluate consumers' perceptions of disclosures provided by debt collectors, and to measure consumers' understanding of their rights in debt collection, including with respect to time-barred debt. The first round of one-on-one interviews (*i.e.,* cognitive testing) was designed to assess how consumers might interact with different versions of a validation notice, and how consumers' behavior might differ after reading the forms. Regarding time-barred debt, participants were shown two different versions of time-barred debt and revival disclosures and were asked to respond to a survey with Likert-scale questions.[39] The second round of one-on-one interviews (*i.e.,* usability testing) also was designed to assess consumers' understanding of different validation notices and to evaluate how each of the notices, which contained one of several different time-barred debt disclosures and, in certain cases, revival disclosures, might affect consumer behavior. During this testing, participants responded to researchers' comprehension questions and engaged in additional testing activities.[40]

As discussed in the May 2019 Proposed Rule, the Bureau's qualitative testing found that consumers often are uncertain about their rights concerning time-barred debt.[41] Focus group participants said that knowing a debt is time barred is helpful and important information. Many participants said that knowing that a debt was time barred (and thus better understanding the risk of a lawsuit regarding that debt) would affect their decision-making regarding payments.[42] In particular, many participants said they would be less likely to pay or prioritize a debt they knew was time barred.[43] The qualitative testing also suggested that a plain-language disclosure could help consumers understand their rights with respect to time-barred debt. For example, nearly all participants in the Bureau's qualitative testing who were provided with a disclosure stating, ''Because of the age of this debt, we cannot sue you for it'' understood that they could not be sued on the debt.[44] However, the Bureau's qualitative testing also suggested that it could be challenging to develop an effective revival disclosure, in part because consumers find the concept of revival counterintuitive—that is, consumers believe that making a payment should avert the negative consequences of nonpayment, which is in tension with being subject to the risk of a lawsuit.[45]

C. Small Business Review Panel

As discussed in the May 2019 Proposed Rule, in August 2016, the Bureau convened a Small Business Review Panel (Small Business Review Panel or Panel) with the Chief Counsel for Advocacy of the Small Business Administration and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB).[46] As part of that process, the Bureau prepared an outline of proposals under consideration and the alternatives considered (Small Business Review Panel Outline or Outline).[47]

Among other topics, the Small Business Review Panel Outline discussed consumer protection concerns regarding time-barred debt and a proposal under consideration to require disclosures in connection with the collection of such debt. The Outline noted that the Bureau was considering requiring debt collectors collecting on time-barred debt to provide a brief, plain-language statement informing the consumer that, because of the age of the debt, the debt collector could not sue to recover it. The Bureau also was considering proposing that a time-barred debt disclosure made by one debt collector would bind subsequent debt collectors who, in turn, would have to provide the disclosure to the consumer.[48] The Outline noted that the Bureau was considering how frequently debt collectors should be required to provide any such time-barred debt disclosures (*i.e.,* in the validation notice only, or in other oral or written communications with the consumer) and whether to require such disclosures only when the debt collector knew or should have known that the debt was time barred.[49] The Outline also noted that the Bureau was considering a proposal to prohibit debt collectors from collecting time-barred debt that could be revived under State law unless they waived the right to sue on the debt.[50]

The Bureau participated in telephone conferences and a full-day outreach meeting to receive feedback on the Outline from the small entity representatives participating in the Panel process. After gathering information from the small entity representatives, the Panel issued a Small Business Review Panel Report (Report), which set forth findings and recommendations regarding the Bureau's proposals under consideration.[51] The Report noted that

[38] 84 FR 23274, 23279 (May 21, 2019).

[39] A Likert-scale is a commonly used research scale that asks respondents to specify their level of agreement or disagreement with a series of statements.

[40] Reports prepared by FMG regarding each phase of the qualitative testing, as well as a report summarizing all of the qualitative testing, were published on the Bureau's website when the May 2019 Proposed Rule was issued. *See* Fors Marsh Grp., *Debt Collection Focus Groups* (Aug. 2014), *https://files.consumerfinance.gov/f/documents/cfpb_debtcollection_fmg-focus-group-report.pdf* (hereinafter FMG Focus Group Report); Fors Marsh Grp., *Debt Collection Cognitive Interviews* (n.d.), *https://files.consumerfinance.gov/f/documents/cfpb_debtcollection_fmg-cognitive-report.pdf* (hereinafter FMG Cognitive Report); Fors Marsh Grp., *Debt Collection User Experience Study* (Feb. 2016), *https://files.consumerfinance.gov/f/documents/cfpb_debtcollection_fmg-usability-report.pdf* (hereinafter FMG Usability Report); Fors Marsh Grp., *Debt Collection Validation Notice Research: Summary of Focus Groups, Cognitive Interviews, and User Experience Testing* (Feb. 2016), *https://files.consumerfinance.gov/f/documents/cfpb_debtcollection_fmg-summary-report.pdf* (hereinafter FMG Summary Report).

[41] *See* 84 FR 23274, 23328 (May 21, 2019). *See also* FMG Focus Group Report, *supra* note 40, at 9–10; FMG Cognitive Report, *supra* note 40, at 36–37; FMG Summary Report, *supra* note 40, at 35–36.

[42] FMG Summary Report, *supra* note 40, at 35.

[43] FMG Focus Group Report, *supra* note 40, at 9–10; FMG Cognitive Report, *supra* note 40, at 36; FMG Usability Report, *supra* note 40, at 75, 78, 80–81; FMG Summary Report, *supra* note 40, at 35–36.

[44] FMG Usability Report, *supra* note 40, at 74, 77.

[45] *Id.* at 74–75, 77; FMG Summary Report, *supra* note 40, at 37. *See also United States* v. *Asset Acceptance, LLC,* No. 8:12–cv–182, at ¶ 34 (M.D. Fla. filed Jan. 30, 2012).

[46] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), as amended by section 1100G(a) of the Dodd-Frank Act, requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have a substantial economic impact on a significant number of small entities. *See* Public Law 104–121, tit. II, 110 Stat. 847, 857 (1996) (as amended by Pub. L. 110–28, section 8302 (2007)).

[47] Bureau of Consumer Fin. Prot., *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* (July 2016), *https://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf* (hereinafter Small Business Review Panel Outline or Outline).

[48] *Id.* at 20–21.

[49] *Id.*

[50] *Id.* at 21.

[51] *See* 84 FR 23274, 23281 (May 21, 2019). The Small Business Review Panel Report is part of the administrative record in this rulemaking and is available to the public on the Bureau's website. *See generally* Bureau of Consumer Fin. Prot., U.S. Small Bus. Admin., & Office of Mgmt. & Budget, *Final Report of the Small Business Review Panel on the*

Continued

some small entity representatives expressed concern about the proposal under consideration to require time-barred debt disclosures. Those small entity representatives stated that it can be difficult to determine whether debt is time barred, and they feared potential lawsuits if good faith determinations about a debt's time-barred status proved wrong.[52] One such small entity representative recommended that a debt collector should not be liable for failing to provide a time-barred debt disclosure if the debt collector made a good-faith determination, after appropriate consideration, that the statute of limitations for that debt had not yet expired.[53] Another small entity representative said that a time-barred debt disclosure could mislead a consumer into believing that the consumer no longer had any obligation to pay the debt.[54] Regarding the Bureau's proposal under consideration to require waiver of revival in certain circumstances, one small entity representative predicted that, if the Bureau limited the circumstances in which debt collectors could sue on revived debts, creditors would be less motivated to negotiate prolonged repayment plans and more motivated to sue consumers before the statute of limitations expired. The Bureau has considered the Small Business Review Panel's findings and recommendations in preparing this proposal and also discusses them in part V.

D. 2019 Notice of Proposed Rulemaking

In May 2019 the Bureau published a proposed rule to amend Regulation F, 12 CFR part 1006.[55] The May 2019 Proposed Rule would amend Regulation F to prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA.

Among other things, the Bureau proposed to interpret and apply FDCPA section 807's prohibitions on false or misleading representations, including by prohibiting a debt collector from suing or threatening to sue a consumer to collect a debt that the debt collector ''knows or should know'' is time barred.[56] The Bureau proposed the ''know or should know'' standard in response to feedback received during the SBREFA process about the complexity of determining whether the statute of limitations for a particular debt has expired.[57] The Bureau stated that, while debt collectors often will know, or can readily determine, whether the statute of limitations has expired, there may be some instances in which debt collectors may be uncertain whether it has expired even after undertaking a reasonable investigation. The Bureau noted that this could occur when, for example, the case law in a State is unclear as to which statute of limitations applies to a particular type of debt. The Bureau also acknowledged, however, that it could be difficult to determine whether a ''know or should know'' standard has been met. The Bureau requested comment on the merits of using that standard, as opposed to a ''strict liability'' standard under which collectors would be liable for suing or threatening to sue on time-barred debt even if they neither knew nor should have known that a debt was time barred.[58]

The May 2019 Proposed Rule also stated that the Bureau was likely to propose that debt collectors must provide disclosures to consumers when collecting time-barred debt. The proposal noted that, before issuing any such proposal, the Bureau intended to conduct additional consumer testing of possible time-barred debt and revival disclosures, and that the Bureau would publish the results of such testing for public comment.[59] That testing is now complete and is summarized in part III.E. The May 2019 Proposed Rule reserved proposed 12 CFR 1006.26(c) and appendix B for any requirements for time-barred debt and revival disclosures.[60]

The comment period for the May 2019 Proposed Rule closed on September 18, 2019,[61] and the Bureau received over 14,000 public comments.[62] A large number of comments addressed time-barred debt and the Bureau's proposed prohibition regarding suits and threats of suit on time-barred debt, including the proposed ''know or should know'' standard and alternatives for regulating the collection of time-barred debt, such as prohibiting the collection of such debt altogether. The Bureau is undertaking a complete review of the comments as part of the process of taking final action on the May 2019 Proposed Rule. The Bureau cross-references provisions of the May 2019 Proposed Rule throughout this proposal.

E. Quantitative Consumer Testing

To obtain additional information about consumer comprehension and decision-making in response to sample debt collection disclosures relating to time-barred debt, in 2017 the Bureau contracted with ICF International, Inc. (ICF) to conduct a web survey of approximately 8,000 individuals possessing a broad range of demographic characteristics.[63] This quantitative testing concluded in late September 2019, and the Bureau[64] and ICF[65] have published detailed reports summarizing the testing methodology and results. The Bureau summarizes the results below and welcomes feedback on the full reports, as published on the Bureau's website.

Respondents to the web survey were provided one of two versions of a vignette in which a consumer incurred debt to purchase a couch. In one version, the purchase occurred three years ago; in the other, it occurred 10 years ago. Respondents were told that the consumer had not paid off the debt and had received a validation notice from a debt collector.

Respondents were randomly shown one of 11 different versions of a validation notice. Two versions served as control conditions. One control was designed to resemble validation notices that some debt collectors use today (Status Quo Notice). The other control was the Bureau's model validation notice as proposed in the May 2019 Proposed Rule (Model Notice).[66] Neither of the control notices contained a time-barred debt or revival disclosure.

CFPB's Proposals Under Consideration for the Debt Collector and Debt Buying Rulemaking (Oct. 2016), *https://files.consumerfinance.gov/f/documents/cfpb_debt-collector-debt-buyer_SBREFA-report.pdf* (hereinafter Small Business Review Panel Report or Report).

[52] Small Business Review Panel Report, *supra* note 51, at 25.

[53] *Id.* at appendix A (comment of Levy & Associates, LLC).

[54] *Id.* at 25.

[55] 84 FR 23274 (May 21, 2019).

[56] *Id.* at 23327–29, 23403 (proposing 12 CFR 1006.26(b) to provide that ''[a] debt collector must not bring or threaten to bring a legal action against a consumer to collect a debt that the debt collector knows or should know is a time-barred debt'').

[57] *See* part III.C, *supra.*

[58] 84 FR 23274, 23329 (May 21, 2019).

[59] *Id.*

[60] *Id.*

[61] 84 FR 37806 (Aug. 2, 2019).

[62] *See Regulations.gov, Debt Collection Practices (Regulation F) Docket Folder Summary, https://www.regulations.gov/docket?D=CFPB-2019-0022* (last visited Feb. 18, 2020).

[63] OMB approved the Bureau's request to conduct the survey on May 7, 2019. *See* Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, *ICR—OIRA Conclusion, https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201902-3170-001#* (last visited Feb. 18, 2020).

[64] *See* Bureau of Consumer Fin. Prot., *Disclosure of Time-Barred Debt and Revival: Findings from the CFPB's Quantitative Disclosure Testing* (Feb. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_debt-collection-quantitative-disclosure-testing_report.pdf* (hereinafter CFPB Quantitative Testing Report).

[65] *See* ICF Int'l, Inc., *Quantitative Survey Testing of Model Disclosure Clauses and Forms for Debt Collection: Methodology Report* (Jan. 21, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_icf_debt-survey_methodology-report.pdf.*

[66] *See* CFPB Quantitative Testing Report, *supra* note 64, at 6–9.

Of the remaining nine tested notices, four contained variations of a time-barred debt disclosure added to the Bureau's model notice (TBD Notices), and five contained variations of both a time-barred debt disclosure and a revival disclosure added to the Bureau's model notice (TBD with Revival Notices).[67] The survey used these various TBD Notices and TBD with Revival Notices to test whether and how consumers' understanding of time-barred debt and revival concepts changed with differently worded disclosures.

After viewing their assigned validation notice, respondents answered a series of questions designed primarily to measure their understanding of time-barred debt and revival disclosures (or their understanding of time-barred debt and revival concepts without such disclosures). Respondents were asked whether, based on what they read in the notice, they thought a debt collector would be legally allowed to sue the consumer to collect the debt if the consumer: (1) Ignored the notice and took no action; (2) made a payment; (3) sent the debt collector a letter acknowledging the debt; (4) called the debt collector acknowledging the debt; or (5) mailed in the tear-off portion of the validation notice to dispute the debt.

As discussed further in part V, the quantitative testing results generally indicate that, in connection with the collection of a time-barred debt, and at least in a testing environment, a validation notice without a time-barred debt disclosure can leave consumers with the misleading impression that debt collectors would be legally allowed to sue to collect the debt.[68] Time-barred debt disclosures, whether alone or with a revival disclosure, generally appear to correct this misimpression. On the other hand, the quantitative testing results indicate that a time-barred debt disclosure alone (*i.e.,* without a revival disclosure) could lead consumers in revival States to believe that debt collectors are legally allowed to sue in fewer circumstances than they in fact are. Revival disclosures generally appear to clarify the circumstances in which the debt collector's right to sue can be revived.[69]

IV. Legal Authority

The Bureau issues this supplemental proposal pursuant to its authority under the FDCPA and the Dodd-Frank Act. As amended by the Dodd-Frank Act, FDCPA section 814(d) provides that the Bureau ''may prescribe rules with respect to the collection of debts by debt collectors,'' as defined in the FDCPA.[70]

Section 1022(a) of the Dodd-Frank Act provides that ''[t]he Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.'' [71] Section 1022(b)(1) of the Dodd-Frank Act provides that the Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.[72] ''Federal consumer financial law'' includes title X of the Dodd-Frank Act and the FDCPA.[73]

A. FDCPA Sections 807 and 808

The Bureau issues this proposal pursuant to its authority to interpret FDCPA sections 807 [74] and 808.[75] FDCPA section 807 generally prohibits a debt collector from ''us[ing] any false, deceptive, or misleading representation or means in connection with the collection of any debt,'' [76] and then lists, without limiting the general prohibition, 16 examples of conduct that violate the section.[77] Similarly, FDCPA section 808 generally prohibits a debt collector from ''us[ing] unfair or unconscionable means to collect or attempt to collect any debt,'' and then lists, without limiting the general prohibition, eight examples of conduct that violate the section.[78]

The Bureau proposes to interpret FDCPA sections 807 and 808 consistent with the approach proposed in the May 2019 Proposed Rule for interpreting FDCPA sections 806 through 808.[79] That is, the Bureau proposes to interpret FDCPA sections 807 and 808 in light of: (1) The FDCPA's language and purpose; (2) the general types of conduct prohibited by sections 807 and 808 and, where relevant, the specific examples enumerated in those sections; and (3) judicial precedent.[80]

In particular, the Bureau notes that FDCPA section 807's and 808's examples of prohibited conduct do not ''limit[ ] the general application'' of the general prohibitions set forth in those sections. Accordingly, the Bureau may prohibit conduct that the specific examples do not address if the conduct violates the general prohibitions. In addition, the Bureau uses the specific examples to inform its understanding of the general prohibitions.[81] The Bureau also interprets FDCPA sections 807 and 808 in light of the significant body of existing court decisions interpreting those sections, including cases discussing the collection of time-barred debt.[82] Finally, consistent with the majority of courts, the Bureau proposes to interpret FDCPA sections 807 and 808 to incorporate an objective, ''unsophisticated'' or ''least sophisticated'' consumer standard.[83]

B. Dodd-Frank Act Section 1032

The Bureau also issues this proposal pursuant to its authority under Dodd-Frank Act section 1032. Dodd-Frank Act section 1032(a) provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, ''both initially and over the term of the product or service,'' are ''fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.'' [84] Under Dodd-Frank Act section 1032(a), the Bureau is empowered to prescribe rules regarding the disclosure of the ''features'' of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features. Dodd-Frank Act section

[67] *See id.*

[68] Throughout this proposal, the Bureau refers to time-barred debts as not ''legally enforceable'' or states that debt collectors are not ''legally allowed to sue'' to collect them. The Bureau uses these shorthand phrases to reflect the current state of the law, *i.e.,* that the statute of limitations generally is an affirmative defense to a lawsuit on time-barred debt and, as a result, courts have concluded that suits or threats of suit on time-barred debt violate the FDCPA. *See supra* note 9. As noted, the Bureau's May 2019 Proposed Rule also would prohibit debt collectors from suing or threatening to sue to collect debts that the debt collectors know or should know are time barred. *Id.*

[69] *See* CFPB Quantitative Testing Report, *supra* note 64, at 4.

[70] 15 U.S.C. 1692*l*(d).

[71] 12 U.S.C. 5512(a).

[72] 12 U.S.C. 5512(b)(1).

[73] 12 U.S.C. 5481(12)(H), (14).

[74] 15 U.S.C. 1692e.

[75] 15 U.S.C. 1692f.

[76] 15 U.S.C. 1692e.

[77] 15 U.S.C. 1692e(1)–(16).

[78] 15 U.S.C. 1692f.

[79] 84 FR 23274, 23281–82 (May 21, 2019).

[80] *Id.* at 23281–83.

[81] *Id.* at 23282.

[82] *Id. See, e.g., Holzman* v. *Malcolm S. Gerald & Assocs.,* 920 F.3d 1264 (11th Cir. 2019); *Tatis* v. *Allied Interstate, LLC,* 882 F.3d 422 (3rd Cir. 2018); *Pantoja* v. *Portfolio Recovery Assocs., LLC,* 852 F.3d 679 (7th Cir. 2017); *Daugherty* v. *Convergent Outsourcing Inc.,* 836 F.3d 507 (5th Cir. 2016); *Buchanan* v. *Northland Grp., Inc.,* 776 F.3d 393 (6th Cir. 2015); *McMahon* v. *LVNV Funding, LLC,* 744 F.3d 1010, 1020 (7th Cir. 2014).

[83] 84 FR 23282 (May 21, 2019).

[84] 12 U.S.C. 5532(a).

1032(b)(1) provides that ''any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.'' [85] Dodd-Frank Act section 1032(b)(2) provides that such a model form ''shall contain a clear and conspicuous disclosure that at a minimum—(A) uses plain language comprehensible to consumers; (B) contains a clear format and design, such as an easily readable type font; and (C) succinctly explains the information that must be communicated to the consumer.'' [86] Dodd-Frank Act section 1032(b)(3) provides that any such model form ''shall be validated through consumer testing.'' [87]

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to Dodd-Frank Act section 1032, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' [88] Dodd-Frank Act section 1032(d) provides that ''[a]ny covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.'' [89]

V. Section-by-Section Analysis

Section 1006.26 Collection of Time-Barred Debts

26(c) Disclosures Required

For the reasons discussed below, the Bureau proposes § 1006.26(c) to require debt collectors who are collecting debts that they know or should know are time barred to provide time-barred debt disclosures and, if applicable, revival disclosures to consumers. Proposed § 1006.26(c)(1) and (2) sets forth content and timing requirements, and proposed § 1006.26(c)(3) sets forth formatting requirements and a safe harbor for making the disclosures.

The Bureau proposes § 1006.26(c) pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors, and pursuant to its authority to interpret FDCPA section 807. The Bureau proposes to interpret FDCPA section 807's prohibition on using ''any false, deceptive, or misleading representation or means in connection with the collection of any debt'' to require debt collectors to make time-barred debt disclosures and, if applicable, revival disclosures to consumers because, as discussed below, a debt collector's attempt to collect a time-barred debt is likely to give a consumer the false impression that the debt is legally enforceable. This false impression, as also discussed below, is likely to affect a consumer's decision whether to pay or prioritize the debt. Thus, when a debt collector collects a time-barred debt without disclosing that the debt is time barred, the debt collector may misrepresent the character or le gal status of the debt, which FDCPA section 807(2)(A) specifically prohibits.

The Bureau also proposes § 1006.26(c) pursuant to its authority under section 1032(a) of the Dodd-Frank Act. As discussed in part IV, Dodd-Frank Act section 1032(a) provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, ''both initially and over the term of the product or service,'' are ''fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.'' Under Dodd-Frank Act section 1002(5) and (15)(A)(x), collecting debt related to any consumer financial product or service is itself a consumer financial product or service.

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032 of the Dodd-Frank Act, the Bureau ''shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.'' Accordingly, in developing proposed § 1006.26(c), the Bureau has considered consumer complaints, industry disclosure practices, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. The Bureau has also considered the evidence developed through its consumer testing.

The Bureau proposes § 1006.26(c) on the theory that a debt's status as time barred is a feature of debt collection. Knowing that a debt is time barred may help a consumer understand the costs, benefits, and risks associated with paying or not paying a debt. For the reasons described below, the Bureau believes that requiring debt collectors to clearly and conspicuously disclose to consumers when a debt is time barred and, if applicable, when revival may occur, using disclosures substantially similar to those set forth on the model forms in proposed appendices B–4 through B–7, may ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers.

26(c)(1) In General

As discussed in part II.C, the non-litigation collection of time-barred debt can raise concerns about consumer deception. If a debt collector attempts to collect a debt, the consumer may take away the impression that the debt collector is legally allowed to sue to collect it.[90] For time-barred debts, this impression would be false, and this false impression is likely to affect a consumer's decision whether to pay or prioritize a time-barred debt.

As summarized in part III.E, the Bureau's quantitative testing results suggest that, without a disclosure, many consumers are likely to believe that a debt collector is legally allowed to sue to collect a time-barred debt. For example, as discussed in the Bureau's Quantitative Testing Report, one survey question asked respondents whether, based on what they read in a sample validation notice, they thought the debt collector would be legally allowed to sue the debtor if the debtor ignored the notice and took no action. For the time-barred debts described in the testing scenarios, the correct answer to this question was ''no,'' the debt collector would not be legally allowed to sue. However, over 60 percent of respondents who saw either a Status Quo or Model Notice (*i.e.,* a validation notice without a time-barred debt disclosure) got this question wrong and replied that the debt collector would be legally allowed to sue.[91]

This false impression could affect a consumer's decision whether to pay or prioritize a debt. For example, a different survey question asked respondents how likely they would be, if they were the debtor, either to make a full or partial payment on the debt or to ignore the validation notice and not

[85] 12 U.S.C. 5532(b)(1).

[86] 12 U.S.C. 5532(b)(2).

[87] 12 U.S.C. 5532(b)(3).

[88] 12 U.S.C. 5532(c).

[89] 12 U.S.C. 5532(d).

[90] *See* FTC Debt Buying Report, *supra* note 8, at 46–47 (''When collectors attempt to recover on debts, in many circumstances, such efforts may convey or imply to consumers that the collectors could sue them if they do not pay.''). *See also, e.g., Holzman* v. *Malcolm S. Gerald & Assocs., Inc.,* 920 F.3d 1264, 1272 (11th Cir. 2019); *Pantoja* v. *Portfolio Recovery Assocs., LLC,* 852 F.3d 679, 683–84 (7th Cir. 2017).

[91] CFPB Quantitative Testing Report, *supra* note 64, at 17–18.

respond to it. Respondents who saw a validation notice with no time-barred debt disclosure were more likely than respondents who saw a validation notice with such a disclosure to say that they were ''very likely'' to make a full or partial payment and that they were ''very unlikely'' to ignore the notice.[92] These results reflect responses to hypotheticals in a testing environment, but they indicate that, if a consumer has the misimpression that a debt collector can sue to enforce a time-barred debt, the consumer may be more likely to pay or prioritize that debt than if the consumer knew that doing so was not necessary to avoid litigation. Consumers, of course, may choose to pay time-barred debts for any number of reasons, including moral ones[93] or in the belief that doing so will improve their credit reports.[94] However, the Bureau believes that consumers are harmed to the extent that they decide to pay or prioritize time-barred debts over other debts or expenses such as household necessities because of a false understanding that they can be sued.

As discussed in part II.C., several jurisdictions already require debt collectors to inform consumers if a debt is time barred,[95] and some debt collectors also must provide such disclosures as a result of consent agreements with law enforcement agencies, including the Bureau and the FTC.[96] The Bureau's quantitative testing supports the conclusion that such a time-barred debt disclosure can, in fact, help to correct the misimpression that a debt collector would be legally allowed to sue to collect a time-barred debt. As noted, over 60 percent of respondents who were shown a validation notice without a time-barred debt disclosure answered incorrectly when asked whether, based on what they read in the notice, the debt collector would be legally allowed to sue to collect the time-barred debt if the debtor ignored the notice and took no action. By contrast, over 60 percent of respondents who received either a TBD or TBD with Revival Notice (*i.e.,* a validation notice with a time-barred debt disclosure) answered this question correctly.[97]

Although the Bureau's quantitative testing found that a time-barred debt disclosure tended to correct the misimpression that a debt collector would be legally allowed to sue to collect a time-barred debt, the testing also revealed that, in States with revival laws, an unqualified time-barred debt disclosure could create its own risk of a consumer taking away a false, material impression. Specifically, the Bureau's quantitative testing found that a time-barred debt disclosure alone (*i.e.,* without a revival disclosure) could lead consumers in revival States to believe that debt collectors are able to legally sue them on time-barred debt in fewer circumstances than they in fact are.[98] As discussed in the Bureau's Quantitative Testing Report, two survey questions asked respondents whether, based on what they read in a sample validation notice, they thought the debt collector would be legally allowed to sue the debtor if the debtor either made a payment or acknowledged the debt in writing. For the time-barred debts described in the testing scenarios, the correct answer to these questions was ''yes,'' the debt collector would be legally allowed to sue. However, more than 60 percent of respondents who saw a TBD Notice (*i.e.,* a validation notice with an unqualified time-barred debt disclosure) replied incorrectly that the debt collector would *not* be legally allowed to sue.[99]

As with the false impression that debt collectors legally *are* allowed to sue to collect a time-barred debt even if the consumer takes *no action,* the false impression that debt collectors *are not* legally allowed to sue *even if* the consumer makes a payment or acknowledges the debt in writing could affect a consumer's decision whether to pay or prioritize time-barred debts. The Bureau's quantitative testing suggests that, in revival jurisdictions, a time-barred debt disclosure accompanied by a revival disclosure may help to correct this misimpression. When respondents were asked whether, based on what they read in the notice, the debt collector would be legally allowed to sue to collect the time-barred debt if the consumer either made a payment or acknowledged the debt in writing, about 70 percent and 60 percent of respondents, respectively, who received both a time-barred debt and revival disclosure answered correctly that the debt collector would be legally allowed to sue.[100]

To address the likelihood that consumers may be deceived by the non-litigation collection of time-barred debt, and pursuant to its authority under FDCPA sections 814(d) and 807 and Dodd-Frank Act section 1032, the Bureau proposes § 1006.26(c)(1) to require debt collectors who are collecting time-barred debt to provide

[92] *Id.* at 28–29. The Bureau's qualitative consumer testing and other research also suggests that knowing whether a debt is time barred, and that debt collectors cannot enforce time-barred debts in court, may affect a consumer's decision-making with respect to the debt. Participants in the Bureau's consumer testing said that knowing a debt is time barred is important and would affect their decision-making. In particular, many participants said they would be less likely to pay or prioritize a debt they knew was time barred. FMG Focus Group Report, *supra* note 40, at 9–10; FMG Cognitive Report, *supra* note 40, at 36; FMG Usability Report, *supra* note 40, at 75, 78, 80–81; FMG Summary Report, *supra* note 40, at 35–36. *See also* Timothy E. Goldsmith & Nathalie Martin, *Testing Materiality Under the Unfair Practices Acts: What Information Matters Collecting Time-Barred Debts?* 64 Consumer Fin. L. Q. Rep. 372, at 377–80 (2010).

[93] *See, e.g., Pantoja,* 852 F.3d at 684; *Buchanan* v. *Northland Grp., Inc.,* 776 F.3d 393, 399 (6th Cir. 2015); *McMahon* v. *LVNV Funding, LLC,* 744 F.3d 1010, 1020 (7th Cir. 2014).

[94] *See supra* note 12.

[95] *See, e.g.,* Cal. Civ. Code 1788.52(d)(3); Conn. Gen. Stat. 36a–805(a)(14); Mass. Code Regs., tit. 940, 7.07(24); N.M. Code. R. 12.2.12.9(A); N.Y. Comp. Codes R. & Regs., tit. 23, 1.3; New York City, N.Y., Rules, tit. 6, 2–191(a); W. Va. Code 46a–2–128(f).

[96] For example, the Bureau has brought enforcement actions alleging that debt collectors violated the FDCPA by sending letters containing time-limited ''settlement'' offers that failed to disclose that the debt was time barred and therefore too old for litigation. Consent Order at ¶¶ 65–69, *In re Encore Capital Grp., Inc.,* Bureau of Consumer Fin. Prot., File No. 2015–CFPB–0022 (Sept. 9, 2015), *https://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf;* Consent Order at ¶¶ 56–59, *In re Portfolio Recovery Assocs., LLC,* Bureau of Consumer Fin. Prot., File No. 2015–CFPB–0023 (Sept. 9, 2015), *https://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf.* Similarly, the FTC has brought an enforcement action alleging that a debt collector's collection of time-barred debts violated the FDCPA where the debt collector failed to disclose that the debts were time-barred and that the debt collector's right to sue could be revived. Complaint ¶¶ 30–34, 56–58, *United States* v. *Asset Acceptance, LLC,* No. 8:12–cv–182 (M.D. Fla. Jan. 30, 2012), *https://www.ftc.gov/sites/default/files/documents/cases/2012/01/120130assetcmpt.pdf.* The consent orders that resolved *Encore, Portfolio Recovery,* and *Asset Acceptance* required the debt collectors in those cases to make time-barred debt disclosures. *Encore* Consent Order at ¶ 133; *Portfolio Recovery* Consent Order at ¶ 126; *Asset Acceptance* Consent Decree at § IV, *https://www.ftc.gov/sites/default/files/documents/cases/2012/01/120131assetconsent.pdf.*

[97] CFPB Quantitative Testing Report, *supra* note 64, at 17–18. The Bureau's qualitative testing supports the same conclusion. Nearly all participants in the Bureau's consumer testing who were provided with a disclosure stating, ''Because of the age of this debt, we cannot sue you for it'' understood that they could not be sued on the debt. FMG Usability Report, *supra* note 40, at 74, 77.

[98] As discussed in part II, in ''revival jurisdictions,'' if consumers either make partial payments on time-barred debts or acknowledge time-barred debts in writing (or both), debt collectors once again would be legally allowed to sue to collect the debts. If a debt collector makes an unqualified time-barred debt disclosure to a consumer in a revival jurisdiction, that disclosure would be false for a consumer whose conduct revived the debt.

[99] CFPB Quantitative Testing Report, *supra* note 64, at 18–20. Although respondents who received no time-barred debt disclosure at all also tended to answer these questions incorrectly, respondents who received an unqualified time-barred debt disclosure were even more likely to answer these questions incorrectly. *Id.* These results suggest that an unqualified time-barred debt disclosure could mislead consumers for those scenarios.

[100] *Id.*

certain disclosures to consumers.[101] Specifically, proposed § 1006.26(c)(1) would provide that a debt collector who knows or should know that a debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) must, in that initial communication, and on any validation notice required by § 1006.34(a)(1)(i)(B), clearly and conspicuously provide time-barred debt and, if applicable, revival disclosures to consumers.[102]

Proposed § 1006.26(c)(1) would require the time-barred debt and, if applicable, revival disclosures to be made regarding debts that the debt collector ''knows or should know'' are time barred. As discussed in the May 2019 Proposed Rule and in part III.D, determining whether the statute of limitations for a particular debt has expired can, in certain cases, be a complex undertaking, and debt collectors may be uncertain about whether a particular statute of limitations has passed even after conducting a reasonable investigation.[103] For this reason, the May 2019 Proposed Rule proposed to prohibit debt collectors from suing or threatening to sue to collect debts if they ''know or should know'' that the statute of limitations has expired.[104] In response to the May 2019 Proposed Rule, the Bureau received a large number of comments regarding this knowledge standard. In general, industry commenters favored a ''know or should know'' standard, while consumer advocates favored a ''strict liability'' standard.[105] The Bureau is analyzing those comments as part of the process of finalizing the May 2019 Proposed Rule. For consistency with that proposal, the Bureau proposes to require disclosures under § 1006.26(c)(1) only if the debt collector knows or should know that the debt is time barred.

Proposed § 1006.26(c)(1) also would require the time-barred debt and, if applicable, revival disclosures to be made clearly and conspicuously. The Bureau proposes this standard to help ensure that consumers take away a truthful, non-misleading impression. A disclosure that is not clear and conspicuous will not be effective in conveying this impression, defeating the disclosure's purpose. Proposed comment 26(c)(1)–1 would clarify that ''clearly and conspicuously'' for purposes of § 1006.26(c)(1) means the same thing as ''clear and conspicuous'' as the Bureau proposed to define that term in § 1006.34(b)(1) in the May 2019 Proposed Rule.[106] That standard, in turn, is based on the standard used in other consumer financial services laws and their implementing regulations, including Regulation E Subpart B (Remittance Transfers).[107]

Proposed § 1006.26(c)(1) also would require the time-barred debt and, if applicable, revival disclosures to be made in the initial communication as defined in § 1006.34(b)(2), and on any validation notice required by § 1006.34(a)(1)(i)(B).[108] Proposed § 1006.26(c)(1) would require a debt collector to provide the disclosures in these communications because, without the disclosures, the debt collector may convey a misleading impression about the legal enforceability of the time-barred debt. In addition, requiring the disclosures at the time that the debt collector first communicates with the consumer in connection with the collection of the debt and on any required validation notice should ensure that consumers receive information regarding the debt's legal enforceability at a time when they may be evaluating their rights and obligations regarding the debt, including whether to pay or prioritize it over other debts. Proposed comment 26(c)(1)–2 would clarify that a debt collector who sends a validation notice in the initial communication pursuant to § 1006.34(a)(1)(i)(A) complies with § 1006.26(c)(1) by providing the required disclosures on the validation notice.

Some stakeholders, including consumers, consumer groups, and others who commented on the May 2019 Proposed Rule, have urged the Bureau to prevent the risk of deception by prohibiting the collection of time-barred debt and banning revival. These stakeholders assert, among other things, that concepts like statutes of limitations and revival are too complicated to disclose to consumers effectively. As discussed above, however, the Bureau's quantitative testing results suggest that disclosures can be effective in preventing the deception associated with the collection of time-barred debts and that, therefore, prohibiting the collection of time-barred debt and banning revival are not necessary to prevent deception. In addition, banning the collection of time-barred debt could have unintended consequences for consumers, such as increased litigation before expiration of the statute of limitations. Because disclosures may adequately address the risks to consumers, the Bureau proposes to require disclosures rather than to prohibit the collection of time-barred debt and ban revival.

The Bureau requests comment on proposed § 1006.26(c)(1) and its related commentary. In particular, the Bureau requests comment on the merits of using a ''know or should know'' standard versus a ''strict liability'' standard for determining when debt collectors must provide time-barred debt and revival disclosures. The Bureau also requests comment on the merits of using, as an alternative, a ''strict liability'' standard with a safe harbor for debt collectors who provide the disclosures when they

[101] The requirements of proposed § 1006.26(c)(1) therefore would apply to FDCPA-covered debt collectors collecting debt, as that term is defined in FDCPA section 803(5), regardless of whether the debt is a consumer financial product or service debt, as that term is defined in the May 2019 Proposed Rule. *See* 84 FR 23274, 23399 (May 21, 2019). Consumer financial product or service debts would include, for example, debts related to consumer mortgage loans or credit cards. *Id.* at 23286.

[102] The required disclosures are discussed in the section-by-section analysis of proposed § 1006.26(c)(1)(i) and (ii). Proposed § 1006.34(c)(2)(xi), discussed below, would amend the validation notice provisions of the May 2019 Proposed Rule to reflect the disclosures that would be required by proposed § 1006.26(c)(1).

[103] *See* 84 FR 23274, 23329 (May 21, 2019) (determining whether the statute of limitations has expired may involve analyzing which statute of limitations applies, when the statute of limitations began to run, and whether the statute of limitations has been tolled or reset).

[104] *Id.* at 23328–29, 23403. A debt collector would violate FDCPA section 807's prohibition on deception and, if finalized, § 1006.18 in the May 2019 Proposed Rule, by providing the § 1006.26(c)(1) disclosures if the debt collector later sues or threatens to sue to collect the debt. The Bureau requests comment on whether the final rule should indicate in rule text or commentary that this would be a violation.

[105] Under a ''strict liability'' standard, for example, a debt collector would violate the proposed prohibition against suits or threats of suit if the debt collector sued or threatened to sue to collect a debt that a court later determined was time barred, even if the debt collector had investigated and reasonably concluded that the debt was not time barred. This could occur, for example, if State law applies different statutes of limitations to different types of debts, and if a court later determined that a debt collector had applied the wrong provision in determining whether the debt was time barred, notwithstanding a reasonable investigation.

[106] Proposed § 1006.34(b)(1) defines ''clear and conspicuous'' to mean ''disclosures that are readily understandable.'' In the case of written and electronic disclosures, ''the location and type size also must be readily noticeable to consumers.'' In the case of oral disclosures, ''the disclosures also must be given at a volume and speed sufficient for the consumer to hear and comprehend them.''

[107] Regulation E, 12 CFR 1005.31.

[108] The Bureau proposes to use the same definition of ''initial communication'' proposed in the May 2019 Proposed Rule. *See* 84 FR 23274, 23404 (May 21, 2019) (proposing 12 CFR part 1006.34(b)(2) to define ''initial communication'' in to mean ''the first time that, in connection with the collection of a debt, a debt collector conveys information, directly or indirectly, regarding the debt to the consumer,'' other than certain communications required by law or made in the form of a formal pleasing in a civil action).

neither knew nor should have known the debt was time-barred.

The Bureau also requests comment on: (1) Whether knowing if a debt is time barred affects or is likely to affect a consumer's conduct relating to the debt; (2) the frequency with which debt collectors should be required to provide required disclosures, including the basis for requiring more or less frequent disclosures; (3) whether additional guidance is needed to address situations in which a validation notice might be re-issued voluntarily because, for example, the consumer requests a copy or a translation; (4) debt collectors' current practices with respect to disclosing whether a debt is time barred and the circumstances, if any, in which revival can occur; and (5) debt collectors' current practices with respect to revival, including whether and how frequently they sue to collect debts when the right to do so has been revived.

26(c)(1)(i)

Proposed § 1006.26(c)(1)(i) sets forth the disclosure that debt collectors would be required to provide when collecting debts that they know or should know are time barred. Proposed § 1006.26(c)(1)(i) would require debt collectors to disclose that the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it. The disclosure would be required to be substantially similar to the disclosure shown on proposed Model Form B–4 in appendix B, and debt collectors could comply by using that model form (or, if making the disclosure other than on a validation notice, by using the relevant language from that model form).[109]

As discussed in the Bureau's Quantitative Testing Report, the Bureau tested alternative versions of this time-barred debt disclosure, including two that used the phrase ''will not sue'' and two that used the phrase ''cannot sue.'' A disclosure that uses the phrase ''will not sue'' may be more accurate than a disclosure that uses the phrase ''cannot sue.'' A disclosure that uses the phrase ''cannot sue'' may imply that a debt collector has definitively determined that the debt is time barred and that all subsequent collectors thus would reach the same conclusion. By contrast, a ''will not sue'' disclosure merely represents that the debt collector believes that the debt is time barred, not that the debt collector has definitely determined that it is time barred; it may not actually be the case that the debt is, or that a subsequent collector would conclude that the debt is, time barred.[110] The Bureau's testing showed no consistent differences in consumer understanding between the ''will not sue'' and ''cannot sue'' disclosures.[111]

As discussed in part III.C, during the SBREFA process, the Bureau was considering a proposal to require a debt collector who was collecting a time-barred debt to disclose that, because of the age of the debt, the debt collector ''cannot sue to recover it.'' [112] Several small entity representatives expressed concern that the disclosure under consideration could constitute legal advice, or that consumers who received the disclosures could construe them as legal advice and ask the debt collector follow-up questions about the debt's legal status. Some industry commenters to the Bureau's ANPR expressed similar concerns. As noted, the Bureau does not believe that the ''will not sue'' disclosure described in proposed § 1006.26(c)(1)(i) constitutes legal advice. It is neither a statement of what the law is nor advice to consumers as to what they should or should not do. Instead, it is a statement of what the collector will do. In addition, nothing in the Bureau's proposal would require a debt collector to provide legal advice to a consumer who requests it. The Bureau requests comment on proposed § 1006.26(c)(1)(i) and on the burden of making a time-barred debt determination for debt collectors who do not sue to collect debts.

26(c)(1)(ii)

Proposed § 1006.26(c)(1)(ii) sets forth an additional disclosure that debt collectors would be required to provide when collecting debts that they know or should know are time barred if, under applicable law, the debt collector's right to bring a legal against the consumer could be revived. Under proposed § 1006.26(c)(1)(ii), debt collectors would be required to disclose the fact that revival can occur and the circumstances in which it can occur. The disclosure would be required to be substantially similar to those shown on proposed Model Forms B–5 through B–7 in appendix B, and debt collectors could comply by using those model forms, as applicable (or, if making the disclosure other than on a validation notice, by using the relevant language from the model forms).[113] Proposed comment 26(c)(1)(ii)–1 would clarify that, to satisfy the disclosure requirement in proposed § 1006.26(c)(1)(ii), a debt collector would be required to determine which State's law applies and the circumstances, if any, in which that law would permit revival.

The Bureau requests comment on proposed § 1006.26(c)(1)(ii) and on comment 26(c)(1)(ii)–1. The Bureau specifically requests comment on the burden of requiring all debt collectors to determine, when collecting debt that they know or should know is time barred, which State's law applies and the circumstances, if any, under which that law would permit revival. The Bureau also specifically requests comment on the burden of making these determinations under a strict liability standard. The Bureau recognizes that some debt collectors do not sue to collect any debts (including revived debts) and that some debts may be clearly time barred under any applicable State law. The Bureau requests comment on the burden in such circumstances of requiring debt collectors to conduct the inquiry that would be required to satisfy proposed § 1006.26(c)(1)(ii) (*i.e.,* to make a disclosure that reflects the applicable State's revival law).

26(c)(2) Additional Circumstances in Which Disclosures Are Required

A debt may become time barred after a debt collector's initial communication with the consumer or after the debt collector sends the consumer any validation notice required by § 1006.34(a)(1)(i)(B). This could happen, for example, if a debt collector begins collecting a debt soon before the statute of limitations expires, and collection activities continue after expiration. This also could happen if a debt collector begins collecting a debt before the statute of limitations expires, warehouses the debt, and resumes collection activities after expiration. Relatedly, it may be the case that a debt collector who does not know, and should not know, that a debt is time barred when making the initial communication with the consumer or

[109] See the section-by-section analysis of proposed § 1006.26(c)(3) regarding proposed requirements for the form and delivery of the required disclosures.

[110] For this reason, a debt collector who provides the proposed § 1006.26(c)(1) disclosures after undertaking a reasonable inquiry and concluding that a debt is time barred would not be liable under either the FDCPA or Regulation F for having made the disclosures even if it is determined later that the debt collector's conclusion about the debt's time-barred status was incorrect, as long as the debt collector honors the disclosures by not suing.

[111] CFPB Quantitative Testing Report, *supra* note 64, at 22–23.

[112] Small Business Review Panel Outline, *supra* note 47, at 20.

[113] See the section-by-section analysis of proposed § 1006.26(c)(3) regarding proposed requirements for the form and delivery of the required disclosures.

when sending the consumer any validation notice required by § 1006.34(a)(1)(i)(B) later knows, or should know, that the debt was, in fact, time barred.

As discussed, the Bureau's quantitative testing results indicate that, without disclosure, few consumers are likely to recognize that a debt collector is not legally allowed to sue to collect a time-barred debt. The quantitative testing results also indicate that an unqualified time-barred debt disclosure provided in a revival State may create a risk of consumer misunderstanding about revival. For these reasons, and pursuant to its authority under FDCPA sections 814(d) and 807 and Dodd-Frank Act section 1032(a), the Bureau proposes § 1006.26(c)(2) to specify additional circumstances in which debt collectors would be required to provide time-barred debt and, if applicable, revival disclosures.[114]

Proposed § 1006.26(c)(2)(i) would require a debt collector who knows or should know that a debt has become time barred after the initial communication as defined in § 1006.34(b)(2) but before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B) to provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt has become time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). In addition, proposed § 1006.26(c)(2)(i) would require a debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) and has sent any validation notice required by § 1006.34(a)(1)(i)(B) to provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred. Proposed comments 26(c)(2)(i)–1 and –2 provide examples illustrating the rule.

Proposed § 1006.26(c)(2)(ii) would require a debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2), but who knows or should know that the debt is time barred before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B), to provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt is time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). In addition, proposed § 1006.26(c)(2)(ii) would require a debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) and sends any validation notice required by § 1006.34(a)(1)(i)(B), but who later knows or should know that the debt is time barred, to provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt was time barred. Proposed comments 26(c)(2)(ii)–1 and –2 provide examples illustrating the rule.

The Bureau requests comment on proposed § 1006.26(c)(2). In particular, the Bureau requests comment on the knowledge standard that should apply for determining when disclosures would be required under proposed 1006.26(c)(2).[115] In addition, the Bureau requests comment on whether, if the first communication after a debt becomes time barred (or after the debt collector knows or should know that the debt is time barred) is oral, the debt collector should also be required to provide the disclosures in the first subsequent written communication.

26(c)(3) Form and Delivery of Disclosures

26(c)(3)(i) In General

The Bureau has developed a series of model forms featuring the disclosures that would be required by proposed § 1006.26(c)(1). Under proposed § 1006.26(c)(3)(i), the required disclosures would need to be substantially similar to those shown on the model forms, and under proposed § 1006.26(c)(3)(ii), debt collectors would receive a safe harbor for using the model forms (or, when applicable, for providing the disclosures shown on the model forms).

Proposed Model Form B–4 is a validation notice that includes a time-barred debt disclosure, for use by debt collectors providing only the disclosure required under § 1006.26(c)(1)(i) (*i.e.,* if the right to bring a legal action against the consumer on a time-barred debt cannot be revived under applicable law). The disclosure on proposed Model Form B–4 reads as follows: ''The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it.''

Proposed Model Forms B–5 through B–7 are validation notices that include time-barred debt and revival disclosures, for use by debt collectors providing the disclosures required under § 1006.26(c)(1)(i) and (ii). The proposed model forms contain revival disclosures tailored to the different circumstances in which time-barred debts could be revived under applicable law. Specifically:

- The disclosure on proposed Model Form B–5 provides: ''The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment or acknowledge in writing that you owe this debt, then we can sue you to collect it.'' Proposed Model Form B–5 would be for use by debt collectors collecting time-barred debts if applicable law permits revival when a consumer makes a payment or acknowledges the debt in writing.[116]
- The disclosure on proposed Model Form B–6 provides: ''The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment, then we can sue you to collect it.'' Proposed Model Form B–6 would be for use by debt collectors collecting time-barred debts if applicable law permits revival only when a consumer makes a payment.
- The disclosure on proposed Model Form B–7 provides: ''The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you acknowledge in writing that you owe this debt, then we can sue you to collect it.'' Proposed Model Form B–7

[114] The requirements of proposed § 1006.26(c)(2) therefore would apply to FDCPA-covered debt collectors collecting debt, as that term is defined in FDCPA section 803(5), regardless of whether the debt is a consumer financial product or service debt, as that term is defined in the May 2019 Proposed Rule. *See* 84 FR 23274, 23399 (May 21, 2019). Consumer financial product or service debts would include, for example, debts related to consumer mortgage loans or credit cards. *Id.* at 23286.

[115] See the request for comment regarding the knowledge standard in the section-by-section analysis of proposed 1006.26(c)(1).

[116] Although what constitutes a written acknowledgement sufficient to trigger revival may differ by State, proposed Model Form B–5 is drafted at a level of generality meant to accommodate debt collectors in all jurisdictions where written acknowledgement revives the debt collector's right to sue.

would be for use by debt collectors if applicable law permits revival only when a consumer acknowledges the debt in writing.[117]

As described in part III.B, the Bureau tested multiple written time-barred debt and revival disclosures. In proposing Model Forms B–4 through B–7, the Bureau generally has selected the disclosures that, based on testing results, consumers would be most likely to understand.[118] Regarding revival, the Bureau selected the disclosure that respondents most understood when asked whether the debt collector would legally be allowed to sue to collect the debt if the debtor did nothing, made a payment, or wrote to the debt collector to acknowledge the debt. However, the Bureau notes that this disclosure underperformed other tested revival disclosures when respondents were asked whether the debt collector would legally be allowed to sue if the debtor called the debt collector to acknowledge the debt.[119] As tested, the first sentence of the selected revival disclosure read, ''If you do nothing in response to this notice, we will not sue you to collect this debt.'' Based on the testing results, the Bureau believes that this phrasing could lead consumers who receive such a revival disclosure to have the false impression that communicating with a debt collector by telephone would revive the debt collector's right to sue and thus make the consumer reluctant to communicate. To clarify that communicating with a debt collector by telephone would not revive the debt collector's right to sue, the first sentence of the revival disclosures on proposed Model Forms B–5 through B–7 also includes the phrase ''or speak to us.''

As noted, the Bureau's quantitative testing tested respondents' understanding of written disclosures included on validation notices. For this reason, the time-barred debt and revival disclosures described what would or would not happen if the consumer took various actions in response ''to this notice.'' However, proposed § 1006.26(c)(1) and (2) would require time-barred debt and revival disclosures in certain oral communications. To ensure that the disclosure on the proposed model forms will be appropriate whether provided in writing or orally (and whether on a validation notice or not), the Bureau also proposes to include the phrase ''about this debt'' instead of the tested language ''in response to this notice.'' Based on the Bureau's quantitative testing, and with these slight adjustments, the Bureau believes that the model forms effectively disclose the information described in proposed § 1006.26(c)(1) and (2).

For these reasons, and pursuant to its authority under FDCPA sections 814(d) and 807 and Dodd-Frank Act section 1032, the Bureau proposes § 1006.26(c)(3)(i) to require that, when debt collectors provide the disclosures required by § 1006.26(c)(1) on a validation notice, the content, format, and placement of the disclosures must be substantially similar to such disclosures on Model Forms B–4 through B–7 in appendix B, as applicable. Proposed § 1006.26(c)(3)(i) also would require that, when the disclosures required by § 1006.26(c)(1) are provided orally or in a written communication that is not a validation notice, the content must be substantially similar to such disclosures on Model Forms B–4 through B–7 in appendix B, as applicable.

As already discussed, some jurisdictions require debt collectors to make disclosures, including on validation notices, when collecting time-barred debt. Proposed comment 26(c)(3)(i)–1 would clarify that, when providing the disclosures required by § 1006.26(c)(1) on a validation notice, a debt collector who uses a validation notice that is otherwise substantially similar to Model Forms B–4 through B–7, as applicable, may include any disclosures required by other applicable law on the reverse of the validation notice and will continue to be in compliance with the requirements of proposed § 1006.26(c)(1) and (3)(i). The proposed comment also provides an example of a disclosure required by other applicable law.

The Bureau requests comment on proposed § 1006.26(c)(3)(i) and on comment 26(c)(3)(i)–1, including on conflicts that might arise between the Bureau's proposed model forms and other disclosures required by applicable law. In particular, the Bureau requests comment on whether proposed § 1006.26(c)(3)(i)—and proposed Model Forms B–4 through B–7—would allow debt collectors to comply with other applicable law, including on whether any jurisdictions require time-barred debt or revival disclosures to be included on the front of the validation notice and whether, if so, it is possible for a debt collector to comply with both the Bureau's proposal and any such State laws. The Bureau also requests comment and any supporting data on whether consumers who receive both Federal and State time-barred debt (and, if applicable, revival) disclosures on a validation notice may be confused by the dual disclosures.

26(c)(3)(ii) Safe Harbor

Model forms that provide a safe harbor may benefit both consumers and debt collectors. A model form that has been tested with consumers may effectively disclose the information required by proposed § 1006.26(c)(1) in a manner that prevents deception and permits consumers to understand the costs, benefits, and risks associated with the collection of time-barred debts. A model form may also provide debt collectors with protection from liability that could arise if they developed and used their own forms. During the SBREFA process, small entity representatives encouraged the Bureau to develop model forms and safe harbors, emphasizing that model forms can promote efficiency and predictability by reducing legal risk.[120] Because of the potential benefits to consumers and debt collectors, the Bureau has developed proposed Model Forms B–4 through B–7 in appendix B.

As described above, proposed Model Forms B–4 through B–7 were developed over multiple rounds of consumer testing, and, based on this testing, the Bureau believes that they effectively disclose the information described in proposed § 1006.26(c)(1). For these reasons, under proposed § 1006.26(c)(3)(ii) a debt collector who uses Model Forms B–4 through B–7 in appendix B, as applicable, to provide the disclosures required by § 1006.26(c)(1) in a validation notice would receive a safe harbor for compliance with the requirements of § 1006.26(c)(1) and (3)(i). In addition, under proposed § 1006.26(c)(3)(ii) a debt collector who uses the relevant content of Model Forms B–4 through B–7, as applicable, to provide the disclosures required by § 1006.26(c)(1) orally or in a written communication that is not a validation notice would receive a safe harbor for compliance with the requirements of § 1006.26(c)(1) and (3)(i).

Proposed comment 26(c)(3)(ii)–1 explains that, although the use of Model Forms B–4 through B–7 is not required, a debt collector who uses the applicable model form complies with the requirements of § 1006.26(c)(1) and (3)(i). The comment also would clarify what it means for a debt collector to use the ''applicable'' model form. For

[117] Proposed Model Form B–7, like proposed Model Form B–5, is drafted at a level of generality meant to accommodate debt collectors in all written-acknowledgement jurisdictions.

[118] CFPB Quantitative Testing Report, *supra* note 64, at 22–25.

[119] CFPB Quantitative Testing Report, *supra* note 64, at 24–25.

[120] *See, e.g.,* Small Business Review Panel Report, *supra* note 51, at 22.

example, if under applicable law only a payment on a time-barred debt revives a debt collector's right to bring a legal action against the consumer to collect the debt, a debt collector who uses Model Form B–6, which refers to payment but not written acknowledgement, to provide the disclosure on the validation notice would comply with the requirements of § 1006.26(c)(1) and (3)(i). Proposed comment 26(c)(3)(ii)–2 would clarify that a debt collector who uses Model Forms B–4 through B–7, as applicable, may include any disclosures required by other applicable law on the reverse of the validation notice and will continue to be in compliance with the requirements of proposed § 1006.26(c)(1) and (3)(i).

The Bureau proposes Model Forms B–4 through B–7 pursuant to its authority under section 1032(b) of the Dodd-Frank Act. As discussed in part IV, section 1032(b)(1) of the Dodd-Frank Act provides that ''any final rule prescribed by the Bureau under [section 1032] requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.'' Section 1032(b)(2) of the Dodd-Frank Act provides certain minimum criteria that any such model form must meet, and section 1032(b)(3) of the Dodd-Frank Act requires the Bureau to validate any such model form through consumer testing.

Consistent with the Bureau's authority under Dodd-Frank Act section 1032(b)(1), the Bureau believes that proposed Model Forms B–4 through B–7 use plain language comprehensible to consumers, contain a clear format and design, such as easily readable type font, and succinctly explain the information that must be communicated to consumers. As discussed above, the Bureau has developed these model forms after consumer testing and believes that making them available would help ensure that the disclosures required by proposed § 1006.26(c)(1) are provided to consumers effectively, while also minimizing the burden on debt collectors who would otherwise need to develop their own disclosures.

The Bureau requests comment on proposed § 1006.26(c)(3)(ii) and on proposed comments 26(c)(3)(ii)–1 and –2. In particular, the Bureau requests comment on the content, format, and design of proposed Model Forms B–4 through B–7. The Bureau also requests comment on whether the two conditions described on the model forms—payment and written acknowledgement—capture all circumstances in which State law permits revival.

26(c)(3)(iii) Delivery

Proposed § 1006.26(c)(3)(iii) would state that, when providing the disclosures required by proposed § 1006.26(c)(1) on a validation notice or a written communication that is not a validation notice, a debt collector must do so in a manner permitted by proposed § 1006.42. As discussed in the May 2019 Proposed Rule, proposed § 1006.42(a)(1) generally would require a debt collector who provides disclosures required by Regulation F in writing or electronically to do so in a manner that is reasonably expected to provide actual notice and in a form that the consumer may keep and access later.[121] Proposed § 1006.42(b) through (e) in the May 2019 Proposed Rule explain how debt collectors may provide required notices to consumers by email or text message.[122]

The Bureau proposes § 1006.26(c)(3)(iii) as an interpretation of FDCPA section 808's prohibition on using unfair or unconscionable means to collect a debt. It may be unfair or unconscionable under FDCPA section 808 for a debt collector to deliver a disclosure using a method that is not reasonably expected to provide actual notice to the consumer or that does not allow the consumer to retain the disclosure and access it later. If debt collectors deliver disclosures in a manner that does not meet these standards, consumers may not receive required information or have it available for future reference, potentially leading them to take different actions with respect to debts than they otherwise would have. A debt collector's decision to provide a required disclosure in a manner not reasonably expected to provide actual notice or in a form that the consumer cannot keep and access later is outside of a consumer's control; therefore, a consumer cannot reasonably avoid the injury caused by a debt collector who provides a required disclosure in such a manner or form. Providing required disclosures in a manner not reasonably expected to provide actual notice or in a form that the consumer cannot keep and access later could effectively thwart the rule's disclosure provisions. Thus, whatever benefits debt collectors may receive from such conduct do not appear to be outweighed by the costs to consumers.

In addition, to the extent proposed § 1006.26(c)(3)(iii) applies to the provision of disclosures on a validation notice, the Bureau proposes § 1006.26(c)(3)(iii) to implement and interpret FDCPA section 809(a) and (b) and pursuant to its authority under FDCPA section 814(d) to prescribe rules with respect to the collection of debts by debt collectors.[123] The Bureau requests comment on proposed § 1006.26(c)(3)(iii).

26(c)(3)(iv) Translated Disclosures

As discussed, the disclosures that proposed § 1006.26(c)(1) would require may help resolve consumer uncertainty related to the collection of time-barred debts and enable consumers to make more informed choices about whether to pay or prioritize such debts. Because some consumers do not speak or understand English, some debt collectors communicate with consumers in languages other than English. Consumers who are unable to communicate in English would benefit from receiving translated versions of the disclosures. At the same time, requiring debt collectors to identify such consumers and provide accurate translations in the myriad languages that consumers speak may impose a significant burden on industry. If a debt collector chooses to communicate with a consumer in a non-English language, however, this burden may be reduced. Such a debt collector has already identified the consumer's language preference and exhibited a willingness to communicate in that language. Although preparing accurate translations of the disclosures described in proposed § 1006.26(c)(1) may be challenging in some circumstances, requiring a debt collector who communicates in a non-English language to provide the disclosures in that language may prevent deception and help ensure that the disclosures are effective for more consumers.[124]

[121] *See* 84 FR 23274, 23355–57 (May 21, 2019). The May 2019 Proposed Rule would except from this requirement two disclosures that would be required to accompany all written debt collection communications (even relatively routine ones), on the theory that subjecting them to proposed § 1006.42(a)(1) likely would impose an unnecessary burden on debt collectors with little corresponding benefit to consumers. *Id.* The disclosures that proposed § 1006.26(c) would require would accompany at most two of the debt collector's communications, so there is no similar basis to except them from proposed § 1006.42(a)(1).

[122] *See id.* at 23357–67. As discussed in the May 2019 Proposed Rule, the Bureau proposed § 1006.42(b) through (d) based, in part, on its authority under the Electronic Communications in Global and National Commerce Act (E–SIGN Act). *Id.; see also id.* at 23285 (describing Bureau's E–SIGN Act authority).

[123] *Id.* at 23356.

[124] Proposed § 1006.34(e) in the May 2019 Proposed Rule also would require the translation of any such disclosures provided on a validation notice that is translated into a language other than English. *See id.* at 23405 (permitting a debt collector who also sends an English-language validation notice in the same communication, or who has already provided an English-language validation

For these reasons, and pursuant to the Bureau's authority under FDCPA section 814(d) and Dodd-Frank Act section 1032(a), proposed § 1006.26(c)(3)(iv) would require a debt collector to make the disclosures that would be required by proposed § 1006.26(c)(1) in the same language or languages used for the rest of the communication in which the disclosures are conveyed. Proposed § 1006.26(c)(3)(iv) also would require that any translation of the disclosures that would be required by § 1006.26(c)(1) be complete and accurate. Proposed comment 26(c)(3)(iv)–1 provides illustrative examples, the second of which illustrates the application of proposed § 1006.26(c)(3)(iv) to communications that take place in multiple languages. Proposed comment 26(c)(3)(iv)–2 would clarify that the language of a disclosure obtained from the Bureau's website is considered a complete and accurate translation, although debt collectors are permitted to use other translations so long as those translations are complete and accurate. The Bureau requests comment on proposed § 1006.26(c)(3)(iv).

Section 1006.34 Notice for Validation of Debts

34(c) Validation Information

34(c)(2) Information About the Debt

34(c)(2)(xi)

In the May 2019 Proposed Rule, the Bureau proposed § 1006.34(a) to require debt collectors to provide consumers with specified validation information, either by sending the consumer a validation notice in the initial communication, as defined in proposed § 1006.34(b)(2), or within five days of that initial communication, or by providing the information orally in the initial communication.[125] Proposed § 1006.34(c) in the May 2019 Proposed Rule set forth the required validation information, with proposed § 1006.34(c)(2) specifying the information that debt collectors would be required to provide about the debt being collected.[126] Because the time-barred debt and revival disclosures described in § 1006.26(c)(1) and (2) represent information about the debt that debt collectors would be required to include, as applicable, on validation notices, the Bureau proposes to include the disclosures in the list of validation information in § 1006.34(c)(2). Specifically, the Bureau proposes § 1006.34(c)(2)(xi) to provide that validation information includes a time-barred debt disclosure, or a time-barred debt and a revival disclosure, if the debt collector determines after a reasonable investigation that such disclosures are required by § 1006.26(c). Thus, a debt collector who provides the proposed § 1006.26(c) disclosures after undertaking a reasonable inquiry and concluding that the disclosures are required would not violate proposed § 1006.34 for having made the disclosures even if it is determined later that such disclosures were not required. For the reasons discussed in the section-by-section analysis of proposed § 1006.26(c)(1), the Bureau proposes § 1006.34(c)(2)(xi) pursuant to its authority under FDCPA sections 814(d) and 807 and Dodd-Frank Act section 1032(a). The Bureau requests comment on proposed § 1006.34(c)(2)(xi).

VI. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing the supplemental proposed rule, the Bureau has considered its potential benefits, costs, and impacts.[127] The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts.

Debt collectors play a critical role in markets for consumer financial products and services. Credit markets function because lenders expect that borrowers will pay them back. In consumer credit markets, if borrowers fail to repay what they owe per the terms of their loan agreement, creditors often engage debt collectors to attempt to recover amounts owed, whether through the court system or through less formal requests for repayment.

The supplemental proposal would require debt collectors to make certain disclosures when attempting to collect time-barred debt. The new requirements would provide benefits to consumers by helping to correct the misimpression that consumers might have that debt collectors can legally sue to collect time-barred debts. Correcting this misimpression can help consumers because a better understanding of whether they can be sued could be important in deciding how to prioritize time-barred debts relative to other debts or expenses such as household necessities. The requirements would also impose costs on debt collectors who would need to determine for each debt whether the disclosures are required and to provide the disclosures when appropriate. The disclosures could also reduce debt collector revenue because consumers who receive such disclosures might be less willing to repay time-barred debts. In addition to these effects, there could be indirect impacts on credit markets. This is because, if the proposal were to increase costs for debt collectors or reduce repayment of time-barred debt, it would reduce the expected return to lending. This could lead lenders to increase interest rates and other costs to borrowers and to restrict availability of credit, particularly to higher-risk borrowers.[128]

In developing the supplemental proposed rule, the Bureau has consulted, or offered to consult with, the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

B. Provisions To Be Analyzed

The analysis below considers the potential benefits, costs, and impacts to consumers and covered persons of the supplemental proposal, which would require debt collectors who are collecting debts that they know or should know are time barred to provide time-barred debt disclosures and, if applicable, revival disclosures to consumers.

C. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion in this part VI relies on publicly available information as well as information the Bureau has obtained. The Bureau engaged a contractor to conduct qualitative and quantitative testing to evaluate consumers' understanding of time-barred debt and revival and of disclosures about time-barred debt and revival. Specifically, the Bureau conducted 54 qualitative one-on-one interviews with consumers between April 2017 and April 2019, in order to refine the disclosures. The Bureau then

notice, to "send the consumer a validation notice completely and accurately translated into any language").

[125] *Id.* at 23404.

[126] *Id.*

[127] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products and services; the impact of proposed rule on insured depository institutions and insured credit unions with less than $10 billion in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

[128] *See* 84 FR 23274, 23371–72, 23389–91 (May 21, 2019).

conducted an online survey designed to assess the effectiveness of time-barred debt and revival disclosures. The online survey, completed in September of 2019, surveyed 8,011 consumers—66 percent of whom had debt collection experience—and used random assignment to study the effect of receiving a time-barred debt disclosure alone, or time-barred debt and revival disclosures together, on consumer comprehension of time-barred debt and revival.[129]

The Bureau also relies on the results of its 2015 Survey of Consumer Views on Debt, which provided the first comprehensive and nationally representative data on consumers' experiences and preferences related to debt collection.[130] In addition, the Bureau relies on its Consumer Credit Panel (CCP) to understand potential benefits and costs to consumers of the proposed rule.[131] To better understand potential effects on industry of potential requirements, such as those in the proposed rule, the Bureau has engaged in significant outreach, including the CFPB Debt Collections Operations Study.[132] In July 2016, the Bureau consulted with small entities as part of the SBREFA process and obtained important information on the potential impacts of proposals that the Bureau was considering at the time, including disclosures regarding a debt's time-barred status.[133]

The sources described above, together with other sources of information and the Bureau's market knowledge, form the basis for the Bureau's consideration of the likely impacts of the supplemental proposed rule. The Bureau provides the best estimates possible of the potential benefits and costs to consumers and covered persons of this proposal given available data. However, available data sources generally do not permit the Bureau to quantify, in dollar terms, how particular proposed provisions will affect consumers. With respect to industry impacts, much of the Bureau's existing data come from qualitative input from debt collectors and other entities that operate in the debt collection market rather than from representative sampling that would allow the Bureau to estimate total benefits and costs.

The Bureau's discussion in this part generally considers the benefits, costs, and impacts of the supplemental proposal through the first 10 years after the potential effective date. The Bureau generally anticipates that any one-time costs to covered persons of coming into compliance with the supplemental proposal would be borne before or during the first year after the effective date. Ongoing benefits and costs would likely vary from year to year in accordance with the amount of time-barred debt collected in any year. The Bureau does not have any basis at this time to predict how that amount will vary during future years.

General economic principles and the Bureau's expertise in consumer financial markets, together with the data and findings that are available, provide insight into the potential benefits, costs, and impacts of the supplemental proposed rule. Where possible, the Bureau has made quantitative estimates based on these principles and the data available. Some benefits and costs, however, are not amenable to quantification, or are not quantifiable given the data available to the Bureau. The Bureau provides a qualitative discussion of those benefits, costs, and impacts. The Bureau requests additional data or studies that could help quantify the benefits and costs to consumers and covered persons of the supplemental proposed rule.

D. Baseline for Analysis

In evaluating the potential benefits, costs, and impacts of the supplemental proposal, the Bureau takes as a baseline the current legal framework governing debt collection. This includes debt collector practices as they currently exist, responding to the requirements of the FDCPA as currently interpreted by courts and law enforcement agencies, other Federal laws, and the rules and statutory requirements promulgated by the States.[134] In the consideration of potential benefits, costs, and impacts below, the Bureau discusses its understanding of practices in the debt collection market under this baseline and how those practices would change under the proposal.

E. Coverage of Proposal

The proposed rule would apply to debt collectors as defined in the FDCPA, as further discussed in the May 2019 Proposed Rule.[135] Creditors that collect on debts they own generally would not be affected directly by the proposal because they typically are not debt collectors for purposes of the FDCPA. Creditors, however, may experience indirect effects if debt collectors' costs increase and if those costs are passed on to creditors.

F. Potential Benefits and Costs to Consumers and Covered Persons

Proposed § 1006.26(c) would require debt collectors who are collecting debts that they know or should know are time barred to provide time-barred debt disclosures and, if applicable, revival disclosures to consumers. Proposed model forms B–4 through B–7 include the disclosures that debt collectors could use to comply with the disclosure requirements of proposed § 1006.26(c).

Potential benefits and costs to consumers. The proposed time-barred debt and revival disclosures would benefit consumers by providing them with information that may be important when deciding how to respond to a request for payment. A debt collector's attempt to collect a time-barred debt may give a consumer the impression that the debt is legally enforceable—an impression that is false for time-barred debts. A consumer who takes away from the collection attempt that he or she will, or could, be sued for a time-barred debt may place greater priority on paying that debt than if he or she knew that the debt collector could not sue. Furthermore, a consumer who is unaware of the actions that would trigger revival may revive the debt collector's right to sue, for example by making a partial payment.

The consumer benefits of the proposed time-barred debt and revival disclosures depend on a number of factors, including: (i) How frequently debt collectors attempt to collect debt that is time barred; (ii) what consumers already understand about debts' time-barred status and how much the proposed disclosures would improve

[129] *See* CFPB Quantitative Testing Report, *supra* note 64. The survey results provide important information on consumer comprehension of disclosures about time-barred debt; however, as further discussed in the Testing Results Report, effects observed in a controlled setting such as the survey may differ from those observed in practice.

[130] Bureau of Consumer Fin. Prot., *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt* (Jan. 2017), *https://www.consumerfinance.gov/data-research/research-reports/consumer-experiences-debt-collection-findings-cfpbs-survey-consumer-views-debt/*.

[131] For more information about Bureau data sources, see Sources and Uses of Data at the Bureau of Consumer Financial Protection (Sept. 2018), *https://www.consumerfinance.gov/data-research/research-reports/sources-and-uses-data-bureau-consumer-financial-protection/*.

[132] *See* Bureau of Consumer Fin. Prot., *Study of Third-Party Debt Collection Operations* (July 2016), *https://www.consumerfinance.gov/documents/755/20160727_cfpb_Third_Party_Debt_Collection_Operations_Study.pdf* (hereinafter CFPB Debt Collection Operations Study).

[133] *See* Small Business Review Panel Report, *supra* note 51.

[134] These requirements, and the specificity of the requirements, may vary depending upon the jurisdiction in which the collection occurs. For example, as discussed in part II.C, certain States require specific disclosure language be provided when collecting time-barred debt.

[135] *See* 84 FR 23274, 23372 (May 21, 2019).

their understanding about time-barred debt and revival; and (iii) the value to consumers of gaining a better understanding of time-barred debt and revival and making better-informed decisions as a result. The Bureau cannot fully quantify each of these factors, although the Bureau has research and other data that are relevant to the potential extent of these benefits.

First, regarding the frequency with which debt collectors attempt to collect time-barred debt, the Bureau is not aware of representative data showing how much debt collection activity involves time-barred debt. There is evidence that some debt collectors contact a substantial share of consumers to attempt to collect time-barred debt. For example, a 2013 FTC report notes that most statutes of limitations are between three and six years and estimates that, for certain large debt buyers, about a third of debt purchased was at least three years old, and 12 percent of debt purchased was at least six years old.[136] On the other hand, some contingency collection agencies have told the Bureau that they do not collect any debt that is time barred. Variation in State statutes of limitations makes quantification of the number of debts that are time barred difficult; some States consider debts time barred if they are three years from charge off, while others use longer periods, such as seven or 15 years, to demarcate time-barred debt. The Bureau has estimated that at least 49 million consumers are contacted by a third-party debt collector each year about a debt in collection.[137] Even if only a relatively small fraction of those consumers' debts were time barred, it could still mean that debt collectors contact millions of consumers each year about time-barred debts.

Second, the Bureau has some evidence that consumers do not have a clear understanding of what constitutes time-barred debt and the implications of having a debt that is time barred. In focus groups the Bureau observed in developing the proposed disclosures, for example, consumers expressed erroneous beliefs about if debts are time barred, if they can be sued for time-barred debt, and if time-barred debt can appear on their credit report.[138] As an example, one consumer said ''I think you're forgiven after twenty years.'' Additionally, as discussed in the Quantitative Testing Report, without a disclosure, most consumers believe they can be sued for a debt even if it is old enough to be time barred in most jurisdictions. When asked if a debt collector could sue to collect a debt if the debtor did nothing in response to the collection notice for a ten-year-old debt, about 65 percent of respondents who read a notice about a debt that did not include a time-barred debt disclosure incorrectly reported that the debt collector was legally allowed to sue to collect the debt.[139] Being presented with a disclosure explaining that a debt is time barred largely corrected this misunderstanding: Approximately 65 percent of respondents who were randomly assigned a notice containing a time-barred debt disclosure (with or without a revival disclosure) correctly stated that they could not be sued on the debt.[140]

Similarly, the Bureau has evidence to suggest that consumers do not understand the actions that trigger revival of a debt collector's right to sue on a time-barred debt. In focus groups, participants in general were confused about actions that would trigger revival, in particular finding it surprising that making a payment made them susceptible to being sued. One participant said, ''Why would they punish me for trying to make a payment?'' [141] The Bureau's quantitative research findings are consistent with this. Of the respondents who did not receive a disclosure informing them of the actions that trigger revival, fewer than 20 percent correctly reported that the debt collector is legally allowed to sue the debtor if the debtor makes a partial payment, and fewer than 20 percent correctly reported that a debt collector is legally allowed to sue if the debtor sends a letter acknowledging the debt as theirs.[142] In contrast, once a revival disclosure was provided, about 70 percent of respondents reported correctly that the debtor can be sued after making a partial payment, and about 58 percent reported correctly that the debtor can be sued after writing to the debt collector to acknowledge the debt as theirs.[143] This research suggests that consumers generally do not understand that making a partial payment or writing a debt collector to acknowledge a time-barred debt can trigger revival of a debt collector's right to sue to collect the debt, but that a revival disclosure can substantially improve understanding of the implications of these actions.

Finally, the Bureau has evidence that, if consumers know that debts are time barred, that knowledge is likely to affect their conduct relating to the debts. Consumers in focus groups expressed that it was important to know that a debt was time barred. The Bureau's Quantitative Testing Report indicates that, for many respondents, understanding a debt's time-barred status and revival could affect their choice of what to do about a debt under some circumstances. Respondents who were shown a time-barred debt and revival disclosure were more likely to say that they would ignore the debt, and less likely to say that they would make a payment on the debt, than respondents who did not see a disclosure or who saw a time-barred debt disclosure without a revival disclosure.[144] These differences were statistically significant and relatively large in magnitude. For example, of respondents who saw either a time-barred debt disclosure without revival or no time-barred debt disclosure, about 31 to 38 percent said they would be ''very likely'' to make a full or partial payment on a hypothetical debt, whereas about 23 percent of respondents who saw the a time-barred debt with revival disclosure said they would be ''very likely'' to pay.[145] The fact that many respondents who saw a time-barred debt with revival disclosure said they would make different choices suggests that, for consumers such as these respondents, the information in the proposed disclosure is valuable in making choices.

The Bureau is unaware of data that could be used to estimate the frequency with which debt collectors in fact sue or threaten to sue on revived debt. Industry representatives state that many debt collectors choose not to sue or threaten to sue on time-barred debt even if the consumer takes action to revive the right

[136] FTC Debt Buying Report, *supra* note 8, at 43. The same study estimates that, even for debts that are at least 15 years old, these debt buyers attempted to collect the debt at least 29 percent of the time. *Id.* at B–12.

[137] *See* 84 FR 23274, 23384 (May 21, 2019).

[138] FMG Focus Group Report, *supra* note 40, at 9–10.

[139] CFPB Quantitative Testing Report, *supra* note 64, at appendix table 8. The length of the limitations period generally varies by State and debt type. Most statutes of limitations applicable to debt collection claims are between three and six years, and therefore a ten-year-old debt is likely to be time-barred in most states.

[140] *Id.*

[141] FMG Cognitive Report, *supra* note 40, at 35–36.

[142] CFPB Quantitative Testing Report, *supra* note 64, at appendix tables 9–10. These results compare respondents who received a time-barred debt with revival disclosure to respondents who received either a time-barred debt disclosure that did not mention revival or no time-barred debt disclosure at all.

[143] *Id.*

[144] *Id.* at 28–30. Respondents were asked about a hypothetical debt and told that ''while it would not be easy, [the respondent] probably could find a way to come up with money to pay the debt.'' The survey results thus more closely reflect consumer choices in that situation than situations in which consumers are either more or less able to repay.

[145] *Id.* at appendix table 23.

to sue, and one major trade association composed largely of debt buyers has established standards that prohibit its members from suing or threatening to sue on time-barred debt even if the right to sue has been revived.[146] However, the Bureau does not know what share of time-barred debts are collected by debt collectors following such a policy. The benefits of the revival disclosures in the supplemental proposal may be limited if few debt collectors in fact sue or threaten to sue after the right to do so has been revived.

The estimates above suggest that the proposed time-barred debt and revival disclosures could benefit some consumers, but the Bureau expects this benefit could vary based on current State law and the practices of particular debt collectors. The Bureau understands, for example, that some debt collectors, when attempting to collect time-barred debt, currently disclose to consumers that they cannot sue to collect the debt.[147] Moreover, certain jurisdictions, including California and New York, require debt collectors to make time-barred debt disclosures, and in some cases revival disclosures, in at least some circumstances. The benefits of the proposed disclosures may be limited where similar disclosures are already being provided.

The proposed disclosures could have costs to consumers if they lead to mistaken beliefs about the consequences of consumers' actions. Some results of the Bureau's quantitative testing suggest that a revival disclosure could lead some consumers to overgeneralize the actions that can make them susceptible to lawsuit. In the Bureau's quantitative testing, about 45 percent of respondents who saw the revival disclosure incorrectly reported that the debt collector is legally allowed to sue the debtor to collect time-barred debt if the debtor calls to acknowledge the debt as theirs, relative to about 17 percent of respondents who saw no disclosure about time-barred debt or revival and about 9 percent of respondents who saw a time-barred debt disclosure without revival.[148] As discussed in the section-by-section analysis of proposed § 1006.26(c)(3)(i), the Bureau has made a small change to the content of the disclosures on proposed Model Forms B–5 through B–7 (*i.e.,* the proposed model forms containing revival language), specifically mentioning that the debt collector will not sue if the consumer does nothing or speaks to the debt collector about the debt, to attempt to reduce the risk of this type of overgeneralization.

Another potential cost to consumers could arise if the proposed disclosures make debt collectors more likely to sue consumers before a debt becomes time-barred. The Bureau's research provides some evidence that consumers may be less likely to pay debts that they know are time barred, as discussed below in the Bureau's consideration of costs to covered persons. Requiring debt collectors to disclose that a debt is time barred may therefore reduce the number of time-barred debts that are paid. Knowing that a consumer is less likely to pay a time-barred debt may make debt collectors more likely to pursue litigation prior to a debt reaching the statute of limitations, which could impose costs on some consumers. However, as described below, the available evidence suggests that, in practice, time-barred debt disclosures in use today do not lead to a material reduction in the aggregate rate at which time-barred debt is repaid, which in turn suggests that there would not be a large increase in litigation. The Bureau requests data and other evidence that would permit it to better estimate any such effects.

Potential benefits and costs to covered persons. The supplemental proposal would require debt collectors who attempt to collect time-barred debt to provide new disclosures in certain communications with consumers. This could impose one-time costs for systems that identify whether a debt is time barred and whether (and if so, when) it is subject to revival, and it may impose ongoing costs both to determine whether debts are time barred and to make disclosures when appropriate.

To quantify costs of the proposal to covered persons, the Bureau would need to estimate the number of debt collectors who collect time-barred debt, the number of time-barred accounts they collect, the cost to such debt collectors of determining whether a debt is time barred and whether and when it can be revived, and the cost of making the proposed disclosures when appropriate. The Bureau does not have representative data that permit it to estimate the number of debt collectors who collect time-barred accounts or the number of time-barred accounts they collect. The Bureau understands based on industry outreach that many debt collectors do not collect time-barred accounts. Even debt collectors who do not regularly collect time-barred debt might need to review systems to ensure that they are not communicating about time-barred debts without providing the appropriate proposed disclosure in circumstances when they are required; however, as discussed below, the Bureau expects that the burden of the proposed provision on such debt collectors would be lower than for debt collectors who regularly collect time-barred accounts.

Among those debt collectors who do regularly attempt to collect time-barred accounts, the Bureau understands that some currently disclose to consumers that they cannot sue to collect the debt. Moreover, debt collectors who are collecting debt in certain jurisdictions, such as California and New York, already must make such disclosures in at least some circumstances. Also, debt collectors who litigate accounts must know whether an account is time barred to avoid threatening to sue or suing on time-barred accounts in violation of the FDCPA as interpreted by existing FDCPA case law. Thus, some debt collectors, particularly ones that collect nationwide or that engage in litigation, already have a process in place for identifying time-barred accounts and, where they do attempt to collect time-barred debt, for providing disclosures to consumers about the time-barred status of such accounts.[149]

The Bureau understands that determining whether an account is time barred is not always straightforward, particularly for debt collectors operating in a range of jurisdictions. Different States have different statutes of limitations for different types of debt.[150] Which statute applies depends on questions such as where the consumer resides and the nature of the credit contract, as well as which State's law a court applies to a given case. As noted above, many debt collectors already must make decisions about a debt's time-barred status to determine whether a lawsuit is permissible or, in certain

[146] Receivables Mgmt. Ass'n Int'l, Receivables Management Certification Program, at 32 (Jan. 2018), *https://rmassociation.org/wp-content/uploads/2018/02/Certification-Policy-version-6.0-FINAL-20180119.pdf* (''A Certified Company shall not knowingly bring or imply that it has the ability to bring a lawsuit on a debt that is beyond the applicable statute of limitations, even if state law revives the limitations period when a payment is received after the expiration of the statute.'')

[147] Some debt collectors also must provide such disclosures as a result of consent agreements with law enforcement agencies, including the Bureau and the FTC. *See supra* note 96.

[148] CFPB Quantitative Testing Report, *supra* note 64, at appendix table 11.

[149] Consistent with this, the FTC found that debt buyers commonly consider the prevalence of time-barred debt when bidding on portfolios of debt, suggesting that debt buyers and sellers of debt regularly determine whether debts are time barred. *See* FTC Debt Buying Report, *supra* note 8, at 21.

[150] Small Business Review Panel Report, *supra* note 51, at 25.

States, whether particular disclosures are required. Even for these debt collectors, however, the proposed rule would increase the importance of making the correct determination. The Bureau anticipates that some collection agencies and debt buyers would incur legal and programming costs to develop a system to identify time-barred accounts and incorporate the determination into the collection management system.[151] These costs could be mitigated somewhat by the proposed rule's ''know or should know'' standard for the debt's time-barred status, which could reduce the likelihood that debt collectors would be held liable for failing to identify time-barred debt. Debt collectors would also incur costs to train staff to answer consumer questions about the proposed disclosures and to incorporate information about the new disclosures into their systems for managing communication with consumers.

Debt collectors could also incur ongoing costs of determining whether debts are time barred. Debt collectors would need to update systems from time to time to reflect changes in State laws regarding statutes of limitations and might need to perform new legal analyses when facing novel questions of law or fact, such as when beginning to collect debt from consumers in a particular jurisdiction for the first time.

For accounts that are identified as time barred, debt collectors would need to make disclosures with certain written and oral communications. This would impose direct costs to make the disclosures and potentially indirect costs because consumers may be less likely to pay debts after being informed that those debts are time barred.

Debt collectors most often initiate communication with consumers by letter, meaning that most disclosures required by the proposal would be made in writing.[152] The Bureau does not anticipate that debt collectors would incur substantial ongoing costs to provide the proposed disclosures in written materials because required disclosures could be automatically included in written materials when applicable.

Some debt collectors call consumers before sending any written material and would need to make any required disclosure orally in their first communication with the consumer. For oral communications, the Bureau anticipates that debt collectors or their vendors would adjust collection management systems to identify disclosures that must be made and prompt debt collector employees to make oral disclosures when required. The required disclosure would increase the length of each conversation about a time-barred debt by perhaps 5 to 10 seconds, though if consumers have questions about the disclosure, this could lengthen some calls considerably. If the disclosure lengthens initial calls to collect a time-barred debt by 15 seconds on average, given an assumed average labor cost of $22 per hour for debt collectors, this would cost approximately $0.09 per call.[153]

Costs may also increase if debt collectors and creditors increase monitoring of calls regarding time-barred debt to ensure compliance. Many debt collectors currently audit telephone conversations, either by listening to a sample of calls or by using automated voice-recognition software, to ensure that individual debt collectors comply with applicable law and other standards. A new required disclosure for time-barred debt could increase the cost of such monitoring, by adding to the list of items that must be audited.

The Bureau believes that many consumers are unaware of the statute of limitations or may not know whether it has expired for their debt. As discussed above, the Bureau's quantitative survey suggests that some consumers might not repay a debt if they know they cannot be sued, although others may repay regardless.[154] While the Bureau's quantitative research findings show that about 44 percent of respondents who viewed a time-barred debt with revival disclosure indicated they would be ''very unlikely'' to pay, about 32 percent answered they would be likely or very likely to pay (indicated either a 4 or 5 on a 5-point scale where 5 was ''very likely'').[155] In contrast, about 18 to 26 percent of consumers who did not see the revival disclosure said they would be ''very unlikely'' to pay, and about 54 to 56 percent of these consumers said they would be likely or very likely to repay.[156]

These survey results reflect responses to a hypothetical question by respondents who were being asked specifically about a debt's time-barred status. They suggest that the proposed disclosures can affect consumers' decisions about whether to repay under certain circumstances. The degree to which the proposed disclosures would affect repayment of time-barred debt in aggregate depends on a number of other factors, including the extent to which debt collectors actively attempt to collect time-barred debts, whether debt collectors are able to contact consumers, and whether consumers are willing and able to repay debts. To better understand the effect of time-barred debt disclosures on aggregate real-world collections activity, the Bureau examined credit report data from the CCP. As noted above, some debt collectors already provide time-barred debt disclosures; some do so voluntarily, while others are required by State law or a consent order to do so. While the Bureau has no data regarding debt collectors who voluntarily provide time-barred debt disclosures, the Bureau has some data in the CCP regarding the effects of disclosures mandated by State laws. The Bureau analyzed whether a likely time-barred collections tradeline in the CCP has a lower probability of being paid if there is a State-mandated time-barred debt disclosure requirement in effect. To determine whether a collections tradeline is likely past the State statute of limitations, the Bureau used the same procedure as in its analysis of the effects of prohibiting threats of suit on time-barred debt in the May 2019 Proposed Rule.[157] The Bureau identified nine States with laws or regulations mandating some kind of time-barred debt disclosure: California,[158] Connecticut,[159] Massachusetts,[160] Nevada,[161] New

[151] The Bureau understands that many debt collectors who currently track the time-barred status of debts to comply with existing requirements are able to categorize debts as time barred in an automated way. In part, this may require debt collectors to take a conservative approach of erring in favor of categorizing debt as time barred in cases where there might be doubt as to a debt's time-barred status and where a detailed fact-specific inquiry about a particular account would be costly.

[152] CFPB Debt Collection Operations Study, *supra* note 132, at 28.

[153] *Id.* at 17.

[154] CFPB Quantitative Testing Report, *supra* note 64, at 28–30. In addition, another study found that, when told they could not be sued, 34 percent of participants reflecting on a hypothetical scenario said they would decline to pay relative to 6 percent who were not told they could not be sued. FTC Debt Buying Report, *supra* note 8, at 47.

[155] CFPB Quantitative Testing Report, *supra* note 64, at appendix table 23.

[156] *Id.* The likelihood that consumers choose to repay actual debts is likely to be different than the rate at which survey respondents said they would repay debt in a hypothetical situation, but the survey findings do suggest that time-barred debt and revival disclosures will affect some consumers' repayment decisions.

[157] *See* 84 FR 23274, 23381–82 (May 21, 2019).

[158] Cal. Civ. Code 1788.52(d). This law only applies to debt buyers, and so the Bureau only considered California debts to have a disclosure required if the CCP data indicate that the debt was held by a debt buyer.

[159] Conn. Gen. Stat. 36a–805(a)(14).

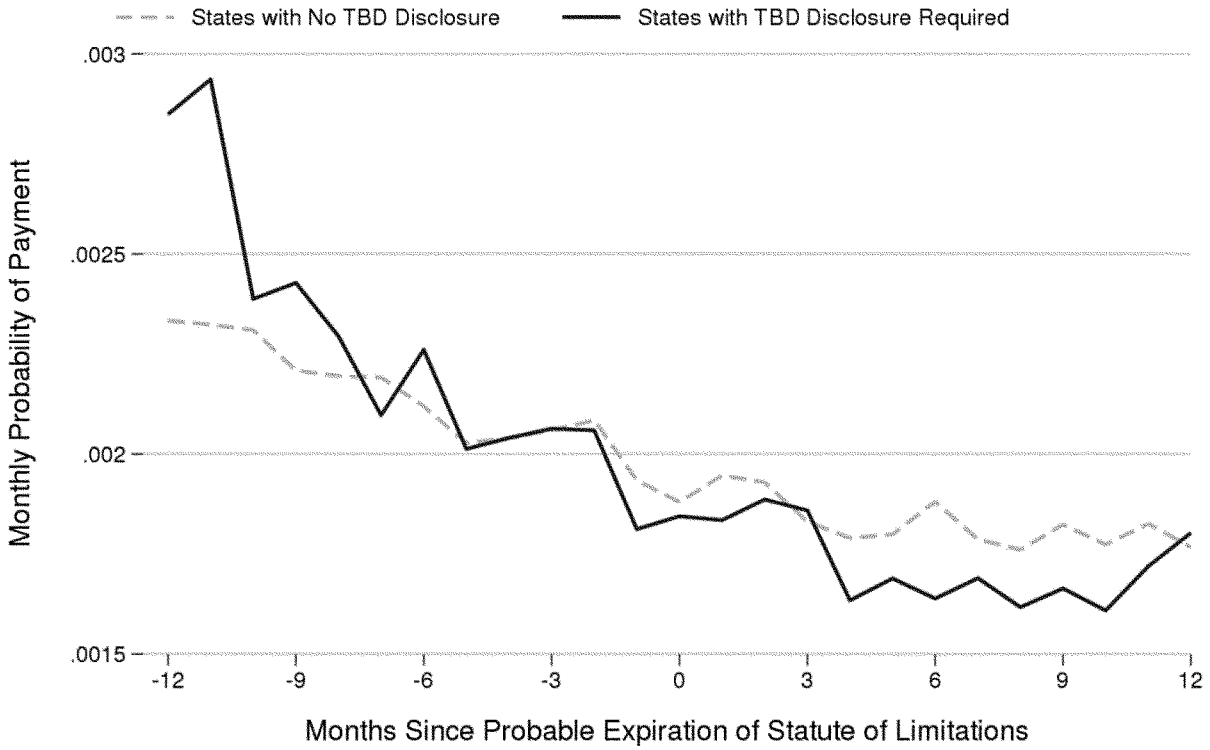
[160] Mass Code Regs., tit. 904, 7.07(24).

[161] Nev. Rev. Stat. 649.332(2). This regulation only applies to ''hospital'' debt. The Bureau only

Continued

Mexico,[162] New York,[163] North Carolina,[164] Vermont,[165] and West Virginia.[166]

The Bureau calculated the hazard rate of payment over time in collections—that is, the probability of payment occurring after a given number of months, conditional on no payment occurring before—for all collections tradelines in the CCP. The Bureau also calculated the hazard rate separately for tradelines belonging to consumers residing in a State where a time-barred debt disclosure would have been required after the expiration of the statute of limitations, and for tradelines belonging to consumers residing in States that did not have these requirements.[167] The Bureau then calculated the average hazard rate based on the number of months before or after the probable expiration of the applicable statute of limitations, again with separate calculations for loans with and without a State-mandated time-barred debt disclosure. This calculation is plotted in Figure 1, below.[168] The hazard of payment declines steadily over the year leading up to the probable expiration of the statute of limitations and continues to decline at roughly the same rate afterwards, with the rate of decline flattening out slowly over time. If the requirement to make a time-barred debt disclosure significantly affects payment rates, one would expect the hazard rate in States with disclosures to diverge downward from the rate in States without disclosures following the probable expiration of the State statute of limitations. In fact, although prior to the probable expiration of the State statute of limitations the hazard of payment declines slightly faster in States with time-barred debt disclosures than in States that do not require disclosure, the slope flattens out more following the probable expiration of the statute of limitations in States with disclosures, compared to States without. This suggests that time-barred debt disclosures in these States have not resulted in a large drop in the aggregate likelihood that consumers pay time-barred debts, although it is still consistent with the possibility that repayment rates are reduced for certain types of debt or for consumers in certain situations.



Thus, while the requirement to provide the proposed disclosures would likely impose some costs on covered persons, the Bureau does not expect that the proposed disclosures would have large effects on aggregate collections revenue.

Alternatives considered. The Bureau considered alternative proposals regarding time-barred debt and revival, including those considered as part of the SBREFA process. In the Small Business Review Panel Outline, the Bureau considered an alternative that would also require debt collectors to

considered Nevada debts to have a disclosure required if the CCP data indicate that the tradeline was related to a medical debt.

[162] N.M. Admin. Code 12.2.12.9.

[163] N.Y. Comp. Codes R. & Regs. tit. 23, 1.3.

[164] N.C. Gen. Stat. 58–70–115.

[165] 6 Code of Vt. Rules 031–004–Rule CF 104.05.

[166] W. Va. Code 46a–2–128(f).

[167] The calculations rely on the assumption that debts owed by consumers who reside in a given State are governed by the statute of limitations in that State and that consumers in that State receive disclosures mandated by the law of that State. Note that some of the States in question passed their laws or regulations mandating a time-barred debt disclosure during the sample period studied by the Bureau. Specifically, California's law became effective January 1, 2014; Connecticut's law became effective October 1, 2013; Massachusetts' regulation became effective March 2, 2012; Nevada's law became effective June 13, 2007; New Mexico's law became effective March 15, 2011; New York's regulation became effective December 1, 2014; North Carolina's law became effective October 1, 2009; Vermont's law became effective January 1, 1976; and West Virginia's law became effective June 6, 2014. The CCP data used in the Bureau's analysis covers the period from 2005 to 2018. For purposes of this analysis, the Bureau excluded debts belonging to consumers in States that eventually mandated time-barred debt disclosures if the probable expiration of the statute of limitations occurred before the disclosure became effective.

[168] The overall level of the hazard rate in the figure is quite low—on the order of two-tenths of 1 percent. This is to be expected given the monthly nature of the series. Although around 10 percent of all collections tradelines eventually show some evidence of payment, the proportion that do so in any given month is quite low.

provide a disclosure when collecting time-barred debt but would prohibit debt collectors from collecting on time-barred debt that can be revived unless they waive the right to sue on the debt. Under the requirement considered, subsequent debt collectors would be bound by the disclosure made by any previous debt collectors. Such a requirement could have benefits for consumers relative to the supplemental proposal, because it would mean debt would generally not be revived regardless of whether consumers read and understood a disclosure about revival. Similarly, this alternative would be more burdensome for debt collectors than the proposed requirement because it would prevent them from suing to recover debts when the consumer had taken actions that revive the debts. However, the differences in consumer benefits and in debt collector costs from this alternative could be quite small assuming that, as industry has claimed, collectors do not in fact sue to recover debts that have been revived.

The Bureau also considered requiring a time-barred debt disclosure without requiring any disclosure about revival. Such a requirement could be less burdensome for small entities under some circumstances. However, the Bureau's quantitative disclosure testing indicates that many consumers who view a time-barred debt disclosure without a disclosure about revival fail to understand that certain actions they take could revive the debt.[169]

G. Potential Reduction of Access by Consumers to Consumer Financial Products and Services

Economic theory indicates that it is possible for changes in debt collection rules, such as those contained in this supplemental proposal, to affect consumers' access to credit. Under economic theory, creditors should decide to extend credit based on the discounted expected value of the revenue stream from that extension of credit. This entails considering the possibility that the consumer will ultimately default and expected payments will decrease. If the proposed rule were to increase collection costs or reduce revenue collected from time-barred debt, then this would reduce the return to lending, which in theory could lead lenders to increase the cost of lending, restrict availability of credit, or both.

As discussed in the May 2019 Proposed Rule, the Bureau has considered the available empirical data and research on the effect of State debt collection laws on the price and availability of credit.[170] That research shows that State debt collection laws affect the price and availability of credit in ways that theory would predict, but that effects are relatively small even for changes in State laws that are likely more significant than the disclosures in this proposed rule.[171] In light of that research and the CCP analysis above, the Bureau concludes that the disclosures in the proposed rule are unlikely to cause any significant reduction in access to consumer credit. The Bureau requests comment on this conclusion and data that can provide insights into the impact of the proposed disclosures on the price and availability of credit.

H. Potential Specific Impacts of the Proposed Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

Depository institutions and credit unions are generally not debt collectors under the FDCPA and therefore would not be covered under the proposal. Creditors could experience indirect effects from the proposal to the extent they hire FDCPA-covered debt collectors or sell debt in default to such debt collectors. Such creditors could experience higher costs if debt collectors' costs increase and if debt collectors are able to pass those costs on to creditors. The Bureau understands that many depository institutions and credit unions with $10 billion or less in total assets rely on FDCPA-covered debt collectors to collect uncollected amounts, but the Bureau does not have data indicating whether such institutions are more or less likely than other creditors to do so. The Bureau requests additional data and other information about potential benefits and costs of the proposal for these institutions.

2. Impact of the Proposed Provisions on Consumers in Rural Areas

Consumers in rural areas may experience benefits from the supplemental proposed rule that are different in certain respects from the benefits experienced by consumers in general. For example, consumers in rural areas may be more likely to borrow from small local banks and credit unions that may be less likely to outsource debt collection to FDCPA-covered debt collectors. The Bureau does not have any information to suggest that consumers in rural areas are more or less likely than other consumers to have time-barred debt or to benefit from disclosures about time-barred debt. The Bureau will further consider the impact of the proposed rule on consumers in rural areas. The Bureau therefore asks interested parties to provide data, research results, and other factual information on the impact of the proposed rule on consumers in rural areas.

I. Request for Information

The Bureau will further consider the benefits, costs, and impacts of the proposed provisions, and any modifications to the proposed provisions made in response to comments, before finalizing the proposal. As noted above, there are a number of areas in which additional information would allow the Bureau to better estimate the benefits, costs, and impacts of this proposal and more fully inform the rulemaking. The Bureau asks interested parties to provide comment or data on various aspects of the proposed rule, as detailed in the section-by-section analysis. Information provided by interested parties regarding these and other aspects of the proposed rule may be considered in the analysis of the benefits, costs, and impacts of the final rule. The Bureau specifically requests precise cost or operational data that would permit it to better evaluate the potential implementation costs and ongoing operational costs imposed by the proposed provisions.

VII. Regulatory Flexibility Analysis

Under section 603(a) of the Regulatory Flexibility Act (RFA), an initial regulatory flexibility analysis (IRFA) ''shall describe the impact of the proposed rule on small entities.'' [172] Section 603(b) of the RFA sets forth the required elements of the IRFA. Section 603(b)(1) requires a description of the reasons agency action is being considered.[173] Section 603(b)(2) requires a succinct statement of the objectives of, and the legal basis for, the proposed rule.[174] Section 603(b)(3) requires a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.[175] Section 603(b)(4) requires a description of the projected

[169] *See* CFPB Quantitative Testing Report, *supra* note 64, at 16–25.

[170] *See* 84 FR 23274, 23389–91 (May 21, 2019).

[171] For example, one study found that additional State regulations on debt collectors' conduct caused the success rate of a credit inquiry to decline by less than 0.02 percentage points off a base rate of about 43 percent. *See* 84 FR 23274, 23389–90 (May 21, 2019).

[172] 5 U.S.C. 603(a).

[173] 5 U.S.C. 603(b)(1).

[174] 5 U.S.C. 603(b)(2).

[175] 5 U.S.C. 603(b)(3).

reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record.[176] Section 603(b)(5) requires identifying, to the extent practicable, all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.[177] Section 603(c) requires a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.[178] Finally, section 603(d)(1) requires a description of any projected increase in the cost of credit for small entities, a description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any increase in the cost of credit for small entities (if such an increase in the cost of credit is projected), and a description of the advice and recommendations of representatives of small entities relating to the cost of credit issues.[179]

A. Description of the Reasons Why Agency Action Is Being Considered

The Bureau is issuing this supplemental proposed rule to implement and interpret the FDCPA, particularly with respect to debt collection communication and disclosures regarding time-barred debts and revival. As discussed in part V, the Bureau believes that the supplemental proposed rule would provide additional clarity about the FDCPA's requirements to debt collectors and consumers and help ensure that the features of debt collection are fully, accurately, and effectively disclosed to consumers.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

As discussed in part IV, the Bureau issues this supplemental proposal pursuant to its authority under the FDCPA and the Dodd-Frank Act. The objectives of the supplemental proposed rule are to clarify and implement the FDCPA's provisions and to further the FDCPA's goals of eliminating abusive debt collection practices and ensuring that debt collectors who refrain from abusive debt collection practices are not competitively disadvantaged.[180] As the first Federal agency with authority under the FDCPA to prescribe substantive rules with respect to the collection of debts by debt collectors, the Bureau proposes consumer disclosure requirements to provide greater clarity for both consumers and industry participants as to the information they must provide consumers to comply with the law. The Bureau intends that these clarifications will help to eliminate abusive debt collection practices and ensure that debt collectors who refrain from abusive debt collection practices are not competitively disadvantaged.[181]

As amended by the Dodd-Frank Act, FDCPA section 814(d) provides that the Bureau may ''prescribe rules with respect to the collection of debts by debt collectors,'' as that term is defined in the FDCPA.[182] Section 1022(a) of the Dodd-Frank Act provides that ''[t]he Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.'' [183] ''Federal consumer financial law'' includes title X of the Dodd-Frank Act and the FDCPA. The legal basis for the proposed rule is discussed in detail in the legal authority analysis in part IV and in the section-by-section analysis in part V.

C. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

As discussed in the Small Business Review Panel Report, for the purposes of assessing the impacts of the supplemental proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions.[184] A ''small business'' is determined by application of SBA regulations in reference to the North American Industry Classification System (NAICS) classifications and size standards.[185] Under such standards, the Small Business Review Panel (Panel) identified four categories of small entities that may be subject to the proposed provisions: Collection agencies (NAICS 561440) with annual receipts at or below the SBA size standard (currently $16.5 million), debt buyers (NAICS 522298) with annual receipts at or below the size standard (currently $41.5 million), collection law firms (NAICS 54110) with annual receipts at or below the size standard (currently $12 million), and servicers who acquire accounts in default. These servicers include depository institutions (NAICS 522110, 522120, and 522130) with assets at or below the size standard (currently $600 million) or non-depository institutions (NAICS 522390) with annual receipts at or below the size standard (currently $22 million). The Panel did not meet with small nonprofit organizations or small government jurisdictions.[186]

The following table provides the Bureau's estimate of the number and types of entities that may be affected by the proposed provisions:

TABLE 1—ESTIMATED NUMBER OF AFFECTED ENTITIES AND SMALL ENTITIES BY CATEGORY

Category	NAICS	Small entity threshold	Estimated total number of debt collectors within category	Estimated number of small entity debt collectors
Collection agencies	561440	$16.5 million in annual receipts	9,000	8,800
Debt buyers	522298	$41.5 million in annual receipts	330	300
Collection law firms	541110	$12.0 million in annual receipts	1,000	950
Loan servicers	522110, 522120, and 522130 (depositories); 522390 (non-depositories.	$600 million in annual receipts for depository institutions; $22.0 million or less for non-depositories.	700	200

[176] 5 U.S.C. 603(b)(4).
[177] 5 U.S.C. 603(b)(5).
[178] 5 U.S.C. 603(c).
[179] 5 U.S.C. 603(d)(1).
[180] *See* 15 U.S.C. 1692(e).
[181] *See id.*
[182] 15 U.S.C. 1692*l*(d).
[183] 12 U.S.C. 5512(a).
[184] 5 U.S.C. 601(6).
[185] The current SBA size standards are found on SBA's website, *http://www.sba.gov/content/table-small-business-size-standards.*
[186] Small Business Review Panel Report, *supra* note 51, at 29.

Descriptions of the four categories:

Collection agencies. The Census Bureau defines ''collection agencies'' (NAICS code 561440) as ''establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients.'' [187] According to the Census Bureau, in 2012 (the most recent year for which detailed data are available), there were approximately 4,000 collection agencies with paid employees in the United States. Of these, the Bureau estimates that 3,800 collection agencies have $15.0 million or less in annual receipts and are therefore small entities.[188] Census Bureau estimates indicate that in 2012 there were also more than 5,000 collection agencies without employees, all of which are presumably small entities.

Debt buyers. Debt buyers purchase delinquent accounts and attempt to collect amounts owed, either themselves or through agents. The Bureau estimates that there are approximately 330 debt buyers in the United States, and that a substantial majority of these are small entities.[189] Many debt buyers—particularly those that are small entities—also collect debt on behalf of other debt owners.[190]

Collection law firms. The Bureau estimates that there are 1,000 law firms in the United States that either have as their principal purpose the collection of consumer debt or regularly collect consumer debt owed to others, so that the proposed rule would apply to them. The Bureau estimates that 95 percent of such law firms are small entities.[191]

Loan servicers. Loan servicers would be covered by the proposed rule if they are covered by the FDCPA because, among other things, they acquire the right to service loans already in default.[192] The Bureau believes that this is most likely to occur with regard to companies that service mortgage loans or student loans. The Bureau estimates that approximately 200 such mortgage servicers may be small entities and that few, if any, student loan servicers that would be covered by the proposed rule are small.[193]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for the Preparation of the Report or Record

The supplemental proposed rule would not impose new reporting or recordkeeping requirements, but it would impose new compliance requirements on small entities subject to the proposal.[194] The proposed requirements and the costs associated with them are discussed below.

In evaluating the potential impacts of the proposal on small entities, the Bureau takes as a baseline the current legal framework governing debt collection. This includes debt collector practices as they currently exist, responding to the requirements of the FDCPA as currently interpreted by courts and law enforcement agencies, other Federal laws, and the rules and statutory requirements promulgated by the States. This baseline represents the status quo from which the impacts of this proposal will be evaluated.

The Bureau requests comment on the estimated impacts on small entities discussed below and solicits data and analysis that would supplement the quantitative estimates discussed below or provide quantitative estimates of benefits, costs, or impacts for which there are currently only qualitative discussions.

The discussion here is confined to the direct costs to small entities of complying with the requirements of the supplemental proposed rule, if finalized. Other impacts, such as the impacts of disclosures about time-barred debt on consumers' repayment decisions, are discussed in part VI. The Bureau believes that, except where otherwise noted, the impacts discussed in part VI would apply to small entities.

The supplemental proposal would require small entity debt collectors that attempt to collect time-barred debt to provide new disclosures in certain communications with consumers. This could impose one-time costs for systems that identify whether a debt is time barred and whether (and if so, when) it is subject to revival, and it may impose ongoing costs both to determine whether debts are time barred and to make disclosures when appropriate.

To quantify costs of the proposal to small entities, the Bureau would need to estimate the number of small entity debt collectors that collect time-barred debt, the number of time-barred accounts they collect, the cost to such debt collectors of determining whether a debt is time barred and whether and when it can be revived, and the cost of making the proposed disclosures when appropriate. The Bureau does not have representative data that permit it to estimate the number of small entity debt collectors that collect time-barred accounts or the number of time-barred accounts they collect. The Bureau understands based on industry outreach that many debt collectors do not collect time-barred accounts. Even debt collectors that do not regularly collect time-barred debt might need to review systems to ensure that they are not communicating about time-barred debts without providing the appropriate proposed disclosure in circumstances when they are required; however, the Bureau expects that the burden of the proposed provision on such debt collectors would be lower than for debt collectors that regularly collect time-barred accounts.

Among those debt collectors that do regularly attempt to collect time-barred accounts, the Bureau understands that

[187] As defined by the Census Bureau, collection agencies include entities that collect only commercial debt, and the proposed rule would apply only to debt collectors of consumer debt. However, the Bureau understands that relatively few collection agencies collect only commercial debt.

[188] The Census Bureau estimates average annual receipts of $95,000 per employee for collection agencies. Given this, the Bureau assumes that all firms with fewer than 100 employees and approximately one-half of the firms with 100 to 499 employees are small entities, which implies approximately 3,800 firms.

[189] The Receivables Management Association, the largest trade group for debt buyers, states that it has approximately 300 debt buyer members and believes that 90 percent of debt buyers are current members.

[190] The Bureau understands that debt buyers are generally nondepositories that specialize in debt buying and, in some cases, debt collection. The Bureau expects that debt buyers that are not collection agencies would be classified by the Census Bureau under ''all other nondepository credit intermediation'' (NAICS Code 522298).

[191] The primary trade association for collection attorneys, the National Creditors Bar Association (NCBA), states that it has approximately 600 law firm members, 95 percent of which are small entities. The Bureau estimates that approximately 60 percent of law firms that collect debt are NCBA members and that a similar fraction of non-member law firms are small entities.

[192] The Bureau expects that loan servicers are generally classified under NAICS code 522390, ''Other Activities Related to Credit Intermediation.'' Some depository institutions (NAICS codes 522110, 522120, and 522130) also service loans for others and may be covered by the proposed rule.

[193] Based on the December 2015 Call Report data as compiled by SNL Financial (with respect to insured depositories) and December 2015 data from the Nationwide Mortgage Licensing System and Registry (with respect to non-depositories), the Bureau estimates that there are approximately 9,000 small entities engaged in mortgage servicing, of which approximately 100 service more than 5,000 loans. *See* 81 FR 72160, 72363 (Oct. 19, 2016). The Bureau's estimate is based on the assumption that all those servicing more than 5,000 loans may acquire servicing of loans when loans are in default and that at most 100 of those servicing 5,000 loans or fewer acquire servicing of loans when loans are in default.

[194] While the supplemental proposed rule does not include new recordkeeping requirements, the Bureau notes that, by introducing a new compliance requirement, the supplemental proposed rule may increase the cost of complying with recordkeeping requirements proposed in the May 2019 Proposed Rule. This is because debt collectors would need to retain evidence of compliance with any additional compliance requirement.

some currently disclose to consumers that they cannot sue to collect the debt. Moreover, debt collectors who are collecting debt in certain jurisdictions, such as California and New York, already must make such disclosures in at least some circumstances. Also, debt collectors that litigate accounts must know whether an account is time barred to avoid threatening to sue or suing on time-barred accounts in violation of the FDCPA as interpreted by existing FDCPA case law. Thus, some debt collectors, particularly ones that collect nationwide or that engage in litigation, already have a process in place for identifying time-barred accounts and, where they do attempt to collect time-barred debt, for providing disclosures to consumers about the time-barred status of such accounts.[195]

The Bureau understands that determining whether an account is time barred is not always straightforward, particularly for debt collectors that operate in a range of jurisdictions. Different States have different statutes of limitations for different types of debt.[196] Which statute applies depends on questions such as where the consumer resides and the nature of the credit contract, as well as which State's law a court applies to a given case. As noted above, many debt collectors already must make decisions about a debt's time-barred status to determine whether a lawsuit is permissible or, in certain States, whether particular disclosures are required. Even for these debt collectors, however, the proposed rule would increase the importance of making the correct determination. The Bureau anticipates that some collection agencies and debt buyers would incur legal and programming costs to develop a system to identify time-barred accounts and incorporate the determination into the collection management system. These costs could be mitigated somewhat by the proposed rule's ''know or should know'' standard for the debt's time-barred status, which could reduce the likelihood that debt collectors would be held liable for failing to identify time-barred debt. Debt collectors would also incur costs to train staff to answer consumer questions about the proposed disclosures and to incorporate information about the new disclosures into their systems for managing communication with consumers.

Debt collectors could also incur ongoing costs of determining whether debts are time barred. Debt collectors would need to update systems from time to time to reflect changes in State laws regarding statutes of limitations and might need to perform new legal analyses when facing fact patterns that are new to their business, such as when beginning to collect debt from consumers in a particular jurisdiction for the first time.

For accounts that are identified as time barred, debt collectors would need to make disclosures with certain written and oral communications. This would impose direct costs to make the disclosures and potentially indirect costs because consumers may be less likely to pay debts after being informed that those debts are time barred.

Debt collectors most often initiate communication with consumers by letter, meaning that the majority of disclosures required by the proposal would be made in writing.[197] The Bureau does not anticipate that debt collectors would incur substantial ongoing costs to provide the proposed disclosures in written materials because required disclosures could be automatically included in written materials when applicable.

Some debt collectors call consumers before sending any written material and would need to make any required disclosure orally in their first communication with the consumer. For oral communications, the Bureau anticipates that debt collectors or their vendors would adjust collection management systems to identify disclosures that must be made and prompt debt collector employees to make oral disclosures when required. The required disclosure would increase the length of each conversation about a time-barred debt by perhaps 5 to 10 seconds, though if consumers have questions about the disclosure, this could lengthen some calls considerably. If the disclosure lengthens initial calls to collect a time-barred debt by 15 seconds on average, given an assumed average debt collector labor cost of $22 per hour, this would cost approximately $0.09 per call.[198]

Costs may also increase if debt collectors and creditors increase monitoring of calls regarding time-barred debt to ensure compliance. Many debt collectors currently audit telephone conversations, either by listening to a sample of calls or by using automated voice-recognition software, to ensure that individual debt collectors comply with applicable law and other standards. A new required disclosure for time-barred debt could increase the cost of such monitoring, by adding to the list of items that must be audited.

E. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

Certain other Federal laws and regulations include requirements that apply to FDCPA-covered debt collectors. However, consistent with the findings of the Panel, the Bureau is not aware of any other Federal regulations that currently duplicate, overlap, or conflict with the proposed rule.

The Bureau requests comment on the intersection between the proposed rule and other Federal laws and regulations. The Bureau specifically requests comment on conflicts that may arise between the proposed rule and other Federal laws and regulations and methods to minimize such conflicts to the extent they exist.

F. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of the Applicable Statutes and Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Section 603(c) of the RFA requires the Bureau to describe in the IRFA any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities.[199] In developing the proposed rule, the Bureau has considered alternative provisions and believes that none of the alternatives considered would be as effective at accomplishing the stated objectives of the FDCPA and the applicable provisions of title X of the Dodd-Frank Act while minimizing the impact of the proposed rule on small entities.[200]

In developing the proposal, the Bureau considered a number of alternatives, including those considered as part of the SBREFA process. In the Small Business Review Panel Outline, the Bureau considered an alternative that would also require debt collectors to provide a disclosure when collecting time-barred debt but would prohibit debt collectors from collecting on time-barred debt that can be revived unless

[195] Consistent with this, the FTC found that debt buyers commonly consider the prevalence of time-barred debt when bidding on portfolios of debt, suggesting that debt buyers and sellers of debt regularly determine whether debts are time barred. *See* FTC Debt Buying Report, *supra* note 8, at 21.

[196] Small Business Review Panel Report, *supra* note 51, at 25.

[197] CFPB Debt Collection Operations Study, *supra* note 132, at 28.

[198] *Id.* at 17.

[199] 5 U.S.C. 603(c).

[200] Certain alternatives, including those suggested by commenters, are discussed in part V above.

they waive the right to sue on the debt. Under the requirement considered, subsequent debt collectors would be bound by the disclosure made by any previous debt collectors. The Bureau believes that such a requirement would be more burdensome for small entities than the proposed requirement.

The Bureau also considered requiring a time-barred debt disclosure without requiring any disclosure about revival. Such a requirement could be less burdensome for small entities under some circumstances. However, the Bureau's quantitative disclosure testing indicates that many consumers who view a time-barred debt disclosure without a disclosure about revival fail to understand that certain actions they take could revive the debt.[201]

G. Discussion of Impact on Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters.[202] To satisfy these statutory requirements, the Bureau provided notification to the Chief Counsel for Advocacy of the Small Business Administration (Chief Counsel) that the Bureau would collect the advice and recommendations of the same small entity representatives identified in consultation with the Chief Counsel through the SBREFA process concerning any projected impact and the proposed rule on the cost of credit for small entities. The Bureau sought to collect the advice and recommendations of the small entity representatives during the Small Business Review Panel meeting regarding the potential impact on the cost of business credit because, as small debt collectors with credit needs, the small entity representatives could provide valuable input on any such impact related to the proposed rule.

The Bureau's Small Business Review Panel Outline asked small entity representatives to comment on how the proposals under consideration would affect the cost of credit to small entities. The Bureau believes that the disclosures in the supplemental proposal will have little impact on the cost of credit to small entities. The Bureau does recognize that consumer credit could become more expensive and less available as a result of requirements that restrict the collection of debt; however, the Bureau does not anticipate that the requirements of this supplemental proposal would have any significant impact on the cost or availability of consumer credit. Many small entities affected by the disclosures in the supplemental proposal use consumer credit as a source of credit and may, therefore, see costs rise if consumer credit availability decreases. The Bureau does not expect this to be a large effect and does not anticipate measurable impact.

During the SBREFA process, several small entity representatives said that the proposals under consideration at that time, which included time-barred debt disclosures among several other proposals, could have an impact on the cost of credit for them and for their small business clients. Some small entity representatives said that they use lines of credit in their business and that regulations that raise their costs or reduce their revenue could mean they are unable to meet covenants in their loan agreements, causing lenders to reduce access to capital or increase their borrowing costs.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[203] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the information collection requirements in accordance with the PRA. This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The supplemental proposed rule would amend 12 CFR part 1006 (Regulation F), which implements the FDCPA. The Bureau's OMB control number for Regulation F is 3170–0056. This supplemental proposed rule along with the May 2019 Proposed Rule would revise the information collection requirements contained in Regulation F that OMB has approved under that OMB control number.

The supplemental proposal would require a new information collection requirement under Regulation F, in proposed § 1006.26 regarding time-barred debts, which would require debt collectors to provide a particular disclosure in certain communications when attempting to collect time-barred debt.

This information collection would be required to provide benefits for consumers and would be mandatory. Because the Bureau does not collect any information, no issue of confidentiality arises. The likely respondents would be for-profit businesses that are FDCPA-covered debt collectors.

The collection of information contained in this supplemental proposed rule, and identified as such, has been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirement, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Send these comments by email to *oira_submission@omb.eop.gov* or by fax to (202) 395–6974. If you wish to share your comments with the Bureau, please send a copy of these comments as described in the Addresses section above. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as on OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: Regulation F: Fair Debt Collection Practices Act.

OMB Control Number: 3170–0056.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector.

Estimated Number of Respondents: 12,027.[204]

[201] *See* CFPB Quantitative Testing Report, *supra* note 64, at 17–24.

[202] 5 U.S.C. 603(d).

[203] 44 U.S.C. 3501 *et seq.*

[204] The Bureau shares enforcement authority under the FDCPA with the Federal Trade Commission. To avoid double-counting, the Bureau allocates to itself half of the estimated paperwork burden under the proposed rule by dividing the burden hours even between the agencies. However, since the Bureau has joint authority over the respondents themselves, the Bureau retains the entity count of all affected respondents as shown above.

Estimated Total Annual Burden Hours: 2,360,000.[205]

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (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 supplemental proposal will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

If applicable, the notice of final rule will display the control number assigned by OMB to any information collection requirements proposed herein and adopted in the final rule.

List of Subjects in 12 CFR Part 1006

Administrative practice and procedure, Consumer protection, Credit, Debt collection, Intergovernmental relations.

Authority and Issuance

For the reasons set forth above, the Bureau proposes that Regulation F, 12 CFR part 1006, as proposed to be amended on May 21, 2019 (84 FR 23274), be further amended as follows:

PART 1006—DEBT COLLECTION PRACTICES (REGULATION F)

■ 1. The authority citation for part 1006 continues to read as follows:

Authority: 12 U.S.C. 5512, 5514(b), 5531, 5532; 15 U.S.C. 1692*l*(d), 1692o, 7004.

Subpart B—Rules for FDCPA Debt Collectors

■ 2. Section 1006.26 is amended by adding paragraph (c) to read as follows:

§ 1006.26 Collection of time-barred debts.

* * * * *

(c) *Disclosures required.* (1) *In general.* A debt collector who knows or should know that a debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) must, in that initial communication and on any validation notice required by § 1006.34(a)(1)(i)(B), clearly and conspicuously disclose:

(i) That the law limits how long the consumer can be sued for a debt and that, because of the age of the debt, the debt collector will not sue the consumer to collect it; and

(ii) If, under applicable law, the debt collector's right to bring a legal action against the consumer can be revived, the fact that revival can occur and the circumstances in which it can occur.

(2) *Additional circumstances in which disclosures are required.* (i) *Debts that become time barred.* A debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) but before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B) must provide the disclosures required by paragraph (c)(1) of this section in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). A debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) and has sent any validation notice required by § 1006.34(a)(1)(i)(B) must provide the disclosures required by paragraph (c)(1) of this section in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred.

(ii) *Change in debt collector's knowledge.* A debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2), but who knows or should know that the debt is time barred before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B), must provide the disclosures required by paragraph (c)(1) of this section in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt is time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). A debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) and sends any validation notice required by § 1006.34(a)(1)(i)(B), but who later knows or should know that the debt is time barred, must provide the disclosures required by paragraph (c)(1) of this section in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt was time barred.

(3) *Form and delivery of disclosures.* (i) *In general.* When provided on a validation notice, the content, format, and placement of the disclosures required by paragraph (c)(1) of this section must be substantially similar to such disclosures on Model Form B–4, B–5, B–6, or B–7 in appendix B of this part, as applicable. When provided orally or in a written communication that is not a validation notice, the content of the disclosures required by paragraph (c)(1) of this section must be substantially similar to such disclosures on Model Form B–4, B–5, B–6, or B–7 in appendix B of this part, as applicable.

(ii) *Safe harbor.* When providing the disclosures required by paragraph (c)(1) of this section on a validation notice, a debt collector who uses Model Form B–4, B–5, B–6, or B–7 in appendix B of this part, as applicable, complies with the requirements of paragraphs (c)(1) and (3)(i) of this section. When providing the disclosures required by paragraph (c)(1) of this section orally or in a written communication that is not a validation notice, a debt collector who uses the relevant content of Model Form B–4, B–5, B–6, or B–7, as applicable, complies with the requirements of paragraphs (c)(1) and (3)(i) of this section.

(iii) *Delivery.* When providing the disclosures required by paragraph (c)(1) of this section on a validation notice or a written communication that is not a validation notice, a debt collector must do so in a manner permitted by § 1006.42.

(iv) *Translated disclosures.* A debt collector must make the disclosures required by paragraph (c)(1) of this section in the same language or languages used for the rest of the communication in which the disclosures are conveyed. Any translation of the required disclosures must be complete and accurate.

■ 3. Section 1006.34 is amended by adding paragraph (c)(2)(xi) to read as follows:

§ 1006.34 Notice for validation of debts.

* * * * *

(c) * * *

(2) * * *

(xi) A time-barred debt disclosure, or a time-barred debt and a revival

[205] The Bureau's share of burden hours for this rule is 1,180,000 hours including 150,000 hours of burden that would be added by the new information collections added by the supplemental proposed rule.

disclosure, if the debt collector determines after a reasonable investigation that such disclosures are required by § 1006.26(c).

* * * * *

■ 4. Appendix B to part 1006 is amended by adding B–4 through B–7 to read as follows:

Appendix B to Part 1006—Model Forms and Clauses

* * * * *

BILLING CODE 4810–AM–P

B–4 Model Form for Time-Barred Debt Disclosure § 1006.26

North South Group
P.O. Box 123456
Pasadena, CA 91111-1234
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.NorthSouthGroup.com

To: Person A
2323 Park Street
Apartment 123
Bethesda, MD 20800

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2009, you owed:		$	2,234.56
Between January 2, 2009 and today:			
You were charged this amount in interest:	+	$	75.00
You were charged this amount in fees:	+	$	25.00
You paid or were credited this amount toward the debt:	–	$	50.00
Total amount of the debt now:		**$**	**2,284.56**

The law limits how long you can be sued for a debt. Because of the age of this debt, we will not sue you for it.

How can you dispute the debt?

- **Call or write to us by April 30, 2019, to dispute all or part of the debt.** If you do not, we will assume that our information is correct. If you write to us by April 30, 2019, we must stop collection on any amount you dispute until we send you information that shows you owe the debt.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.NorthSouthGroup.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor.** If you write by April 30, 2019, we will stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.NorthSouthGroup.com/request.
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. Go to www.consumerfinance.gov.
- Contact us about your payment options.
- Review state law disclosures on reverse side, if applicable.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-1234

Person A
2323 Park Street
Apartment 123 Bethesda,
MD 20800

How do you want to respond?

Check all that apply:

☐ **I want to dispute the debt because I think:**
- ☐ This is not my debt.
- ☐ The amount is wrong.
- ☐ Other (please describe on reverse or attach additional information).

☐ **I want you to send me the name and address of the original creditor.**

☐ **I enclosed this amount:** $

Make your check payable to *Bank of Rockville*. Include the reference number 584-345.

☐ **Quiero esta formulario en español.**

B–5 Model Form for Time-Barred Debt and Revival Disclosure (Payment and Written Acknowledgement) § 1006.26

North South Group
P.O. Box 123456
Pasadena, CA 91111-1234
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.NorthSouthGroup.com

To: Person A
2323 Park Street
Apartment 123
Bethesda, MD 20800

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2009, you owed:		$ 2,234.56
Between January 2, 2009 and today:		
You were charged this amount in interest:	+	$ 75.00
You were charged this amount in fees:	+	$ 25.00
You paid or were credited this amount toward the debt:	–	$ 50.00
Total amount of the debt now:		**$ 2,284.56**

The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment or acknowledge in writing that you owe this debt, then we can sue you to collect it.

How can you dispute the debt?

- **Call or write to us by April 30, 2019, to dispute all or part of the debt.** If you do not, we will assume that our information is correct. If you write to us by April 30, 2019, we must stop collection on any amount you dispute until we send you information that shows you owe the debt.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.NorthSouthGroup.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor.** If you write by April 30, 2019, we will stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.NorthSouthGroup.com/request.
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. Go to www.consumerfinance.gov.
- Contact us about your payment options.
- Review state law disclosures on reverse side, if applicable.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-1234

Person A
2323 Park Street
Apartment 123
Bethesda, MD 20800

How do you want to respond?

Check all that apply:

☐ **I want to dispute the debt because I think:**
- ☐ This is not my debt.
- ☐ The amount is wrong.
- ☐ Other (please describe on reverse or attach additional information).

☐ **I want you to send me the name and address of the original creditor.**

☐ **I enclosed this amount:** $

Make your check payable to *Bank of Rockville*. Include the reference number 584-345.

☐ **Quiero esta formulario en español.**

B–6 Model Form for Time-Barred Debt and Revival Disclosure (Payment) § 1006.26

North South Group
P.O. Box 123456
Pasadena, CA 91111-1234
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.NorthSouthGroup.com

To: Person A
2323 Park Street
Apartment 123
Bethesda, MD 20800

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2009, you owed:		$ 2,234.56
Between January 2, 2009 and today:		
You were charged this amount in interest:	+	$ 75.00
You were charged this amount in fees:	+	$ 25.00
You paid or were credited this amount toward the debt:	–	$ 50.00
Total amount of the debt now:		**$ 2,284.56**

The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you make a payment, then we can sue you to collect it.

How can you dispute the debt?

- **Call or write to us by April 30, 2019, to dispute all or part of the debt.** If you do not, we will assume that our information is correct. If you write to us by April 30, 2019, we must stop collection on any amount you dispute until we send you information that shows you owe the debt.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.NorthSouthGroup.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor.** If you write by April 30, 2019, we will stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.NorthSouthGroup.com/request.
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. Go to www.consumerfinance.gov.
- Contact us about your payment options.
- Review state law disclosures on reverse side, if applicable.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Mail this form to:
North South Group
P.O. Box 123456
Pasadena, CA 91111-1234

Person A
2323 Park Street
Apartment 123
Bethesda, MD 20800

How do you want to respond?

Check all that apply:

☐ **I want to dispute the debt because I think:**
- ☐ This is not my debt.
- ☐ The amount is wrong.
- ☐ Other (please describe on reverse or attach additional information).

☐ **I want you to send me the name and address of the original creditor.**

☐ **I enclosed this amount:** $

Make your check payable to *Bank of Rockville*. Include the reference number 584-345.

☐ **Quiero esta formulario en español.**

B–7 Model Form for Time-Barred Debt and Revival Disclosure (Written Acknowledgement) § 1006.26

North South Group
P.O. Box 123456
Pasadena, CA 91111-1234
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.NorthSouthGroup.com

To: Person A
2323 Park Street
Apartment 123
Bethesda, MD 20800

Reference: 584-345

North South Group is a debt collector. We are trying to collect a debt that you owe to Bank of Rockville. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Department Store credit card from Bank of Rockville with account number 123-456-789.

As of January 2, 2009, you owed:		$ 2,234.56
Between January 2, 2009 and today:		
You were charged this amount in interest:	+	$ 75.00
You were charged this amount in fees:	+	$ 25.00
You paid or were credited this amount toward the debt:	–	$ 50.00
Total amount of the debt now:		**$ 2,284.56**

The law limits how long you can be sued for a debt. If you do nothing or speak to us about this debt, we will not sue you to collect it. This is because the debt is too old. BUT if you acknowledge in writing that you owe this debt, then we can sue you to collect it.

How can you dispute the debt?

- **Call or write to us by April 30, 2019, to dispute all or part of the debt.** If you do not, we will assume that our information is correct. If you write to us by April 30, 2019, we must stop collection on any amount you dispute until we send you information that shows you owe the debt.
- You may use the form below or you may write to us without the form. You may also include supporting documents. We accept disputes electronically at www.NorthSouthGroup.com/dispute.

What else can you do?

- **Write to ask for the name and address of the original creditor.** If you write by April 30, 2019, we will stop collection until we send you that information. You may use the form below or write to us without the form. We accept such requests electronically at www.NorthSouthGroup.com/request.
- **Learn more about your rights under federal law.** For instance, you have the right to stop or limit how we contact you. Go to www.consumerfinance.gov.
- Contact us about your payment options.
- Review state law disclosures on reverse side, if applicable.
- Póngase en contacto con nosotros para solicitar una copia de este formulario en español.

Mail this form to:
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P.O. Box 123456
Pasadena, CA 91111-1234

Person A
2323 Park Street
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How do you want to respond?

Check all that apply:

☐ **I want to dispute the debt because I think:**
- ☐ This is not my debt.
- ☐ The amount is wrong.
- ☐ Other (please describe on reverse or attach additional information).

☐ **I want you to send me the name and address of the original creditor.**

☐ **I enclosed this amount:** $

Make your check payable to *Bank of Rockville*. Include the reference number 584-345.

☐ **Quiero esta formulario en español.**

BILLING CODE 4810–AM–C

■ 5. In Supplement I to Part 1006—Official Interpretations, new *Section 1006.26—Collection of Time-Barred Debt* is added to read as follows:

Section 1006.26—Collection of Time-Barred Debt

26(c) Disclosures required.

26(c)(1) In general.

1. *Clearly and conspicuously.* The disclosures required by § 1006.26(c)(1) must be provided clearly and conspicuously. The term ''clear and conspicuous'' is defined in § 1006.34(b)(1).

2. *Validation notice in initial communication.* The disclosures required by § 1006.26(c)(1) must be provided in the initial communication as defined in § 1006.34(b)(2) and on any validation notice required by § 1006.34(a)(1)(i)(B). A debt collector who sends a validation notice in the initial communication pursuant to § 1006.34(a)(1)(i)(A) complies with § 1006.26(c)(1) by providing the required disclosures on the validation notice.

Paragraph 26(c)(1)(ii).

1. *Revival disclosures.* If a debt collector's right to bring a legal action against a consumer to collect a debt can be revived under applicable law, § 1006.26(c)(1)(ii) requires a debt collector who collects a debt that the debt collector knows or should know is time barred to disclose the fact that revival can occur and the circumstances in which it can occur. To satisfy the § 1006.26(c)(1)(ii) disclosure requirement, a debt collector first must determine which State's law applies and the circumstances under which that State permits revival, if any. Then, for example, if a debt collector determines that applicable State law permits revival only if the consumer makes a payment, the debt collector must provide the time-barred debt and revival disclosure shown on Model Form B–6 in appendix B of this part, or a substantially similar disclosure. If, on the other hand, a debt collector determines that applicable State law does not permit revival § 1006.26(c)(1)(ii) does not apply and the debt collector must provide the time-barred debt disclosure shown on Model Form B–4 in appendix B of this part, or a substantially similar disclosure.

26(c)(2) Additional circumstances in which disclosures are required.

26(c)(2)(i) Debts that become time barred.

1. *Debts that become time barred after the debt collector has made the initial communication but before the debt collector has sent the validation notice.* Under § 1006.26(c)(2)(i), a debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) but before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B) must provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). The following example illustrates the rule:

i. A creditor hires ABC debt collector to collect a debt that ABC debt collector knows will become time barred on June 30. ABC debt collector's initial communication with the consumer takes place by telephone on June 27. ABC debt collector's next communication with the consumer takes place by telephone on July 1. Under § 1006.26(c)(2)(i), ABC debt collector must provide the disclosures required by § 1006.26(c)(1) in that telephone conversation. The following day, ABC debt collector sends a validation notice to the consumer. Under § 1006.26(c)(2)(i), the validation notice must include the disclosures required by § 1006.26(c)(1).

2. *Debts that become time barred after the debt collector has made the initial communication and has sent the validation notice.* Under § 1006.26(c)(2)(i), a debt collector who knows or should know that a debt has become time barred after the debt collector has made the initial communication as defined in § 1006.34(b)(2) and has sent any validation notice required by § 1006.34(a)(1)(i)(B) must provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt became time barred. The following example illustrates the rule:

i. A creditor hires ABC debt collector to collect a debt. ABC debt collector knows that the applicable statute of limitations will expire in one month and promptly sends the consumer a validation notice, which is the debt collector's initial communication with the consumer. The next communication between ABC debt collector and the consumer takes place over the telephone two weeks after the statute of limitations has expired. Under § 1006.26(c)(2)(i), ABC debt collector must provide the disclosures required by § 1006.26(c)(1) in that telephone communication.

26(c)(2)(ii) Change in debt collector's knowledge.

1. *Change in debt collector's knowledge after the debt collector has made the initial communication but before the debt collector has sent the validation notice.* Under § 1006.26(c)(2)(ii), a debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2), but who knows or should know that the debt is time barred before the debt collector has sent any validation notice required by § 1006.34(a)(1)(i)(B), must provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should know that the debt is time barred, and on any validation notice required by § 1006.34(a)(1)(i)(B). The following example illustrates the rule.

i. A creditor hires ABC debt collector to collect a debt. Although the debt is time barred, ABC debt collector neither knows nor should know that the debt is time barred. ABC debt collector has an initial communication with the consumer that does not include the disclosures required by § 1006.26(c)(1). Because ABC debt collector neither knew nor should have known that the debt was time barred, ABC debt collector has not violated § 1006.26(c)(1). The next day, before sending the validation notice required by § 1006.34(a)(1)(i)(B), ABC debt collector learns that the debt was, in fact, time barred at the time of the initial communication. Under § 1006.26(c)(2)(ii), ABC debt collector must provide the disclosures required by § 1006.26(c)(1) in its next communication, if any, with the consumer, and on any validation notice required by § 1006.34(a)(1)(i)(B).

2. *Change in debt collector's knowledge after the debt collector has made the initial communication and has sent the validation notice.* Under § 1006.26(c)(2)(ii), a debt collector who neither knows nor should know that a time-barred debt is time barred when the debt collector makes the initial communication as defined in § 1006.34(b)(2) and sends any validation notice required by § 1006.34(a)(1)(i)(B), but who later knows or should know that the debt is time barred, must provide the disclosures required by § 1006.26(c)(1) in the debt collector's first communication, if any, with the consumer on or after the date on which the debt collector knows or should

know that the debt was time barred. The following example illustrates the rule:

i. A creditor hires ABC debt collector to collect a debt. Although the debt is time barred, ABC debt collector neither knows nor should know that the debt is time barred. ABC debt collector has an initial communication with the consumer and sends a validation notice to the consumer, neither of which includes the disclosures required by § 1006.26(c)(1). Because ABC debt collector neither knew nor should have known that the debt was time barred, ABC debt collector has not violated § 1006.26(c)(1). Several weeks later, however, ABC debt collector learns that the debt was, in fact, time barred when ABC debt collector sent the validation notice. Under § 1006.26(c)(2)(ii), ABC debt collector must provide the disclosures required by § 1006.26(c)(1) in its next communication, if any, with the consumer.

26(c)(3) Form and delivery of disclosures.

26(c)(3)(i) In general.

1. *Disclosures required by other applicable law.* Section 1006.26(c)(3)(i) requires that, when provided on a validation notice, the content, format, and placement of the disclosures required by § 1006.26(c)(1) must be substantially similar to such disclosures on Model Form B–4, B–5, B–6, or B–7 in appendix B of this part, as applicable. A debt collector who uses a validation notice that otherwise is substantially similar to Model Form B–4, B–5, B–6, or B–7, as applicable, may include any additional disclosures required by other applicable law on the reverse of the validation notice and will continue to be in compliance with the requirements of § 1006.26(c)(1) and (3)(i). Disclosures required by other applicable law may include, for example, a State law requirement to disclose that a debt is time barred or that a debt collector's right to bring a legal action on a time-barred debt can be revived. See comments 26(c)(3)(ii)–2 and 34(d)(3)(iv)–1 for further guidance concerning disclosures required by other applicable law.

26(c)(3)(ii) Safe harbor.

1. *Safe harbor provided by use of model form.* Although the use of Model Form B–4, B–5, B–6, or B–7 in appendix B of this part is not required, a debt collector who uses the applicable model form complies with the requirements of § 1006.26(c)(1) and (3)(i). For example, if under applicable law only a payment on a time-barred debt revives a debt collector's right to bring a legal action against the consumer to collect the debt, a debt collector who uses Model Form B–6, which refers to payment but not written acknowledgement, to provide the disclosure on the validation notice complies with the requirements of § 1006.26(c)(1) and (3)(i).

2. *Disclosures required by other applicable law.* When providing the disclosures required by § 1006.26(c)(1) on a validation notice, a debt collector who uses Model Form B–4, B–5, B–6, or B–7 in appendix B of this part, as applicable, may include any additional disclosures required by other applicable law on the reverse of the validation notice and will continue to be in compliance with the requirements of § 1006.26(c)(1) and (3)(i). See comments 26(c)(3)(i)–1 and 34(d)(3)(iv)–1 for further guidance concerning disclosures required by other applicable law.

26(c)(3)(iv) Translated disclosures.

1. *Examples.* Section 1006.26(c)(3)(iv) provides that a debt collector must make the disclosures required by § 1006.26(c)(1) in the same language or languages used for the rest of the communication in which they are conveyed. The following examples illustrate the rule:

i. ABC debt collector is collecting time-barred debt. ABC debt collector's initial communication with the consumer takes place in Spanish. Under § 1006.26(c)(1), the initial communication must contain the disclosures described in that section, as applicable. Under § 1006.26(c)(3)(iv), ABC debt collector must provide the disclosures in Spanish.

ii. XYZ debt collector is collecting a time-barred debt. XYZ debt collector's initial communication with the consumer takes place partly in English and partly in Spanish. Under § 1006.26(c)(1), the initial communication must contain the disclosures described in that section, as applicable. Under § 1006.26(c)(3)(iv), XYZ debt collector must provide the disclosures in both Spanish and English.

2. *Complete and accurate translation.* Under § 1006.26(e)(3)(iv), any translation of the disclosures required by § 1006.26(c)(1) must be complete and accurate. The language of a disclosure that a debt collector obtains from the Bureau's website is considered a complete and accurate translation, although debt collectors are permitted to use other translations so long as they are complete and accurate.

Dated: February 13, 2020.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2020–03838 Filed 3–2–20; 8:45 am]

BILLING CODE 4810–AM–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 42 March 3, 2020

Part III

Library of Congress

Copyright Office

37 CFR Parts 201 and 202

Registration Modernization; Proposed Rule

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2018–9]

Registration Modernization

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Statement of policy and notification of inquiry.

SUMMARY: In conjunction with the development of new technological infrastructure for the copyright registration system, on October 17, 2018, the U.S. Copyright Office solicited public input regarding potential regulatory and practice updates to improve the system's efficiency for both users and the Office. The Office sought and received public comment on three main areas of proposed reform: The administration and substance of the application for registration, the utility of the public record, and the deposit requirements for registration. After reviewing the comments, the Office is announcing intended practice updates, to be adopted in conjunction with the deployment of the new technological system that the Library of Congress is building for the Office. The Office also seeks further comment on two proposals to permit post-registration edits to rights and permissions information, and to permit voluntary submission of additional deposit information to be included in the public record.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on April 2, 2020.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/reg-modernization/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office, using the contact information below, for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, *regans@copyright.gov;* Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, *rkas@copyright.gov;* Kevin Amer, Deputy General Counsel, *kamer@copyright.gov;* Erik Bertin, Deputy Director of Registration Policy and Practice, *ebertin@copyright.gov;* or Jalyce E. Mangum, Attorney-Advisor, *jmang@copyright.gov.* They can be reached by telephone at 202–707–3000.

SUPPLEMENTARY INFORMATION: A highly functional registration system is of paramount importance to the Copyright Office as it administers title 17 for the benefit of the nation's thriving copyright ecosystem.[1] Copyright registration provides valuable benefits to copyright owners, including providing access to federal court to initiate a lawsuit for infringement of a U.S. work,[2] serving as prima facie evidence of the validity of the copyright and the facts stated in the certificate of registration,[3] and enabling copyright owners to seek statutory damages and attorneys' fees in litigation for works that are timely registered.[4] Registration also benefits users and prospective users of creative works by enabling them to find key facts relating to the authorship and ownership of such works in the Office's online public record.[5]

Accordingly, modernizing the technological infrastructure of the copyright registration system is one of the Office's top priorities. The Office is working with the Library of Congress's Office of Chief Information Officer (''OCIO''), which is building an enterprise copyright system (''ECS'') to improve the Office's provision of copyright services to the public, including its registration services. Copyright Office information technology (IT) modernization is being implemented in accordance with the overall model of IT centralization at the Library of Congress. Under this model, ''the Copyright Office, with its expertise of both copyright law and its internal systems, provides required business features to the OCIO. The OCIO then uses its expertise to develop technology solutions to support those features for the Copyright Office.'' [6]

To take advantage of forthcoming IT modernization development efforts and promote an efficient and innovative registration system, the Office published a notice of inquiry in October 2018 (''2018 NOI'') inviting public comment on several potential practice and policy changes to better meet the demands of users of the registration system in the digital age.[7] The 2018 NOI previewed technological features that the Office would like to be incorporated into the ECS, including a more dynamic application tracking dashboard, an integrated drag-and-drop submission option for electronic deposits, and an improved messaging system to improve communication between the Office and applicants.[8] The Office also announced an intention to display a draft version of the registration certificate before final submission so that applicants can confirm that they have entered the correct information.[9] In addition to announcing these intended user features, the Office posed fifteen questions that fell into three categories of possible reform: (1) The administration and substance of the application for registration, (2) the utility of the public record, and (3) the deposit requirements for registration.[10]

Commenters expressed broad general support for the proposals set forth in the 2018 NOI. The Copyright Alliance was ''pleased that the Office is considering a broad range of legal and policy changes regarding registration, and seeking input from stakeholders early in that process.'' [11] Noting that ''[a] modernized registration system is key for the healthy functioning of the copyright ecosystem in the 21st century,'' the Association of American Publishers (''AAP'') expressed support for many of the Office's ''innovative proposals to make the registration process more efficient, intuitive, and competitive,'' [12] and the American Intellectual Property Law Association (''AIPLA'') specifically praised the proposed updates that would allow ''user-errors [to] be reduced through

[1] *See* 17 U.S.C. 701(a) (''All administrative functions and duties under this title . . . are the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress.'').

[2] 17 U.S.C. 411(a).

[3] 17 U.S.C. 410(c).

[4] 17 U.S.C. 412.

[5] Additional information is available at *https://www.copyright.gov/registration/.*

[6] *Library of Congress Modernization Oversight: Hearing Before the S. Comm. on Rules and Admin.,* 116th Cong. 24 (2019) (Statement of Carla Hayden, Librarian of Congress).

[7] Registration Modernization, 83 FR 52336 (Oct. 17, 2018).

[8] *Id.* at 52337.

[9] *Id.* A similar display feature will be provided in the forthcoming electronic recordation system pilot.

[10] *Id.*

[11] Copyright Alliance Comments, at 1–2 (Jan. 15, 2019); *see also, e.g.,* National Music Publishers' Association (''NMPA'') Comments, at 3 (Jan. 15, 2019) (''NMPA appreciates the opportunity to comment on how the Office can design a registration system that will fit the needs of the modern music industry.''); Recording Industry Association of America, Inc. (''RIAA'') Comments, at 2 (Jan. 15, 2019) (''RIAA and its members applaud the Copyright Office . . . for thinking broadly about a variety of steps that could be taken to modernize the current copyright registration process.''). Unless otherwise noted, all comments cited refer to comments submitted in response to the 2018 Notice of Inquiry Regarding Registration Modernization.

[12] AAP Comments, at 8 (Jan. 15, 2019).

self-correction and proofing prior to filing.'' [13]

Other commenters opined that the Office's proposals did not address all of the shortcomings of the current registration system. For example, the Coalition of Visual Artists (''CVA'') cautioned the Office to avoid making incremental improvements when a comprehensive modernization effort is necessary to make the registration system easier and more cost effective for authors to use.[14] The Graphic Artists Guild (''GAG'') similarly contended that the modernization effort should not ''proceed in a piecemeal fashion, without substantive changes to a system that for individual visual artists is broken.'' [15] It expressed particular concern about registration processing times, highlighting that ''[t]he processing time for the simplest online copyright registrations, requiring no communication, averages six months.'' [16]

The Office takes these comments seriously and is pleased to note that, separate from the IT modernization process, it already has taken significant steps toward addressing a number of commenters' concerns. For example, the Office has made extensive efforts to reduce registration processing times, particularly in light of the Supreme Court's 2019 decision in *Fourth Estate Public Benefit Corp.* v. *Wall-Street.com,* which confirmed that Copyright Office action on an application for registration must be complete before the owner of a U.S. work can bring an infringement suit.[17] Since 2018, the average processing time for claims that are received through the electronic registration system and do not require correspondence (which make up seventy-two percent of claims) has been reduced from six months to three months.[18]

As a second example apart from IT modernization, the Office has also issued a notice of inquiry requesting written comments on issues relating to online publication, including whether and how to amend its registration regulations and other considerations relevant to ensuring continued thorough assistance to Congress.[19] This notice seeks to address recent feedback to the Office suggesting that the statutorily-drawn distinction between published and unpublished works is, as Copyright Alliance put it, ''so complex and divergent from an intuitive and colloquial understanding of the terms that it serves as a barrier to registration, especially with respect to works that are disseminated online.'' [20] The Office will analyze these issues related to online publication, as well as other potential practice changes, contemporaneously with, yet separately from, the OCIO's efforts to upgrade the IT system through establishment of an ECS. While the Copyright Office remains dedicated to continuously exploring potential regulatory and/or practice changes through public discussion, the current Registration Modernization proceeding focuses on the practices directly relevant to the pending technological upgrades. The Library has committed to an IT development approach that can meet ''the complex and unique mission of the Copyright Office today and for the future,'' including ''to accommodate possible future legal responsibilities'' and to meet ''evolving business needs.'' [21] To the extent the publication proceeding, other pending or future rulemakings, result in regulatory or practice changes that need to be accommodated in the Office's technology, the Office will communicate those requirements to the OCIO, but such changes will be considered separately from the umbrella of ''modernization.'' [22]

With respect to IT modernization, the Office is prioritizing public outreach to gain additional information about the needs and concerns of users of the registration system. The Office created a dedicated IT modernization web page to keep stakeholders apprised of the status of modernization efforts.[23] In early 2019, the Office launched a bimonthly webinar series to report on the progress achieved on IT modernization initiatives and to discuss the overall direction of modernization.[24] And the Office continues to meet regularly with stakeholders and deliver presentations to external audiences to provide updates on modernization activities. OCIO user experience (UX) experts are also committed and involved to ensure that development can incorporate public input through robust user participation and feedback.[25]

To further advance these efforts, and following careful consideration of the comments received in response to the 2018 NOI, the Office is now announcing plans to adopt eleven registration practice updates that it will identify as business needs to the OCIO, so that they may be incorporated into the design of the new ECS to support a more user-friendly and efficient registration process that is simpler, clearer, secure, and adaptable. As detailed below, these updates relate to both the substance of the registration application and the utility of the online public record from a registration-specific perspective. The Office has concluded that each of these intended practice changes or design features can be incorporated into the ECS without adjusting existing regulatory language. As development efforts progress, the Office envisions initiating a pilot program that could permit incorporation of these updates through an iterative process that also takes into account participants' input, similar to the recently-announced pilot for the electronic recordation system.[26]

The Office also seeks further input from the public regarding two additional issues: (1) How the Office might implement a system that would allow users to make post-registration amendments to rights and permissions and unique identifier information; and (2) further considerations related to the possibility of permitting the voluntary submission of an additional public-facing deposit, that may display low-resolution or incomplete portions of the registered work to enhance the public record.

[13] AIPLA Comments, at 2 (Jan. 15, 2019).

[14] CVA Comments, at 2–3 (Jan. 15, 2019).

[15] GAG Comments, at 2 (Jan. 15, 2019).

[16] *Id.* at 1.

[17] 139 S. Ct. 881, 888, 892 (2019).

[18] U.S. Copyright Office, *Registration Processing Times, https://www.copyright.gov/registration/docs/processing-times-faqs.pdf.* The data is from April 1 through September 30, 2019.

[19] *See* Online Publication, 84 FR 66328 (Dec. 4, 2019).

[20] 84 FR at 66328 (citing Copyright Alliance Comments, at 5 (Jan. 15, 2019)).

[21] Letter from Carla Hayden, Librarian of Congress, and Karyn A. Temple, Register of Copyrights & Dir., to Hon. Thom Tillis, United States Senate, 2–3 (Sept. 30, 2019), *https://www.copyright.gov/rulemaking/reg-modernization/letter-to-senator-thom-tillis.pdf.*

[22] As one exception; separately, the Office has issued two interim rules connected to the related IT modernization efforts with respect to its Recordation program. *See* Modernizing Copyright Recordation, 82 FR 52213 (Nov. 13, 2017); 85 FR 3854 (Jan. 23, 2020).

[23] U.S. Copyright Office, *Copyright Modernization, https://www.copyright.gov/copyright-modernization/.*

[24] U.S. Copyright Office, *Modernization Webinar, https://www.copyright.gov/copyright-modernization/webinar/.*

[25] Letter from Carla Hayden, Librarian of Congress, and Karyn A. Temple, Register of Copyrights & Dir., to Hon. Thom Tillis, United States Senate, 4–5 (Sept. 30, 2019), *https://www.copyright.gov/rulemaking/reg-modernization/letter-to-senator-thom-tillis.pdf;* Letter from Carla Hayden, Librarian of Congress, to Thom Tillis, Chairman, S. Comm. on the Judiciary, Subcomm. on Intellectual Prop., and Christopher A. Coons, Ranking Member, S. Comm. on the Judiciary, Subcomm. on Intellectual Prop., 8–9 (Jan. 7, 2020), *https://www.judiciary.senate.gov/imo/media/doc/Hayden%20Responses%20to%20QFRs.pdf.*

[26] *See* 85 FR at 3854.

I. Registration Practice Updates

(A) The Application Process: How Users Engage With the Registration System

(1) New Application Assistance Tools

Recognizing that users approach the system with varying levels of understanding of copyright law and technical experience, the NOI sought input on how the Office should integrate in-application support and assistance to users of the electronic registration system. The Office proposed multi-tiered support options to offer basic, intermediate, or in-depth support based on user experience level.[27]

All commenters expressed support for some form of improved assistance for users.[28] Some encouraged the Office to focus on improving the materials and resources currently available to applicants, with, for example, the AAP and the Motion Picture Association of America, Inc. (''MPAA'') urging the Office to expand upon its existing Frequently Asked Questions web page.[29] The Association of Medical Illustrators (''AMI'') proposed that the Office provide a service similar to that of the U.S. Patent and Trademark Office (''USPTO''), which ''maintains an inventor assistance hotline as well as a call center providing live, telephonic assistance in resolving problems of formalities of electronically submitted patent applications.'' [30]

Other commenters recommended the development of new in-application assistance tools. For example, GAG suggested that the Office incorporate frequently asked questions and answers ''throughout the registration application stream (possibly within an interactive widget that won't clutter or obstruct the interface).'' [31] The New York Intellectual Property Law Association (''NYIPLA'') urged the Office to provide ''more information and guidance in the online forms themselves,'' and suggested that the USPTO's ''method of providing links to pop-up windows with additional information provides a good model for how information can be presented to users.'' [32]

The Office will pursue both approaches. The Office is updating its website to provide additional guidance that applicants can consult before they begin or while they are completing an application. In addition to improving existing FAQs, the Office is updating its questionnaires and adding video tutorials. The Office also will request development of new tools for in-application assistance, such as the tiered system proposed in the 2018 NOI, subject to usability testing during the OCIO's ECS development.

(2) Electronic Applications

The 2018 NOI sought comment on whether the Office should switch to a strictly-electronic system. After considering the feedback received, the Office will continue to encourage the use of electronic applications over paper forms by differentiating the fees for the standard and paper applications. But it will not, at this time, eliminate paper applications.

While paper applications remain the most cumbersome for the Office to ingest and examine,[33] these forms serve populations that do not have access to a computer or the internet. The Office notes GAG's comment that ''there will always be a certain portion of the population who, for various reasons (such as disability, distance from libraries, time constraints, etc.) are unable to avail themselves of those resources.'' [34] Additionally, several commenters expressed concerns about potential technology failures.[35] The 2018 NOI also sought input on whether to switch to electronic-only payment methods, eliminating the instances where payments may be made by cash or check. After consideration of these comments and review of the various regulatory provisions regarding payments,[36] the Office has determined to issue a separate notice to discuss proposed changes to streamline and harmonize its payment processing rules. The Office may separately consider questions related to the feasibility of subscription pricing under its current statutory authority.

(3) Electronic Certificates

Upon approving an application for registration of a copyright claim, the Office issues a certificate of registration.[37] While the Office has traditionally issued certificates in paper form, the 2018 NOI proposed providing electronic certificates in a secure form to ensure authenticity. The cost of the electronic certificate would be included in the registration fee. The Office proposed that it would provide paper certificates upon request for an additional fee.[38]

All commenters supported the issuance of electronic certificates.[39] In response to the Office's explanation that printing paper certificates ''requires a substantial amount of resources both in terms of employee compensation and the cost of maintaining printing equipment,'' [40] AMI agreed that ''resources currently utilized for printing and mailing paper certificates should be redirected to other services, such as better application assistance.'' [41] The Office accordingly will issue electronic certificates in the new ECS as a matter of course. The Office intends to offer paper certificates for an additional fee.[42] In addition, as noted below, the Office has determined that it is appropriate for these electronic certificates to be viewable in the public record.

Some commenters expressed concern about whether courts would accept

[27] 83 FR at 52338.

[28] *See* AIPLA Comments, at 2 (''AIPLA . . . supports including more embedded links to provide immediate help in completing each section of the online application.''); Copyright Alliance Comments, at 4 (''As an organization that represents a diverse group of copyright owners—including individual creators, and small and large businesses—the Copyright Alliance supports a multi-tier approach to in-application support and assistance that would more effectively meet the specific needs of both novice and experienced applicants.''); NMPA Comments, at 3 (''NMPA supports a multi-tiered approach to in-application assistance.'').

[29] AAP Comments, at 4; MPAA Comments, at 2–3 (Jan. 15, 2019).

[30] AMI Comments, at 3 (Jan. 15, 2019).

[31] GAG Comments, at 3.

[32] NYIPLA Comments, at 2 (Jan. 15, 2019).

[33] *See* 83 FR at 52338 (noting that ''a significant portion of claims submitted on paper forms require correspondence or other action from the Office, which further increases pendency times and contributes to the overall backlog of pending claims.'').

[34] GAG Comments, at 4.

[35] AIPLA Comments, at 2 (''[T]echnology has limitations and suffers downtime and failures. It is often critically important that applicants file within strict time requirements to enforce their rights in court (17 U.S.C. 411) or avoid losing statutory benefits (17 U.S.C. 412).''); GAG Comments, at 4 (''Paper applications . . . fill in the gap when a system outage or government shutdown make the eCO system unavailable.''); NMPA Comments, at 6 (''[O]ur members who opt for the paper application largely do so because of negative experiences with the electronic system or interfering outages. Our members have found paper applications a useful backup option for when the electronic system is down.'').

[36] *See, e.g.,* 37 CFR 201.6(a), 201.33(e)(2), 201.39(g)(3), 202.12(c)(2)(ii), 202.23(e)(2).

[37] 17 U.S.C. 410(a), 708(a)(1).

[38] 83 FR at 52338–39; *see* 37 CFR 201.3(c)(14) (2019) (fee for obtaining an additional certificate).

[39] *See, e.g.,* Author Services, Inc. Comments, at 2 (Jan. 8, 2019) (''We support this proposal''); Copyright Alliance Comments, at 9 (''The Copyright Alliance supports the Office's proposal to issue electronic certificates in lieu of paper copies and only offer paper certificates for an additional fee''); GAG Comments, at 4 (''We agree with the Copyright Office's proposal that registration certificates be supplied as electronic documents with validating watermarks, etc.''); MPAA Comments, at 5 (''The MPAA has no objection to the Office issuing electronic certificates in the normal course, with paper certificates available for an additional fee.''); News Media Alliance (''NMA'') Comments, at 4 (Jan. 15, 2019) (''The Alliance supports the issuance of electronic certificates, particularly if it would expedite the application process and the resulting savings are used to offset costs to the registrants.'').

[40] 83 FR at 52338.

[41] AMI Comments, at 4.

[42] The Office will issue a notice regarding any additional fees. *See* 17 U.S.C. 708.

electronic certificates.[43] The Office will request implementation of visual markers, such as watermarks, to indicate that an Office-issued electronic registration certificate is indeed authentic.

(B) Application Information: The Information Requested on the Application for Registration

(1) Simplifying the Authorship Statement

The Copyright Act does not require registration applicants to describe the type of work for which registration is sought, except in the case of a compilation or derivative work.[44] But the Act permits the Register to require ''any other information'' that bears ''upon the preparation or identification of the work or the existence, ownership, or duration of the copyright.''[45] Thus, under current practices, ''[t]o register a work of authorship, the applicant must file an application that clearly identifies the copyrightable authorship that the applicant intends to register.''[46] In the online application, the applicant can identify that authorship by ''checking one or more of the boxes in the Author Created field that accurately describe the authorship.''[47] The options available vary depending on the type of application in use (*e.g.,* Literary, Visual Arts, or Performing Arts). If registering a literary work, the options are ''text,'' ''computer program,'' ''photograph(s),'' or ''artwork.'' If registering a visual arts work, the options include ''photograph'' and ''two-dimensional artwork,'' among others. If registering a performing arts work, the options include ''music,'' ''lyrics,'' ''other text (includes script, screenplay, dramatic work),'' and ''musical arrangement.'' As a result, works are described by their individual elements (*e.g.,* text, lyrics, or two-dimensional artwork), rather than by a holistic description of the work such as ''children's book with illustrations,'' ''research paper,'' or ''craft book with photographs,'' which may be more helpful for future identification purposes. Seeking to capture a more complete description of works submitted for registration, the Office proposed to adjust the Author Created section and ask applicants to identify the work as a whole instead of the work's individual elements.[48]

Although the Office did not receive comments objecting to the adjustment of this requirement *per se,* several commenters opposed the wholesale elimination of the online application's Author Created section.[49] For example, AAP argued that it is ''helpful to the public record to have an applicant name the authorship, what is being registered, what is being disclaimed, and other such pertinent information.''[50]

The Office agrees that authorship descriptions provide pertinent information concerning registered works, and does not intend a complete removal of the Author Created section. Rather, the Office will request that the OCIO explore two complementary methods to obtain more complete and specific descriptions of works. First, the Office will request exploration of using tiers of descriptions that permit the applicant to gradually narrow the identification of their work using a more expanded decision tree format. Under this approach, the system would allow applicants to identify the work submitted for registration by using general and specific pre-populated descriptions, as well as a free-form space allowing applicants to provide more descriptive, non-legal information. General descriptions would include the categories of authorship set forth in section 102 of the Copyright Act, while specific descriptions could include particular types of works within those categories—for example, ''novel,'' ''poem,'' ''article'' or ''podcast.'' After testing the feasibility of this approach, the Office will provide guidance regarding whether this method is preferable to the current format.

Second, and potentially additive of the first approach, the Office will request that the OCIO investigate developing a table of crowdsourced descriptions, using as a model the USPTO's Trademark Identification Manual, which provides users with acceptable identifications of goods and services for use in trademark applications.[51] This option would allow examiners to curate acceptable descriptions encountered through the examination process to add to the database, and for an applicant to rely upon this list for guidance in describing their work. This would allow the Office to consider and adopt industry-specific or specialized descriptors for applications on a going-forward basis.

For paper applications, the Office will permit the examiner to provide a description of the work submitted for registration where no description is provided by the applicant. Although commenters were not supportive of examiners providing work descriptions, arguing that it would ''likely increase the workload of examiners and could have the effect of lengthening registration times and increasing costs,''[52] on average, paper applications comprise only 4% of all applications that the Office receives.[53] A common error that the Office encounters is a blank authorship section. Allowing examiners to provide this information would improve efficiency by reducing the correspondence required to obtain omitted authorship statements, which, as the Office has noted, ''imposes significant burdens on the Office's limited resources, and has had an adverse effect on the [pendency of] examination of claims submitted on electronic forms.''[54]

(2) Derivative Works

For a compilation or derivative work, the Copyright Act requires copyright registration applicants to identify ''any preexisting work or works that it is based on or incorporates'' and to provide ''a brief, general statement of the additional material covered by the copyright claim being registered.''[55] Generally, the Office attempts to obtain this information in two steps. First, the applicant must ''identify the new authorship that the applicant intends to register'' by checking one or more boxes that appear under the heading ''Author Created'' in the online application that describe the new material the applicant intends to register, or by providing a descriptive statement in the ''Nature of Authorship'' space on the paper application.[56] Second, if the derivative work contains an appreciable amount of preexisting material that was previously published, previously registered, in the public domain, or owned by a third party, the applicant must identify that material by checking one or more boxes in the ''Material Excluded'' field of the online application or by providing a brief statement in the corresponding section of the paper application.[57] This

[43] Copyright Alliance Comments, at 9; MPAA Comments, at 5–6; NMPA Comments at 7; NYIPLA Comments, at 2; RIAA Comments, at 3.

[44] *See* 17 U.S.C. 409(1)–(10).

[45] *Id.* at 409(10).

[46] U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 618.1 (3d ed. 2017) (''*Compendium (Third)*'').

[47] *Id.* at sec. 618.4(A).

[48] 83 FR at 52339–40.

[49] *See, e.g.,* AIPLA Comments, at 3–4; Authors Guild, Inc. (''Authors Guild'') Comments, at 3 (Jan. 15, 2019).

[50] AAP Comments, at 5.

[51] *See* USPTO, *Trademark ID Manual, https://idm-tmng.uspto.gov/id-master-list-public.html.*

[52] NMPA Comments, at 11.

[53] U.S. Copyright Office, *Registration Processing Times, https://www.copyright.gov/registration/docs/processing-times-faqs.pdf.*

[54] 83 FR at 52338.

[55] 17 U.S.C. 409(9).

[56] *Compendium (Third)* sec. 618.5.

[57] *Id.*

method can lead to gaps in the public record because it ''encourage[s] applicants to identify individual elements of the work that should be excluded from the claim,'' but it does not require applicants to identify the preexisting work itself.[58] Further, in the Office's experience, the checkboxes provided on the application may limit applicants' ability to fully describe the nature of their claims, leading to errors in identifying new or preexisting material. For example, using the checkboxes, applicants often mark the ''Material Included'' as ''text'' and the ''Material Excluded'' also as ''text.'' These descriptions do not add any meaningful information to users of the public record.

To avoid this result, the 2018 NOI proposed requiring applicants to identify explicitly whether a work submitted for registration is a derivative work. If the work is identified as derivative, applicants would be directed to identify, in their own words, any elements that should be excluded from the claim. And, assuming that the applicant intends to register all copyrightable aspects of the work that have not been expressly disclaimed, the applicant would not be required to identify the new material that should be ''included'' in the claim.[59]

While most commenters acknowledged that it would benefit the public record to require applicants to explicitly identify derivative works submitted for registration,[60] some were concerned that such a requirement would cause confusion. For example, the Copyright Alliance had ''concerns that novice applicants might be confused about how to answer such a question,'' believing that it ''would require an understanding of the nuance between 'transformation' as it is used in fair use, and 'transform' as it is used to define a derivative work.'' [61] GAG likewise noted that ''novice users (and even experience[d] users) are often tripped up in interpreting whether a work is derivative.'' [62] Instead of asking whether a work is a derivative work, commenters argued that the Office should ask ''whether preexisting works have been used, and if yes, what those works are.'' [63] Some commenters also expressed concern that eliminating the requirement to identify the new material that should be included in the claim would ''wreak havoc with the Copyright Office's objective to produce as accurate a public record as possible.'' [64]

Others supported this proposed approach. AMI opined that eliminating ''cumbersome checkboxes'' and allowing applicants ''to more easily explain in their own words the elements that are pre-existing versus the 'new material to be included' '' would simplify the registration process for such works.[65] AIPLA agreed that ''asking the applicant to identify the new authorship is unnecessary . . . and that the Office should assume that the applicant intends to register all copyrightable aspects of the work.'' [66]

After reviewing the comments, the Office continues to believe that the current identification process should be simplified, but agrees that use of the term ''derivative work'' may cause confusion. Instead, the Office will provide a business requirement that the revised electronic application ask applicants, in plain language, about the facts relating to the authorship of the work (*e.g.,* Is the work based on one or more preexisting works? Does the work incorporate any preexisting work?). The Office will request that the system allow applicants to identify any elements that should be excluded from the claim using their own words, rather than a set of predetermined checkboxes. This approach is intended to streamline the process by which applicants can disclaim preexisting material.

(3) Simplifying the Transfer Statement

An application for registration must identify the copyright claimant.[67] The ''claimant'' is either the author(s) of the work submitted for registration,[68] or an individual or organization that owns all of the rights under copyright.[69] To register a claim of copyright, ''if the copyright claimant is not the author,'' the copyright registration application must include ''a brief statement of how the claimant obtained ownership of the copyright.'' [70] This ''brief statement'' is termed a transfer statement. Further, the Copyright Act specifies that copyright may be transferred (1) ''by any means of conveyance,'' (2) ''by will or . . . by the applicable laws of intestate succession,'' or (3) ''by operation of law,'' and so the transfer statement must fit within these statutory guidelines.[71]

As the 2018 NOI explained, the current online registration application allows applicants to provide a transfer statement by selecting one of three options in a drop-down menu marked ''Transfer Statement.'' The three options are ''By written agreement,'' ''By inheritance,'' and ''Other.'' The *Compendium of U.S. Copyright Office Practices* provides that ''[i]f the claimant obtained the copyright through an assignment, contract, or other written agreement, the applicant should select 'By written agreement.' '' [72] And ''[i]f the claimant obtained the copyright through a will, bequest, or other form of inheritance, the applicant should select 'By inheritance.' '' [73] The applicant may select ''Other'' and provide a more specific transfer statement in a blank space marked ''Transfer Statement Other'' if ''By written agreement'' or ''By inheritance'' do not fully describe the transfer.

In the 2018 NOI, the Office proposed eliminating the ''Other'' option both to avoid confusion among applicants and to better align the process with the statutory text. Applicants often provide conflicting information when they select the ''Other'' option, which requires examiners to expend time to correspond with applicants to correct the application and delays the resolution of claims. Because the methods of transfer are limited by section 201, practically

[58] 83 FR at 52341.

[59] *Id.*

[60] *See, e.g.,* AIPLA Comments, at 4 (''AIPLA believes that applicants should be required to identify whether the work submitted for registration is a derivative work''); AMI Comments, at 6 (''The AMI would not object to asking applicants to affirmatively state whether a work submitted is derivative *provid*[ed] *the application form makes it crystal clear as to what constitutes a derivative work.*''); NYIPLA Comments, at 3 (''It is often helpful to know whether a registered work is a derivative work'').

[61] Copyright Alliance Comments, at 17.

[62] GAG Comments, at 7.

[63] *Id.; see* American Bar Association Section of Intellectual Property Law (''ABA–IPL'') Comments, at 5 (Jan. 9, 2019) (''The Section suggests that a simpler process for soliciting factual information about preexisting materials would be to include questions requiring 'yes/no' responses'').

[64] AAP Comments, at 6.

[65] AMI Comments, at 5 (citation omitted).

[66] AIPLA Comments, at 4; *see also* New Media Rights (''NMR'') Comments, at 17 (Jan. 15, 2019) (''If the user disclaims content, presumably the rest of the protectable audiovisual work is original content created by the author, so the 'New Material Included' category does not seem necessary or relevant *unless* the work being registered is a new edition of a previously registered work (which is a very specific subset of content).''); AAP Comments, at 5 (''AAP members are in favor of asking applicants to explicitly identify whether a work submitted for registration is a derivative work and to identify, in their own words, any elements that should be excluded from the claim.'').

[67] 17 U.S.C. 409(1).

[68] *Id.* at 201(a) (''Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.'').

[69] *Id.* at 201(d)(1) (''The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.''); 37 CFR 202.3(a)(3) (defining claimant as the author of a work or the person or organization that has obtained all rights under copyright initially belonging to the author).

[70] 17 U.S.C. 409(5).

[71] *Id.* at 201(d)(1).

[72] *Compendium (Third)* sec. 620.9(A).

[73] *Id.*

speaking, the only correct statement that can be provided in the ''Other'' space is a transfer occurring ''by operation of law,'' a legal concept referring to rights that arise under specific contingencies such as by court-ordered or bankruptcy-related transfers, certain forms of acquisitions such as stock sales, or explicit agreements providing for joint ownership with rights of survivorship.[74] The Office accordingly proposed to replace the ''Other'' option with ''By operation of law.'' [75]

Most commenters supported the Office's proposal, agreeing that it would ''simplify and clarify the process for completing transfer statements.'' [76] Others, however, expressed concern about the proposed change. For example, the Authors Guild argued that the ''means of acquiring ownership other than by written transfer or inheritance should be spelled out in a dropdown menu in plain English and explained'' because '' 'By operation of law' is a broad and legal term that non-lawyers won't necessarily understand.'' [77] AAP opposed removing the ''Transfer Statement Other'' field, recommending ''a flexible and open format to accommodate sufficient explanation in cases of complicated transfer statements'' to support a ''robust and useful public record.'' [78]

As several commenters pointed out, copyright transfer remains a confusing area of law for many applicants.[79] While it might at first seem that giving applicants more space to describe their particular transfer scenario would enhance the public record, the Office's experience indicates that an open format text box can give rise to inconsistent information, while increasing registration processing time due to the need for correspondence. Therefore, the Office tentatively concludes it would be optimal to eliminate the ''Other'' field and restrict the available fields to ''By written agreement,'' ''By inheritance,'' and ''By operation of law'' to improve efficiency. Rather than requiring applicants to describe the transfer in their own words, the Office intends to provide guidance, such as information icons or other in-application assistance, to provide a clear definition of each transfer statement option for applicants, including, in particular, to explain what instances may constitute a transfer ''by operation of law.''

The Office is also exploring the value of providing a space for applicants to add any recordation document numbers that support the transfer statement. While a copy of an agreement, conveyance, or other legal instrument is not an acceptable substitute for a transfer statement,[80] if such an instrument has been recorded with the Office, the relevant recordation information may be valuable to the registration record. Should this option prove feasible, the Office will provide in-application guidance on relevant document recordation topics.

(4) In-Process Corrections

The current online registration system does not permit applicants to make manual corrections once an application is submitted to the Office. The applicant must contact the Public Information Office to ask the Office to make any necessary corrections. For the new ECS, the Office proposed removing this limitation and permitting applicants to make changes to pending applications at any point before an examiner opens the application for review.[81]

All commenters supported this proposal,[82] but several requested that the ECS warn applicants when an amendment would change a work's Effective Date of Registration.[83] ImageRights International, Inc. (''ImageRights'') recommended that the system ''present a schedule of what types of changes can be made without altering the Effective Date of Registration and which changes would change the Effective Date.'' [84]

In general, to establish an Effective Date of Registration, the Office must receive an acceptable application, a complete deposit copy, and the appropriate filing fee.[85] The Effective Date of Registration is the date the Office receives all three of these elements, but ''[w]here the three necessary elements are received at different times the date of receipt of the last of them is controlling.'' [86] The *Compendium* sets forth the minimum requirements for an acceptable application, deposit copy, and filing fee.[87] In consideration of the comments, the Office envisions that the new ECS will incorporate these current rules to warn applicants when an amendment would alter the Effective Date of Registration.

(5) Application Programming Interfaces (''APIs'')

A copyright system of the twenty-first century demands flexibility, agility, and adaptability to technological advancements. The Office believes that the use of APIs—interfaces that permit communication between two systems or software programs—could improve the registration system by enabling programs used in the process of creating works to submit copyright registration applications or extract data from the online public record. To explore possible uses of this technology in the new ECS, the Office invited comment on how it could use APIs to integrate external data into the registration system or allow parties to export internal data from the Office's registry. The Office also inquired about relevant design considerations, such as establishing a trusted provider framework to minimize spam submissions and deter predatory behavior.[88] Commenters generally agreed that using APIs would benefit registration applicants and users of the online public record,[89] although some

[74] *See* David Nimmer & Melville Nimmer, 3 Nimmer on Copyright sec. 10.03(A)(6) (2019).

[75] 83 FR at 52341.

[76] NYIPLA Comments, at 3; *see also* AMI Comments, at 6 (''The AMI supports simplification of transfer statements.''); International Trademark Association (''INTA'') Comments, at 7 (Jan. 10, 2019) (''[S]ince Copyright Act Section 201(d)(1) provides for transfer of an author's interest only by written agreement, inheritance, or operation of law, limiting the transfer statement to these three categories is advisable.''); MPAA Comments, at 9 (''The only options that should be available to registrants in describing a transfer of ownership are those mentioned in 17 U.S.C. 201: 'by written agreement,' 'by inheritance,' or 'by operation of law.' There is no statutory justification for the 'Other' option, which should be eliminated.'').

[77] Authors Guild Comments, at 4.

[78] AAP Comments, at 6.

[79] *See* Authors Guild Comments, at 4; Copyright Alliance Comments, at 17; GAG Comments, at 7; INTA Comments, at 7.

[80] *Compendium (Third)* sec. 620.10(A).

[81] 83 FR at 52341.

[82] *See, e.g.,* AIPLA Comments, at 5 (''AIPLA supports permitting applicants to make edits to pending applications in most circumstances.''); AAP Comments, at 6 (''AAP members generally support the proposal of allowing applicants to make in-process edits to open cases prior to the examination of application materials.'').

[83] AAP Comments, at 6 (''We trust the Office would establish clear parameters and practices as to when such corrections would trigger a change in the effective date of registration.''); Copyright Alliance Comments, at 18 (''The Office should permit applicants to make in-process edits to open cases at any point *prior* to the examination of the application materials, provided that the Office clearly warns applicants prior to making changes that a modification could alter the effective date depending on the type of change and explains the types of changes that would result in change in the effective date.'').

[84] ImageRights Comments, at 6 (Jan. 15, 2019).

[85] *Compendium (Third)* sec. 625.

[86] H.R. Rep. No. 94–1476, at 157 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5773.

[87] *Compendium (Third)* sec. 625.

[88] 83 FR at 52342–43.

[89] Artists Rights Society Comments, at 4 (Jan. 10, 2019) (''ARS . . . would welcome the opportunity to develop in cooperation with the Office an API that would be tailored to the needs of ARS members so that when members sign up with ARS . . . they also might be able to complete an electronic registration form.''); CVA Comments, at 27–28 (encouraging the Office ''to develop robust Application Programming Interfaces (APIs) that will

Continued

commenters urged the Office to provide adequate safeguards to protect the security of the data and to guard against abuses by bad actors.[90] With stakeholder support, the Office will continue to explore and clarify its business needs related to the use of APIs for two purposes: (1) Ingesting data into the Office online registration system, and (2) extracting information from the online public record. Of course, any new functionality must provide appropriate security for all relevant data. The Office will continue to communicate this need to the OCIO.

Initially, the Office will prioritize investigation of ways to allow for the transmission of data between the registration system and the database of musical works information that will be administered by the Mechanical Licensing Collective (''MLC'') pursuant to the Orrin G. Hatch–Bob Goodlatte Music Modernization Act.[91] The MLC database will contain information relating to musical works (and shares of such works) and, to the extent known, the identity and location of the copyright owners of such works and the sound recordings in which the musical works are embodied.[92] To reduce the incidence of unmatched works, where the copyright owner has not been identified or located, the MLC will operate a claiming process by which musical work copyright owners may identify their ownership interests in a musical work underlying a specific sound recording, to receive accrued royalties for the usage of that musical work.[93]

By law, the Copyright Office may access the database in a bulk, machine-readable format, although the Office may not treat the database or any of its information therein as a Government record.[94] As some have suggested,[95] providing a method of access between the copyright and MLC registration systems could permit a copyright owner to verify or update ownership information with respect to musical works listed in the MLC database alongside the process of completing a copyright registration application for that work, or vice versa. The Office has concluded that the MLC database represents an appropriate starting point for API development. While the Office will prioritize this aspect, the Office will also work with the OCIO to explore additional avenues to facilitate the ingestion and exportation of data through APIs, while ensuring the integrity of registration records and safeguarding against abuses.

(C) Public Record: How Users Engage and Manage Copyright Office Records

(1) The Online Registration Record

The Copyright Act charges the Copyright Office with ensuring ''that records of deposits, registrations, recordations, and other actions taken under this title are maintained'' and are ''open to public inspection.'' [96] The 2018 NOI proposed to expand the online public record to include records of pending applications, refusals, closures, appeals, and correspondence for completed claims.

This proposal received significant support from many commenters. For example, the American Association of Law Libraries (''AALL'') supported ''publishing refused registration application records, full versions of correspondence records, and associated appeal records in the online public record because we believe it would help the public better understand the originality requirement in copyright law and assist those who wish to register a claim to a copyright understand the contours of what 'constitute[s] copyrightable subject matter.' '' [97] Similarly, AIPLA noted that ''the need for full information regarding an application and registration is often crucial for litigation, licensing, and corporate diligence, among other circumstances.'' [98]

Some commenters, however, expressed concern that records of correspondence may expose personally identifiable information or informal communications that applicants may not wish to make public. Explaining that ''[c]orrespondence between applicants and the Office is often informal,'' AAP argued that including such materials ''would not be appropriate [or] useful for the Public Record and could be misused by persons who have no claim to the work in question.'' [99] Other commenters argued that the public record should be limited to records of what has been registered by the Copyright Office.[100] NMPA, for example, contended that ''[o]nly a subset of copyrights would benefit from the inclusion of . . . additional information in the Online Public Record'' and that ''[i]ncluding large amounts of administrative information concerning a registration would likely slow the system down and be an inefficient use of the Office's resources.'' [101]

Current law and regulations require the Office to make available for public inspection any ''[o]fficial correspondence, including preliminary applications, between copyright claimants or their agents and the Copyright Office, and directly relating to a completed registration, a recorded document, a rejected application for registration, or a document for which recordation was refused.'' [102] Further, the current registration application displays a privacy notice stating that the information collected for registration ''will appear in the Office's online catalog.'' [103] Given that registration records are already available for public inspection and copying,[104] the Office does not see a persuasive basis for categorically excluding them from online availability, although the Office will approach historical materials sensitively to address any potential notice or privacy considerations.

allow third-party image management software to interface directly with the Copyright Office's registration system''); Copyright Alliance Comments, at 21 (expressing support for ''allowing third-parties to interoperate with the Office's API in a way that would integrate registration into a creator's workflow to streamline and simplify the registration process''); GAG Comments, at 8 (expressing support for the ''integration of APIs into the registration system so that registration becomes part of a creator's workflow'').

[90] *See, e.g.,* Copyright Alliance Comments, at 23 (urging the Office to ''create terms of service for access to its API,'' which would allow the Office ''to block access . . . [by] third parties who abuse the APIs'' though spam submissions or predatory behavior); PPA Comments, at 16 (stating that the Office must ensure that ''the process is secure and able to handle the influx of data'').

[91] Public Law 115–264, 132 Stat. 3676 (2018).

[92] 17 U.S.C. 115(d)(3)(C).

[93] *Id.* at 115(d)(3)(I), (J)(iii); *see id.* at 115(e)(35).

[94] *Id.* at 115(d)(3)(E)(v).

[95] David C. Lowery, *Simplifying Registration and Costs for MLC,* The Trichordist (Nov. 6, 2019), *https://thetrichordist.com/2019/11/06/simplify-registration-and-costs-for-mlc/* (''It seems like a simple solution for the Copyright Office to harmonize [the online registration system and the MLC database] to . . . have a check box to allow you to sign up with the MLC.'').

[96] 17 U.S.C. 705.

[97] AALL Comments, at 1 (Jan. 14, 2019) (citing 17 U.S.C. 410(b)).

[98] AIPLA Comments, at 6.

[99] AAP Comments, at 7.

[100] *See, e.g.,* RIAA Comments, at 8 (''The online public record should support its primary purpose to notify the public of which works have been registered, and not be appended in a manner that detracts or dilutes from this important function.'').

[101] NMPA Comments, at 17–18.

[102] 37 CFR 201.2(c)(1); *see also* 17 U.S.C. 705.

[103] U.S. Copyright Office, *eCO Registration System Standard Application, https://eco.copyright.gov/* (''Privacy Act Notice: Sections 408–410 of title 17 of the United States Code authorize the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing this information you are agreeing to routine uses of the information that include publication to give legal notice of your copyright claim as required by 17 U.S.C. 705. It will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, and benefits under the copyright law.'').

[104] *Compendium (Third)* sec. 2407.1(B)(1).

Expanding the online public record to include these materials would advance the Office's goal to ''[e]xpand access to Copyright Office records'' and ''[e]nhance services'' to make it ''easier and more convenient for users to transact business with the Copyright Office.'' [105] As such, on a prospective basis, the Office will request that the ECS include records of pending applications, refusals, closures, appeals, and correspondence for completed claims in the new online public record. The Office's PII removal rule will remain in place to provide for removal of extraneous PII from the public record upon request.[106]

Similarly, the Office will work with the OCIO to make digital copies of registration certificates available in the online public record.

(2) Linking Registration and Recordation Records

Arising out of historical practice, registration and recordation records are currently maintained as discrete data sets. Because these records are not linked, it can be difficult to identify chain-of-title information for particular works contained in the Office's records. All commenters supported the Office's proposal to link registration and recordation records, so that information about registered claims, recorded transfers, and/or other chain of title information can be viewed together to facilitate access to information about copyrighted works, including updated ownership information.[107]

Because the registration and recordation processes are voluntary, however, commenters also highlighted some areas of caution, which the Office itself is taking into account when developing requirements for the new ECS. For example, RIAA noted that while linking records would be useful, it could ''create confusion where the records are incomplete or the chain of title is unclear.'' [108] RIAA also expressed concern about ''what legal presumptions may be made based on the chain of title in a recordation record where there is no obligation for a subsequent rights holder to file a transfer or security interest with the Office.'' [109] The MPAA cautioned that the Office should not ''itself engage in chain-of-title analysis.'' [110]

The Copyright Office appreciates the need for the ECS to clearly communicate the limitations of the public record to users of the system. Currently, the Office warns that while ''[s]earches of the Copyright Office catalogs and records are useful in helping to determine the copyright status of a work . . . they cannot be regarded as conclusive in all cases.'' [111] The Office will continue to explore ways to minimize confusion on the part of users. For example, the Office may request that the ECS begin by linking only future registration and recordation records.

Second, commenters discussed how the Office should display assignment information and documentation within public registration records. The ABA–IPL suggested that the USPTO's system, which consists of an ''Assignment Abstract of Title'' linked to the database entry for a mark identified in a search, could be a model for the Copyright Office's system.[112] The NYIPLA similarly suggested that ''the Trademark Office offers a good model in that the application/registration data is directly linked to the chain of title information.'' [113] The Office found these comments helpful and hopes to work with the OCIO to explore the specific manner of display for the new online public record system.

(3) Unified Case Number

The Office currently administers and tracks separate numbers for applications, correspondence, and registrations, which creates challenges for the Office and users. To streamline identification methods, the 2018 NOI proposed to unify the Office's identification numbers to create a clear relationship between an application for registration, any correspondence, and any associated request for reconsideration.[114] There was a general consensus among commenters in support of the Office's proposal.[115]

Accordingly, for future applications, the Office would like the system to adopt one number for any pending application and registration record completed from that application. The Office envisions that the number assigned to an application (the ''case number'') and the registration number will have an identical base, but the registration number will be distinguished by a prefix that indicates the administrative class or type of registration. For example, case number 12345678 for a performing arts work would become PA12345678, if registered. To further simplify the registration process, the Office will also retire correspondence identification numbers.

(D) Digital Deposits

In the 2018 NOI, the Office requested comment on whether applicants should be permitted to submit electronic deposit copies, phonorecords, or identifying materials, rather than physical copies or phonorecords, unless the Office requests a physical copy.[116] While commenters expressed general support for providing greater flexibility in complying with deposit requirements, the comments raised a number of concerns. The Library of Congress's Library Services unit expressed concern over the potential effect of such a change on Library collections. Noting that ''[t]he Library depends on the continuing flow of items acquired via Copyright deposit to help build its collection,'' it noted that ''implementation of this strategy would require that a duplicative process be established to obtain deposit copies for the Library's collection.'' [117] Subsequently, in response to a question raised by the Senate Judiciary's IP Subcommittee, the Librarian of Congress noted that ''a change to a default digital deposit requirement would critically affect our ability to serve some of our

[105] U.S. Copyright Office, *Strategic Plan 2019–2023, Copyright: The Engine of Free Expression* 13 (2019), *https://www.copyright.gov/reports/strategic-plan/USCO-strategic2019-2023.pdf.*

[106] *See* 37 CFR 201.2(f).

[107] AALL Comments, at 3 (noting that the proposal ''would assist users who are attempting to obtain permission to use a work with accurately identifying and contacting the current copyright owner''); ABA–IPL Comments, at 7 (''The Section strongly supports connecting registration and recordation records.''); Authors Alliance Comments, at 5 (Jan. 15, 2019) (noting that the proposal would ''increase[] the likelihood that users will be able to locate current and accurate contact information for copyright holders, better facilitating licensing and permissions requests''); INTA Comments, at 15 (expressing support for ''provid[ing] chain of title information''); NMPA Comments, at 18 (''The registration and recordation systems should be fully integrated and should be part of the same database.''); Nanette Petruzzelli Comments, at 5 (Jan. 14, 2019) (supporting the proposal so that ''public inquiry about the current copyright status of a work can be found in one record/file'').

[108] RIAA Comments, at 8.

[109] RIAA Comments, at 8.

[110] MPAA Comments, at 13.

[111] U.S. Copyright Office, *Circular 22: How to Investigate the Copyright Status of a Work* 3 (Feb. 2013), *https://www.copyright.gov/circs/circ22.pdf; see also* U.S. Copyright Office, *Request a Search Estimate, https://www.copyright.gov/forms/search_estimate.html.*

[112] ABA–IPL Comments, at 7.

[113] NYIPLA Comments, at 5.

[114] 83 FR at 52344.

[115] *See generally* AIPLA Comments, at 7 (''AIPLA strongly supports this proposal.''); AAP Comments, at 8 (''AAP members are in favor of unified case numbers to track and identify a work or group of works through the registration and appeals process''); PPA Comments, at 16 (''PPA supports a single case number which remains with the application through the registration process and after the registration is issued. This will help with tracking and consistency.'').

[116] 83 FR at 52344–45.

[117] Library of Congress Library Services Comments, at 1–2 (Jan. 15, 2019).

largest user groups, either by not meeting their preferences or by denying service altogether.'' [118]

Other commenters representing copyright owner interests raised potential security concerns. For example, the Copyright Alliance pointed to the possibility of cyberattacks resulting in unauthorized access to deposit copies.[119] AAP stated that ''[p]ublishers would welcome a registration deposit regime that is less burdensome, but only if it is operated in a wholly secure IT system and kept wholly separate from the collections of the Library and its access or interlibrary lending or surplus books policies.'' [120] In its view, such changes are ''premature and will remain so until the Copyright Office is permitted and able to develop the necessary IT systems and security.'' [121]

The Copyright Office is committed to pursuing any updates to the registration deposit system in a reasonable and conscientious manner. At the same time, due to the wide variety of expressive works that can be registered, spanning physical and digital formats, from individual to large corporate authors, the ECS must be designed in a manner to accommodate submission of both physical and electronic deposits.[122] Under the current framework, the Office has recently noted that ''[a]ny future expansion of electronic deposits to additional categories of works will require careful consideration of several factors, including the Library's collection needs, technological capabilities, and security and access issues.'' [123] Meanwhile, the Office notes that these issues may overlap with ongoing legislative discussion.[124] The Office therefore has concluded that consideration of changes to the deposit requirements are beyond the scope of this current notice. As noted, however, the Office and the Library will work collaboratively to develop alternative deposit options ''that appropriately balance security with ease of use. These kinds of important issues will be addressed using transparent processes that invite public comment and participation.'' [125]

II. Additional Subjects of Inquiry

In addition to the foregoing practice changes, the Office is continuing to consider additional issues raised in the 2018 NOI and now seeks further comment on the following topics.

(A) The Rights and Permissions Field

Presently, at the conclusion of an online registration application, the applicant is asked to provide Rights and Permissions information, which may include ''the name, address, and other contact information for the person and/or organization that should be contacted for permission to use the work.'' [126] Currently, applicants may provide only one name and address. This information appears in the online public record for the work to facilitate licensing and similar transactions.[127] Once a certificate of registration is issued, interested parties may update the Rights and Permissions information by either (1) requesting that the Office remove certain personally identifiable information from the online public record and replace it with substitute information,[128] or (2) submitting an application for a supplementary registration.[129]

To achieve a more flexible amendment process, the 2018 NOI proposed allowing users to update Rights and Permissions information, as necessary, without having to submit a formal written removal request and fee and without having to seek a supplementary registration.[130] The overwhelming majority of commenters supported this proposal.[131] AALL noted that it would ''better ensure that the information remains up-to-date, thereby reducing the risk of a work becoming an orphan work, encouraging proper attribution by others, and facilitating users [in] properly obtaining permission or a license to use a work.'' [132] Authors Alliance similarly noted that ''the costs associated with updating the Rights and Permissions field discourages users from updating contact information, leading to inaccurate records and contributing to the orphan works problem.'' [133]

While there was general support for this proposed change, several commenters noted the importance of implementing a corresponding method for authenticating or confirming the identity of registrants, assignees, or their authorized representatives. RIAA stated there must be ''robust security and authentication surrounding the authorized user's credentials and access to the registration database.'' [134] Likewise, the Copyright Alliance suggested that ''[t]he ability to make these changes should be restricted to accounts belonging to the rights holder (including a previous rights holder's verified successor in interest) or their agent'' to protect ''rights holders and users of the public record from fraud, misrepresentation, inadvertent mistakes and unauthorized changes to the record by third parties.'' [135]

In principle, the Office agrees that the ECS should be designed to encourage copyright owners to keep their contact information up to date, including in cases of transfer, and also that security and access controls will be key to implementing self-service edits.[136] The

[118] Carla Hayden, Librarian of Congress, Responses to Questions for the Record, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary at 3–4 (Jan. 7, 2020), *https://www.judiciary.senate.gov/imo/media/doc/Hayden%20Responses%20to%20QFRs.pdf.*

[119] Copyright Alliance Comments, at 25.

[120] AAP Comments, at 2.

[121] *Id.* at 3.

[122] The current statutory default instructs owners to submit a deposit of a complete copy of the work and, for works published in the U.S., the best edition of that work (unless regulations permit the deposit of alternate identifying material). 17 U.S.C. 407, 408; 83 FR at 52344. But the statute does not compel authors or publishers to create a special copy for the purpose of copyright registration or to fulfill the separate obligation under section 407. *See* Mandatory Deposit of Electronic-Only Books, 83 FR 16269, 16274 (notice of proposed rulemaking).

[123] Jody Harry, Chief Financial Officer, U.S. Copyright Office, Responses to Questions for the Record, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary at 13 (Dec. 17, 2019), *https://www.judiciary.senate.gov/imo/media/doc/Harry%20Responses%20to%20QFRs.pdf.*

[124] Carla Hayden, Librarian of Congress, Responses to Questions for the Record, Subcomm. on Intell. Prop. of the S. Comm. on the Judiciary at 3 (Jan. 7, 2020), *https://www.judiciary.senate.gov/imo/media/doc/Hayden%20Responses%20to%20QFRs.pdf* (responding to question about draft legislation on the deposit requirement).

[125] *Id.; see also id.* at 4 (''The Library would like to work closely with the Copyright Office to update the best edition statement on a consistent and regular basis.'').

[126] *Compendium (Third)* sec. 622.1. There is no corresponding space for providing Rights and Permissions information in a paper application.

[127] *Id.*

[128] 37 CFR 201.2(e)(1); *Compendium (Third)* sec. 622.1. *See generally* Removal of Personally Identifiable Information from Registration Records, 82 FR 9004 (Feb. 2, 2017) (final rule).

[129] 37 CFR 202.6(d), (e); *Compendium (Third)* sec. 1802.

[130] 83 FR at 52341–42.

[131] ABA–IPL Comments, at 6 (''[T]he Section supports allowing registrants to update the Rights and Permissions information for their works posted on the public record in a simplified manner''); AIPLA Comments, at 5 (''AIPLA supports allowing authorized users to make changes to this field''); Authors Alliance Comments, at 4 (''Authors Alliance supports the Office's efforts to build a registration interface that allows users to update Rights and Permissions information without having to submit a supplementary registration together with the associated fee''); INTA Comments, at 9 (''INTA strongly supports making the Online Public Record a more dynamic system by allowing authorized representatives to update rights and permission information''); NMA Comments, at 5 (''The Alliance supports the proposal to allow authorized users to make changes to the Rights and Permissions field in a completed registration'').

[132] AALL Comments, at 3.

[133] Authors Alliance Comments, at 4.

[134] RIAA Comments, at 6.

[135] Copyright Alliance Comments, at 19.

[136] The option to edit Rights and Permissions information will not affect the recordation of documents pertaining to copyright. Rights and Permissions information is limited to contact information (*e.g.,* mailing and/or email addresses).

Office seeks additional stakeholder feedback on how the ECS might administer such a service. Specifically, what eligibility criteria should be considered in evaluating the parties seeking to edit Rights and Permissions information? Should this service be limited to users with access to the account through which the original registration was made, or should those users be able to consent or transfer account authorizations associated with individual registrations? Should this service be limited to parties named on the registration certificate and their authorized agents? The Office also seeks stakeholder feedback on whether to expand the Rights and Permissions field to allow users to provide more than one name and address. The Office will share this information with the OCIO to explore technological feasibility, and both the Office and the OCIO have committed to facilitating communication and outreach with users of the prospective system.

(B) Additional Data

The 2018 NOI invited comment on what additional data could or should be included in the online registration record on a voluntary basis in order to enhance the functionality and value of the system.[137] The 2018 NOI noted that the current system already allows applicants to include a number of unique identifiers, including an International Standard Book Number (''ISBN''), International Standard Recording Code (''ISRC''), International Standard Serial Number (''ISSN''), International Standard Audiovisual Number (''ISAN''), International Standard Music Number (''ISMN''), International Standard Musical Work Code (''ISWC''), International Standard Text Code (''ISTC''), or Entertainment Identifier Registry number (''EIDR'').[138] The 2018 NOI inquired whether the Office should consider expanding the number of unique identifiers that may be included on an application, requiring inclusion of unique identifiers if they have been assigned, or establishing a procedure for adding unique identifiers to completed registration records, similar to the proposed procedure for updating the Rights and Permission field.[139]

Commenters were in favor of having the option to submit additional data as part of the registration application, as long as adding such information is not made mandatory.[140] Commenters were also in favor of being able to provide unique identifiers to pending and completed registration records, on an optional basis.[141] The Office agrees that any new requests for information should not be mandatory. Recognizing that certain standard identifiers may not always be available at the time of the registration application, the Office also appreciates the desire to add identifiers to the record after submission of a registration application, provided the online public record identifies when such amendments are made to completed registration records. The acceptance of post-registration unique identifiers would seem to potentially raise eligibility questions similarly presented with post-registration updates to the rights and permissions field, discussed above. Subject to additional public comment, the Office will work with the OCIO to explore the best ways to enable these types of voluntary submissions in the ECS.

In addition, the Office sought comment on whether it should allow applicants to voluntarily upload public-facing deposit material, such as low-resolution images or sound bites, as part of the registration application.[142] The option to include this information would be additive of the existing registration deposit requirement. Such public-facing material might assist in the identification of a work to serve licensing, or even enforcement, purposes. Commenters generally were supportive of this proposal. INTA opined that ''developing a more robust Online Public Record through the uploading of these images and clips will be beneficial by enhancing recognition of the work registered and will also aid in the licensing of those works.'' [143] NMPA observed that ''[a]llowing applicants to include small sound bites of their works in their application could improve the public record and assist the public in identifying copyright owners.'' [144] Public Knowledge (''PK'') and the Association of Real Estate Photographers (''AREP'') suggested that ''[i]mplementing reverse image search capabilities . . . —and linking those results to rightsholder information—would prov[ide] significant benefits for both users and rightsholders.'' [145] Noting that ''[t[he technology to search by images . . . is widely commercially available,'' PK and AREP stated that the ability to ''reverse image search existing registrations would assist photographers . . . in protecting their rights online.'' [146]

Other commenters, however, noted that there may be complications in accepting low-resolution or incomplete deposits. Specifically, RIAA argued that collecting sound clips ''would create additional burdens (including, but not limited to, the need to provide ever expanding storage resources for clips) on the Office with, at best, marginal increased utility.'' [147] It also expressed concern that ''the collection and inclusion of sound clips in the Office's registration database could turn the database into a de facto, on-demand streaming service that would effectively compete against commercial services licensed by our member companies.'' [148]

Still others discussed the availability of technology to create low-resolution or incomplete copies. For example, ImageRights suggested that there would be ''little point in asking users to provide'' low-resolution images and sound bites because they ''can be created sufficiently well in an automated way.'' [149] GiantSteps Media Technology Strategies suggested that the Office use digital finger printing technology to ''allow registrants to deposit digital fingerprints of works, perhaps in addition to low-resolution images, audio clips, and the like.'' [150]

To more fully explore these issues, the Office is interested in receiving additional input on whether and how the new ECS might be designed to include the option to deposit low-resolution or incomplete copies of works for the online public record. Are there certain available technologies that should be considered to automate creation of lower-resolution or shortened clips works to be made available to the public for identification purposes but that would not serve as a substitute for the work? Should the Office establish specifications, such as a 15-second limit on sound clips, or a specific resolution format, with respect to the acceptance of additional, voluntarily submitted data, to minimize interactions with licensing markets? Should this feature be preliminarily

[137] 83 FR at 52342.

[138] *Id.*

[139] *Id.*

[140] *See* ABA–IPL Comments, at 6; AIPLA Comments, at 6; AAP Comments, at 7; AMI Comments, at 7; Copyright Alliance Comments, at 20; Copyright Clearance Center, Inc. Comments, at 2 (Jan. 14, 2019); GAG Comments, at 8; INTA Comments, at 9; Shaftel & Schmelzer Comments, at 17 (Jan. 11, 2019).

[141] *See* Copyright Alliance Comments, at 20; INTA Comments, at 9; MPAA Comments, at 10.

[142] 83 FR at 52342.

[143] INTA Comments, at 9–10.

[144] NMPA Comments, at 15.

[145] PK & AREP Comments, at 3 (Jan. 15, 2019).

[146] *Id.*

[147] RIAA Comments, at 6–7.

[148] *Id.* at 7.

[149] ImageRights Comments, at 8.

[150] GiantSteps Media Technology Strategies Comments, at 3 (Jan. 15, 2019).

explored in a pilot limited to certain type(s) of works, and if so, which type(s)?

The Office invites comment on any additional considerations it should take into account relating to these topics.

Dated: February 28, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–04435 Filed 3–2–20; 8:45 am]

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