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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0537; Project Identifier 2019–NE–16–AD; Amendment 39–21116; AD 2020–09–02]

RIN 2120–AA64

Airworthiness Directives; Anjou Aeronautique Torso Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–16–04 for certain Anjou Aeronautique (formerly Romtex Anjou Aeronautique) Model 358 torso restraint systems (restraint systems). AD 2017–16–04 required inspection of the restraint system, placarding if it is found to be inoperative, and replacement of the affected restraint system with a part eligible for installation. This AD requires the removal from service of this expanded population of affected restraint systems and modifies the compliance schedule for their removal. This AD was prompted by reports to the European Union Aviation Safety Agency (EASA), since the publication of AD 2017–16–04, of additional restraint system buckle knobs breaking on a batch of parts outside of the population identified in AD 2017–16–04. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 29, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 22, 2017 (82 FR 39355, August 18, 2017).

ADDRESSES: For service information identified in this final rule, contact Anjou Aeronautique, Strada Livezii nr. 98, 550042, Sibiu, Romania; telephone: +40 269 243 918; fax: +40 269 243 921; email: *seatbelts@anjouaero.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0537.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0537; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–16–04, Amendment 39–18981 (82 FR 39355, August 18, 2017), (''AD 2017–16–04''). AD 2017–16–04 applied to certain Anjou Aeronautique (formerly Romtex Anjou Aeronautique) Model 358 restraint systems. The NPRM published in the **Federal Register** on December 31, 2019 (84 FR 72257). The NPRM was prompted by reports to the European Union Aviation Safety Agency (EASA) of additional restraint system buckle knobs, since the publication of AD 2017–16–04, breaking on a batch of parts outside of the population identified in AD 2017–16–04. The NPRM proposed to require the removal from service of this expanded population of affected restraint systems and modifies the compliance schedule for their removal. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0195, dated September 4, 2018 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Occurrences have been reported of rupture of the upper side (knob) of the rotary buckle installed on certain Anjou Aeronautique model 358 torso restraint systems. Further occurrences have been reported after the publication of EASA PAD 18–019. Preliminary investigation identified a batch of parts potentially affected by the same unsafe condition, for which high operating temperatures might be a contributing factor.
>
> This condition, if not corrected, could prevent the release of the restraint system straps as intended in the event of an emergency landing, possibly inhibiting safe evacuation from the aircraft. As of the issue date of this [EASA] AD, Anjou Aeronautique has not issued applicable repair or modification instructions.
>
> For the reasons described above, this [EASA] AD requires replacement of affected torso restraint systems, and prohibits installation thereof.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0537.

Comments

The FAA gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Miscellaneous Comment

An individual commenter provided a comment not relevant to this AD. The FAA did not change this AD.

Revision to Cost Estimate

The FAA determined the need to clarify the estimated cost in AD 2017–16–04. The cost reflected in AD 2017–16–04 was the total cost per helicopter ($6,000 per restraint system multiplied by 7 seats per helicopter totaling $42,000). In this AD, the FAA is providing the cost estimate per restraint system.

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Anjou Aero Service Bulletin (SB) No. 358SB–14–101, Revision 1, dated December 12, 2014. The SB describes procedures for removing from service and replacing the rotary buckle sub-assembly on certain part-numbered and serial-numbered buckle assemblies, consisting of the rotary buckle, belt, and attachment. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects an unknown number of restraint systems installed on, but not limited to, Airbus Helicopters AS350B2, AS350B3, EC130B4, EC130T2, and AS355NP helicopters of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Inspect restraint system	0.5 work-hours × $85 per hour = $42.50	$0	$42.50
Remove and replace restraint system	0.5 work-hours × $85 per hour = $42.50	6,000	6,042.50

The FAA estimates the following costs to do any necessary placarding that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need this placarding:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Placard seat as inoperable	0.1 work-hour × $85 per hour = $8.50	$0	$8.50

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–16–04, Amendment 39–18981 (82 FR 39355, August 18, 2017), and adding the following new AD:

2020–09–02 Anjou Aeronautique (formerly Romtex Anjou Aeronautique): Amendment 39–21116; Docket No. FAA–2019–0537; Project Identifier 2019–NE–16–AD.

(a) Effective Date

This AD is effective May 29, 2020.

(b) Affected ADs

This AD replaces AD 2017–16–04, Amendment 39–18981 (82 FR 39355, August 18, 2017).

(c) Applicability

(1) This AD applies to Anjou Aeronautique Model 358 torso restraint systems (restraint systems), part number (P/N) 358XX–XXX–YY–ZZZ (where 358XX–XXX–YY–ZZZ can be any combination of numbers and/or letters), with serial numbers (S/Ns) listed in Effectivity, paragraph 1.2, of Anjou Aero Service Bulletin (SB) No. 358SB–14–101, Revision 1, dated December 12, 2014, and with S/Ns listed in Figure 1 to Paragraph (c)(1) of this AD.

Figure 1 to Paragraph (c)(1) – Applicability

S/N (FROM … inclusive)	S/N (TO … inclusive)
738	1037
1049	1049
1056	1061
1074	1619

(2) These restraint systems are installed on, but not limited to, Airbus Helicopters AS350B2, AS350B3, EC130B4, EC130T2, and AS355NP helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports to the European Union Aviation Safety Agency (EASA), since the publication of AD 2017–16–04, of additional restraint system buckle knobs breaking on a batch of parts outside of the population identified in AD 2017–16–04. The FAA is issuing this AD to prevent a restraint system strap from failing to release from the buckle, causing occupants to be unable to exit the aircraft during an emergency. The unsafe condition, if not addressed, could result in a restraint system strap failing to release from the buckle, resulting in injury or death of the occupant.

(f) Compliance

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

(g) Required Actions

(1) For the restraint systems listed in the Effectivity, paragraph 1.2, of Anjou Aero SB No. 358SB–14–101, Revision 1, dated December 12, 2014, except for S/Ns 1038–1048 (inclusive), 1050–1055 (inclusive), and 1062–1073 (inclusive), within 30 hours time-in-service (TIS) after the effective date of this AD, inspect each restraint system for proper release of the straps from the restraint system.

(i) If the straps do not release from the restraint system, before further flight, placard the seat as inoperative. Within 180 hours TIS after the effective date of this AD, remove the rotary buckle sub-assembly and replace it with a part eligible for installation.

(ii) If the straps release from the restraint system, within 180 hours TIS after the effective date of this AD, remove the rotary buckle sub-assembly and replace it with a part eligible for installation.

(2) For restraint systems, P/N 358XX–XXX–YY–ZZZ (where 358XX–XXX–YY–ZZZ can be any combination of numbers and/or letters), having S/Ns 738–1619 (inclusive), within 30 hours TIS after the effective date of this AD, inspect the restraint system for proper release of the straps from the restraint system.

(i) If the straps do not release from the restraint system, before further flight, placard the seat as inoperative and within 180 hours TIS after the effective date of this AD, remove the restraint system from service and replace it with a part eligible for installation.

(ii) If the straps release from the restraint system, within 180 hours TIS or six months after the effective date of this AD, whichever occurs first, remove the restraint system from service and replace it with a part eligible for installation.

(h) Installation Prohibition

After the effective date of this AD, do not install on any aircraft an Anjou Aeronautique restraint system, P/N 358XX–XXX–YY–ZZZ, having S/Ns 738–1619 (inclusive), even if the restraint system is labeled in compliance with Anjou Aero SB No. 358SB–14–101, Revision 1, dated December 12, 2014.

(i) Definition

For the purpose of this AD, a ''part eligible for installation'' is an Anjou Aeronautique restraint system, excluding P/N 358XX–XXX–YY–ZZZ, having S/Ns 738–1619 (inclusive), that had the rotary buckle sub-system repaired and a label attached indicating compliance with Anjou Aero SB No. 358SB–14–101, Revision 1, dated December 12, 2014, or later revisions.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018–0195, dated September 4, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0537.

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on September 22, 2017 (82 FR 39355, August 18, 2017).

(i) Anjou Aero Service Bulletin No. 358SB–14–101, Revision 1, dated December 12, 2014.

(ii) [Reserved]

(4) For Anjou Aeronautique service information identified in this AD, contact Anjou Aeronautique, Strada Livezii nr. 98, 550042, Sibiu, Romania; telephone: +40 269 243 918; fax: +40 269 243 921; email: *seatbelts@anjouaero.com.*

(5) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(6) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on April 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08706 Filed 4–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0832; Project Identifier 2019–NE–28–AD; Amendment 39–21117; AD 2020–09–03]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 model turbofan engines with a certain diffuser case assembly installed. This AD was prompted by a report of a manufacturing quality escape that could impact the life of the diffuser case assembly. This AD requires removal of the affected diffuser case assembly from service and replacement with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 29, 2020.

ADDRESSES: For service information identified in this final rule, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; email: *help24@pw.utc.com;* internet: *https://fleetcare.pw.utc.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0832.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0832; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nicholas Paine, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7116; fax: 781–238–7199; email: *nicholas.j.paine@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all IAE V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 model turbofan engines with a certain diffuser case assembly installed. The NPRM published in the **Federal Register** on December 16, 2019 (84 FR 68374). The NPRM was prompted by a report of a manufacturing quality escape that could impact the life of the diffuser case assembly. The NPRM proposed to require removal of the affected diffuser case assembly from service and replacement with a part eligible for installation. The FAA is issuing this AD to address the unsafe condition on these products.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise the Required Actions

Delta Air Lines (DAL) requested that the FAA revise paragraph (g), Required Actions, of this AD to include instructions applicable to IAE V2500–D5 model turbofan engines. DAL reasoned that IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0707, dated July 1, 2019 (''IAE NMSB V2500–ENG–72–0707''), referenced in paragraph (g) of this AD, only includes procedures for replacing the affected diffuser case assemblies on IAE V2500–A1/A5 model turbofan engines. If one of the affected diffuser case assemblies was installed on a V2500–D5 model engine, DAL would not be able to accomplish the required actions of this AD.

As an alternative to revising paragraph (g) of this AD, DAL requested that the FAA add an installation prohibition or parts installation limitation to this AD to prevent the installation of the affected diffuser case assembly in any model turbofan engine. If the FAA adds the installation prohibition to this AD, then DAL requested that the FAA remove the IAE V2500–D5 model turbofan engine from paragraph (c), Applicability, of this AD.

The FAA disagrees. This AD does not require operators to use IAE NMSB V2500–ENG–72–0707 to replace the affected diffuser case assembly. The note to paragraph (g) of this AD, referencing use of IAE NMSB V2500–ENG–72–0707, is provided as guidance.

The FAA disagrees with adding an installation prohibition or parts installation limitation to this AD because paragraph (g) of this AD requires the removal of all affected diffuser case assemblies from service.

Support for the AD

The Air Line Pilots Association, International, expressed support for the AD as written.

No Concerns With the AD

United Airlines commented that it does not operate any of the affected diffuser case assemblies and indicated it does not have any concerns with the proposed AD.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed.

Related Service Information

The FAA reviewed IAE NMSB V2500–ENG–72–0707, dated July 1, 2019. The NMSB describes procedures for replacing the affected diffuser case assemblies on IAE V2500–A5 model turbofan engines.

Costs of Compliance

The FAA estimates that this AD affects two engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace the diffuser case assembly	70 work-hours × $85 per hour = $5,950	$250,000	$255,950	$511,900

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–09–03 International Aero Engines AG: Amendment 39–21117; Docket No. FAA–2019–0832; Project Identifier 2019–NE–28–AD.

(a) Effective Date

This AD is effective May 29, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines AG (IAE) V2500–A1, V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 model turbofan engines with diffuser case assembly, serial number PGGUBB8267, PGGUBB8271, PGGUA95825, PGGUA95827, or PGGUBB8264, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by a report of a manufacturing quality escape that could impact the life of the diffuser case assembly. The FAA is issuing this AD to prevent failure of the diffuser case assembly. The unsafe condition, if not addressed, could result in the uncontained release of the diffuser case assembly, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Action

At the next engine shop visit after the effective date of the AD or before accumulating 10,000 cycles since new, whichever occurs first, remove the affected diffuser case assembly from service and replace with a part eligible for installation.

Note to paragraph (g): IAE Non-Modification Service Bulletin (NMSB) V2500–ENG–72–0707, dated July 1, 2019, contains guidance for replacing the diffuser case assembly.

(h) Definition

For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Nicholas Paine, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7116; fax: 781–238–7199; email: *nicholas.j.paine@faa.gov.*

(k) Material Incorporate by Reference

None.

Issued on April 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08703 Filed 4–23–20; 8:45 am]

BILLING CODE 4910–13–P

Proposed Rules

Federal Register
Vol. 85, No. 80
Friday, April 24, 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 ENERGY

10 CFR Part 431

[EERE–2019–BT–STD–0033]

RIN 1904–AE78

Energy Conservation Program: Energy Conservation Standards for Single Package Vertical Units

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) is initiating an effort to determine whether to amend the current energy conservation standards for single package vertical air conditioners (SPVACs) and single package vertical heat pumps (SPVHPs), collectively referred to as single package vertical units (SPVUs). This request for information (RFI) solicits information from the public to help DOE determine whether amended standards for SPVUs, a category of covered commercial equipment, would result in significant additional energy savings and whether such standards would be technologically feasible and economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised in this RFI), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before June 23, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–STD–0033 and/or RIN 1904–AE78, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: SPVU2019STD@ee.doe.gov.* Include the docket number EERE–2019–BT–STD–0033 and/or RIN 1904–AE78 in the subject line of the message.
3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2019-BT-STD-0033.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

A. Authority and Background

The Energy Policy and Conservation Act, as amended (EPCA),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

equipment. Title III, Part C [2] of EPCA (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes SPVUs, which are a category of small, large, and very large commercial package air conditioning and heating equipment and the subject of this RFI. (42 U.S.C. 6311(1)(B)–(D)) EPCA prescribed initial standards for this equipment. (42 U.S.C. 6313(a)(1)–(2))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (42 U.S.C. 6316(b)(2)(D))

The Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, amended EPCA in relevant part to establish equipment classes and minimum energy conservation standards for SPVUs. (42 U.S.C. 6313(a)(10)(A)) In doing so, the EISA 2007 amendments established Federal energy conservation standards for SPVUs at levels that generally corresponded to the levels in the 2004 edition of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1, *Energy Standard for Buildings Except Low-Rise Residential Buildings* (*i.e.,* ASHRAE Standard 90.1–2004). On March 23, 2009, DOE published a final rule that codified the statutory equipment classes and energy conservation standards for SPVUs into DOE's regulations in the Code of Federal Regulations (CFR) at 10 CFR 431.97. 74 FR 12058, 12073–12074 (March 2009 final rule).

EPCA further required that, not later than 3 years after the date of enactment of EISA 2007, DOE must review ASHRAE Standard 90.1, with respect to SPVACs and SPVHPs in accordance with the procedures established under 42 U.S.C. 6313(a)(6). (42 U.S.C. 6313(a)(10)(B)) Additionally, in acknowledgement of technological changes that yield energy efficiency benefits, Congress further directed DOE through EPCA to consider amending the existing Federal energy conservation standards for SPVUs, each time ASHRAE amends Standard 90.1 with respect to such equipment. (42 U.S.C. 6313(a)(6)(A)) When triggered in this manner, DOE must undertake and publish an analysis of the energy savings potential of amended energy efficiency standards, and amend the Federal standards to establish a uniform national standard at the minimum level specified in the amended ASHRAE Standard 90.1, unless DOE determines that there is clear and convincing evidence to support a determination that a more-stringent standard level as a national standard would produce significant additional energy savings and be technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(A)(i)–(ii))

On September 23, 2015, DOE published amendments to the SPVU standards in accordance with the 3-year review prescribed by EPCA as amended by EISA 2007 and in response to the 2013 update to ASHARE Standard 90.1 (*i.e.,* ASHRAE Standard 90.1–2013). 80 FR 57438 (September 2015 final rule). For four of the six SPVU equipment classes, DOE adopted the levels specified ASHRAE Standard 90.1–2013. 80 FR 57438, 57439 (Sept. 23, 2015). For the remaining two equipment classes, DOE concluded that there is clear and convincing evidence to support more stringent standards than the levels in ASHRAE Standard 90.1–2013. *Id.* Compliance dates for the amended standards were as follows: SPVACs and SPVHPs <65,000 Btu/h cooling capacity beginning September 23, 2019; SPVACs and SPVHPs ≥65,000 and <135,000 Btu/h cooling capacity, beginning October 9, 2015; and SPVACs and SPVHPs ≥135,000 and <240,000 Btu/h cooling capacity, beginning October 9, 2016. 80 FR 57438, 57438 (Sept. 23, 2015). The current energy conservation standards are codified at 10 CFR 431.97.

The currently applicable DOE test procedure for SPVUs is set forth at 10 CFR 431.96. DOE's test procedures for SPVUs were established in a final rule for commercial heating, air-conditioning, and water-heating equipment published on May 16, 2012. 77 FR 28928. The current test procedure incorporates by reference American National Standards Institute (ANSI)/Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 390–2003, *Performance Rating of Single Package Vertical Air-Conditioners and Heat Pumps* (ANSI/AHRI 390–2003), omitting section 6.4. The current test procedure also requires that manufacturers adhere to additional provisions in paragraphs (c) and (e) of 10 CFR 431.96. Paragraph (c) of 10 CFR 431.96 provides the method for an optional compressor break-in period, while paragraph (e) of 10 CFR 431.96 provides specifications for addressing key information typically found in the installation and operation manuals.

ASHRAE Standard 90.1 has been updated on several occasions since the 2013 version, the most recently being released on October 26, 2016 (*i.e.,* ASHRAE Standard 90.1–2016). However, the standard levels for SPVUs remain unchanged from the 2013 version.

In those situations where ASHRAE has not acted to amend the levels in Standard 90.1 for the equipment types enumerated in the statute, EPCA also provides for a 6-year-lookback to consider the potential for amending the uniform national standards. (42 U.S.C. 6313(a)(6)(C)) Specifically, pursuant to EPCA, DOE is required to conduct an evaluation of each class of covered equipment in the ASHRAE Standard 90.1 ''every 6 years'' to determine whether the applicable energy conservation standards need to be amended. (42 U.S.C. 6313(a)(6)(C)(i)) DOE must publish either a notice of proposed rulemaking (NOPR) to propose amended standards or a notice of determination that existing standards do not need to be amended. (42 U.S.C. 6313(a)(6)(C)(i)(I)–(II)) In making a determination, DOE must evaluate whether amended standards would result in significant additional conservation of energy and are technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i)(I); 42 U.S.C. 6313(a)(6)(A)) In proposing new standards under the 6-year-lookback review, DOE must undertake the same considerations as if it were adopting a standard that is more stringent than an amendment to ASHRAE Standard 90.1. (42 U.S.C. 6313(a)(6)(C)(i)(II); 42 U.S.C. 6313(a)(6)(B)) This is a separate statutory review obligation, as differentiated from the obligation triggered by an ASHRAE Standard 90.1 amendment, as previously discussed.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

While the statute continues to defer to ASHRAE's lead on covered equipment subject to Standard 90.1, it does allow for a comprehensive review of all such equipment and the potential for adopting more-stringent standards, where supported by the requisite clear and convincing evidence. That is, DOE interprets ASHRAE's not amending Standard 90.1 with respect to a product or equipment type as ASHRAE's determination that the standard applicable to that product or equipment type is already at an appropriate level of stringency, and DOE will not amend that standard unless there is clear and convincing evidence that a more-stringent level is justified. In those instances where DOE makes a determination that the standards for the equipment in question do not need to be amended, the statute requires the Department to revisit that decision within three years to either make a new determination or propose amended standards. (42 U.S.C. 6313(a)(6)(C)(iii)(II))

DOE is publishing this RFI to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

As discussed, DOE is required to conduct an evaluation of each class of covered equipment in ASHRAE Standard 90.1 every 6 years. (42 U.S.C. 6313(a)(6)(C)(i)) In making a determination of whether standards for such equipment need to be amended, DOE must follow specific statutory criteria. DOE must evaluate whether amended Federal standards would result in significant additional conservation of energy and are technologically feasible and economically justified. (42 U.S.C. 6313(a)(6)(C)(i) (*referencing* 42 U.S.C. 6313(a)(6)(A)(ii)(II)) To determine whether a potential proposed standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on manufacturers and consumers of the equipment subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered equipment in the type (or class) compared to any increase in the price of, initial charges for, or maintenance expenses of the covered equipment that are likely to result from the standard;

(3) The total projected amount of energy savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered equipment likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6313(a)(6)(C)(i)(II) (*referencing* 42 U.S.C. 6313(a)(6)(B)(ii)(I)–(VII)))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy and Water Use Determination.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
2. Lifetime operating cost savings compared to increased cost for the product.	• Mark-ups for Product Price Determination. • Energy and Water Use Determination. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits. • Regulatory Impact Analysis.

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to amend the energy conservation standards for SPVUs.

II. Request for Information and Comments

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether amended standards for SPVUs may be warranted. DOE also welcomes comments on other issues relevant to this data-gathering process that may not specifically be identified in this document.

In addition, as an initial matter, DOE seeks comment on whether there have been sufficient technological or market changes since the most recent standards

update that may justify a new rulemaking to consider more-stringent standards. Specifically, DOE seeks data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more-stringent standard: (1) Would not result in a significant additional savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of foregoing.

A. Equipment Covered by This Process

This RFI covers equipment that meet the definitions of SPVACs and SPVHPs, as codified at 10 CFR 431.92. The definitions for SPVACs and SPVHPs were established under EPCA, as amended by EISA 2007 (*see* 42 U.S.C. 6311(22) and (23)), and codified in the March 2009 final rule. 74 FR 12058, 12061, 12073 (March 23, 2009).

DOE defines a ''single package vertical air conditioner'' as air-cooled commercial package air conditioning and heating equipment that:

(1) Is factory assembled as a single package that:

(i) Has major components that are arranged vertically;

(ii) Is an encased combination of cooling and optional heating components; and

(iii) Is intended for exterior mounting on, adjacent interior to, or through an outside wall;

(2) Is powered by single- or three-phase current;

(3) May contain one or more separate indoor grilles, outdoor louvers, various ventilation options, indoor free air discharges, ductwork, well plenum, or sleeves; and

(4) Has heating components that may include electrical resistance, steam, hot water, or gas, but may not include reverse cycle refrigeration as a heating means.

10 CFR 431.92

DOE defines ''single package vertical heat pumps'' as a single package vertical air conditioner that: (1) Uses reverse cycle refrigeration as its primary heating source and (2) may include secondary supplemental heating by means of electrical resistance, steam, hot water, or gas. *Id.*

Issue A.1 DOE requests comment on whether the definitions for SPVUs require any revisions—and if so, how those definitions should be revised. Please provide the rationale for any suggested change.

Issue A.2 DOE requests comment on whether additional equipment definitions are necessary to close any potential gaps in existing coverage between equipment types. If there are such gaps, DOE also seeks input on whether equipment currently exists in the market that are in such a gap or whether they are being planned for introduction.

B. Market and Technology Assessment

The market and technology assessment that DOE routinely conducts when analyzing the impacts of a potential new or amended energy conservation standard provides information about the SPVUs industry that will be used in DOE's analysis throughout the rulemaking process. DOE uses qualitative and quantitative information to characterize the structure of the industry and market. DOE identifies manufacturers, estimates market shares and trends, addresses regulatory and non-regulatory initiatives intended to improve energy efficiency or reduce energy consumption, and explores the potential for efficiency improvements in the design and manufacturing of SPVUs. DOE also reviews product literature, industry publications, and company websites. Additionally, DOE considers conducting interviews with manufacturers to improve its assessment of the market and available technologies for SPVUs.

1. Energy Efficiency Descriptor

For SPVUs, DOE currently prescribes energy efficiency ratio (EER) as the cooling mode metric and coefficient of performance (COP) as the heating mode metric. 10 CFR 431.96. These energy efficiency descriptors are the same as those included in ASHRAE 90.1–2016 for SPVUs. EER is the ratio of the produced cooling effect of the SPVU to its net work input, expressed in Btu/watt-hour, and measured at standard rating conditions. COP is the ratio of the produced heating effect of the SPVU to its net work input, when both are expressed in identical units of measurement, and measured at standard rating conditions. DOE's test procedure for SPVUs does not include a seasonal metric that accounts for part-load performance.

On July 20, 2018, DOE published an RFI (July 2018 TP RFI) to collect information and data to consider amendments to DOE's test procedure for SPVUs. 83 FR 34499. As part of the July 2018 TP RFI, DOE requested comment on whether adoption of a cooling-mode metric that integrates part-load performance would better represent full-season efficiency for SPVUs. 83 FR 34499, 34503 (July 20, 2018). If DOE amends the SPVU test procedure to incorporate a part-load metric, it would conduct any analysis for future standards rulemakings, if any, based on the amended test procedure.

2. Equipment Classes

For SVPUs, the current energy conservation standards specified in 10 CFR 431.97 are based on six equipment classes determined according to the following performance-related features that provide utility to the consumer: Cooling capacity and whether the equipment is an air conditioner or a heat pump. Table II.1 lists the current six equipment classes for SPVUs:

TABLE II.1—CURRENT SPVU EQUIPMENT CLASSES

	Equipment class
1 ..	SPVAC <65,000 Btu/h.
2 ..	SPVHP <65,000 Btu/h.
3 ..	SPVAC ≥65,000 Btu/h and <135,000 Btu/h.
4 ..	SPVHP ≥65,000 Btu/h and <135,000 Btu/h.
5 ..	SPVAC ≥135,000 Btu/h and <240,000 Btu/h.
6 ..	SPVHP ≥135,000 Btu/h and <240,000 Btu/h.

Issue B.1 DOE requests feedback on the current SPVU equipment classes and whether changes to these individual equipment classes and their descriptions should be made or whether certain classes should be merged or separated. Specifically, DOE requests comment on opportunities to combine equipment classes that could reduce regulatory burden. DOE further requests feedback on whether combining certain classes could impact product utility by eliminating any performance-related features or impact the stringency of the current energy conservation standard for these equipment. DOE also requests comment on separating any of the existing equipment classes and whether it would reduce any compliance burdens.

3. Model Counts

For this RFI, DOE conducted a review of the current market for SPVUs based on models included in DOE's Compliance Certification Database.[3] Table II.2 shows the number of models listed within the DOE Compliance Certification Database that DOE has identified for each class of SPVUs. Based on DOE's review of equipment currently available on the market, DOE did not identify any SPVAC models with a cooling capacity greater than

[3] DOE's Compliance Certification Database can be found at *https://www.regulations.doe.gov/certification-data/products.html#q=Product_Group_s%3A** (Last accessed Jan. 29, 2020).

135,000 Btu/h or SPVHP models with cooling capacities greater than 65,000 Btu/h.

TABLE II.2—NUMBER OF MODELS UNDER CURRENT SPVU EQUIPMENT CLASSES

Cooling capacity range (Btu/h)	Number of models	
	SPVACs	SPVHPs
<65,000	411	221
≥65,000 and <135,000	58	0
≥135,000 and <240,000	0	0

Issue B.2 DOE requests comment on whether there are units currently available on the market in the following equipment classes: SPVHP ≥65,000 Btu/h and <135,000 Btu/h, SPVAC ≥135,000 Btu/h and <240,000 Btu/h, and SPVHP ≥135,000 Btu/h and <240,000 Btu/h.

4. Technology Assessment

In analyzing the feasibility of potential new or amended energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis. That analysis will likely include a number of the technology options DOE previously considered during its most recent rulemaking for SPVUs (*i.e.,* the September 2015 final rule). 80 FR 57438 (Sept. 23, 2015). A complete list of those prior options appears in Table II.3.

TABLE II.3—TECHNOLOGY OPTIONS FOR SPVUS CONSIDERED IN THE DEVELOPMENT OF THE SEPTEMBER 2015 FINAL RULE

Technology Options	
Heat Exchanger Improvements.	Increased frontal coil area. Increased depth of coil. Microchannel heat exchangers. Dual condenser heat exchangers.
Indoor Blower and Outdoor Fan Improvements.	Improved fan motor efficiency. Improved fan blades.
Compressor Improvements.	Improved compressor efficiency. Multi-speed compressors.

TABLE II.3—TECHNOLOGY OPTIONS FOR SPVUS CONSIDERED IN THE DEVELOPMENT OF THE SEPTEMBER 2015 FINAL RULE—Continued

Other Improvements ..	Thermostatic expansion valves. Electronic expansion valves. Thermostatic cyclic controls.

In addition, DOE conducted preliminary market research by examining manufacturer product literature and published technical literature (*e.g.,* reports, journal articles, or presentations) which identified specific technologies and design options, and DOE will consider these along with others identified during the rulemaking process, should it determine that a rulemaking is necessary. Table II.4 lists additional technology options that DOE may consider in a future SPVU energy conservation standards rulemaking.

TABLE II.4—OTHER TECHNOLOGY OPTIONS FOR SPVUS

Technology Options	
Indoor Blower and Outdoor Fan Improvements.	Variable speed condenser fan/motor. Variable speed indoor blower/motor.

Issue B.4 DOE seeks information on the technologies listed in Table II.3 regarding their applicability to the current market and how these technologies may impact the efficiency of SPVUs, as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the September 2015 final rule analysis. Specifically, DOE seeks information on the range of efficiencies or performance characteristics that are currently available for each technology option.

Issue B.5 DOE seeks information on the technologies listed in Table II.4 regarding their market adoption, costs, and any concerns with incorporating them into equipment (*e.g.,* impacts on consumer utility, potential safety concerns, manufacturing/production/implementation issues).

Issue B.6 DOE seeks comment on other technology options that it should consider for inclusion in its analysis and if these technologies may impact equipment features or consumer utility.

DOE did not evaluate several technology options in the September 2015 final rule for the following reasons:

- Data were not available to evaluate the energy efficiency characteristics;
- The test procedure would not measure the energy impact of these technologies; and
- Available data suggest that the efficiency benefits of the technology are negligible.

80 FR 57438, 57454–57455 (Sept. 23, 2015)

DOE did not evaluate microchannel heat exchangers for the September 2015 final rule engineering analysis because there was insufficient information regarding improvements to the overall system's energy efficiency. 80 FR 57438, 57455 (Sept. 23, 2015).

Issue B.7 DOE requests information and data on how microchannel heat exchangers may impact overall system energy efficiency for SPVUs.

In addition, DOE did not consider the following technologies for the engineering analysis because they were determined not to have a measured impact on energy consumption based on the DOE test procedure:

- Thermostatic Expansion Valves (TXVs) and Electronic Expansion Valves (EEVs);
- Thermostatic Cyclic Controls, and
- Multi-Speed Compressors, *Id.*

As discussed in section II.B.1 of this RFI, the current DOE test procedure for SPVUs measures efficiency at full-load steady-state conditions, while TXV, EEV, thermostatic cyclic controls, and multi-speed compressor technologies only provide benefit at part-load conditions. TXVs and EEVs regulate the

flow of liquid refrigerant entering the evaporator and can adapt to changes in operating conditions, such as variations in temperature, humidity, and compressor staging. As a result, TXVs and EEVs can control for optimum system operating parameters over a wide range of operating conditions, and are a consideration in evaluating improved seasonal efficiency. Thermostatic cyclic controls more accurately monitor room temperature and allow for modulation of performance to match room conditions, which impacts seasonal energy savings. Multi-speed compressors (*e.g.,* two-speed, variable-capacity, and variable-speed compressors) enable modulation of the refrigeration system cooling capacity, allowing the unit to match the cooling load. This modulation can improve efficiency by reducing off-cycle losses and can improve heat exchanger effectiveness at part-load conditions by operating at a lower mass flow rate.

DOE notes that the technologies identified in Table II.4 (*i.e.,* variable speed condenser fan motors and variable speed indoor blower motors) would likewise not have a measured impact on energy consumption based on the current test procedure. These technologies allow for varying fan speed to reduce airflow rate at part-load operation, which is not accounted for under the current metric.

As discussed in section II.B.1 of this RFI, DOE may consider adopting for SPVUs a cooling-mode metric that integrates part-load performance.

Issue B.8 DOE requests comment and data on how the following technology options would impact the measured energy consumption for SPVUs based on the current DOE test procedure: TXVs and EEVs, thermostatic cyclic controls, multi-speed compressors, variable speed condenser fan motors, and variable speed indoor blower motors. In the event DOE were to amend the metric for the SPVU standards to account for part-load performance, DOE requests data on the efficiency improvement associated with these technology options when considering part-load operation. In addition, DOE requests data on any other technology options not listed above that would improve the efficiency of equipment under part-load conditions.

Finally, DOE did not consider the following technologies for the engineering analysis because they were commonly found in most baseline and higher-efficiency SPVUs:

- Improved Fin Design,
- Improved Tube Design, and
- Hydrophilic Film Coating on Fins.

Id.

Issue B.9 DOE requests comment on whether the above technology options are still commonly found in both baseline and higher-efficiency SPVUs.

C. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve equipment efficiency to determine which technologies will be eliminated from further consideration and which will be passed to the engineering analysis for further consideration.

DOE determines whether to eliminate certain technology options from further consideration based on the following criteria:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial equipment or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on equipment utility or equipment availability.* If a technology is determined to have significant adverse impact on the utility of the equipment to significant subgroups of consumers, or result in the unavailability of any covered equipment type or class with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further.

See 10 CFR part 430, subpart C, appendix A, 6(c)(3) and 7(b).

Technology options identified in the technology assessment are evaluated against these criteria using DOE analyses and inputs from interested parties (*e.g.,* manufacturers, trade organizations, and energy efficiency advocates). Technologies that pass through the screening analysis are referred to as ''design options'' in the engineering analysis. Technology options that fail to meet one or more of the five criteria are eliminated from consideration.

Issue C.1 DOE requests feedback on what impact, if any, the five screening criteria described in this section would have on each of the technology options listed in Table II.3 and Table II.4 with respect to SPVUs. Similarly, DOE seeks information regarding how these same criteria would affect consideration of any other technology options not already identified in this document with respect to their potential use in SPVUs.

DOE did not screen out any technology options in the September 2015 final rule based on any of the screening criteria. Table II.5 summarizes the preliminary technology options which DOE intends to examine further as part of the engineering analysis.

TABLE II.5—PRELIMINARY TECHNOLOGY OPTIONS FOR SPVUS

Technology Options	
Heat Exchanger Improvements.	Increased frontal coil area.
	Increased depth of coil.
	Microchannel heat exchangers.
	Dual condenser heat exchangers.
Indoor Blower and Outdoor Fan Improvements.	Improved fan motor efficiency.
	Improved fan blades.
	Variable speed condenser fan/motor.
	Variable speed indoor blower/motor.
Compressor Improvements.	Improved compressor efficiency.
	Multi-speed compressors.
Other Improvements ..	Thermostatic expansion valves.
	Electronic expansion valves.
	Thermostatic cyclic controls.

D. Engineering Analysis

The engineering analysis estimates the cost-efficiency relationship of equipment at different levels of increased energy efficiency (efficiency levels). This relationship serves as the basis for the cost-benefit calculations for consumers, manufacturers, and the Nation. In determining the cost-efficiency relationship, DOE estimates the increase in manufacturer production cost (MPC) associated with increasing the efficiency of equipment above the baseline (*i.e.,* the current minimum energy conservation standards), up to the maximum technologically feasible (max-tech) efficiency level for each equipment class.

DOE historically has used the following three methodologies to generate incremental manufacturing costs and establish efficiency levels (ELs) for analysis: (1) The design-option

approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed cost data for parts and materials, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Baseline Efficiency Levels

For each established equipment class, DOE selects a baseline model as a reference point against which any changes resulting from new or amended energy conservation standards can be measured. The baseline model in each equipment class represents the characteristics of common or typical equipment in that class. Typically, a baseline model is one that just meets the current minimum energy conservation standards and provides basic consumer utility.

If it determines that a rulemaking is necessary, consistent with this analytical approach, DOE tentatively plans to consider the current minimum energy conservation standards [4] to establish the baseline efficiency levels for each equipment class. As discussed in section II.B.1 of this document, the current standards for SPVUs are based on the full-load metrics (*i.e.,* EER and COP). The current standards for SPVUs are found at 10 CFR 431.97 and are presented in Table II.6 of this document. As discussed, the majority of equipment currently available on the market are at the minimum energy conservation standard levels.

TABLE II.6—CURRENT SPVU ENERGY CONSERVATION STANDARD LEVELS

Equipment class	Minimum energy conservation standard level
SPVAC <65,000 Btu/h	EER = 11.0.
SPVHP <65,000 Btu/h	EER = 11.0. COP = 3.3.
SPVAC ≥65,000 Btu/h and <135,000 Btu/h.	EER = 10.0.
SPVHP ≥65,000 Btu/h and <135,000 Btu/h.	EER = 10.0. COP = 3.0.
SPVAC ≥135,000 Btu/h and <240,000 Btu/h.	EER = 10.0.
SPVHP ≥135,000 Btu/h and <240,000 Btu/h.	EER = 10.0. COP = 3.0.

To inform its data collection in this RFI, DOE initially reviewed data in DOE's Compliance Certification Database to characterize the distribution of efficiencies for SPVU equipment currently available on the market, analyzing cooling and heating efficiency separately. DOE is making available for comment a document that provides the distributions of EER and COP for SPVUs in all three equipment classes for which DOE has identified units: SPVAC <65,000, SPVAC ≥65,000 Btu/h and <135,000 Btu/h, and SPVHP <65,000 Btu/h.[5]

Issue D.1 DOE requests feedback on whether using the current established minimum energy conservation standards for SPVUs are appropriate baseline efficiency levels for DOE to apply to each equipment class in evaluating whether to amend the current energy conservation standards for this equipment, or if there are different efficiency levels DOE should consider to evaluate the baseline efficiency levels in order to better evaluate amending energy conservation standards for this equipment.

Issue D.2 DOE requests feedback on the appropriate baseline efficiency levels for any newly analyzed equipment classes that are not currently in place or for any contemplated combined equipment classes, as discussed in section II.B.2 of this document. For newly analyzed equipment classes, DOE requests energy use data to develop a baseline relationship between energy use and adjusted volume.

As discussed in section II.B.1 of this document, if DOE were to amend the SPVU test procedure to incorporate a part-load metric, it would conduct any analysis for the energy conservation standards rulemaking based on the amended test procedure, including considering baseline efficiency levels based on a part-load metric.

Issue D.3 To the extent that it is available, DOE seeks data and information regarding part-load performance for SPVUs currently on the market, in the event that DOE amends the SPVU test procedure to include a part-load energy efficiency metric.

2. Maximum Available and Maximum Technologically Feasible Levels

As part of DOE's analysis, DOE considers the maximum available efficiency level, which is the highest-efficiency unit currently available on the market. DOE also considers the max-tech efficiency level, which it defines as the level that represents the theoretical maximum possible efficiency if all available design options are incorporated in a model. In many cases, the max-tech efficiency level is not commercially available because it is not economically feasible.

For the September 2015 final rule, DOE surveyed the AHRI Directory, manufacturers' websites, and technical literature to determine the highest efficiency that SPVU equipment could attain. DOE also discussed what an appropriate max-tech level would be with manufacturers. For all six equipment classes, DOE determined that the maximum technologically feasible efficiency was the maximum available efficiency. For the September 2015 final rule analysis, DOE did not develop COP efficiency levels independent of EER efficiency levels. Rather, DOE developed the COP efficiency levels using a relationship between EER and COP from AHRI Database market data, thus determining a ''median'' COP level for each EER efficiency level. Therefore, DOE did not separately analyze maximum available COP levels as part of the September 2015 final rule. See section II.B.4 of this document for further discussion on heating efficiency levels. *See* chapter 5 of the 2015 final rule technical support document (TSD).[6]

Table II.7 shows the maximum-available efficiency levels considered for the September 2015 final rule and based on the current market for each equipment classes, as identified in DOE's Compliance Certification Database.

[4] The current standards for SPVUs with cooling capacities <65,000 Btu/h are applicable to equipment manufactured on or after September 23, 2019. The current standards for SPVUs with cooling capacities ≥65,000 Btu/h and <135,000 Btu/h are applicable to equipment manufactured on or after October 9, 2015. The current standards for SPVUs with cooling capacities ≥135,000 Btu/h and <240,000 Btu/h are applicable to equipment manufactured on or after October 9, 2016.

[5] The supplemental file be found in docket EERE–2019–BT–STD–0033 at *https://www.regulations.gov/document?D=EERE-2019-BT-STD-0033-0001.*

[6] The 2015 final rule TSD can be found in docket EERE–2012–BT–STD–0041–0027 at *https://www.regulations.gov/document?D=EERE-2012-BT-STD-0041-0027.*

TABLE II.7—MAXIMUM-AVAILABLE EFFICIENCY LEVELS FOR SPVUS

Equipment class	2015 Final rule	Current market
SPVAC <65,000 Btu/h	12.3 EER	12.5 EER.
SPVHP <65,000 Btu/h	12.3 EER	12.0 EER.
	3.9 COP	4.1 COP
SPVAC ≥65,000 Btu/h and <135,000 Btu/h	10.0 EER	11.2 EER.
SPVHP ≥65,000 Btu/h and <135,000 Btu/h *	10.0 EER	N/A.
	3.0 COP.	
SPVAC ≥135,000 Btu/h and <240,000 Btu/h *	N/A	N/A.
SPVHP ≥135,000 Btu/h and <240,000 Btu/h *	N/A	N/A.

* Based on DOE's review of equipment currently available on the market, DOE did not identify any SPVAC models with a cooling capacity greater than 135,000 Btu/h or SPVHP models with cooling capacities greater than 65,000 Btu/h.

Issue D.4 DOE seeks input on whether the current maximum available efficiency levels are appropriate and technologically feasible for potential consideration as possible energy conservation standards for the equipment at issue. Although the Department has tentatively concluded that the maximum available efficiency level for SPVUs would be the max-tech level, DOE also seeks input as to what efficiency levels should be considered max-tech.

Issue D.5 DOE seeks feedback on what design options would be incorporated at a max-tech efficiency level. DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

As discussed in section II.B.1 of this document, if DOE were to amend the SPVU test procedure to incorporate a part-load metric, it would conduct any analysis for an energy conservation standards rulemaking based on the amended test procedure, including considering efficiency levels based on a part-load metric.

Issue D.6 DOE seeks data and information regarding incremental and maximum-available efficiency levels for each equipment class in the event that the SPVU test procedure includes a part-load energy efficiency metric. In particular, DOE seeks energy use data for equipment operating at part-load capacities, for example, at the part-load test conditions specified in AHRI Standard 340/360 (I/P)–2019, ''2019 Standard for Performance Rating of Commercial and Industrial Unitary Air-Conditioning and Heat Pump Equipment.'' In addition, DOE requests information on the technologies for improving part-load operation, including the order in which manufacturers would likely add such technologies.

3. Manufacturer Production Costs and Manufacturing Selling Price

As described at the beginning of this section, the main outputs of the engineering analysis are cost-efficiency relationships that describe the estimated increases in manufacturer production cost associated with higher-efficiency equipment for the analyzed equipment classes. For the September 2015 final rule, DOE developed the cost-efficiency relationships using a combination of the efficiency level and reverse-engineering approaches, performing teardowns of equipment available on the market at different efficiency levels to estimate the efficiency improvements and costs associated with incorporating specific design options into the assumed baseline model for each analyzed equipment class. 80 FR 57438, 57456–57459 (Sept. 23, 2015).

Issue D.7 DOE requests feedback on how manufacturers would incorporate the technology options listed in Table II.3 and Table II.4 to increase energy efficiency in SPVU efficiencies beyond the current levels. This includes information on the order in which manufacturers would incorporate the different technologies to incrementally improve the efficiencies of equipment. DOE also requests feedback on whether the increased energy efficiency would lead to other design changes that would not occur otherwise. DOE is also interested in information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand.

Issue D.8 DOE also seeks input on the increase in MPC associated with incorporating each particular design option. Specifically, DOE is interested in whether and how the costs estimated for design options in the September 2015 final rule have changed since the time of that analysis. DOE also requests information on the investments necessary to incorporate specific design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

Issue D.9 DOE requests comment on whether certain design options may not be applicable to (or incompatible with) specific equipment classes.

DOE directly analyzed one equipment class in the September 2015 final rule (*i.e.,* SPVACs with a cooling capacity <65,000 Btu/h). DOE then performed a more limited analysis of the other equipment classes based on limited physical/virtual teardowns and scaling the results from the analysis conducted for SPVACs with a cooling capacity <65,000 Btu/h. *See* chapter 5 of the September 2015 final rule TSD for the cost-efficiency curves developed in that rulemaking. 80 FR 57438, 57459–57460 (Sept. 23, 2015).

Issue D.10 DOE seeks feedback on whether the approach of directly analyzing the SPVACs <65,000 Btu/h equipment class and scaling the results to other equipment classes is appropriate for a future SPVU energy conservation standards rulemaking, should one be undertaken. DOE requests comment on whether it is necessary to individually analyze all or some of the available equipment classes.

As discussed in the September 2015 final rule, for SPVACs ≥65,000 and <135,000 Btu/h, there were no models on the market above the ASHRAE level, and for SPVHPs ≥65,000 and ≥135,000 Btu/h and SPVUs ≥135,000 Btu/h and <240,000 Btu/h, there were no models on the market at all. As a result, DOE had no basis with which to develop higher efficiency levels or conduct analyses for those equipment classes. As a result, DOE adopted amended standards for those equipment classes equivalent to levels specified in ASHRAE Standard 90.1–2013, as required by EPCA. 80 FR 57438, 57456 (Sept. 23, 2015).

Issue D.11 DOE requests information on how to conduct the cost-efficiency

analyses for equipment classes without models on the market and for which DOE does not have data, and whether the approach used in the 2015 final rule is appropriate.

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer mark-up) to the MPC. The resulting manufacturer selling price (MSP) is the price at which the manufacturer distributes a unit into commerce. For the September 2015 final rule, DOE used a manufacturer mark-up of 1.28 for all SPVUs. See chapter 5 of the September 2015 final rule TSD.

Issue D.12 DOE requests feedback on whether manufacturer mark-up of 1.28 is appropriate for SPVUs, or if a different value would be more appropriate.

E. Mark-Ups Analysis and Distribution Channels

In generating end-user price inputs for the life-cycle cost (LCC) analysis and the national impact analysis (NIA), DOE must identify distribution channels (*i.e.,* how the products are moved from the manufacturer to the consumer), and estimate relative sales volumes through each channel. Additionally, DOE needs to determine the cost to the commercial consumer of a baseline piece of equipment that satisfies the currently applicable standards, and the cost of the more-efficient piece of equipment the consumer would purchase under potential new and/or amended standards. By applying a multiplier called a ''mark-up'' to the MSP, DOE estimates the commercial consumer's price. The appropriate mark-ups for determining the end-user equipment price depend on the distribution channels (*i.e.,* how equipment is distributed from the manufacturer to the consumer), and estimated relative sales volumes through each channel.

In the September 2015 final rule, DOE identified four distribution channels based on a literature review and interviews with SPVU manufacturers, two distribution channels representing the sale of new equipment, and two representing the sale of replacement equipment. A recent literature review indicates that the end users of SPVUs have not changed since the September 2015 final rule. 80 FR 57438, 57460–57461 (Sept. 23, 2015).

In the first new equipment distribution channel, an SPVU manufacturer sells the product to a heating, ventilation, and air conditioning (HVAC) distributor, who sells to a modular building manufacturer, who sells to the end user.

Manufacturer → HVAC Distributor → Modular Building Manufacturer → End User

In the second new equipment distribution channel, an SPVU manufacturer sells the product to an HVAC distributor, who sells to a modular building manufacturer, who sells to the end user, via a general contractor.

Manufacturer → HVAC Distributor → Modular Building Manufacturer → General Contractor → End User

In the first replacement distribution channel, an SPVU manufacturer sells the product to an HVAC distributor, who sells it to a modular building distributor, who sells it to the end user.

Manufacturer → HVAC Distributor → Modular Building Distributor → End user

Finally, in the second replacement distribution channel, an SPVU manufacturer sells the product to an HVAC distributor, who sells it to a mechanical contractor, who sells it to the end user.

Manufacturer → HVAC Distributor → Mechanical Contractor → End user

Were DOE to undertake an energy conservation standards rulemaking, DOE would determine the mark-ups for wholesalers, modular building manufacturers, and contractors by examining the updated versions of the sources of information used in the previous energy conservation standards rulemaking for SPVUs. In the September 2015 final rule, DOE developed baseline and incremental mark-ups based on available financial data. More specifically, DOE based the air-conditioning wholesaler/distributor mark-ups on data from the Heating, Air Conditioning, and Refrigeration Distributors International (HARDI) 2013 Profit Report.[7] DOE also used financial data from the U.S. Census Bureau [8] to estimate mark-ups for modular building manufacturers, modular building distributors, mechanical contractors, and general contractors. *See* Chapter 6 of the September 2015 final rule TSD for more details on mark-ups and distribution channels.

Issue E.1 DOE requests information on the existence of any distribution channels other than the four distribution channels identified in the September 2015 final rule that are used to distribute the SPVU equipment at issue into the market. DOE also requests data on the fraction of SPVUs that go through each of the four identified distribution channels, as well as the fraction of sales that go through any other identified channels. DOE also welcomes comment on its approach to estimating mark-ups and any financial data available that would assist DOE in developing mark-ups for the various segments in the above-mentioned distribution channels.

F. Energy Use Analysis

As part of a typical rulemaking process, DOE conducts an energy use analysis to identify how equipment is used by consumers, and thereby determine the energy savings potential of energy efficiency improvements. To determine the energy savings potential, DOE develops estimates of the annual unit energy consumption (UEC) for each efficiency level developed in the engineering analysis. The energy savings are calculated by comparing the UEC of a baseline product to the UECs of higher-efficiency products. In the September 2015 final rule, DOE used Energy Plus,[9] a whole building energy simulation program, to develop estimates of the UECs for SPVUs. SPVUs are most commonly used in modular buildings, such as classrooms, telecommunications shelters, and modular offices for a variety of other industries. In the September 2015 final rule, DOE simulated the energy use in three types of buildings: Modular offices, modular schools, and telecommunications structures. DOE developed State-specific unit energy consumption estimates in order to account for the variability of energy use by climate. 80 FR 57438, 57462 (Sept. 23, 2015).

1. Model Buildings

DOE developed three prototypical building models to simulate modular offices, modular schools, and telecommunications structures. For offices and schools, a 1,568 sq. ft. wood-frame structure was developed that had performance characteristics (lighting density, ventilation, envelope, economizer usage) meeting the requirements of ASHRAE 90.1–2004. Schedules and load profiles were taken from the DOE commercial reference buildings for primary schools and small offices. For telecommunications shelters, a 240 sq. ft. precast concrete structure was developed. These shelters were assumed to operate with a constant thermal load of 6.86 kW (23,400 Btu/h)

[7] Heating, Air-conditioning & Refrigeration Distributors International (HARDI), 2013 Profit Report (2012 Data) (Available at: *http://www.hardinet.org/Profit-Report*).

[8] Available at: *https://www.census.gov/programs-surveys/economic-census.html.*

[9] Available at: *http://apps1.eere.energy.gov/buildings/energyplus/.*

during all hours of the year, thus requiring year-round cooling. DOE plans to continue to use the model building approach as it provides DOE with the capability to measure the diverse loads conditions that SPVUs encounter in the field. For a detailed discussion of the building models see Chapter 7 of the 2015 final rule TSD.

Issue F.1 DOE requests comment on the simulation approach that was used in the analysis for the September 2015 final rule. Specifically, should any other types of commercial buildings be included in the energy use analysis?

Issue F.2 DOE seeks input on the assumption that the internal cooling load of telecommunications structures is constant. As part of the energy use analysis for the September 2015 final rule, DOE could not identify a source for the typical load profiles of telecommunications structures, as it did for schools and offices. Instead, DOE based its cooling load assumptions on computer server room environments, which maintain a constant cooling load. DOE requests input on whether this was a valid basis for comparison and how cooling loads may vary as telecommunications traffic changes throughout the day.

Issue F.3 DOE requests feedback on the use of economizers in telecommunications structures. As part of the energy use analysis for the September 2015 final rule, DOE assigned economizers to offices and schools in all climate zones except for the hot-humid regions (zones 1A, 2A, 3A, and 4A), in line with ASHRAE guidelines for economizer use. There are no ASHRAE guidelines for economizers in telecommunications structures, and discussions with manufacturers indicated that economizer use is driven by individual corporate user specifications, not climate zone. Manufacturers estimated that 45 percent of telecommunications structures have economizers and that 55 percent do not. Therefore, in the energy use analysis, DOE simulated all telecommunications buildings with and without economizers and weighted the results using the 45 percent and 55 percent market share breakdown. DOE seeks input on this approach and requests input about whether economizers should be assigned by climate zone.

G. Life-Cycle Cost and Payback Period Analysis

DOE conducts the LCC and PBP analysis to evaluate the economic effects of potential energy conservation standards for SPVUs on individual customers. For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimated baseline level. The LCC is the total customer expense over the life of the equipment, consisting of purchase, installation, and operating costs (expenses for energy use, maintenance, and repair). Inputs to the calculation of total installed cost include the cost of the equipment—which includes MSPs, distribution channel markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, discount rates, and the year that compliance with new and amended standards is required.

1. Repair and Maintenance Costs

In order to develop annual operating costs and savings for the life-cycle cost analysis, DOE must estimate repair and maintenance costs over the lifetime of the SPVU. In the September 2015 final rule, DOE used RS Means [10] in order to develop annualized repair and maintenance costs. The repair costs represent the expenses associated with repairing or replacing a damaged component of an SPVU that has failed, and the first instance of a significant repair typically occurs about 10 years after purchase. The materials portion of the repair cost scales with the manufacturer selling price, although the labor portion stays constant, so higher-efficiency units will typically have higher repair costs. The annual maintenance cost represents expenses associated with ensuring continued operation of the covered equipment over time, something which remained constant across all efficiency levels. For a detailed discussion of the repair and maintenance cost estimates, see Chapter 8 of the 2015 final rule TSD. RS Means is a leading source for facility repair and maintenance data for space conditioning equipment, and, as such, DOE intends to continue to use RS Means for any future rulemakings for SPVUs.

Issue G.1 DOE requests feedback and data on whether maintenance costs differ in comparison to the baseline maintenance costs for any of the specific technology options listed in Table II.3 and Table II.4. To the extent that these costs differ, DOE seeks supporting data and an explanation of the reasons for those differences.

Issue G.2 DOE requests information and data on the frequency of repair and repair costs by equipment class for the technology options listed in Table II.3 and Table II.4. While DOE is interested in information regarding each of the listed technology options, DOE is also interested in the extent to which consumers simply replace, as opposed to repair, failed equipment.

H. Shipments Analysis

DOE develops shipments forecasts of SPVUs to calculate the national impacts of potential amended energy conservation standards on energy consumption, net present value (NPV), and future manufacturer cash flows. DOE shipments projections are based on available historical data broken out by equipment class, capacity, and efficiency. Current sales estimates allow for a more accurate model that captures recent trends in the market. In the September 2015 final rule, DOE used three data sources to develop its shipments model: (1) Actual shipments of SPVUs in 2005 provided by AHRI; (2) a graph displaying the shipments trend from 2006–2014 provided by AHRI, and (3) floor space production data from the modular building institute from 1994–2005. 80 FR 57438, 57469–57470 (Sept. 23, 2015). The modular building floor space production data was used to develop shipments prior to 2005, which is necessary to account for replacement shipments in future years once the older stock of SPVUs reach the end of their useful life. Future new construction shipments for offices and schools were based on floor space projections from the 2015 Energy Information Administration's *Annual Energy Outlook* (*AEO*).[11] New construction shipments for the telecommunication sector were based on data of power and communication line construction from the U.S. Census.[12] DOE intends to project future shipments using the most current *AEO* and Census data, as new shipments of SPVUs should track floor space of the industries that use SPVUs.

Issue H.1 DOE requests the most recent annual sales data for SPVUs (*i.e.,* number of shipments), as well as historical annual sales data going back to 2015. DOE also requests the shipments by equipment class and efficiency level for the most recent year available and if possible, for each year going back to 2015.

Table II.8 presents the shipments and market shares from the year 2015 in the

[10] RS Means, CostWorks 2014 (2014) (Available at: *http://www.rsmeansonline.com*) (Last accessed Feb. 27, 2014).

[11] Available at: *https://www.eia.gov/outlooks/aeo/pdf/0383(2015).pdf* (Last accessed April 18, 2015).

[12] Available at: U.S. Census Bureau. County Business Patterns. *www.census.gov/econ/cbp/index.html* (Last accessed April 15, 2014).

National Impact Analysis [13] spreadsheet for the September 2015 final rule. As requested in Issue H.1 DOE seeks to update this table with shipments and market shares by EER bin for the most recent year available. Interested parties are also encouraged to provide additional shipments data as may be relevant.

TABLE II.8—SUMMARY TABLE OF SHIPMENTS-RELATED DATA REQUESTS FOR SPVUS

Equipment class	Annual sales (2015)	Fraction of annual sales (%)			
		9–10 EER	10–11 EER	11–12 EER	>12 EER
SPVAC <65,000 Btu/h	41,741	80.8	18.1	1.1	0
SPVHP <65,000 Btu/h	17,343	80.8	18.1	1.1	0
SPVAC ≥65,000 Btu/h and <135,000 Btu/h	1,868	80.8	18.1	1.1	0
SPVHP ≥65,000 Btu/h and <135,000 Btu/h*	0	N/A	N/A	N/A	N/A
SPVAC ≥135,000 Btu/h and <240,000 Btu/h*	0	N/A	N/A	N/A	N/A
SPVHP ≥135,000 Btu/h and <240,000 Btu/h*	0	N/A	N/A	N/A	N/A

* DOE did not identify any SPVAC models with a cooling capacity greater than 135,000 Btu/h or SPVHP models with cooling capacities greater than 65,000 Btu/h.

If disaggregated fractions of annual sales are not available at the equipment class or efficiency level, DOE requests more aggregated fractions of annual sales at the equipment category level.

Issue H.2 In the September 2015 final rule, DOE determined that SPVU lifetimes range from 10 to 25 years, with an average lifetime of 15 years. 80 FR 57438, 57467 (Sept. 23, 2015). DOE requests comment on the estimated average lifetime of 15 years, as well as any new data or information about the lifetimes of SPVUs. DOE also requests input on whether the lifetimes changes by equipment class, efficiency, or end use.

I. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (MIA) is to estimate the financial impact of amended energy conservation standards on manufacturers of SPVUs, and to evaluate the potential impact of such standards on direct employment and manufacturing capacity. The MIA includes both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model adapted for each product in this analysis, with the key output being industry net present value (INPV). The qualitative part of the MIA addresses the potential impacts of energy conservation standards on manufacturing capacity and manufacturing employment, as well as factors such as product characteristics, impacts on particular subgroups of firms, and important market and product trends.

As part of the MIA, DOE intends to analyze impacts of amended energy conservation standards on subgroups of manufacturers of covered equipment, including small business manufacturers. DOE uses the Small Business Administration's (SBA) small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the applicable North American Industry Classification System (NAICS) code.[14] Manufacturing of SPVUs is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing,'' and the SBA sets a threshold of 1,250 employees or less for a domestic entity to be considered as a small business. This employee threshold includes all employees in a business' parent company and any other subsidiaries.

One aspect of assessing manufacturer burden involves examining the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Issue I.1 To the extent feasible, DOE seeks the names and contact information of any domestic or foreign-based manufacturers that distribute SPVUs in commerce in the United States.

Issue I.2 DOE identified small businesses as a subgroup of manufacturers that could be disproportionally impacted by amended energy conservation standards. DOE requests the names and contact information of small business manufacturers (as defined by the SBA's size threshold) of SPVUs that distribute products in commerce in the United States. In addition, DOE requests comment on any other manufacturer subgroups that could be disproportionally impacted by amended energy conservation standards. DOE requests feedback on any potential approaches that could be considered to address impacts on manufacturers, including small businesses.

Issue I.3 DOE requests information regarding the cumulative regulatory burden impacts on manufacturers of SPVUs associated with: (1) Other DOE standards applying to different equipment that these manufacturers may also make and (2) equipment-specific regulatory actions of other Federal agencies. DOE also requests comment on its methodology for computing cumulative regulatory burden and whether there are any flexibilities it can consider that would reduce this burden while remaining consistent with the requirements of EPCA.

[13] Available at: *https://www.regulations.gov/document?D=EERE-2012-BT-STD-0041-0029* (Last accessed Sept 2, 2019).

[14] Available online at *https://www.sba.gov/document/support--table-size-standards.*

J. Other Energy Conservation Standards Topics

1. Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amended energy conservation standards for SPVUs.

2. Emerging Smart Technology Market

DOE published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data, and information on the issues presented in that RFI as they may be applicable to energy conservation standards for SPVUs.

3. Other Issues

Additionally, DOE welcomes comments on any other aspects of energy conservation standards for SPVUs that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. *See* 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to SPVUs while remaining consistent with the requirements of EPCA.

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified previously in the **DATES** section of this document, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of amended energy conservations standards for SPVUs. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this RFI.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Following such instructions, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption, and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process

for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signed in Washington, DC, on February 21, 2020.

Alexander N. Fitzsimmons,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2020–08318 Filed 4–23–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0411; Product Identifier 2018–SW–061–AD]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. (Leonardo) Model A119 and AW119MKII helicopters. This proposed AD would require repetitive borescope inspections of the tail rotor gearbox (TGB) and depending on the inspection results, removing the TGB from service. This proposed AD was prompted by reports of corrosion on the internal surface of the 90-degree TGB output shaft. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 23, 2020.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0411; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Leonardo S.p.a. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Rao Edupuganti, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *rao.edupuganti@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2018–0156, dated July 24, 2018 (EASA AD 2018–0156) to correct an unsafe condition for Leonardo (formerly Finmeccanica S.p.A., AgustaWestland S.p.A., Agusta S.p.A.; and AgustaWestland Philadelphia Corporation, formerly Agusta Aerospace Corporation) Model A119 and AW119MKII helicopters with 90-degree TGB part number (P/N) 109–0440–06–101 or P/N 109–0440–06–105 having serial number 167, 169 through 172 inclusive, 215 through 225 inclusive, 227, 230, 232, 233, AW268, K3, K16, M47, or L29, installed. EASA advises of two reported occurrences of corrosion on the internal surface of the 90-degree TGB shaft installed on Model A119 helicopters. Further analysis identified a specific batch of parts that may be susceptible to similar conditions. Due to design similarity, Model AW119MKII helicopters are also affected.

EASA states that this condition, if not detected and corrected, could lead to failure of the tail rotor, possibly resulting in reduced control of the helicopter. Accordingly, EASA AD 2018–0156 requires performing repetitive endoscope inspections on the internal surface of the 90-degree TGB output shaft for corrosion and depending on the findings, replacing the TGB. EASA further states EASA AD 2018–0156 is considered an interim action and further AD action may follow.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is

likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Leonardo Helicopters Alert Service Bulletin No. 119–090, dated July 23, 2018, for Model A119 and AW119MKII helicopters, which contains procedures for conducting an endoscope inspection of the internal surface of the 90-degree TGB output shaft for corrosion. This service information also specifies replacing the TGB if corrosion is found.

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

Proposed AD Requirements

This proposed AD would require compliance with certain procedures described in the manufacturer's service bulletin. For helicopters with an affected 90-degree TGB output shaft installed, this proposed AD would require within 25 hours time-in-service (TIS) or 3 months, whichever comes first, and thereafter at intervals not to exceed 100 hours TIS or 6 months, whichever occurs first, borescope inspecting the internal surface of the 90-degree TGB output shaft for corrosion. If there is corrosion, this proposed AD would require removing the TGB from service before further flight.

Interim Action

The FAA considers this proposed AD to be an interim action. An investigation is ongoing and if final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this proposed AD would affect 96 helicopters of U.S. Registry. The FAA also estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Borescope inspecting the 90-degree TGB output shaft would take about 3 work-hours for an estimated cost of $255 per helicopter and $24,480 for the U.S. fleet per inspection cycle.

Replacing a (overhauled) TGB would take about 18 work-hours and parts would cost about $49,000 (overhauled) for an estimated cost of $50,530 per helicopter.

According to Leonardo's service information, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Leonardo. Accordingly, the FAA has included all costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Leonardo S.p.a.: Docket No. FAA–2020–0411; Product Identifier 2018–SW–061–AD.

(a) Applicability

This AD applies to Leonardo S.p.a. Model A119 and AW119MKII helicopters, certified in any category, with 90-degree tail rotor gearbox (TGB) part number (P/N) 109–0440–06–101 or 109–0440–06–105 having serial number 167, 169 through 172 inclusive, 215 through 225 inclusive, 227, 230, 232, 233, AW268, K3, K16, M47, or L29, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as corrosion on the internal surface of the 90-degree TGB output shaft. This condition could result in failure of the 90-degree TGB output shaft and reduced control of the helicopter.

(c) Comments Due Date

The FAA must receive comments by June 23, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 25 hours time-in-service (TIS) or 3 months, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or 6 months, whichever occurs first, borescope inspect the entire internal surface of the 90-degree TGB output shaft for corrosion. Refer to Figure 3 of Leonardo Helicopters Alert Service Bulletin No. 119–090, dated July 23, 2018, for a depiction of the entry point for the borescope. If there is corrosion, before further flight, remove from service the TGB.

(2) After the effective date of this AD, do not install on any helicopter any 90-degree TGB P/N 109–0440–06–101 or 109–0440–06–105 that has serial number 167, 169 through 172 inclusive, 215 through 225 inclusive, 227, 230, 232, 233, AW268, K3, K16, M47, or L29, unless the actions required by paragraph (e)(1) of this AD have been done.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Rao Edupuganti, Aviation Safety Engineer, Regulations and Policy Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before

operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD No. 2018–0156, dated July 24, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 62, Tail Rotor Gearbox.

Issued on April 20, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–08644 Filed 4–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2019–OSERS–0156]

Proposed Priority and Definitions—State Personnel Development Grants

Catalog of Federal Domestic Assistance (CFDA) Number: 84.323A.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and definitions.

SUMMARY: The Office of Special Education and Rehabilitative Services (OSERS) proposes a funding priority and definitions under the State Personnel Development Grants (SPDG) program, which assists States in reforming and improving their systems for personnel preparation and personnel development in order to improve results for children with disabilities. We take this action to focus attention on the need to improve results for children with disabilities by empowering personnel to select professional development activities to improve their ability to serve children with disabilities. The Department may use the proposed priority and definitions for competitions in fiscal year (FY) 2020 and later years.

DATES: We must receive your comments on or before May 26, 2020.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov*'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority and definitions, address them to Jennifer Coffey, U.S. Department of Education, 400 Maryland Avenue SW, Room 5161, Potomac Center Plaza, Washington, DC 20202–5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

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:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and definitions. To ensure that your comments have maximum effect in developing the notice of final priority and definitions, we urge you to identify clearly the specific section of the proposed priority or definition that each comment addresses.

We are particularly interested in comments about whether the proposed priority would be challenging for new grantees to meet and, if so, how the proposed priority could be revised to address potential challenges for new grantees and reduce burden.

Directed Question 1: The Department seeks information on the extent to which State educational agencies (SEAs) and local educational agencies (LEAs) under Part B of IDEA, and, if appropriate, lead agencies (LAs) or local agencies under Part C of IDEA provide special education teachers and other personnel autonomy in selecting their professional development options.

Directed Question 2: The Department seeks information on State and local professional development policies and requirements for special education teachers and other personnel, such as the number of hours of professional development personnel must fulfill or the competencies personnel must acquire to obtain or maintain applicable certifications.

In responding to these questions, the Secretary specifically invites comments on how this proposed priority would change existing professional development requirements, policies, and practices and if it could increase the effectiveness of professional development for teachers and other personnel. When responding, commenters should keep in mind that the professional development provided must be consistent with the State personnel development plan (hereinafter referred to as a ''State plan'') under section 653 of IDEA and the use of SPDG funds to implement authorized professional development activities under section 654 of IDEA.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from the proposed priority and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and definitions by accessing *Regulations.gov*. You may also inspect the comments in person in Room 5161, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of this program is to assist SEAs in

reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

Program Authority: 20 U.S.C. 1451–1455.

Proposed Priority

This notice contains one proposed priority.

Choice in Professional Development

Background: The purpose of this proposed priority is to increase the learning and engagement of personnel [1] in their professional development experiences by empowering them to select professional development activities based on their individual needs in order to improve results for children with disabilities. Funds would be awarded competitively to SEAs to develop personalized professional development pilots to carry out the State plan under section 653 of IDEA and implement professional development activities that are authorized under the use of funds provisions under section 654 of IDEA. These professional development pilots would include stipends or other mechanisms, such as competency-based personalized learning, that provide teachers and other personnel choice in their professional development.

Note: To carry out the State plan under section 653 of IDEA described in its application, the SEA also may award contracts, subgrants, or both to other public and private entities, including, if appropriate, the LA under Part C of IDEA.

SEAs, LEAs, LAs, or local agencies under Part C, if appropriate, would have flexibility in selecting the individual(s) or groups of personnel who would be provided with professional development options. For example, stipends could be targeted for personnel who teach children with disabilities in specific subjects such as math and science; personnel in schools identified for comprehensive support and improvement or targeted support and improvement under the Elementary and Secondary Education Act of 1965, as amended (ESEA); personnel preparing for leadership roles in or out of the classroom; or, if appropriate, personnel providing early intervention services. Applicants would describe how they will prioritize selecting individuals or groups of personnel serving rural children with disabilities or disadvantaged children with disabilities, such as children from low-income families and ensure there is an equitable distributions across these groups if demand for professional development exceeds what available funds can support.

Personnel could then use the stipends or other mechanisms based on their individual needs to select evidence-based professional development that is designed to improve outcomes for children with disabilities.

Although school-related factors such as curriculum, family engagement, and funding contribute to student academic performance, research suggests that the single most important school-based factor impacting students' achievement is their teacher (Hanushek, 2016; Stronge & Tucker, 2000). Accordingly, creating every opportunity for teachers and other education personnel to be fully engaged in high-quality professional development that increases their knowledge and skills and is aligned to students' academic and other learning needs holds promise in boosting student achievement.

Alignment of professional development to personnel needs is also critical. Research on adult learning (andragogy) posits that adults engage more deeply with learning opportunities when those opportunities are aligned to their interests (Trotter, 2006). Among educators, those interests can vary in the different phases of their careers. For example, novice teachers may seek to improve classroom management skills, content knowledge, and pedagogy. In contrast, more experienced teachers may want to develop the advanced skills necessary to take on new leadership roles or increase intensive intervention skills. Andragogy suggests that adult learning can be differentiated by the learner's need—that is, personalized—and indeed should be in order to maximize engagement in learning (Trotter, 2006).

Leveraging the power of personalization, and the deep engagement with learning it promotes, is critical if professional development is to have an impact on educator practice. The Learning Policy Institute (2017) identifies a set of seven pillars for effective professional development. Among them are: (1) Active learning, (2) collaboration, (3) coaching and support, (4) feedback and reflection, and (5) training of a sustained duration (Learning Policy Institute, 2017). A common thread among each of these practices is that they require personnel to invest meaningful effort and attention. No matter how well designed by the provider, the promise of these pillars to improve personnel practice is only realized when educators engage fully with the content. Adult learning theory suggests personalization is one way to make this engagement more likely (Trotter, 2006).

Giving educators the financial and other resources needed to personalize their professional development, consistent with their needs and the needs of their students, has the potential to maximize benefits for them and their students. Research indicates that having educators create professional learning plans and giving them the freedom to select the activities that will support them in achieving the goals outlined in those plans could have positive effects on student achievement and attainment (Rabbitt, et al., 2015). Thus, it may be the case that a stipend program or other mechanisms to provide personnel with choice in selecting professional development options could magnify the efficacy of other personalization efforts by giving teachers access to options that otherwise may have been inaccessible due to professional development requirements or that were cost prohibitive.

For these reasons, this proposed priority would support innovative projects that develop and test approaches to providing personnel with professional learning stipends or other mechanisms to provide personnel with choice in selecting professional development options. With the autonomy to identify instructionally relevant professional learning, teachers and other personnel can improve their knowledge and skills and better support student achievement and other desirable outcomes for children with disabilities.

We intend for this proposed priority to supplement the absolute priority 2, the SPDG statutory priority, published in the **Federal Register** on February 13, 2017 (82 FR 10470),[2] as well as other relevant statutory and regulatory priorities established by the Department. Specifically, all applicants must meet the statutory requirements in sections 651 through 655 of the IDEA, 20 U.S.C. 1451–1455. Applicants may apply for this proposed priority as well, but would not be required to do so to be eligible for an award.

[1] ''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. Section 651(b) of IDEA; 20 U.S.C. 1451(b).

[2] *https://www.federalregister.gov/documents/2017/02/13/2017-02895/applications-for-new-awards-state-personnel-development-grants-spdg-program.*

Projects must be awarded and operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

Proposed Priority: The purpose of this proposed priority is to fund SPDG grants to SEAs that empower teachers and other personnel to select professional development that meets their individual needs in order to improve results for children with disabilities. States will meet the priority if they describe in their application how they will develop personalized professional development projects to carry out their State plan under section 653 of IDEA and to implement professional development activities that are consistent with the use of funds provisions in section 654 of IDEA. This would be accomplished by using funds under the SPDG program for stipends or other mechanisms to provide personnel with choice in selecting professional development options that will count toward State or local professional development requirements, as appropriate, such as the number of hours personnel must fill or the competencies they must acquire to obtain or retain certification, and that are designed to meet their individual needs and thus improve results for children with disabilities.

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will develop personalized professional development activities using stipends or other mechanisms that provide personnel choice in professional development options designed to meet their individual needs and count toward State or local professional development requirements and thus improve results for children with disabilities;

(b) Describe how the State will select the individual(s) or groups of personnel that will be provided with professional development options, including the extent to which applicants will prioritize selecting individuals or groups of personnel serving rural children with disabilities or disadvantaged children with disabilities, such as children from low-income families. If applicable, applicants should specify how they will prioritize personnel if demand for professional development among the individuals or groups of personnel that the applicant proposes to serve exceed what available funds can support.

(c) Describe how the State will create a list of approved professional development options that meet the requirements of the SPDG program. This description should include how the applicant will engage with a range of stakeholders, including school administrators, personnel serving students with disabilities, families of students with disabilities and individuals with disabilities, and other State or local agencies serving individuals with disabilities, such as juvenile justice agencies, to determine which professional development options it will offer. Specifically, professional development options must—

(1) Use evidence-based (as defined in this notice) professional development methods that will increase implementation of evidence-based practices and result in improved outcomes for children with disabilities;

(2) Include ongoing assistance that supports the implementation of evidence-based practices with fidelity (as defined in this notice); and

(3) Use technology to more efficiently and effectively provide ongoing professional development to personnel, including to personnel in rural areas and in urban or high-need local educational agencies (LEAs) (as defined in this notice); and

(d) If applicable, describe the steps that personnel would need to take to request professional development options not already on a list of approved professional development options, the justification that personnel would need to provide to demonstrate how the selected options would improve results for children with disabilities, and how personnel would be notified if their request was approved or disapproved in writing and within 14 days.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Definitions

We propose the following definitions for use with this proposed priority and with the SPDG program. We propose these definitions to ensure that applicants have a clear understanding of how we are using these terms. We propose to use definitions the Department has adopted elsewhere and provide the source of existing definitions in parentheses.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale. (34 CFR 77.1)

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment. (34 CFR 77.1)

Fidelity means the delivery of instruction in the way in which it was designed to be delivered. (77 FR 45944)

High-need LEA means, in accordance with section 2102(3) of the ESEA, an LEA—

(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 8101(41) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

Lead agency means the agency designated by the State's Governor under section 635(a)(10) of IDEA and 34 CFR 303.120 that receives funds under section 643 of IDEA to administer the State's responsibilities under part C of IDEA. (34 CFR 303.22)

Local educational agency means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. (Section 602(19) of IDEA (20 U.S.C. 1401(19)))

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1)

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome. (34 CFR 77.1)

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook. (34 CFR 77.1)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program. (34 CFR 77.1)

State educational agency means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. (Section 602(32) of IDEA (20 U.S.C. 1401(32)))

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement. (34 CFR 77.1)

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation. (34 CFR 77.1)

References

Darling-Hammond, L., Hyler, M., and Gardner, M., with assistance from Espinoza, D. (2017). Effective teacher professional development. Learning Policy Institute.

Hanushek, E.A. (2016). What matters for student achievement. *Education Next, 16*(2), 18–26.

Ingersoll, R., & May, H. (2012). The magnitude, destinations, and determinants of mathematics and science teacher turnover. *Educational Evaluation and Policy Analysis, 34*(4), 435–464.

Rabbitt, B., Finegan, J., & Kellogg, N. (2019). Research-Based, online learning for teachers: What the research literature tells us about the design of platforms and virtual experiences for working adult learners. The Learning Accelerator.

Stronge, J.H., & Tucker, P.D. (2000). Teacher evaluation and student achievement. National Education Association.

Trotter, Y. (2006). Adult learning theories: Impacting professional development programs. *Delta Kappa Gamma Bulletin, 72*(2), 8–13.

Final Priority and Definitions

We will announce the final priority and definitions in a document in the

Federal Register. We will determine the final priority and definitions after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use the proposed priority and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new rule must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to ''transfer rules'' that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priority and definitions would be utilized in connection with a discretionary grant program, Executive Order 13771 does not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priority and definitions only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. The Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

Participation in the SPDG program is voluntary. In addition, the only eligible entities for this program are SEAs, which do not meet the definition of a small entity. For these reasons, the proposed priority and definitions would impose no burden on small entities.

We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed

under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations 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,

Commissioner, Rehabilitation Services Administration. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–08554 Filed 4–23–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2017–0548; FRL–10007–89–OAR]

Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards: Notice of Action Denying Petition for Reconsideration of Uinta Basin, Utah Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of action denying petition for reconsideration.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that it has responded to a petition for reconsideration of a rule published in the **Federal Register** on June 4, 2018 titled, ''Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards,'' that promulgated initial ozone air quality designations for certain areas in the United States. The August 3, 2018, petition, submitted on behalf of Patel Industrial Park, requested that the EPA reconsider the nonattainment designation for the Uinta Basin, Utah area. The petition also requested that the EPA stay the designation rule as it applies to the Uinta Basin, Utah area, pending reconsideration. The EPA carefully considered the petition and supporting information, along with information contained in the rulemaking docket, in reaching its decision on the petition. The EPA denied the petition for reconsideration in a letter to the petitioner and the letter has been included in the rulemaking docket. The letter explains the EPA's basis for the denial. Because the EPA denied the reconsideration request, the EPA also denied the stay request.

DATES: April 24, 2020.

ADDRESSES: Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Carla Oldham, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, NC 27711, phone number (919) 541–3347 or by email at: *oldham.carla@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Where can I get copies of this document and other related information?

This **Federal Register** notice, the petition for reconsideration,[1] and the response letter to the petitioner are available in the docket that the EPA established for the rulemakings to promulgate the air quality designations for the 2015 ozone standards, under Docket ID No. EPA–HQ–OAR–2017–0548.

All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. The EPA is temporarily suspending its Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID–19. Written comments submitted by mail will be delayed and no hand deliveries will be accepted. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our Federal partners so we can respond rapidly as conditions change regarding COVID–19.

In addition, the EPA has established a website for the ozone designations rulemakings at: *http://www.epa.gov/ozone-designations.* This **Federal Register** notice, the petition for reconsideration, and the response letter denying the petition are also available on this website along with other information relevant to the designation process.

II. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

The EPA's action is a denial of an administrative petition requesting reconsideration of an aspect of a nationally applicable action, ''Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards,'' that is currently being challenged in the Court of Appeals for the District of Columbia Circuit.[2] To the extent a court finds the EPA's action denying the administrative petition to be locally or regionally applicable, the EPA finds that the action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). The action addresses an administrative petition for the EPA to reconsider its previous action that designated 51 nonattainment areas, 1 unclassifiable

[1] Although the petitioner framed its request under Clean Air Act (CAA) section 307(d)(7)(B), that provision is not applicable here because the Agency action at issue was not promulgated under CAA section 307(d). Therefore, we are responding to the request as a petition to revise or modify the EPA's final rule under the Administrative Procedure Act. Use of the term ''petition for reconsideration'' throughout this notice is solely to reflect the language used by the petitioner.

[2] *Clean Wisconsin* v. *EPA,* No. 18–1203 (D.C. Cir., August 1, 2018).

area, and numerous attainment/unclassifiable areas located in 32 states and the District of Columbia and 11 federal judicial circuits. This final action is also based on a common core of factual findings and analyses concerning the interaction between the EPA's June 4, 2018, ozone designations rulemaking and the EPA's Exceptional Event Rule, titled, ''Treatment of Data Influenced by Exceptional Events'' (81 FR 68216, October 3, 2016).

For these reasons, the action is nationally applicable or, alternatively, to the extent a court finds this action to be locally or regionally applicable, the Administrator has determined that the action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1). Thus, pursuant to CAA section 307(b), any petition for review of the final letter denying the petition for reconsideration from Patel Industrial Park must be filed in the Court of Appeals for the District of Columbia Circuit on or before June 23, 2020.

Andrew Wheeler,

Administrator.

[FR Doc. 2020–08026 Filed 4–23–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 510

[CMS–5529–N]

RIN 0938–AU01

Medicare Program: Comprehensive Care for Joint Replacement Model Three-Year Extension and Changes To Episode Definition and Pricing; Extension of Comment Period

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for the proposed rule titled ''Medicare Program: Comprehensive Care for Joint Replacement Model Three-Year Extension and Changes to Episode Definition and Pricing'' that was published in the February 24, 2020 **Federal Register**. The comment period for the proposed rule, which would end on April 24, 2020, is extended until June 23, 2020.

DATES: The comment period for the proposed rule (85 FR 10516) is extended to 5 p.m., eastern daylight time, on June 23, 2020.

ADDRESSES: You may submit comments as outlined in the February 24, 2020 proposed rule (85 FR 10516). Please choose only one method listed.

FOR FURTHER INFORMATION CONTACT: Bobbie Knickman, (410) 786–4161. Heather Holsey, (410) 786–0028.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period shall be made available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

In the February 24, 2020 **Federal Register** (85 FR 10516), we published a proposed rule titled ''Medicare Program: Comprehensive Care for Joint Replacement Model Three-Year Extension and Changes to Episode Definition and Pricing.'' The February 2020 proposed rule solicited public comments on our proposals to revise certain aspects of the Comprehensive Care for Joint Replacement (CJR) model including the episode of care definition, the target price calculation, the reconciliation process, the beneficiary notice requirements and the appeals process. In addition, for proposed performance years 6 through 8, it would eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments for certain recipients. This proposed rule would also extend the additional flexibilities provided to hospitals related to certain Medicare program rules consistent with the revised episode of care definition. Additionally, the proposed rule would allow time to test the proposed changes by extending the length of the CJR model for an additional 3 years, through December 31, 2023, for certain participant hospitals. Finally, it solicits comment on how we might best conceptualize and design a future bundled payment model focused on lower extremity joint replacements (LEJR) procedures performed in the ambulatory surgical center (ASC) setting and could involve shared financial accountability.

In the April 6, 2020 **Federal Register** (85 FR 19230), we published an interim final rule with comment period (IFC) in order to ensure continuity of CJR model operations in participant hospitals during the public health emergency (PHE) for the COVID–19 pandemic so that we do not create any additional disruptions to the standard care procedures hospitals have in place during this challenging time, implementing a 3-month extension of CJR Performance Year 5, such that the end of Performance Year 5 is changed from December 31, 2020 to March 31, 2021. Additionally, the April 6, 2020 IFC amends the CJR extreme and uncontrollable circumstances policy to account for all participant hospitals affected by the PHE for the COVID–19 pandemic, such that for a fracture or non-fracture episode with a date of admission to the anchor hospitalization that is on or within 30 days before the date that the emergency period began or that occurs through the termination of the emergency period, actual episode payments are capped at the performance year target price determined for the applicable episode.

Further, we recognize that hospitals are focused on the COVID–19 pandemic. Given the challenges to the health care delivery system in responding to COVID–19 cases we want to be considerate of the medical community's ability to focus on reviewing the proposed rule and submitting comments given their current extraordinary focus on patient care during the COVID–19 pandemic. In order to maximize the opportunity for the public to provide meaningful input to CMS, we believe it is important to allow additional time for the public to prepare comments on the February 2020 proposed rule. Therefore, we are extending the comment period for the proposed rule by 60 days. This document announces the extension of the public comment period for the proposed rule, which will now end at 5 p.m., eastern daylight time, on June 23, 2020.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 14, 2020.

Evell J. Barco Holland,

Federal Register Liaison, Department of Health and Human Services.

[FR Doc. 2020–08717 Filed 4–23–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1003 and 1005

RIN 0936–AA09

Grants, Contracts, and Other Agreements: Fraud and Abuse; Information Blocking; Office of Inspector General's Civil Money Penalty Rules

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the civil money penalty (CMP or penalty) rules of the Department of Health and Human Services (HHS or Department) Office of Inspector General (OIG) to: Incorporate new authorities for CMPs, assessments, and exclusions related to HHS grants, contracts, other agreements; incorporate new CMP authorities for information blocking; and increase the maximum penalties for certain CMP violations.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 11:59 p.m. Eastern Standard Time on June 23, 2020.

ADDRESSES: In commenting, please reference file code OIG–2605–P. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. However, you may submit comments using one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may mail your printed or written submissions to the following address: Aaron S. Zajic, Office of Inspector General, Department of Health and Human Services, Attention: OIG–2605–P, Cohen Building, 330 Independence Avenue SW, Room 5527, Washington, DC 20201.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* You may deliver, by hand or courier, before the close of the comment period, your printed or written comments to: Aaron S. Zajic, Office of Inspector General, Department of Health and Human Services, Attention: OIG–2605–P, Cohen Building, 330 Independence Avenue SW, Room 5527, Washington, DC 20201.

Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–0335.

Inspection of Public Comments: All comments received before the end of the comment period will be posted on *http://www.regulations.gov* for public viewing. Hard copies will also be available for public inspection at the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201, Monday through Friday from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–0335.

FOR FURTHER INFORMATION CONTACT: Robert Penezic at (202) 205–3211, Office of Counsel to the Inspector General.

SUPPLEMENTARY INFORMATION:

I. Executive Summary:

A. Purpose and Need for Regulatory Action

This proposed rule seeks to address three issues: (1) The amendment of the Civil Monetary Penalties Law (CMPL), 42 U.S.C. 1320a–7a, by the 21st Century Cures Act (Cures Act), Public Law 114–255, sec. 5003, authorizing HHS to impose CMPs, assessments, and exclusions upon individuals and entities that engage in fraud and other misconduct related to HHS grants, contracts, and other agreements (42 U.S.C. 1320a–7a(o)–(s)); (2) the amendment of the Public Health Service Act (PHSA), 42 U.S.C. 300jj–52, by the Cures Act authorizing OIG to investigate claims of information blocking and providing the Secretary of HHS (Secretary) authority to impose CMPs for information blocking; and (3) the increase in penalty amounts in the CMPL effected by the Bipartisan Budget Act of 2018 (BBA 2018), Public Law 115–123. Each of these issues is discussed further below.

First, this proposed rule would modify 42 CFR parts 1003 and 1005 to add HHS's new authority related to fraud and other misconduct involving grants, contracts, and other agreements into the existing regulatory framework for the imposition and appeal of CMPs, assessments, and exclusions. The additions would: (1) Expressly enumerate in the regulation, HHS's grant, contract, and other agreement fraud and misconduct CMPL authority; and (2) give individuals and entities sanctioned for fraud and other misconduct related to HHS grants, contracts, and other agreements, the same procedural and appeal rights that currently exist under 42 CFR parts 1003 and 1005 for those sanctioned under the CMPL and other statutes for fraud and other misconduct related to, among other things, the Federal health care programs. We propose to codify these new authorities and their corresponding sanctions in the regulations at §§ 1003.110, 1003.130, 1003.140, 1003.700, 1003.710, 1003.720, 1003.1550, 1003.1580, and 1005.1.

Second, Section 4004 of the Cures Act added sec. 3022 to the PHSA, 42 U.S.C. 300jj–52, which, among other provisions, provides OIG the authority to investigate claims of information blocking and authorizes the Secretary to impose CMPs against a defined set of individuals and entities that OIG determines committed information blocking. Investigating and taking enforcement action against individuals and entities that engage in information blocking is consistent with OIG's history of investigating serious misconduct that impacts HHS programs and beneficiaries. Information blocking can pose a threat to patient safety and undermine efforts by providers, payers, and others to make our health system more efficient and effective. Addressing the negative effects of information blocking is consistent with OIG's mission to protect the integrity of HHS programs, as well as the health and welfare of program beneficiaries.

We propose to implement 3022(b)(2)(C), which requires information blocking CMPs to follow the procedures of sec. 1128A of the Act. Specifically, the proposed rule would add the information blocking CMP authority to the existing regulatory framework for the imposition and appeal of CMPs, assessments, and exclusions (42 CFR parts 1003 and 1005), pursuant to the PHSA sec. 3022(b)(2)(C) (42 U.S.C. 300jj–52(b)(2)(C)). The proposed modifications would give individuals and entities subject to CMPs for information blocking the same procedural and appeal rights that currently exist under 42 CFR parts 1003 and 1005. We propose to codify this new information blocking authority at §§ 1003.1400, 1003.1410, and 1003.1420. The proposed rule also explains OIG's anticipated approach to enforcement and coordination within HHS to implement the information blocking authorities.

The Office of the National Coordinator for Health Information Technology (ONC) has finalized the

information blocking regulations in the Cures Act final rule in 45 CFR part 171 (ONC Final Rule). This proposed rule incorporates by reference the relevant information blocking regulations in the ONC Final Rule as the basis for imposing CMPs and determining the amount of penalty imposed.

Finally, on February 9, 2018, the President signed into law the Bipartisan Budget Act of 2018 (BBA 2018). Section 50412 of the BBA 2018 (42 U.S.C. 1320a–7a(a), (b)) amended the CMPL to increase the amounts of certain civil money penalties. The proposed regulation would codify the increased civil money penalties at 42 CFR part 1003. Specifically, for conformity with the CMPL as amended by the BBA 2018, we propose to revise the civil money penalties contained at §§ 1003.210, 1003.310, and 1003.1010.

B. Legal Authority

The legal authority for this regulatory action is found in the Social Security Act (Act) and the PHSA, as amended by the Cures Act and the BBA 2018. The legal authority for the proposed changes is listed by the parts of Title 42 of the Code of Federal Regulations (CFR) that we propose to modify:

1003: 42 U.S.C. 1320a–7a(a)–(b), (o)–(s); 42 U.S.C. 300jj–52

1005: 42 U.S.C. 1320a–7a(o)–(s); 42 U.S.C. 300jj–52

C. Summary of Major Provisions

This proposed rule incorporates into OIG's CMP regulations at 42 CFR parts 1003 and 1005 two new CMP authorities established by the Cures Act related to: (1) Fraud and other misconduct involving HHS grants, contracts, and other agreements; and (2) information blocking. The proposed rule also incorporates into 42 CFR part 1003, new maximum CMP amounts for certain offenses, as set by the BBA 2018.

In the context of HHS grants, contracts and other agreements, the Cures Act authorizes CMPs, assessments, and exclusions for:

- Knowingly presenting or causing to be presented a specified claim under a grant, contract, or other agreement that a person knows or should know is false or fraudulent;
- knowingly making, using, or causing to be made or used, any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, or other document that is required to be submitted in order to directly or indirectly receive or retain funds provided in whole or in part by HHS pursuant to a grant, contract, or other agreement;
- knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent specified claim under a grant, contract, or other agreement;
- knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit funds or property to HHS with respect to a grant, contract, or other agreement;
- knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit funds or property to HHS with respect to a grant, contract, or other agreement; and
- failing to grant timely access, upon reasonable request, to OIG, for the purposes of audits, investigations, evaluations, or other statutory functions of OIG in matters involving grants, contracts, or other agreements.

In the context of information blocking, the Cures Act authorizes CMPs for:

- Any practice that is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information if this practice is conducted by a developer of certified health information technology (health IT), an entity offering certified health IT, a health information exchange, or a health information network, and the developer of certified health IT, entity offering certified health IT, health information exchange, or health information network knows or should know that this practice is likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information.

The ONC Final Rule implements certain Cures Act information blocking provisions, including defining terms and establishing reasonable and necessary exceptions to the definition of information blocking. OIG and ONC have coordinated extensively on both the ONC Final Rule and this proposed rule to align both regulatory actions. We propose to incorporate by reference the regulatory definitions and exceptions from the ONC Final Rule related to information blocking in 45 CFR part 171 as the basis for imposing CMPs and determining the amount of penalty imposed. These regulatory definitions, penalties for information blocking, and applicable procedures are reflected in the proposed regulations.

We further propose changes to the CMP regulations at 42 CFR part 1003 for conformity with the civil penalty amounts contained in the Act, as amended by the BBA 2018.

II. Background

For over 35 years, OIG has exercised the authority to impose CMPs, assessments, and exclusions in furtherance of its mission to protect Federal health care and other Federal programs from fraud, waste, and abuse. OIG recently received new CMP authorities, granted under the Cures Act, related to fraud and other prohibited conduct involving HHS grants, contracts, other agreements, and information blocking. OIG also received authority through the BBA 2018 to impose larger CMPs for certain offenses committed after February 9, 2018.

A. Overview of OIG Civil Money Penalty Authorities

The CMPL (sec. 1128A of the Act, 42 U.S.C 1320a–7a) was enacted in 1981 to provide HHS with the statutory authority to impose CMPs, assessments, and exclusions upon individuals and entities that commit fraud and other misconduct related to the Federal health care programs, including Medicare and Medicaid. The Secretary delegated the CMPL's authorities to OIG. 53 FR 12993 (April 20, 1988). HHS has promulgated regulations at 42 CFR parts 1003 and 1005 that: (1) Enumerate specific bases for the imposition of CMPs, assessments, and exclusion under the CMPL and other CMP statutes; (2) set forth the appeal rights of individuals and entities subject to those sanctions; and (3) outline the procedures under which a sanctioned party may appeal the sanction. Since 1981, Congress has created various other CMP authorities related to fraud and abuse that were delegated by the Secretary to OIG and added to part 1003.

B. The Cures Act and the ONC Final Rule

The Cures Act amended the CMPL to give HHS the authority to impose CMPs, assessments, and exclusions upon persons that commit fraud and other misconduct related to HHS grants, contracts, and other agreements. 42 U.S.C. 1320a–7a(o)–(s). This authority allows for the imposition of sanctions for a wide variety of fraudulent and improper conduct involving HHS grants, contracts, and other agreements, including, among other things, the making of false or fraudulent specified claims to HHS, the submission of false or fraudulent documents to HHS, and the creation of false records related to HHS grants, contracts, or other agreements. The authority applies to a broad array of situations in which HHS provides funding, directly or indirectly, in whole or in part, pursuant to a grant,

contract, or other agreement. The Cures Act also created a new set of definitions related to grant, contract, and other agreement fraud and misconduct, outlined the sanctions for violation of the statute, and referenced the procedures to be used when imposing sanctions under the statute.

In addition, sec. 4004 of the Cures Act added sec. 3022 of the PHSA, which defines conduct that constitutes information blocking by developers of health IT, entities offering certified health IT, health information exchanges, health information networks, and health care providers. Specifically, sec. 3022(a) of the PHSA defines information blocking as: ''a practice that—(A) except as required by law or specified by the Secretary pursuant to rulemaking under paragraph (3), is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information; and (B)(i) if conducted by a health information technology developer, exchange, or network, such developer, exchange, or network knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information; or (ii) if conducted by a health care provider, such provider knows that such practice is unreasonable and is likely to interfere with, prevent, or materially discourage access, exchange, or use of electronic health information.'' Section 3022(a)(3) of the PHSA further provides that the Secretary shall, through rulemaking, identify reasonable and necessary activities that do not constitute information blocking. Section 3022(a)(4) of the PHSA states that the term ''information blocking'' does not include any conduct that occurred before January 13, 2017.

Section 3022(b)(1) of the PHSA authorizes OIG to investigate claims of information blocking by individuals and entities described in sec. 3022(a) of the PHSA, and also authorizes OIG investigations of claims that health IT developers or other entities offering certified health IT have submitted false attestations under the ONC Health IT Certification Program (sec. 3001(c)(5) of the PHSA). Section 3022(b)(2)(A) authorizes the Secretary to impose CMPs not to exceed $1 million per violation, on health IT developers or other entities offering certified health IT, health information exchanges, and health information networks that OIG determines committed information blocking. Section 3022(b)(2)(A) also provides that a determination to impose CMPs shall consider factors such as the nature and extent of the information blocking and harm resulting from such information blocking, including, where applicable, the number of patients affected, the number of providers affected, and the number of days the information blocking persisted. Section 3022(b)(2)(C) of the PHSA applies the procedures of sec. 1128A of the Act to civil money penalties imposed under sec. 3022(b)(2) of the PHSA in the same manner as such provisions apply to a civil money penalty or proceeding under such sec. 1128A(a) of the Act. This proposed rule would implement sec. 3022(b)(2)(A) and (C) of the PHSA.

Further, Section 3022(b)(2)(B) of the PHSA provides that any health care provider determined by OIG to have committed information blocking shall be referred to the appropriate agency to be subject to appropriate disincentives using authorities under applicable Federal law, as the Secretary sets forth through notice and comment rulemaking. This proposed rule only addresses OIG's imposition of CMPs for information blocking by health IT developers or other entities offering certified health IT, health information exchanges, and health information networks. This proposed rule does not apply to health care providers who engage in information blocking.[1] However, health care providers that also meet the definition of a health information exchange or health information network as defined in the ONC Final Rule would be subject to information blocking CMPs. Once established, OIG will coordinate with, and send referrals to, the agency or agencies identified in future rulemaking by the Secretary that will apply the appropriate disincentive for health care providers that engage in information blocking, consistent with sec. 3022(b)(2)(B).

The Cures Act also identifies ways for ONC, OCR, and OIG to consult, refer, and coordinate. For example, sec. 3022(b)(3) of the PHSA states that OIG may refer instances of information blocking to OCR where a consultation regarding the health privacy and security rules promulgated under sec. 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) (HIPAA) will resolve such information blocking claims. Additionally, sec. 3022(d)(1) requires ONC to share information with OIG as required by law. For additional discussion related to coordination, see section III.A.5 of the preamble.

We intend that the provisions of the ONC Final Rule and the OIG proposed rule will work in tandem and that each will inform the public's understanding of the other. As a result, we encourage parties to read this proposed rule together with the ONC Final Rule. ONC's Final Rule will define ''information blocking,'' define specific terms related to information blocking, and implement reasonable and necessary exceptions to the definition of information blocking. OIG's proposed rule will describe the parameters and procedures applicable to information blocking CMPs.

C. The Bipartisan Budget Act of 2018

The BBA 2018 amended the CMPL to increase certain civil money penalty amounts contained in 42 U.S.C. 1320a–7a(a) and (b). The BBA 2018 increased maximum civil money penalties in sec. 1128A(a) of the Act (42 U.S.C. 1320a–7a) from $10,000 to $20,000; from $15,000 to $30,000; and from $50,000 to $100,000. The BBA 2018 increased maximum civil money penalties in sec. 1128A(b) of the Act from $2,000 to $5,000 in paragraph (1), from $2,000 to $5,000 in paragraph (2), and from $5,000 to $10,000 in paragraph (3)(A)(i). This statutory increase in civil money penalty amounts is effective for acts committed after the date of enactment, February 9, 2018. This proposed rule would update our regulations to reflect the increased civil money penalties authorized by the 2018 BBA amendments.

III. Provisions of the Proposed Rule

A. Civil Money Penalty, Assessment, and Exclusion Authorities Under 42 CFR Part 1003

1. Subpart A—General Provisions

Subpart A contains the general provisions that apply to part 1003. The proposed changes revise the ''Basis and Purpose'' and ''Definitions'' sections of subpart A to incorporate into part 1003 OIG's new statutory authorities to impose sanctions related to grants, contracts, and other agreements, and information blocking.

[1] While health care providers are not subject to information blocking CMPs, many must currently comply with separate statutes and regulations related to information blocking. Prior to the enactment of the Cures Act, Congress enacted the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), Public Law 114–10, which, in part, requires a health care provider to demonstrate that it has not knowingly and willfully taken action to limit or restrict the compatibility or interoperability of Certified Electronic Health Record (EHR) Technology. To implement these provisions, the Centers for Medicare & Medicaid Services (CMS) established and codified attestation requirements to support the prevention of information blocking, which consist of three statements containing specific representations about a health care provider's implementation and use of Certified EHR technology (81 FR 77028 through 77035).

§ 1003.100—Basis and Purpose

We propose to add the statutory authority for OIG's imposition of information blocking CMPs—sec. 3022 of the PHSA (42 U.S.C. 300jj–52)—to the list of statutory CMP provisions that appears in § 1003.100.

§ 1003.110—Definitions

We propose to make several changes to the ''Definitions'' section at § 1003.110 to add and revise definitions to incorporate OIG's new authorities into part 1003.

Department, Obligation, Other Agreement, Program Beneficiary, Recipient, Specified Claim, Specified State Agency

We propose to add the statutory definitions of the terms ''Department,'' ''obligation,'' ''other agreement,'' ''program beneficiary,'' ''recipient,'' ''specified claim,'' and ''specified State agency'' (codified at 42 U.S.C. 1320a–7a(q)–(s)) to § 1003.110. There are two differences between the statutory definitions and proposed regulatory definitions. First, the proposed regulatory definitions of ''specified State agency'' and ''obligation'' contain internal citations to regulatory—not statutory—provisions. Second, we propose to define the term ''recipient'' to clarify that the term means all persons (excluding program beneficiaries as defined in § 1003.110) directly or indirectly receiving money or property under a grant, contract, or other agreement funded in whole or in part by the Secretary, including subrecipients and subcontractors. We believe based upon the structure and purpose of the statute that Congress intended the term ''recipient'' to apply to any person that directly or indirectly receives money or property from the Secretary under a grant, contract, or other agreement, and authorized HHS to impose penalties, assessments, and exclusions against any individual or entity that commits acts in its interactions with these recipients that violate 42 U.S.C. 1320a–7a(o)(1)–(4).

Reasonable Request

The Cures Act provided HHS with the authority to impose CMPs, assessments, and exclusions for the failure ''to grant timely access, upon reasonable request (as defined by such Secretary in regulations), to the Inspector General of the Department, for the purpose of audits, investigations, evaluations, or other statutory functions of such Inspector General in matters involving such grants, contracts, or other agreements.'' 42 U.S.C. 1320a–7a(o)(5). This statutory language largely mirrors the language of 42 U.S.C. 1320a–7a(a)(9), which has for many years given HHS the authority to impose sanctions for the failure to grant timely access to OIG, upon reasonable request, ''for the purpose of audits, investigations, evaluations, or other statutory functions'' of OIG. Because the statutory language of 42 U.S.C. 1320a–7a(o)(5) and 42 U.S.C. 1320a–7a(a)(9) are similar, and based upon OIG's experience enforcing 42 U.S.C. 1320a–7a(a)(9), we believe the definition of ''Reasonable Request'' that currently appears in § 1003.110 and applies to CMP actions under 42 U.S.C. 1320a–7a(a)(9) for failure to grant timely access upon reasonable request to OIG in the healthcare fraud context, should be extended to circumstances involving grants, contracts, and other agreements. As such, we propose to amend § 1003.110 (Definitions—Reasonable Request) to apply the definition of ''Reasonable Request'' to actions under 42 U.S.C. 1320a–7a(o)(5) for failure ''to grant timely access, upon reasonable request (as defined by such Secretary in regulations), to the Inspector General of the Department, for the purpose of audits, investigations, evaluations, or other statutory functions of such Inspector General in matters involving such grants, contracts, or other agreements.''

§1003.130—Assessments

We propose to add the term ''specified State agency'' to § 1003.130 to conform the language of § 1003.130 to the Cures Act changes to the CMPL. This revision would make explicit that assessments imposed under part 1003 are in lieu of damages sustained not only by the Department or a State agency, but also by a ''specified State agency,'' a term that is defined by 42 U.S.C. 1320a–7a(q)(6) and differs from the term ''State agency'' defined by 42 U.S.C. 1320a–7a(i)(1). The statutory definition of the term ''specified State agency'' is also being added to § 1003.110.

§1003.140—Determinations Regarding the Amount of Penalties and Assessments and the Period of Exclusion

We propose to change the cross-reference in § 1003.140(c)(3) from ''as defined by paragraph (e)(2) of this section'' to ''as defined by paragraph (d)(2) of this section'' to correct a scrivener's error from a prior amendment of part 1003, which took place on December 7, 2018. 81 FR 88354. We also propose to add a new subsection (5) to section § 1003.140(d), stating that the penalty amounts in part 1003 are adjusted annually for inflation. We are proposing this addition because we are proposing to eliminate footnotes 1 through 12 in part 1003 to simplify those sections.

2. Subpart B—CMPs, Assessments, and Exclusions for False or Fraudulent Claims or Other Similar Misconduct

We propose to modify §§ 1003.210 and 1003.310 to conform the subpart to the BBA 2018 amendments to the CMPL regarding the increase of CMP amounts. We propose to add text to each provision that provides a penalty amount to reflect the increased penalty amounts in the BBA 2018 for the applicable time periods. We also propose to delete footnotes 1–12, which are found in §§ 1003.210, 1003.310, 1003.410, 1003.510, 1003.610, 1003.810, 1003.910, 1003.1010, 1003.1110, 1003.1210, and 1003.1310. The proposed deletions accompany a parallel proposal to add a new § 1003.140(d)(5), stating that penalty amounts are adjusted annually. We are proposing these technical changes to state the annual adjustment to penalty amounts once in the ''General Provisions'' sections rather than repetitively in footnotes.

§1003.210—Amount of Penalties and Assessments

We propose to modify the text of § 1003.210, regarding the amount of penalties, to reflect the BBA 2018 penalty increases in 42 U.S.C. 1320a–7a(a) and (b). Specifically, in paragraphs (a)(1), (3), (4), and (8), we propose to insert the phrase ''for conduct that occurred on or before February 9, 2018, and not more than $20,000 for conduct that occurred after February 9, 2018,'' after ''$10,000'' to conform to the BBA 2018 amendments to the CMPL regarding the increase of CMP amounts. In paragraph (a)(3), we further propose to insert a comma after the words ''per day'' for grammatical clarity.

In paragraphs (a)(2) and (9), we propose to insert the phrase ''for conduct that occurred on or before February 9, 2018, and not more than $30,000 for conduct that occurred after February 9, 2018,'' after ''$15,000,'' to conform to the BBA 2018 amendments to the CMPL.

In paragraphs (a)(6) and (7), we propose to insert the phrase ''for conduct that occurred on or before February 9, 2018, and not more than $100,000 for conduct that occurred after February 9, 2018,'' after ''50,000'' to conform to the BBA 2018 amendments to the CMPL.

In paragraph (a)(10)(i), we propose to insert ''for conduct that occurred on or

before February 9, 2018, and $10,000 for conduct that occurred after February 9, 2018,'' after ''5,000'' to conform to the BBA 2018 amendments to the CMPL.

§ 1003.310—Amount of Penalties and Assessments

Similarly, for § 1003.310, we propose to modify the text regarding the amount of penalties to reflect the BBA 2018 penalty increases to 42 U.S.C. 1320a–7a(a)(7). In paragraph (a)(3), we propose to insert ''for conduct that occurred on or before February 9, 2018, and $100,000 for conduct that occurred after February 9, 2018,'' after ''50,000'' to conform to the BBA 2018 amendments to the CMPL.

3. Subpart G—CMPs, Assessments, and Exclusions for Fraud or False Claims or Similar Conduct Related to Grants, Contracts, and Other Agreements

We propose to add a new subpart G that would codify in regulation OIG's new authority under the Cures Act to impose CMPs, assessments, and exclusions for fraud, false claims, and similar conduct related to HHS grants, contracts, and other agreements. Subpart G would also identify the maximum assessments and penalties that OIG may impose under part 1003 and aggravating and mitigating factors OIG may consider when imposing sanctions.

§ 1003.700—Basis for Civil Money Penalties, Assessments, and Exclusions

New § 1003.700 would enumerate in regulation the new CMP offenses in 42 U.S.C. 1320a–7a(o) created by the Cures Act related to fraud and other misconduct involving grants, contracts, and other agreements, which provided OIG with the authority to impose CMPs, assessments, and exclusions for a variety of abusive conduct involving important HHS programs that provide many billions of dollars in funding every year. The five distinct categories of offenses, which would be enumerated in regulation at § 1003.700(a)(1) through (5), make sanctionable a variety of fraudulent or otherwise improper conduct related to HHS grants, contracts, and other agreements.

First, OIG may impose sanctions against any person that knowingly presents or causes to be presented a specified claim related to a grant, contract or other agreement that a person knows or should know is false or fraudulent. A ''specified claim'' includes an application, request, or demand for money or property under a grant, contract, or other agreement, and would include a request for a drawdown or other payment that is made to a computerized payment administration system like the HHS Payment Management System. Second, OIG may impose sanctions against any person who knowingly makes, uses, or causes to be made or used any false statement, omission, or misrepresentation of a material fact in any of the wide array of documents (such as applications, proposals, bids, or progress reports) that are required to be submitted in order to directly or indirectly receive or retain funds provided in whole or in part pursuant to an HHS grant, contract, or other agreement. Third, OIG is authorized to impose sanctions against any person who knowingly makes, uses, or causes to be made or used, false records or statements material to false or fraudulent specified claims under a grant, contract, or other agreement. Fourth, OIG has authority to sanction any person who knowingly conceals, avoids, or decreases an obligation to pay or transmit funds or property with respect to a grant, contract, or other agreement, or knowingly makes, uses, or causes to be made or used, a false record or statement material to such an obligation. Finally, OIG is authorized to impose sanctions for a person's failure to grant timely access upon reasonable request to OIG personnel who are carrying out audits, evaluations, investigations, and other statutory functions related to grants, contracts, and other agreements. The regulatory text in proposed § 1003.700 is consistent with the statutory language of 42 U.S.C. 1320a–7a(o), with technical modifications to change internal cross-references to regulatory provisions, not statutory provisions.

The statutory authority to impose CMPs, assessments, and exclusions under 42 U.S.C. 1320a–7a(o) applies to a wide array of situations in which HHS provides funding, directly or indirectly, in whole or in part, pursuant to a grant, contract, or other agreement. Regarding OIG's authority to impose sanctions for conduct involving ''other agreements,'' the statutory definition of ''other agreement'' under 42 U.S.C. 1320a–7a(q)(3) is broad and identifies a non-exclusive list of arrangements that could constitute ''other agreements'' under the statute. When OIG investigates potential misconduct under the statute and decides whether to impose sanctions, it will evaluate each matter on a case-by-case basis to determine whether the funding arrangement at issue constitutes an ''other agreement'' under the statute and if the conduct at issue violates the statute.

§ 1003.710—Amount of Penalties and Assessments

We propose to add a new § 1003.710 that codifies in the regulation the maximum statutory penalties and assessments OIG may impose for violation of the new offenses for grant, contract, and other agreement fraud and misconduct. As with proposed § 1003.700, the regulatory language of proposed § 1003.710 is consistent with the statutory language of 42 U.S.C. 1320a–7a(o) that establishes the maximum penalties and assessments for violations of the statute, with only slight technical modifications to change internal citations to regulatory provisions, not statutory provisions. Penalties authorized under 42 U.S.C. 1320a–7a(o) range from a maximum of $10,000 per offense to a maximum of $50,000 per offense, and OIG may impose an assessment of not more than three times the amount involved with the improper conduct.

§ 1003.720—Determinations Regarding the Amount of Penalties and Assessments and Period of Exclusion

We propose to add a new § 1003.720 to identify factors that OIG may consider in conjunction with § 1003.140 as aggravating and mitigating factors when imposing penalties, assessments, and exclusions resulting from violations of the Cures Act's new grant, contract, and other agreement fraud and misconduct offenses. This list of factors is not all-inclusive and largely mirrors the list of circumstances already established under § 1003.220 that OIG may consider as aggravating and mitigating when imposing penalties, assessments, and exclusions for violations of § 1003.200 related to the fraudulent or false submission of healthcare claims. Based upon OIG's experience enforcing CMPs against health care providers and others, this non-exhaustive set of factors provides a framework to aid OIG in assessing the severity of the conduct at issue when determining the size and scope of the penalties, assessments, and exclusions to be imposed. The factors as stated for assessing violations in the healthcare context are also applicable in assessing violations of grant, contract, and other agreement fraud and misconduct offenses.

Proposed § 1003.720 states that OIG should consider it a mitigating circumstance if the violations included in an action brought under proposed § 1003.700 were of the same type and occurred within a short period of time, there were few such violations, and the total amount claimed or requested

related to the violations was less than $5,000. The proposed list of mitigating circumstances is nearly identical to the list of mitigating circumstances in § 1003.220(a), which OIG currently uses to determine the amount of the penalty and assessment and period of exclusion imposed in actions brought under § 1003.200 for CMPL violations related to the submission of false or fraudulent healthcare claims. Like the proposed § 1003.720(a), it is considered mitigating in the healthcare fraud context under § 1003.220(a), if the total amount claimed or requested for the items or services at issue was less than $5,000.

Proposed § 1003.720 also identifies a non-exclusive list of factors that OIG could consider as aggravating circumstances in actions brought under proposed § 1003.700, including if: (1) The violations were of several types or occurred over a lengthy period of time; (2) there were many such violations (or the nature and circumstances indicate a pattern of false or fraudulent specified claims, requests for payment, or a pattern of violations); (3) the amount requested or claimed or related to the violations was $50,000 or more; or (4) the violation resulted, or could have resulted, in physical harm to any individual. As with the proposed mitigating factors, the proposed aggravating factors are consistent with the aggravating factors listed in § 1003.220(b) that OIG currently uses to determine the amount of the penalty and assessment and period of exclusion imposed in actions brought under § 1003.200 for conduct related to the submission of false or fraudulent healthcare claims. For example, like the proposed § 1003.720(b)(3), it is considered aggravating under § 1003.220(b)(3) if the total amount claimed or requested for the items or services at issue was more than $50,000.

We solicit comments on other aggravating or mitigating circumstances OIG should consider when imposing penalties, assessments, and exclusions under its new grant, contract, and other agreement CMP authority.

4. Subpart J—CMPs, Assessments, and Exclusions for Beneficiary Inducement Violations

We propose to modify § 1003.1010 to conform to the BBA 2018 amendments to the CMPL regarding the increase of CMP amounts.

§ 1003.1010—Amount of Penalties and Assessments

We propose to modify the text of § 1003.1010, regarding the amount of penalties, to reflect the BBA 2018 penalty increases to 42 U.S.C. 1320a–7a(a)(5). In paragraph (a), we propose to insert ''for conduct that occurred on or before February 9, 2018, and $20,000 for conduct that occurred after February 9, 2018,'' after ''$10,000'' to conform to the BBA 2018 amendments to the CMPL.

5. Subpart N—CMPs for Information Blocking

OIG has a long and successful history of investigating serious conduct that negatively affects HHS programs and program beneficiaries. Investigating and taking enforcement action against individuals and entities that engage in information blocking is consistent with this history. Information blocking can pose a threat to patient safety and undermine efforts by providers, payers, and others to make our health system more efficient and effective. Addressing the negative effects of information blocking is consistent with OIG's mission to protect the integrity of HHS programs, as well as the health and welfare of program beneficiaries.

We are aware that some individuals and entities subject to information blocking CMPs may not be familiar, or may have limited experience, with OIG's enforcement authorities, especially OIG's other CMP authorities in 42 CFR part 1003. To address potential questions or concerns, we explain our anticipated approach to information blocking enforcement, including our expected priorities. The following information regarding OIG's anticipated approach to information blocking enforcement is not a regulatory proposal, and is provided for information only. This preamble discussion of enforcement priorities is not binding on OIG and does not impose any legal restrictions related to OIG's discretion to choose which information blocking complaints to investigate.

OIG has significant experience investigating and taking enforcement action for conduct that is subject to other CMPs. For example, OIG investigates and imposes CMPs on individuals and entities that submit false claims to health care programs (*i.e.,* healthcare fraud). For over 35 years, OIG has conducted other CMP investigations and enforcement and will use this institutional knowledge to ensure effective enforcement of the information blocking provision. OIG's investigation of information blocking allegations and exercise of discretion regarding penalties would utilize similar methods and techniques appropriately tailored to each complaint's unique facts and circumstances.

As with other conduct that OIG has authority to investigate, OIG has discretion to choose which information blocking complaints to investigate. To maximize efficient use of OIG's resources, OIG focuses on selecting cases for investigation that are consistent with enforcement priorities.

Based on our current expectations, OIG's enforcement priorities will include conduct that: (i) Resulted in, is causing, or had the potential to cause patient harm; (ii) significantly impacted a provider's ability to care for patients; (iii) was of long duration; (iv) caused financial loss to Federal health care programs, or other government or private entities; or (v) was performed with actual knowledge. We expect these priorities will evolve as OIG gains more experience investigating information blocking.

We emphasize that information blocking—as defined in sec. 3022(a)(1)(B)(i) of the PHSA and in 45 CFR 171.103(b)—includes an element of intent (''if conducted by a health information technology developer, exchange, or network, such developer, exchange, or network knows, or should know, that such practice is likely to interfere with, prevent, or materially discourage the access, exchange, or use of electronic health information''). OIG lacks the authority to pursue information blocking CMPs against actors who OIG concludes did not have the requisite intent. Consequently, OIG will not bring enforcement actions against actors who OIG determined made innocent mistakes (*i.e.,* lack the requisite intent for information blocking). OIG has significant experience and expertise investigating and determining whether to take an enforcement action based on other laws that are intent-based (*e.g.,* the CMPL and the Federal anti-kickback statute). This history will inform our use of discretion to take action against individuals and entities who we conclude have the requisite intent.

Each allegation of information blocking will be assessed based on its own merits given the unique facts and circumstances presented. We will closely coordinate with ONC given its separate, but related, authority under the PHSA and its program expertise related to the information blocking regulations. Additionally, consistent with sec. 3022(b)(3)(A) of the PHSA, OIG may refer an information blocking claim to OCR if a consultation regarding the health privacy and security rules promulgated under sec. 264(c) of HIPAA would resolve an information blocking claim. Depending on the facts and circumstances of the claim, OIG may exercise its discretion in referring individuals and entities to consult with

OCR to resolve information blocking claims. In exercising that discretion, OIG will coordinate closely with OCR for referrals under sec. 3022(b)(3)(A) of the PHSA.

Section 3022(d)(4) requires the Secretary, to the extent possible, to ensure that information blocking penalties do not duplicate penalty structures that would otherwise apply with respect to information blocking and the type of individual or entity involved as of the day before the date of enactment of the Cures Act. OIG will closely coordinate with other agencies within HHS, such as ONC and OCR, as well as other Federal agencies, such as the Department of Justice and the Federal Trade Commission, to ensure that any information blocking penalties do not duplicate other penalties structures that would otherwise apply with respect to information blocking conduct. In this way, OIG will exercise its enforcement discretion in a manner that is consistent with this section.

We propose to add a new subpart N that would codify in the regulation OIG's authority under the Cures Act to impose CMPs for information blocking.

OIG will not begin enforcing the information blocking CMPs until the OIG CMP information blocking regulations are effective. We are proposing that the effective date of these regulations be 60 days from the date of publication of our final rule. We are also considering an alternative proposal for the effective date of subpart N described in detail later in this preamble.

We appreciate that information blocking is newly regulated conduct. We also understand the significant negative effect that information blocking can have on patient safety, care coordination in the healthcare system, and the ability of patients and providers to have information to make informed, appropriate decisions about important healthcare decisions. The goal in exercising our enforcement discretion is to provide individuals and entities that are taking necessary steps to comply with the ONC Final Rule with time to do so while putting the industry on notice that penalties will apply to information blocking conduct within a reasonable time.

Recognizing that goal, OIG is providing notice through publication of this proposed rule that enforcement will begin 60 days after our rule is final. We note that section 3022(b) of the PHSA is self-implementing and the only explicit timing limitation of the information blocking provision is in section 3022(a)(4) of the PHSA.

Notwithstanding that legal authority, OIG emphasizes that we will exercise our enforcement discretion to impose CMPs against actors who have engaged in information blocking after the effective date of our final rule. Conduct that occurs before the effective date of our final rule will not be subject to information blocking CMPs. Even though we are proposing that enforcement of information blocking will not begin until 60 days after our rule is final, individuals and entities subject to the information blocking regulations must comply with the ONC Final Rule as of the compliance date for 45 CFR part 171, finalized at 45 CFR 171.101(b). The period between the compliance date of the ONC Final Rule and the proposed start of OIG's information blocking enforcement will provide individuals and entities with time to come into compliance with the ONC Final Rule with added certainty that practices during that period will not be subject to penalties. We believe the proposed effective date of 60 days after publication of the OIG final rule provides a reasonable amount of time for individuals and entities to come into compliance with ONC's Final Rule.

We are also considering for the final rule an alternative proposal for the effective date to apply only to subpart N of part 1003, which would also affect the start of OIG's information blocking enforcement. The alternative proposal would establish a specific date that OIG's information blocking CMP regulations would be effective. Specifically, we are considering for the final rule an effective date of October 1, 2020 for subpart N of part 1003. By considering this specific, effective date, we seek to provide entities a time certain that OIG enforcement will begin. As discussed above, individuals and entities are legally subject to the information blocking regulations and must comply with those rules as of the compliance date of ONC's Final Rule finalized at 45 CFR 171.101(b). This alternative proposal would provide a definite period to these individuals and entities to continue their compliance efforts with the ONC Final Rule with the knowledge that their conduct would not be subject to OIG enforcement until October 1, 2020. OIG believes that this time frame would be more than adequate for actors to implement necessary changes to align with ONC's Final Rule. At a minimum, enforcement would not begin until the compliance date of the ONC Final Rule finalized at 45 CFR 171.101(b).

Having a specific date to target may assist in the execution and timing of amending agreements, issuing updates, or other actions needed to comply with the ONC Final Rule. We recognize that proposing a specific effective date would require OIG to complete the final rulemaking process before this proposed specific date. We have considered that factor and believe this alternative proposal allows time for that process.

We solicit comment on these proposed approaches for the effective date of OIG's information blocking CMP regulations, which would subsequently determine the start of OIG's information blocking enforcement. We are considering alternative effective dates that are sooner or later than October 1, 2020, and are interested in comments on potential dates and explanations about why parties would need a longer or shorter time period to come into compliance with the ONC Final Rule.

We emphasize that these proposed effective dates are only applicable to the information blocking provisions, and not the grant, contract, and other agreement fraud and misconduct CMP provisions of the proposed rule. The grant, contract, and other agreement fraud and misconduct CMP provisions of the proposed rule will go into effect 30 days after publication of the final rule.

§ 1003.1400—Basis for Civil Money Penalties

We propose to add a new § 1003.1400 at subpart N that would codify the new information blocking CMP authority by incorporating the relevant provisions of 45 CFR part 171 established by the ONC Final Rule. These provisions subject health IT developers of certified health IT, which includes other entities offering certified health IT as defined in part 45 CFR part 171, health information networks, and health information exchanges to CMPs if OIG determines, following an investigation, that they have committed information blocking.[2] Among other things, the ONC Final Rule establishes regulatory definitions related to information blocking and identifies reasonable and necessary activities that do not constitute information blocking for purposes of sec. 3022(a)(1) of the PHSA. OIG investigations of information blocking will utilize ONC's regulatory definitions and exceptions to information blocking to assess conduct by health IT developers of certified technology, entities offering certified health IT, health information networks, health information exchanges, and health care providers. Enforcement action using the CMP authority implemented by PHSA sec.

[2] In the ONC final rule, the definition of ''health information exchange'' and ''health information network'' were combined. See 45 CFR 171.102, definition of ''health information network or health information exchange.''

3022(b)(2)(A), will similarly depend on the information blocking regulations in the ONC Final Rule.

We are proposing new regulatory text at § 1003.1400 implementing OIG's information blocking CMP authority. The proposed rule incorporates 45 CFR 171.103(b) with regard to the types of actors that may be liable for CMPs and also the information blocking provisions in 45 CFR part 171 to determine the conduct that triggers the information blocking CMP authority. By incorporating the ONC regulations, OIG enforcement will rely on the regulatory definition of information blocking and the related exceptions.

With the addition of the new information blocking CMP to part 1003, the public can gain an understanding of the procedures for appealing such a determination before enforcement begins. PHSA sec. 3022(b)(2)(C) applies the CMP procedures from sec. 1128A of the Act to information blocking CMPs. The procedures that OIG follows in imposing CMPs under sec. 1128A of the Act are codified in 42 CFR part 1003, subpart O, and the procedures for members of the public to appeal the imposition of CMPs are codified in 42 CFR part 1005. Under the proposal to incorporate the information blocking CMP into 42 CFR part 1003, any CMP determination based on an investigation of information blocking would be subject to the CMP procedures and appeal process in parts 1003 and 1005, as the procedures and appeal process would apply to any CMPs imposed under sec. 1128A of the Act. We solicit comment, for purposes of a final rule, on the proposed incorporation of the information blocking regulations into 42 CFR part 1003, and the proposed application of the existing CMP procedures and appeal process in parts 1003 and 1005 to the information blocking CMP.

The proposal to codify the CMP authority provided in sec. 3022(b)(2)(A) of the PHSA is consistent with the limitations on CMPs that are found throughout sec. 3022. The authority for CMPs extends only to those entities listed in sec. 3022(b)(2)(A) (*i.e.,* a health information technology developer of certified health information technology or other entity offering health information technology, or a health information exchange or network). Pursuant to sec. 3022(b)(2)(B), the CMP authority does not extend to health care providers. If OIG determines that a health care provider has committed information blocking, it shall refer such health care provider to the appropriate agency for appropriate disincentives. The appropriate agency and appropriate disincentives will be established by the Secretary in future notice and comment rulemaking. OIG will coordinate closely with other agencies within HHS to develop consultation and referral processes consistent with such rulemaking by the Secretary. Further, in determining whether a health care provider has committed information blocking, OIG shall consider whether, in accordance with sec. 3022(a)(7), a developer of health information technology or another entity offering health information technology to such provider failed to ensure that the technology meets the requirements to be certified under the ONC Health IT Certification Program.

The proposal is also consistent with the PHSA's establishment of a referral channel from OIG to OCR where a consultation with OCR under HIPAA will resolve an information blocking claim. OIG is coordinating closely with OCR to refer appropriate information blocking claims pursuant to sec. 3022(b)(3).

§ 1003.1410

We propose to add a new § 1003.1410 to codify the maximum penalty OIG can impose per violation of the PHSA's information blocking provisions. PHSA sec. 3022(b)(2)(A) authorizes a maximum penalty not to exceed $1,000,000 per violation. The proposed regulatory language reflects this maximum penalty amount. We solicit comments on this proposed regulatory language.

Furthermore, the proposed rule would define ''violation'' as each practice that constitutes information blocking. The proposed definition of violation incorporates the definition of ''practice'' in 45 CFR 171.102 and ''information blocking'' in 45 CFR part 171. We believe it is necessary to propose a definition of ''violation'' to clarify how OIG will determine the number of information blocking practices that might be penalized. To explain the intent of the proposed definition of ''violation'' and illustrate how OIG would determine what constitutes a single violation or multiple violations, we provide hypothetical examples of conduct that would meet the definition of information blocking. We emphasize that these examples are illustrative and not exhaustive. We further emphasize that what constitutes a violation will depend on the facts and circumstances of each allegation of information blocking.

For purposes of this preamble and proposed rule, these examples assume that the conduct meets all elements of the information blocking definition, which includes the requisite level of statutory intent, are not required by law, and do not meet an exception set forth in the ONC Final Rule. The following two examples would each constitute a single violation:

- A health care provider notifies its health IT developer of its intent to switch to another electronic health record (EHR) system and requests a complete electronic export of its patients' electronic health information (EHI) via the capability certified to in 45 CFR 170.315(b)(10). The developer refuses to export any EHI without charging a fee. The refusal to export EHI without charging this fee would constitute a single violation.
- A health IT developer (D1) connects to a health IT developer of certified health IT (D2) using a certified API. D2 decides to disable D1's ability to exchange information using the certified API. D1 requests EHI through the API for one patient of a health care provider for treatment. As a result of D2 disabling D1's access to the API, D1 receives an automated denial of the request. This would be considered a single violation.

For these examples, the facts or circumstances could affect the penalty amount but would not likely result in determining that there were multiple violations. However, when investigating information blocking, OIG will assess the facts and circumstances on a case-by-case basis, which may lead to a determination that multiple violations occurred. In the first example, the number of patients affected by the health IT developer's information blocking practice is a factor OIG would consider when determining the penalty amount consistent with the regulations proposed at 42 CFR 1003.1420. For determining the number of violations, the important fact would be that the health IT developer engaged in one practice (charging a fee to the health care provider to perform an export of electronic health information for the purposes of switching health IT) that meets the elements of the information blocking definition in 45 CFR 171.103(a). Although several patients might be affected by the health IT developer's practice of information blocking, the health IT developer only engaged in one practice in response to the request from the provider. Therefore, under the proposed rule, the fact scenario in this example would constitute only one violation. We solicit comment, for purposes of the final rule, on the examples of a single violation and what constitutes a single violation.

The following non-exhaustive list of examples illustrates scenarios where OIG would determine that there is more

than one violation under the proposed rule. As with the prior examples, these examples assume that the facts meet all the elements of the information blocking definition, which includes the requisite level of statutory intent, are not required by law, and do not meet any exception established by the ONC Final Rule.

- A health IT developer's software license agreement with one customer prohibits the customer from disclosing to its IT contractors certain technical interoperability information (*i.e.,* interoperability elements), without which the customer and the IT contractors cannot access and convert EHI for use in other applications. The health IT developer also chooses to perform maintenance on the health IT that it licenses to the customer at the most inopportune times because the customer has indicated its intention to switch its health IT to that of the developer's competitor. For this specific circumstance, one violation would be the contractual prohibition on disclosure of certain technical interoperability information and the second violation would be performing maintenance on the health IT in a discriminatory fashion. Each violation would be subject to a separate penalty.
- A health IT developer requires vetting of third-party applications before the applications can access the health IT developer's product. The health IT developer denies applications based on the functionality of the application. There are multiple violations based on each instance the health IT developer vets a third-party application because each practice is separate and based on the specific functionality of each application. Each of the violations in this specific scenario would be subject to a penalty.

For the two examples illustrating multiple violations, we note that important facts, in determining the number of violations under the proposed rule, are the discrete practices that each meet the elements of the information blocking definition. In the first example, the health IT developer engages in two separate practices: (1) Prohibiting disclosure of certain technical interoperability information and (2) performing maintenance on the health IT in a discriminatory fashion. Each practice would meet the definition of information blocking separately. Therefore, the first example illustrates a scenario with two violations under the proposed rule. In the second example, the health IT developer vets each third-party application separately and makes a separate decision for each application. For each denial of access to EHI based on the discriminatory vetting, there is a practice that meets the definition of information blocking. Thus, each denial of access would constitute a separate violation under the proposed rule.

We solicit comments on the proposed definition of ''violation,'' for purposes of the final rule, as it pertains to proposed subpart N of 42 CFR part 1003. The examples are offered solely to illustrate OIG's current understanding of what constitutes a single violation versus multiple violations. However, as previously stated, these examples are non-exhaustive and our understanding of single versus multiple violations will be informed by OIG's experience enforcing the information blocking CMP authority.

§ 1003.1420

We propose to add a new § 1003.1420 that would codify the factors that OIG must consider when imposing a CMP against an individual or entity for committing information blocking. PHSA sec. 3022(b)(2)(A) mandates that a determination to impose a CMP for an information blocking violation must consider factors such as the nature and extent of the information blocking and the harm resulting from such information blocking, including, where applicable, the number of patients affected, the number of providers affected, and the number of days the information blocking persisted. The proposed regulatory language at new § 1003.1420 includes these statutory factors. These factors are similar to those found in other sections of part 1003, for consideration in OIG's imposition of its other CMP authorities.

Given that the regulation of information blocking conduct is new, as is enforcement, we have limited experience to inform the proposal of additional aggravating and mitigating circumstances to adjust the CMP penalties. For these reasons, we have only proposed implementation of the statutory factors described above. We solicit comments on any additional factors we should consider, for purposes of a final rule, in determining the amount of information blocking CMPs, including examples of specific conduct that should be subject to higher or lower penalty amounts.

6. Subpart O—Procedures for the Imposition of CMPs, Assessments, and Exclusions

We propose two technical modifications to subpart O to apply the language of the subpart to situations involving fraud and other improper conduct involving grants, contracts, and other agreements.

§ 1003.1550—Collection of Penalties and Assessments

We propose to add the phrase ''or specified claim'' in § 1003.1550(b) as a technical modification to apply the changes enacted by the Cures Act (42 U.S.C. 1320a–7a(o)) to § 1003.1550. As written, § 1003.1550(b) permits the United States to file suit to recover penalties and assessments imposed under part 1003 in the United States district court for the district in which the claim was presented or where the respondent resides. This modification would permit the United States to also file suit in the United States district court for the district in which a specified claim was presented.

§ 1003.1580—Statistical Sampling

We propose to add the term ''specified claims'' in § 1003.1580(a) as a technical modification to apply the changes enacted by the Cures Act to § 1003.1580.

B. Appeals of Exclusions, Civil Money Penalties and Assessments Under 42 CFR Part 1005

§ 1005.1—Definitions

The procedures set forth in part 1005 govern the appeal of CMPs, assessments, and exclusions in all cases for which OIG has been delegated authority to impose those sanctions, including cases involving grants, contracts, and other agreements, and information blocking. As such, we propose deleting the phrase ''under Medicare or the State health care programs'' from the definitions of ''civil money penalty cases'' and ''exclusion cases'' to correctly define those terms as applying to all cases for which OIG has been delegated authority to apply CMPs, assessments, and exclusions, not only to those cases involving Medicare or the State health care programs.

IV. Regulatory Impact Statement

We have examined the impact of this proposed rule as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

A. Executive Order No. 12866

Executive Order No. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically

significant effects (*i.e.,* $100 million or more in any given year). This is not a major rule as defined at 5 U.S.C. 804(2); it is not economically significant because it does not reach that economic threshold. The vast majority of Federal health care programs would be minimally impacted from an economic perspective, if at all, by these proposals.

This proposed rule would codify new statutory enforcement provisions, including new CMP authorities. The regulatory changes implement provisions of the Cures Act and BBA 2018 into 42 CFR parts 1003 and 1005. We believe that the likely aggregate economic effect of these regulations would be significantly less than $100 million.

The expected benefits of the regulation are deterring conduct that negatively affects the integrity of HHS grants, contracts, and other agreements and potentially enhanced statutory compliance by HHS grantees, contractors, and other parties. It also will deter information blocking conduct that interferes with effective health information exchange and negatively impacts many important aspects of health and health care. We refer readers to the impact analysis of the benefits of prohibiting and deterring information blocking in section XII.C.2.a.(4.2) of the ONC Final Rule.

We anticipate that OIG will incur some costs associated with investigation and enforcement of the statutes underlying these penalty provisions. The FY 2021 President's Budget proposes $5.3 million for OIG information blocking activities. Additionally, investigated parties may incur some costs in response to an OIG investigation or enforcement action. Absent information about the frequency of prohibited conduct, we are unable to determine precisely the potential costs of this regulation.

Civil monetary penalties and assessments, if any, would be considered transfers. However, we are unable to reliably estimate potential penalty and assessment amounts because enforcement action will depend on the facts and circumstances of individual cases, some enforcement will be of newly regulated conduct, and some cases may result in settlement. We seek comment on potential impacts of the rulemaking.

B. Regulatory Flexibility Act

The RFA and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and Government agencies.

The Department considers a rule to have a significant impact on a substantial number of small entities if it has an impact of more than 3 percent of revenue for more than 5 percent of affected small entities. This proposed rule should not have a significant impact on the operations of a substantial number of small entities, as these changes would not impose any new requirement on any party. These changes largely codify existing regulatory authority. In addition, we expect that increases in the maximum penalty proposed here will only have an impact in a small number of cases. As a result, we have concluded that this proposed rule likely will not have a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required for this rulemaking.

In addition, sec. 1102(b) of the Act (42 U.S.C. 1302) requires us to prepare a regulatory impact analysis if a rule under Titles XVIII or XIX or sec. B of Title XI of the Act may have a significant impact on the operations of a substantial number of small rural hospitals. We have concluded that this proposed rule should not have a significant impact on the operations of a substantial number of small rural hospitals because these changes would not impose any requirement on any party and small rural hospitals are not subject to CMPs for information blocking under this proposed rule. Therefore, a regulatory impact analysis under sec. 1102(b) is not required for this rulemaking.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any one year by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted annually for inflation. In 2019, this threshold is approximately $154 million. As indicated above, these proposed revisions comport with statutory amendments and clarify existing law. We believe that there are no significant costs associated with these proposed revisions that would impose any mandates on State, local, or Tribal governments or the private sector that would result in an expenditure of $154 million or more in any given year and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

D. Executive Order 13771

Executive Order 13771 requires that the costs associated with significant new regulations ''to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This rulemaking, while significant under Executive Order 12866, is expected to impose only de minimis costs and therefore is not anticipated to be a regulatory or deregulatory action under Executive Order 13771.

E. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this proposed rule would not significantly affect the rights, roles, and responsibilities of State or local governments. Nothing in this proposed rule imposes substantial direct requirements or costs on State and local governments, preempts State law, or otherwise has Federalism implications. We are not aware of any State laws or regulations that are contradicted or impeded by any of the provisions in this proposed rule.

The Secretary is authorized by 42 U.S.C. 1320a–7a(o), which we propose to codify in the regulation at § 1003.700, to impose CMPs and assessments against individuals and entities that engage in fraud and other improper conduct against specified State agencies that administer or supervise the administration of grants, contracts, and other agreements funded in whole or in part by the Secretary. Additionally, 42 U.S.C. 1320a–7a(f)(4) directs that these CMPs and assessments be deposited into the Treasury of the United States. Amounts collected under this authority could not be used to compensate a State for damages it incurs due to improper conduct related to grants, contracts, or other agreements funded by the Secretary that are administered or supervised by specified State agencies.

However, neither 42 U.S.C. 1320a–7a nor this proposed regulation preclude or impede any State's authority to pursue actions against entities and individuals that defraud or otherwise engage in improper conduct related to grants, contracts, or other agreements funded by the Secretary that are administered or supervised by specified State agencies. For this reason, the Secretary's authority

related to specified State agencies will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Based on OIG's prior approach to enforcement that involves state programs and agencies, we also anticipate coordinating closely with the relevant State authorities, which would provide states notice about the improper conduct and the opportunity to pursue action under the state authority. We solicit comment on the potential Federalism implications of this rulemaking.

V. Paperwork Reduction Act

These proposed changes to parts 1003 and 1005 impose no new reporting requirements or collections of information. Therefore, a Paperwork Reduction Act review is not required.

List of Subjects

42 CFR Part 1003

Fraud—Grant Programs, Contracts; Information Blocking; Penalties.

42 CFR Part 1005

Administrative practice and procedure.

For the reasons set forth in the preamble, the Office of Inspector General, Department of Health and Human Services, proposes to amend 42 CFR chapter V, subchapter B as follows:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

■ 1. Revise the authority citation for part 1003 to read as follows:

Authority: 42 U.S.C. 262a, 300jj–52, 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395cc(j), 1395w–141(i)(3), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c), and 11137(b)(2).

■ 2. Amend § 1003.100 by revising paragraph (a) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1140, 1819(b)(3)(B), 1819(g)(2)(A), 1857(g)(2)(A), 1860D–12(b)(3)(E), 1860D–31(i)(3), 1862(b)(3)(C), 1867(d)(1), 1876(i)(6), 1877(g), 1882(d), 1891(c)(1); 1903(m)(5), 1919(b)(3)(B), 1919(g)(2)(A), 1927(b)(3)(B), 1927(b)(3)(C), and 1929(i)(3) of the Social Security Act; sections 421(c) and 427(b)(2) of Public Law 99–660; section 201(i) of Public Law 107–188 (42 U.S.C. 1320a–7(c), 1320a–7a, 1320b–10, 1395i–3(b)(3)(B), 1395i–3(g)(2)(A), 1395w–27(g)(2)(A), 1395w–112(b)(3)(E), 1395w–141(i)(3), 1395y(b)(3)(B), 1395dd(d)(1), 1395mm(i)(6), 1395nn(g), 1395ss(d), 1395bbb(c)(1), 1396b(m)(5), 1396r(b)(3)(B), 1396r(g)(2)(A), 1396r–8(b)(3)(B), 1396r–8(b)(3)(C), 1396t(i)(3), 11131(c), 11137(b)(2), and 262a(i)); and section 3022 of the Public Health Service Act (42 U.S.C. 300jj–52).

* * * * *

■ 3. Amend § 1003.110 by:

■ a. Adding in alphabetical order definitions for ''Department'', ''Obligation'', ''Other agreement'', and ''Program beneficiary'';

■ b. Revising the definition of ''Reasonable request''; and

■ c. Adding in alphabetical order definitions for ''Recipient'', ''Specified claim'', and ''Specified state agency''.

The revisions and additions read as follows:

§ 1003.110 Definitions.

* * * * *

Department means the Department of Health and Human Services.

* * * * *

Obligation, for the purposes of § 1003.700, means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, for a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

Other agreement, for the purposes of § 1003.700, includes a cooperative agreement, scholarship, fellowship, loan, subsidy, payment for a specified use, donation agreement, award, or subaward (regardless of whether one or more of the persons entering into the agreement is a contractor or subcontractor).

* * * * *

Program beneficiary means, in the case of a grant, contract, or other agreement designed to accomplish the objective of awarding or otherwise furnishing benefits or assistance to individuals and for which the Secretary provides funding, an individual who applies for, or who receives, such benefits or assistance from such grant, contract or other agreement. Such term does not include, with respect to such grant, contract or other agreement, an officer, employee, or agent of a person or entity that receives such grant or that enters into such contract or other agreement.

* * * * *

Reasonable request, with respect to §§ 1003.200(b)(10) and 1003.700(a)(5), means a written request, signed by a designated representative of the OIG and made by a properly identified agent of the OIG during reasonable business hours. The request will include:

(1) A statement of the authority for the request;

(2) The person's rights in responding to the request;

(3) The definition of ''reasonable request'' and ''failure to grant timely access'' under this part;

(4) The deadline by which the OIG requests access; and

(5) The amount of the civil money penalty or assessment that could be imposed and the effective date, length, and scope and effect of the exclusion that would be imposed for failure to comply with the request, and the earliest date that a request for reinstatement would be considered.

Recipient, for the purposes of § 1003.700, means any person (excluding a program beneficiary as defined in this section) directly or indirectly receiving money or property under a grant, contract, or other agreement funded in whole or in part by the Secretary, including a subrecipient or subcontractor.

* * * * *

Specified claim means any application, request, or demand under a grant, contract, or other agreement for money or property, whether or not the United States or a specified State agency has title to the money or property, that is not a claim (as defined in this section) and that:

(1) Is presented or caused to be presented to an officer, employee, or agent of the Department or agency thereof, or of any specified State agency; or

(2) Is made to a contractor, grantee, or other recipient if the money or property is to be spent or used on the Department's behalf or to advance a Department program or interest, and if the Department:

(i) Provides or has provided any portion of the money or property requested or demanded; or

(ii) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

Specified State agency means an agency of a State government established or designated to administer or supervise the administration of a grant, contract, or other agreement funded in whole or in part by the Secretary.

* * * * *

■ 4. Revise § 1003.130 to read as follows:

§ 1003.130 Assessments.

The assessment in this part is in lieu of damages sustained by the Department, a State agency, or a specified State agency because of the violation.

■ 5. Amend § 1003.140:

■ a. In paragraph (c)(3), by removing the phrase ''(as defined by paragraph (e)(2) of this section)'' and adding in its place the phrase ''(as defined by paragraph (d)(2) of this section)''; and

■ b. By adding paragraph (d)(5).

The addition reads as follows:

§ 1003.140 Determinations regarding the amount of penalties and assessments and the period of exclusion.

* * * * *

(d) * * *

(5) The penalty amounts in this part are updated annually, as adjusted in accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (Pub. L. 101–140), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (section 701 of Pub. L. 114–74). Annually adjusted amounts are published at 45 CFR part 102.

Subpart B—CMPs, Assessments, and Exclusions for False or Fraudulent Claims and Other Similar Misconduct

§§ 1003.210, 1003.310, 1003.410, 1003.510, 1003.610, 1003.810, 1003.910, 1003.1010, 1003.110, 1003.1210, and 1003.1310 [Amended]

■ 6. In each location referenced in the first column of the following table, the text is amended by removing the footnote referenced in the second column.

Section	Footnote
§ 1003.210(a) introductory text	1
§ 1003.310(a) subject heading	2
§ 1003.410(a) subject heading	3
§ 1003.410(b)(2)	4
§ 1003.510 introductory text	5
§ 1003.610(a) introductory text	6
§ 1003.810 introductory text	7
§ 1003.910	8
§ 1003.1010 introductory text	9
§ 1003.1110 introductory text	10
§ 1003.1210 introductory text	11
§ 1003.1310	12

■ 7. Section 1003.210 is further amended by revising paragraphs (a)(1) through (4), (6) through (9), (a)(10) introductory text, and (a)(10)(i) to read as follows:

§ 1003.210 Amount of penalties and assessments.

* * * * *

(a) * * *

(1) Except as provided in this section, the OIG may impose a penalty of not more than $10,000 for conduct that occurred on or before February 9, 2018, and not more than $20,000 for conduct that occurred after February 9, 2018, for each individual violation that is subject to a determination under this subpart.

(2) The OIG may impose a penalty of not more than $15,000 for conduct that occurred on or before February 9, 2018, and not more than $30,000 for conduct that occurred after February 9, 2018, for each person with respect to whom a determination was made that false or misleading information was given under § 1003.200(b)(2).

(3) The OIG may impose a penalty of not more than $10,000 for conduct that occurred on or before February 9, 2018, and not more than $20,000 for conduct that occurred after February 9, 2018, per day, for each day that the prohibited relationship described in § 1003.200(b)(3) occurs.

(4) For each individual violation of § 1003.200(b)(4), the OIG may impose a penalty of not more than $10,000 for conduct that occurred on or before February 9, 2018, and not more than $20,000 for conduct that occurred after February 9, 2018, for each separately billable or non-separately-billable item or service provided, furnished, ordered, or prescribed by an excluded individual or entity.

* * * * *

(6) The OIG may impose a penalty of not more than $50,000 for conduct that occurred on or before February 9, 2018, and not more than $100,000 for conduct that occurred after February 9, 2018, for each false statement, omission, or misrepresentation of a material fact in violation of § 1003.200(b)(7).

(7) The OIG may impose a penalty of not more than $50,000 for conduct that occurred on or before February 9, 2018, and not more than $100,000 for conduct that occurred after February 9, 2018, for each false record or statement in violation of § 1003.200(b)(9).

(8) The OIG may impose a penalty of not more than $10,000 for conduct that occurred on or before February 9, 2018, and not more than $20,000 for conduct that occurred after February 9, 2018, for each item or service related to an overpayment that is not reported and returned in accordance with section 1128J(d) of the Act in violation of § 1003.200(b)(8).

(9) The OIG may impose a penalty of not more than $15,000 for conduct that occurred on or before February 9, 2018, and not more than $30,000 for conduct that occurred after February 9, 2018, for each day of failure to grant timely access in violation of § 1003.200(b)(10).

(10) For each false certification in violation of § 1003.200(c), the OIG may impose a penalty of not more than the greater of:

(i) $5,000 for conduct that occurred on or before February 9, 2018, and $10,000 for conduct that occurred after February 9, 2018; or

* * * * *

■ 8. Section 1003.310 is further amended by revising paragraph (a)(3) to read as follows:

§ 1003.310 Amount of penalties and assessments.

* * * * *

(a) * * *

(3) $50,000 for conduct that occurred on or before February 9, 2018, and $100,000 for conduct that occurred after February 9, 2018, for each offer, payment, solicitation, or receipt of remuneration that is subject to a determination under § 1003.300(d).

* * * * *

■ 9. Add subpart G to read as follows:

Subpart G—CMPs, Assessments, and Exclusions for Fraud or False Claims or Similar Conduct Related to Grants, Contracts, and Other Agreements

Sec.

Subpart G—CMPs, Assessments, and Exclusions for Fraud or False Claims or Similar Conduct Related to Grants, Contracts, and Other Agreements

§ 1003.700 Basis for civil money penalties, assessments, and exclusions.

(a) The OIG may impose a penalty, assessment, and an exclusion against any person including an organization, agency, or other entity, but excluding a program beneficiary (as defined in § 1003.110) that, with respect to a grant, contract, or other agreement for which the Secretary provides funding:

(1) Knowingly presents or causes to be presented a specified claim (as defined in § 1003.110) under such grant, contract, or other agreement that the person knows or should know is false or fraudulent;

(2) Knowingly makes, uses, or causes to be made or used, any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, or other document that is required to be submitted in order to directly or indirectly receive or retain funds provided in whole or in part by such Secretary pursuant to such grant, contract, or other agreement;

(3) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent specified claim under such grant, contract, or other agreement;

(4) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation (as defined in § 1003.110) to pay or transmit funds or property to such Secretary with respect to such grant, contract, or other agreement, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit funds or property to such Secretary with respect to such grant, contract, or other agreement; or

(5) Fails to grant timely access, upon reasonable request (as defined in § 1003.110), to the Inspector General of the Department, for the purpose of audits, investigations, evaluations, or other statutory functions of such Inspector General in matters involving such grants, contracts, or other agreements.

(b) [Reserved]

§ 1003.710 Amount of penalties and assessments.

(a) *Penalties.* (1) In cases under § 1003.700(a)(1), the OIG may impose a penalty of not more than $10,000 for each specified claim.

(2) In cases under § 1003.700(a)(2), the OIG may impose a penalty of not more than $50,000 for each false statement, omission, or misrepresentation of a material fact.

(3) In cases under § 1003.700(a)(3), the OIG may impose a penalty of not more than $50,000 for each false record or statement.

(4) In cases under § 1003.700(a)(4), the OIG may impose a penalty of not more than $50,000 for each false record or statement or not more than $10,000 for each day that the person knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay.

(5) In cases under § 1003.700(a)(5), the OIG may impose a penalty of not more than $15,000 for each day of the failure described in such paragraph.

(b) *Assessments.* (1) In cases under § 1003.700(a)(1) and (3), such a person shall be subject to an assessment of not more than three times the amount claimed in the specified claim described in such paragraph in lieu of damages sustained by the United States or a specified State agency because of such specified claim.

(2) In cases under § 1003.700(a)(2) and (4), such a person shall be subject to an assessment of not more than three times the total amount of the funds described in § 1003.700(a)(2) and (4), respectively (or, in the case of an obligation to transmit property to the Secretary described in § 1003.700(a)(4), of the value of the property described in such paragraph) in lieu of damages sustained by the United States or a specified State agency because of such case.

§ 1003.720 Determinations regarding the amount of penalties and assessments and period of exclusion.

In considering the factors listed in § 1003.140:

(a) It should be considered a mitigating circumstance if all the violations included in the action brought under this part were of the same type and occurred within a short period of time, there were few such violations, and the total amount claimed or requested related to the violations was less than $5,000.

(b) Aggravating circumstances include, but are not limited to:

(1) The violations were of several types or occurred over a lengthy period of time;

(2) There were many such violations (or the nature and circumstances indicate a pattern of false or fraudulent specified claims, requests for payment, or a pattern of violations);

(3) The amount requested or claimed or related to the violations was $50,000 or more; or

(4) The violation resulted, or could have resulted, in physical harm to any individual.

§ 1003.1010 [Amended]

■ 10. Section 1003.1010 is further amended by removing the figure ''$10,000'' and adding in its place the phrase ''$10,000 for conduct that occurred on or before February 9, 2018, and $20,000 for conduct that occurred after February 9, 2018'' in paragraph (a).

Subpart N—CMPs for Information Blocking

■ 11. Add subpart N to read as follows:

Subpart N—CMPs for Information Blocking

Sec.

Subpart N—CMPs for Information Blocking

§ 1003.1400 Basis for civil money penalties.

The OIG may impose a civil money penalty against any individual or entity described in 45 CFR 171.103(b) that commits information blocking, as defined in 45 CFR part 171.

§ 1003.1410 Amount of penalties.

(a) The OIG may impose a penalty of not more than $1,000,000 per violation.

(b) For this subpart, *violation* means a practice, as defined in 45 CFR 171.102, that constitutes information blocking, as defined in 45 CFR part 171.

§ 1003.1420 Determinations regarding the amount of penalties.

In considering the factors listed in § 1003.140, the OIG shall take into account—

(a) The nature and extent of the information blocking; and

(b) The harm resulting from such information blocking, including, where applicable—

(1) The number of patients affected;

(2) The number of providers affected; and

(3) The number of days the information blocking persisted.

§ 1003.1550 [Amended]

■ 12. Amend § 1003.1550 in paragraph (b) by removing the phrase ''where the claim'' and adding in its place the phrase ''where the claim or specified claim''.

■ 13. Amend § 1003.1580 by revising paragraph (a) to read as follows:

§ 1003.1580 Statistical sampling.

(a) In meeting the burden of proof in § 1005.15 of this chapter, the OIG may introduce the results of a statistical sampling study as evidence of the number and amount of claims, specified claims, and/or requests for payment, as described in this part, that were presented, or caused to be presented, by the respondent. Such a statistical sampling study, if based upon an appropriate sampling and computed by valid statistical methods, shall constitute prima facie evidence of the number and amount of claims, specified claims, or requests for payment, as described in this part.

* * * * *

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

■ 14. The authority citation for part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

■ 15. Amend § 1005.1 by revising the definitions of ''Civil money penalty cases'' and ''Exclusion cases'' to read as follows:

§ 1005.1 Definitions.

Civil money penalty cases refers to all proceedings arising under any of the statutory bases for which the OIG has been delegated authority to impose civil money penalties.

* * * * *

Exclusion cases refers to all proceedings arising under any of the statutory bases for which the OIG has been delegated authority to impose exclusions.

* * * * *

Christi A. Grimm,

Principal Deputy Inspector General.

Dated: April 16, 2020.

Alex M. Azar II,

Secretary.

[FR Doc. 2020–08451 Filed 4–21–20; 4:15 pm]

BILLING CODE 4152–01–P

Notices

Federal Register
Vol. 85, No. 80
Friday, April 24, 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

Submission for OMB Review; Comment Request

April 21, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 26, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Department of Agriculture

Office of the Chief Information Officer

Title: USDA eAuthentication Service Customer Registration.

OMB Control Number: 0503–0014.

Summary of Collection: The USDA Office of the Chief Information Officer (OCIO) has developed the eAuthentication system as a management and technical process that addresses user authentication and authorization prerequisites for providing services electronically. The process requires a voluntary one-time electronic self-registration to obtain an eAuthentication account for each USDA customer desiring access to online services or applications that require user eAuthentication. The information collected through the electronic self-registration process is necessary to enable the electronic authentication of users and grant them access to only those resources for which they are authorized. The authority to collect this information as well as the new Online Identity Proofing function can be found in Section 2,(c), of the Freedom to E-File Act (Pub. L. 106–222), the Government Paperwork Elimination Act (GPEA, Pub. L. 105–277), the Electronic Signatures in Global and National Commerce Act (E-Sign, Pub. L. 106–229), the E-Government Act of 2002 (H.R. 2458), and Gramm-Leach Bliley Act (Pub. L. 106–102, 502–504).

Need and Use of the Information: The USDA eAuthentication Service provides public and government businesses single sign-on capability for USDA applications, management of user credentials, and verification of identity, authorization, and electronic signatures. USDA eAuthentication obtains customer information through an electronic self-registration process provided through the eAuthentication website. The voluntary online self-registration process applies to USDA Agency customers, as well as employees who request access to protected USDA web applications and services via the internet. Users can register directly from the eAuthentication website located at *www.eauth.egov.usda.gov.* The information collected through the online self-registration process will be used to provide an eAuthentication account that will enable the electronic authentication of users. The users will then have access to authorized resources without needing to reauthenticate within the context of a single internet session.

Description of Respondents: Farms; Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal government; State, Local or Tribal Government.

Number of Respondents: 103,704.

Frequency of Responses: Reporting: On occasion; Third party disclosure.

Total Burden Hours: 13,598.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–08716 Filed 4–23–20; 8:45 am]

BILLING CODE 3410–KR–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 20, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by May 26, 2020. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this

particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agriculture Statistics Service

Title: Agricultural Surveys Program.

OMB Control Number: 0535–0213.

Summary of Collection: National Agriculture Statistics Service (NASS) primary functions are to prepare and issue state and national estimates of crop and livestock production and collect information on related environmental and economic factors. The Agricultural Surveys Program is a series of surveys that contains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts. The surveys results provide the foundation for setting livestock and poultry inventory numbers. Estimates derived from the surveys supply information needed by farmers to make decisions for both short and long-term planning. The General authority for these data collection is granted under U.S. Code Title 7, Section 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, as amended, 7 U.S.C, 2276, which requires USDA to afford strict confidentially to non-aggregated data provided by respondents.

Due to the COVID–19 virus situation, NASS will not conduct the 2020 June Area Survey (JAS) because it requires face-to-face enumeration. To obtain crops, cattle, hog, and sheep and goat area indications, non-overlap (NOL) samples will be added to the 2020 Agricultural, Cattle, Hog and Sheep and Goats List samples. NASS will identify NOL entities by overlapping 2019 JAS tracts with the 2020 ELMO List Frame. In addition, NASS will conduct an expanded Agricultural Land Value survey that encompasses all States. NASS plans to resume conducting the June Area Survey in 2021.

In addition, through cooperative agreements with the USDA, Animal and Plant Health Inspection Service (APHIS) and several State governments, NASS will be including some additional predator loss questions to the 2021 and 2022 Cattle, and Sheep and Goat Surveys.

Need and Use of the Information: The surveys provide the basis for estimates of the current season's crop and livestock production and supplies of grain in storage. Crop and livestock statistics help develop a stable economic atmosphere and reduce risk for production, marketing, and distribution operations. These commodities affect the well being of the nation's farmers, commodities markets, and national and global agricultural policy. Users of agricultural statistics are farm organizations, agribusiness, state and national farm policy makers, and foreign buyers of agricultural products but the primary user of the statistical information is the producer. Agricultural statistics are also used to plan and administer other related federal and state programs in such areas as school lunch program, conservation, foreign trade, education, and recreation. Collecting the information less frequent would eliminate needed data to keep the government and agricultural industry abreast of changes at the state and national levels.

Description of Respondents: Farms.

Number of Respondents: 551,600.

Frequency of Responses: Reporting: Quarterly; Semi-annually; Monthly; Annually.

Total Burden Hours: 175,583.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–08677 Filed 4–23–20; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 21, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995. Comments are required regarding; 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 26, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Farm Loan Program—Inventory Property Management.

OMB Control Number: 0560–0234.

Summary of Collection: The Farm Loan Program provides supervised credit in the form of loans to family farmers to purchase real estate and equipment and finance agricultural production. Authority to establish the regulatory requirements contained in 7 CFR 767 is provided under section 302 of the Act (7 U.S.C. 1922) which provides that ''the Secretary is authorized to make and insure under this title to farmers . . .'' Section 339 of the Act (7 U.S.C. 1989) further provides that ''the Secretary is authorized to make such rules and regulations, prescribe the terms and conditions for making . . . loans, security instruments and agreements, except as otherwise specified herein, and to make such delegations of authority as he deems necessary to carry out this title.'' The Secretary delegated authority to administer the provisions of the Act applicable to FLP to the Under Secretary for Farm and Foreign Agricultural Services (FFAS) in section 2.16 of 7 CFR part 2. FFAS further delegated this authority to the FSA Administrator in section 2.42 of 7 CFR part 2.

Need and Use of the Information: Information collections are submitted by applicants to the local agency office serving the country in which their business is headquartered. The information is necessary to thoroughly evaluate an applicant's request to purchase inventory property and is used

by the agency to determine an applicant's eligibility to lease or purchase inventory property and to ensure payment of the lease or purchase amount. Failure to collect the information would result in the agency not complying with congressional mandates.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 239.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 136.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–08715 Filed 4–23–20; 8:45 am]

BILLING CODE 3410–05–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: April 29, 2020, 11:00 a.m. EDT.

PLACE: U.S. Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW, Suite 910, Washington, DC 20006.

STATUS: Because of the COVID–19 pandemic, members of the public will not be able to attend in person. However, any member of the public may listen to the meeting in its entirety by following the instructions in the ''Additional Information'' section below.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on Wednesday, April 29, 2020 at 11:00 a.m. EDT. The Board will discuss open investigations, the status of audits from the Office of the Inspector General, financial and organizational updates.

Additional Information

This meeting will only be available via the dial in number below.

Join the Audio Conference:

Please dial the phone number five minutes prior to the start of the meeting and enter your passcode.

Dial-In: 1 (866) 294–4838 Audience US Toll Free; 1 (847) 944–7303 Audience US Toll

Passcode: 7814 892

If you require a translator or interpreter, please notify the individual listed below as the **CONTACT PERSON FOR FURTHER INFORMATION**, at least three business days prior to the meeting.

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

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

Dated: April 21, 2020.

Ray Porfiri,

Deputy General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2020–08828 Filed 4–22–20; 11:15 am]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Hampshire 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 New Hampshire Advisory Committee to the Commission will convene by conference call at 11:00 a.m. (EDT) on Friday, May 8, 2020. The purpose of the meeting is for project planning.

DATES: Friday, May 8, 2020, at 11:00 a.m. (EDT).

Public Call-In Information: Conference call-in number: 1–866–288–0540 and conference call 1587705.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, at *mtrachtenberg@usccr.gov* or by phone at (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–866–288–0540; Conference ID: 1587705. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. 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 phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–877–8339 and provide the FRS operator with Conference Call Toll-Free Number: 1–866–288–0540; Conference ID: 1587705. Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, June 8, 2020. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

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=a10t0000001gzlXAAQ;* 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 meetings. 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 numbers, email or street address.

Agenda

May 8, 2020, Friday; 11:00 a.m. (EDT)

- Roll Call
- Leadership Changes: Chair and Designated Federal Official
- Project Planning
- Open Comment
- Adjourn

Dated: April 16, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–08739 Filed 4–23–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maine Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. 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 that the Maine Advisory Committee (Committee) will hold a meeting on Thursday, May 14, 2020, at 1:00 p.m. (EDT) for the purpose of project planning.

DATES: The meeting will be held on Thursday, May 14, 2020, at 1:00 p.m. EDT.

Public Call Information: Dial: 1–800–479–1004, Conference ID: 3005879.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or 202–381–8915.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number: 1–800–479–1004 and conference ID number: 3005879.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave., Suite 1150, Washington, DC 20425. They may also be emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Maine Advisory Committee link: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl8AAA.* Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Thursday, May 14, 2020 at 1:00 p.m. (EDT)

- Welcome and Roll Call
- Introductions
- Project Planning
- Other Business
- Public Comment
- Adjournment

Dated: April 20, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–08735 Filed 4–23–20; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–01–2020]

Foreign-Trade Zone (FTZ) 84—Houston, Texas, Authorization of Production Activity, Mitsubishi Caterpillar Forklift America, Inc. (Forklift/Work Trucks and Related Subassemblies/Kits), Houston, Texas

On December 20, 2019, Mitsubishi Caterpillar Forklift America, Inc., submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 84, in Houston, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 2108, January 14, 2020). On April 20, 2020, the applicant was notified of the FTZ Board's decision that no further review of the proposed activity is warranted at this time. The FTZ Board authorized the production activity described in the notification, subject to the FTZ Act and the Board's regulations, including Section 400.14. Lithium ion batteries must be admitted in privileged foreign status (19 CFR 146.41).

Dated: April 20, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–08726 Filed 4–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology Technical Advisory Committee; Notice of Partially Closed Meeting; Amended

The Emerging Technology Technical Advisory Committee will meet on May 19, 2020, at 1:00 p.m. to 3:00 p.m., Eastern Daylight Time, via remote teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on the identification of emerging and foundational technologies with potential dual-use applications as early as possible in their developmental stages both within the United States and abroad.

Agenda

Open Sesssion

1. Welcome and introductions.
2. Remarks from Bureau of Industry and Security (BIS) management.
3. Emerging technology and research and development issues.
4. Public comments.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than May 12, 2020.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of

the delegate of the General Counsel, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–08728 Filed 4–23–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–812]

Circular Welded Carbon-Quality Steel Pipe From Oman: 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) determines that Al Jazeera Steel Products Co. SAOG (Al Jazeera) made sales of certain welded carbon-quality steel pipe from Oman at less than normal value (NV) during the period of review (POR) December 1, 2017 through November 30, 2018.

DATES: Applicable April 24, 2020.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* on December 11, 2018.[1] For events subsequent to the *Preliminary Results, see* Issues and Decision Memorandum.[2]

Scope of the Order

Imports covered by the order are shipments of circular welded carbon-quality steel pipe. The merchandise subject to review is currently classifiable under items 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5015, 7306.30.5020, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5030, 7306.50.5050, and 7306.50.5070 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive. For a complete description of the scope of the order, *see* Issues and Decision Memorandum.

Analysis of Comments Received

We addressed the issues raised in parties' case and rebuttal briefs in the Issues and Decision Memorandum. A list of the issues raised by parties is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding the *Preliminary Results,* we have recalculated the weighted-average dumping margin for Al Jazeera.[3]

Final Results of the Review

As a result of this review, Commerce determines that the following weighted-average dumping margin exists for the period December 1, 2017 through November 30, 2018:

Producer and/or exporter	Weighted-average dumping margin (percent)
Al Jazeera Steel Products Co. SAOG	1.10

Duty Assessment

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[4] Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

For Al Jazeera, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), Commerce will issue instructions directly to CBP to assess antidumping duties on appropriate entries. Where an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's ''automatic assessment'' practice,[5] for entries of subject merchandise during the POR produced by Al Jazeera 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 if there is no rate for the intermediate company(ies) involved in

[1] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Preliminary Results of Antidumping Duty Administrative Review*; 2017–2018, 84 FR 70150 (December 20, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Issues and Decision Memorandum for the Final Results of Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Issues and Decision Memorandum; *see also* Memorandum, ''Final Results Margin Calculation for Al Jazeera Steel Products Co.,'' dated concurrently with this memorandum.

[4] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[5] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

the transaction. We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Al Jazeera will be the rate established in the final results of this administrative review, as noted above; (2) for merchandise exported by manufacturers or exporters not covered in this administrative 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 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 manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.36 percent, the all-others rate established in the less-than-fair-value investigation.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 and/or countervailing duties.

Administrative Protective Order

This notice also serves as a reminder to 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 351.221(b)(5).

Dated: April 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2020–08759 Filed 4–23–20; 8:45 am]

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[6] *See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 81 FR 91906 (December 19, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–128]

Mattresses From the People's Republic of China: Initiation of Countervailing Duty Investigation

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

ACTION: Notice.

SUMMARY: On March 31, 2020, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition (Petition) concerning imports of mattresses from the People's Republic of China (China), filed in proper form on behalf of the petitioners, domestic producers of mattresses and certified unions that represent workers engaged in the domestic production of mattresses.

DATES: Applicable April 20, 2020.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, 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.

SUPPLEMENTARY INFORMATION:

The Petition

On March 31, 2020, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition (Petition) concerning imports of mattresses from the People's Republic of China (China), filed in proper form on behalf of the petitioners,[1] domestic producers of mattresses and certified unions that represent workers engaged in the domestic production of mattresses.[2] The petition was accompanied by antidumping (AD) petitions concerning imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam.[3]

Between April 3 and 14, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition.[4] The petitioners filed responses to these requests between April 8 and April 16, 2020.[5]

[1] Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (USW) (collectively, the petitioners).

[2] *See* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam—Antidumping and Countervailing Duty Petitions,'' dated March 31, 2020 (the Petitions).

[3] *Id.*

[4] *See* Commerce's Letter, ''Petitions for the Imposition of Antidumping Duties on Imports of Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam and Countervailing Duties on Imports from China: Supplemental Questions,'' dated April 3, 2020 (General Issues Questionnaire); Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Imports of Mattresses from the People's Republic of China: Supplemental Questions,'' dated April 3, 2020; Commerce's Letter, ''Petition for the Imposition of Countervailing Duties on Imports of Mattresses from the People's Republic of China: Second Supplemental Questions,'' dated April 10, 2020; Memorandum, ''Telephone Conversation with the Petitioners regarding Antidumping Duty Petitions Covering Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam and the Countervailing Duty Petition Covering Mattresses from People's Republic of China,'' dated April 10, 2020 (Memorandum of Telephone Conversation); and Memorandum, ''Phone Call with Counsel to the Petitioners,'' dated April 14, 2020.

[5] *See* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Responses to Petition Supplemental Questionnaires,'' dated April

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioners allege 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 mattresses in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing mattresses 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 petitioners supporting its allegations.

Commerce finds that the petitioners filed the Petition on behalf of the domestic industry because the petitioners are an interested party, as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.[6]

Period of Investigation

Because the Petition was filed on March 31, 2020, the period of investigation (POI) is January 1, 2019 through December 31, 2019.[7]

Scope of the Investigation

The merchandise covered by this investigation is mattresses from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

On April 3, 2020, 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.[8] On April 8, 2020, the petitioners revised the scope.[9] On April 10, 2020, Commerce requested further clarification from the petitioner regarding the proposed scope.[10] On April 13, 2020, the petitioner further modified the scope of the Petition to clarify the description of the merchandise covered by the Petition.[11] 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).[12] 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,[13] 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 May 11, 2020, which is the next business day after 20 calendar days from the signature date of this notice.[14] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 21, 2020, which is 10 calendar days from the initial comment deadline.[15]

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), unless an exception applies.[16] An electronically filed document must be received successfully in its entirety by the time and date it is due.

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.[17] 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

8, 2020 at Volume I (First General Issues Supplement) and at Volume III (First China CVD Supplement); Petitioners' Letter, ''Mattresses from China: Response to Petition Second Supplemental Questionnaire,'' dated April 14, 2020; and Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners' Response to Request for Additional Information Regarding Industry Support,'' dated April 16, 2020 (Industry Support Supplement).

[6] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[7] *See* 19 CFR 351.204(b)(2).

[8] *See* General Issues Questionnaire.

[9] *See* First General Issues Supplement at Exhibit I–Supp–5.

[10] *See* Memorandum of Telephone Conversation.

[11] *See* Second General Issues Supplement at Exhibit I–Supp2–1.

[12] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[13] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[14] In this case, 20 days after initiation falls on May 10, 2020, a Sunday. Where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

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

[16] *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.*

[17] *See* Commerce's Letter, ''Countervailing Duty Petition on Mattresses from the People's Republic of China: Invitation for Consultations to Discuss the Countervailing Duty Petition,'' dated March 31, 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,[18] 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.[19]

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 petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation.[20] Based on our analysis of the information submitted on the record, we have determined that mattresses, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[21]

In determining whether the petitioners have 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 petitioners provided the 2019 production of the domestic like product for the U.S. producers that support the Petition.[22] The petitioners estimated the production of the domestic like product for the entire domestic industry based on the production data from the ITC's 2019 report from the AD investigation of mattresses from China.[23] We relied on data provided by the petitioners for purposes of measuring industry support.[24]

On April 9, 2020 and April 10, 2020, respectively, we received comments on industry support from Ashley Furniture Industries, Inc. (Ashley), a domestic producer and importer of merchandise subject merchandise,[25] and Classic Brands, LLC (Classic Brands), an importer of subject merchandise.[26] The petitioners responded to industry support comments on April 13, 2020.[27] On April 17, 2020, we received surrebuttal comments from Ashley [28] and Classic Brands [29] with regard to the petitioners' April 13, 2020 comments. The petitioners responded to these surrebuttal industry support comments on April 20, 2020.[30]

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petition.[31] 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).[32] 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.[33] 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 Petitions 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.[34] 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.[35]

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 this investigation. 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. In addition, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[36]

The petitioners contend 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; declining production, capacity utilization, and sales volumes; declining employment variables; and a decline in financial

[18] *See* section 771(10) of the Act.

[19] *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)).

[20] *See* Volume I of the Petitions at 13–16.

[21] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* China CVD Initiation Checklist at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam (Attachment II).

[22] *See* Volume I of the Petition at 3–4, Exhibit I–3, and Exhibit I–4; *see also* First General Issues Supplement at 2 and Exhibit I–Supp–1.

[23] *See* Volume I of the Petitions at 3–4 and Exhibit I–4; *see also* First General Issues Supplement at 2, Exhibit I–Supp–1, and Exhibit I–Supp–2; and *Mattresses from China,* Inv. No. 731–TA–1424 (Final), USITC Pub. 5000 (December 2019), at 17–25, II–1 to II–28.

[24] *See* Volume I of the Petitions at 3–4, Exhibit I–3, and Exhibit I–4; *see also* First General Issues Supplement at 2, Exhibit I–Supp–1, and Exhibit I–Supp–2. For further discussion, *see* Attachment II of the country-specific CVD Initiation Checklists.

[25] *See* Ashley's Letter, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, Vietnam and China: Comments on Industry Support,'' dated April 9, 2020.

[26] *See* Classic Brand's Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Challenge to Petitioners' Standing,'' dated April 10, 2020.

[27] *See* Petitioner's Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners' Response to Ashley's Industry Support Claims,'' dated April 13, 2020.

[28] *See* Ashley's Letter, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, Vietnam and China: Response to Petitioners' Comments on Industry Support,'' dated April 17, 2020.

[29] *See* Classic Brand's Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Classic Brands's Surrebuttal on Petitioners' Standing,'' dated April 17, 2020.

[30] *See* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners' Response to Industry Support Claims Filed on April 17, 2020 by Ashley and Classic Brands,'' dated April 20, 2020.

[31] *See* Attachment II of the country-specific CVD Initiation Checklists.

[32] *Id.; see also* section 702(c)(4)(D) of the Act.

[33] *See* Attachment II of the country-specific AD Initiation Checklists.

[34] *Id.*

[35] *Id.*

[36] *See* Volume I of the Petitions, at 17–18 and Exhibit I–12.

performance and profitability.[37] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility and cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[38]

Initiation of CVD Investigation

Based upon the examination of the Petition on mattresses 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 mattresses 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 13 of the 19 alleged programs. For a full discussion of the basis for our decision to initiate (or not to 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 petitioners named 46 companies in China as producers/exporters of mattresses.[39] 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 respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of mattresses from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigation,'' in the appendix.

On April 14, 2020, Commerce released CBP data for U.S. imports of mattresses from China under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this CVD investigation.[40] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection. Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce's website at *http://enforcement.trade.gov/apo.*

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. on the date noted above, unless an exception applies. Commerce intends to finalize its decision regarding respondent selection within 20 days of the 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 mattresses from China are materially injuring or threatening material injury to a U.S. industry.[41] A negative ITC determination will result in the investigation being terminated.[42] 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 [43] 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.[44] 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),

[37] *See* Volume I of the Petitions, at 28–46 and Exhibits I–8 through I–18; *see also* First General Issues Supplement, at Exhibit I–Supp–2.

[38] *See* country-specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam (Attachment III).

[39] *See* Volume I of the Petition at Exhibit I–7.

[40] *See* Memorandum to the File, ''Countervailing Duty Petition on Mattresses from the People's Republic of China: Release of Customs Data from U.S. Customs and Border Protection,'' dated April 14, 2020.

[41] *See* section 733(a) of the Act.

[42] *Id.*

[43] *See* 19 CFR 351.301(b).

[44] *See* 19 CFR 351.301(b)(2).

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.[45] Parties must use the certification formats provided in 19 CFR 351.303(g).[46] 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). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[47]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: April 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size or size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofa beds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (Feb. 19, 2009); *Uncovered Innerspring Units From the Socialist Republic of Vietnam,* 73 FR 75391 (Dec. 11, 2008).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a nominal height of four inches or less.

The products subject to this investigation are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to this investigation may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

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[45] *See* section 782(b) of the Act.

[46] *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.*

[47] *See* Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19, 85 FR 17006 (March 26, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–555–001, A–560–836, A–557–818, A–801–002, A–549–841, A–489–841, A–552–827]

Mattresses From Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations

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

DATES: Applicable April 20, 2020.

FOR FURTHER INFORMATION CONTACT: John McGowan at (202) 482–3019 (Cambodia); Brian Smith at (202) 482–1766 (Indonesia); Joshua Simonidis at (202) 482–0608 (Malaysia); Joshua A. DeMoss at (202) 482–3362 (Serbia); Paola Aleman Ordaz at (202) 482–4031 (Thailand); Jacob Keller at (202) 482–4849 (Turkey); and Dakota Potts at (202)

482–0223 (Vietnam); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On March 31, 2020, the U.S. Department of Commerce (Commerce) received antidumping duty (AD) petitions concerning imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey (Turkey), and the Socialist Republic of Vietnam (Vietnam) filed in proper form on behalf of the petitioners,[1] domestic producers of mattresses and certified unions that represent workers engaged in the domestic production of mattresses.[2] The Petitions were accompanied by a countervailing duty (CVD) petition concerning imports of mattresses from the People's Republic of China (China).[3]

Between April 3 and 14, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[4] The petitioners filed responses to the supplemental questionnaires between April 8 and April 16, 2020.[5]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioners allege that imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam 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 imports of such products are materially injuring, or threatening material injury to, the domestic mattress industry in the United States. Consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

Commerce finds that the petitioners filed the Petitions on behalf of the domestic industry, because the petitioners are interested parties, as defined in sections 771(9)(C) and (D) of the Act. Commerce also finds that the petitioners demonstrated sufficient industry support for the initiation of the requested AD investigations.[6]

Period of Investigations

Because the Petitions were filed on March 31, 2020, the period of investigation (POI) for the Cambodia, Indonesia, Malaysia, Serbia, Thailand, and Turkey AD investigations is January 1, 2019 through December 31, 2019, pursuant to 19 CFR 351.204(b)(1).[7] Because Vietnam is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), the POI for the Vietnam AD investigation is July 1, 2019 through December 31, 2019.[8]

Scope of the Investigations

The products covered by these investigations are mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On April 3, 2020, Commerce requested further information from the petitioners 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.[9] On April 8, 2020, the petitioners revised the scope.[10] On April 10, 2020, Commerce requested further clarification from the petitioners regarding the proposed scope.[11] On April 13, 2020, the petitioners further modified the scope of the Petition to clarify the description of the merchandise covered by the Petition.[12] The description of the merchandise covered by these investigations, 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 (*i.e.,* scope).[13] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information,[14] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit such comments by 5:00 p.m. Eastern Time (ET) on May 11, 2020, which is the next business day after 20 calendar days from the signature date of this notice.[15] Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 21, 2020, which is ten calendar days from the initial comment deadline.[16]

Commerce requests that any factual information parties consider relevant to the scope of the investigations be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must

[1] Brooklyn Bedding, Corsicana Mattress Company, Elite Comfort Solutions, FXI, Inc., Innocor, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (USW) (collectively, the petitioners).

[2] *See* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam—Antidumping and Countervailing Duty Petitions,'' dated March 31, 2020 (the Petitions).

[3] *Id.*

[4] *See* Commerce's Letters, ''Petition for the Imposition of Antidumping Duties on Imports of Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam and Countervailing Duties on Imports from China: Supplemental Questions,'' dated April 3, 2020 (General Issues Supplemental); and country-specific supplemental questionnaires: Cambodia Supplemental, Indonesia Supplemental, Malaysia Supplemental, Serbia Supplemental, Thailand Supplemental, Turkey Supplemental, and Vietnam Supplemental, dated April 3, 2020; *see also* country-specific and general issues memoranda regarding telephone conversation with counsel for the petitioners, dated April 10 and April 14, 2020.

[5] *See* Petitioners' First Country-Specific Supplemental Responses, dated April 8, 2020; *see also* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Responses to Petition Supplemental Questionnaires,'' dated April 8, 2020 (General Issues Supplement); Second Country-Specific Supplemental Responses, dated April 13, 2020; and Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam—Responses to Petition Second Supplemental Questionnaires,'' dated April 13, 2020 (Second General Issues Supplement); and Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners' Response to Request for Additional Information Regarding Industry Support,'' dated April 16, 2020 (Industry Support Supplement).

[6] *See infra,* section on ''Determination of Industry Support for the Petitions.''

[7] *See* 19 CFR 351.204(b)(1).

[8] *Id.*

[9] *See* General Issues Questionnaire.

[10] *See* First General Issues Supplement at Exhibit I-Supp–5.

[11] *See* Memorandum of Telephone Conversation.

[12] *See* Second General Issues Supplement at Exhibit I-Supp2–1.

[13] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[14] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[15] Commerce practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, May 11, 2020). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005) (*Next Business Day Rule*).

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

be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[17] An electronically filed document must be received successfully in its entirety by the time and date it is due.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of mattresses to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe mattresses, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the physical characteristics in order of importance, from most important to least important.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on May 11, 2020, which is the next business day after 20 calendar days from the signature date of this notice.[18] Any rebuttal comments must be filed by 5:00 p.m. ET on May 21, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of each of the AD investigations.

Determination of Industry Support for the Petitions

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,[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 petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations.[21] Based on our analysis of the information submitted on the record, we have determined that mattresses, 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 petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioners provided the 2019 production of the domestic like product for the U.S. producers that support the Petitions.[23] The petitioners estimated the production of the domestic like product for the entire domestic industry based on the production data from the ITC's 2019 report from the AD investigation of mattresses from China.[24] We relied on data provided by the petitioners for

[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 help 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* 19 CFR 351.303(b). Commerce practice dictates that where a deadline falls on a weekend or Federal holiday, the appropriate deadline is the next business day (in this instance, April 20, 2020). *See Next Business Day Rule,* 70 FR at 24533.

[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 Petitions at 13–16; *see also* First General Issues Supplement, at Exhibit I-Supp–2.

[22] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* country-specific AD Initiation Checklists at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam (Attachment II).

[23] *See* Volume I of the Petitions at 3–4, Exhibit I–3, and Exhibit I–4; *see also* First General Issues Supplement, at 2 and Exhibit I-Supp–1; and Industry Support Supplement, at Exhibit 2.

[24] *See* Volume I of the Petitions at 3–4 and Exhibit I–4; *see also* First General Issues Supplement at 2, Exhibit I-Supp–1, and Exhibit I-Supp–2; *Mattresses from China,* Inv. No. 731–TA–1424 (Final), USITC Pub. 5000 (December 2019), at 17–25, II–1 to II–28; and Industry Support Supplement, at 2–5 and Exhibit 1.

purposes of measuring industry support.[25]

On April 9, 2020 and April 10, 2020, respectively, we received comments on industry support from Ashley Furniture industries, Inc. (Ashley), a domestic producer and importer of subject merchandise,[26] and Classic Brands, LLC (Classic Brands), an importer of subject merchandise.[27] The petitioners responded to these industry support comments on April 13, 2020.[28] On April 17, 2020, we received surrebuttal comments from Ashley [29] and Classic Brands [30] with regard to the petitioners' April 13, 2020 comments. The petitioners responded to these surrebuttal industry support comments on April 20, 2020.[31]

Our review of the data provided in the Petitions, the General Issues Supplement, Industry Support Supplement, and other information readily available to Commerce indicates that the petitioners have established industry support for the Petitions.[32] First, the Petitions 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).[33] 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 Petitions account for at least 25 percent of the total production of the domestic like product.[34] 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 Petitions 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 Petitions.[35] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[36]

Allegations and Evidence of Material Injury and Causation

The petitioners allege 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 petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[37]

The petitioners contend 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; declining production, capacity utilization, and sales volumes; declining employment variables; and a decline in financial performance and profitability.[38] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility and cumulation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[39]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate AD investigations of imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam. 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 country-specific AD Initiation Checklists.

U.S. Price

For all countries, the petitioners based EP on the average unit value (AUV) of publicly available import data;[40] no adjustments were made to the U.S. price before comparing it to NV.

Normal Value [41]

For Cambodia, Indonesia, Malaysia, Serbia, Thailand, and Turkey, the petitioners were unable to obtain home market prices for mattresses produced and sold in the subject countries. Therefore, for these countries, the petitioners based NV on AUVs of publicly available export data for exports of mattresses from the subject countries to third countries.[42] For each of the countries, the petitioners also provided information showing that the AUVs were below the COP and, therefore, the petitioners calculated NV based on constructed value (CV).[43]

For further discussion of CV, *see* the section ''Normal Value Based on Constructed Value.''

Commerce considers Vietnam to be an NME country.[44] 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, we continue to treat Vietnam as an NME country for purposes of the initiation of this investigation. Accordingly, NV in Vietnam is appropriately based on factors of production (FOPs) valued in a surrogate market economy country, in

[25] *See* Volume I of the Petitions at 3–4, Exhibit I–3, and Exhibit I–4; *see also* First General Issues Supplement at 2, Exhibit I-Supp–1, and Exhibit I–Supp-2; and Industry Support Supplement. For further discussion, *see* Attachment II of the country-specific AD Initiation Checklists.

[26] *See* Ashley's Letter, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, Vietnam and China: Comments on Industry Support,'' dated April 9, 2020.

[27] *See* Classic Brand's Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Challenge to Petitioners' Standing,'' dated April 10, 2020.

[28] *See* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners' Response to Ashley's Industry Support Claims,'' dated April 13, 2020.

[29] *See* Ashley's Letter, ''Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, Vietnam and China: Response to Petitioners' Comments on Industry Support,'' dated April 17, 2020.

[30] *See* Classic Brand's Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Classic Brands's Surrebuttal on Petitioners' Standing,'' dated April 17, 2020.

[31] *See* Petitioners' Letter, ''Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Mattress Petitioners' Response to Industry Support Claims Filed on April 17, 2020 by Ashley and Classic Brands,'' dated April 20, 2020.

[32] *See* Attachment II of the country-specific AD Initiation Checklists.

[33] *Id.; see also* section 732(c)(4)(D) of the Act.

[34] *See* Attachment II of the country-specific AD Initiation Checklists.

[35] *Id.*

[36] *Id.*

[37] *See* Volume I of the Petitions, at 17–18 and Exhibit I–12.

[38] *See* Volume I of the Petitions, at 28–46 and Exhibits I–8 through I–18; *see also* First General Issues Supplement, at Exhibit I-Supp–2.

[39] *See* country-specific AD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam (Attachment III).

[40] *See* country-specific AD Initiation Checklists.

[41] In accordance with section 773(b)(2) of the Act, for these investigations, Commerce will request information necessary to calculate the constructed value and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

[42] *See* country-specific AD Initiation Checklists for Cambodia, Indonesia, Malaysia, Serbia, Thailand, and Turkey.

[43] *Id.*

[44] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, and Final Results of No Shipments of the Antidumping Duty Administrative Review; 2016–2017,* 84 FR 18007 (April 29, 2019).

accordance with section 773(c) of the Act.[45]

The petitioners claim that India is an appropriate surrogate country for Vietnam because India is a market economy country that is at a level of economic development comparable to that of Vietnam and it is a significant producer of comparable merchandise.[46] The petitioners provided publicly available information from India to value all FOPs. Based on the information provided by the petitioners, we determine that it is appropriate to use India 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 Vietnamese producers/exporters was not reasonably available, the petitioners used their own product-specific consumption rates as a surrogate to estimate Vietnamese manufacturers' FOPs.[47] The petitioners valued the estimated FOPs using surrogate values from India.[48] The petitioners calculated factory overhead, selling, general and administrative expenses, and profit based on the experience of an Indian producer of mattresses.[49]

Normal Value Based on Constructed Value

As noted above, the petitioners demonstrated that the third country export AUVs for Cambodia, Indonesia, Malaysia, Serbia, Thailand, and Turkey were below COP. Accordingly, the petitioners based NV on CV.[50] Pursuant to section 773(e) of the Act, the petitioners calculated CV as the sum of the cost of manufacturing, selling, general, and administrative expenses, financial expenses, and profit.[51]

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP or CEP, as applicable, to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for mattresses for each of the countries covered by this initiation are as follows: (1) Cambodia, 326.49–675.83 percent; (2) Indonesia, 213.44–429.74 percent; (3) Malaysia, 42.92 percent; (4) Serbia, 57.37–183.16 percent; (5) Thailand, 414.77–763.28 percent; (6) Turkey, 267.55–609.51 percent; and (7) Vietnam, 481.72–989.90 percent.[52]

Initiation of LTFV Investigations

Based upon the examination of the Petitions and supplemental responses, we find that they meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam 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 determinations no later than 140 days after the date of this initiation.

Respondent Selection

In the Petitions, the petitioners named 8 companies in Cambodia, 13 companies in Indonesia, 21 companies in Malaysia, 12 companies in Serbia, 19 companies in Thailand, and 29 companies in Turkey [53] as producers/exporters of mattresses.

Following standard practice in AD investigations involving market economy countries, in the event Commerce determines that the number of companies is large and that Commerce cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents in Cambodia, Indonesia, Malaysia, Serbia, Thailand, and Turkey based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the ''Scope of the Investigations,'' in the appendix.

For each country, on April 14, 2020, Commerce released CBP data on imports of mattresses to all parties with access to information protected by Administrative Protective Order (APO) and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of these investigations.[54] Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *http://enforcement.trade.gove/apo.*

With respect to Vietnam, the petitioners named 10 companies in Vietnam as producers/exporters of mattresses.[55] In accordance with our standard practice for respondent selection 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. Therefore, considering the number of producers and exporters identified in the Petition, Commerce will solicit Q&V information that can serve as a basis for selecting exporters for individual examination in the event that Commerce decides to limit the number of respondents individually examined pursuant to section 777A(c)(2) of the Act. Given that there are 10 producers and exporters identified in the Petition, Commerce has determined that it will issue Q&V questionnaires to each potential respondent for which the petitioners have 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.* Producers/exporters of mattresses from

[45] *See* Vietnam AD Initiation Checklist.

[46] *See* Volume IX of the Petition at 2–4 and Exhibit IX–4.

[47] *See* Volume IX of the Petition at 5 and Exhibit IX–6; *see also* Petitioners' Letter, ''Supplemental Petition Questionnaire,'' dated April 8, 2020, at Exhibits IX-Supp–5 and IX-Supp–10 (Vietnam AD Supplement); Petitioners' Letter, ''Second Supplemental Questionnaire on the Petition,'' dated April 13, 2020, at Exhibit IX-Supp2–1 (Second Vietnam AD Supplement).

[48] *See* Volume IX of the Petition at 5–6 and Exhibits IX–5 and IX–7; *see also* Vietnam AD Supplement at 8–9 and Exhibits IX-Supp–5 and IX-Supp–10; Second Vietnam AD Supplement at Exhibit IX-Supp2–1.

[49] *See* Volume IX of the Petition at 6–7 and Exhibit IX–10; *see also* Vietnam AD Supplement at Exhibit IX-Supp–5 and IX-Supp–10; Second Vietnam AD Supplement at Exhibit IX-Supp2–1.

[50] *See* country-specific AD Initiation Checklists for Cambodia, Indonesia, Malaysia, Serbia, Thailand, and Turkey for details of calculations.

[51] *Id.*

[52] *Id.*

[53] *See* Volume I of the Petitions at page 22 and Exhibit I–7.

[54] *See* country-specific memoranda, ''Release of Customs Data from U.S. Customs and Border Protection.''

[55] *See* Volume I of the Petition at Exhibit I–7.

Vietnam that do not receive Q&V questionnaires may still submit a response to the Q&V questionnaire and can obtain a copy of the Q&V questionnaire from Enforcement and Compliance's website. In accordance with the standard practice for respondent selection in AD cases involving NME countries, in the event Commerce decides to limit the number of respondents individually investigated, 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 Vietnamese producers/exporters no later than 5:00 p.m. ET on May 6, 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.[56] The specific requirements for submitting a separate-rate application in a Vietnam 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.[57] 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 Vietnam 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.[58]

Distribution of Copies of the AD Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the AD Petitions have been provided to the governments of Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the AD Petitions to each exporter named in the AD Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the AD Petitions were filed, whether there is a reasonable indication that imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.[59] A negative ITC determination for any country will result in the investigation being terminated with respect to that country.[60] Otherwise, these AD investigations 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). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[61] 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.[62] 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. Interested parties should review the regulations prior to submitting factual information in these investigations.

Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of CV under section 773(e) of the Act.[63] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act, nor 19 CFR 351.301(c)(2)(v), sets a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must

[56] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving NME Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[57] 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.

[58] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[59] *See* section 733(a) of the Act.

[60] *Id.*

[61] *See* 19 CFR 351.301(b).

[62] *See* 19 CFR 351.301(b)(2).

[63] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

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 Commerce. 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, we 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, we 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, stand-alone submission; under limited circumstances we 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 factual information in these investigations.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[64] Parties must use the certification formats provided in 19 CFR 351.303(g).[65] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

[64] *See* section 782(b) of the Act.

[65] *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.*

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until May 19, 2020, unless extended.[66]

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: April 20, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Investigations

The products covered by these investigations are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses may also contain (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of these investigations is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size or size description.

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

[66] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020).

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of these investigations may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set in combination with a ''mattress foundation.'' ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of these investigations are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where that filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofa beds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers'' or a like description.

Also excluded from the scope of these investigations are any products covered by the existing antidumping duty orders on uncovered innerspring units from China or Vietnam. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (Feb. 19, 2009); *Uncovered Innerspring Units From the Socialist Republic of Vietnam,* 73 FR 75391 (Dec. 11, 2008).

Also excluded from the scope of these investigations are bassinet pads with a nominal length of less than 39 inches, a nominal width less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of these investigations are ''mattress

toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a nominal height of four inches or less.

The products subject to these investigations are currently properly classifiable under HTSUS subheadings: 9404.21.0010, 9404.21.0013, 9404.29.1005, 9404.29.1013, 9404.29.9085, and 9404.29.9087. Products subject to these investigations may also enter under HTSUS subheadings: 9404.21.0095, 9404.29.1095, 9404.29.9095, 9401.40.0000, and 9401.90.5081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to these investigations is dispositive.

[FR Doc. 2020–08758 Filed 4–23–20; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

DATES: *Comments must be received on or before:* May 24, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSNs—Product Names:
MR 13030—Vegetable Chopper
MR 13047—Container, Leakproof, On-the-Go, Clear, Lunch
MR 13048—Container, Leakproof, On-the-Go, Clear, Salad
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSNs—Product Names:
6510–00–083–5573—Dressing, First Aid, Field, White
6510–00–159–4883—Dressing, First Aid, Field, Camouflaged, Pad
6510–00–200–3075—Compress and Bandage, Camouflaged, 2 in × 2 in
6510–00–200–3080—Compress and Bandage, Camouflaged, 4 in × 4 in
6510–00–200–3180—Bandage, Gauze, Compressed, Camouflaged, 2 in × 6 yds
6510–00–200–3185—Bandage, Gauze, Compressed, Camouflaged, 3 in × 6 yds
6510–00–200–3190—Bandage, Gauze, Compressed, Camouflaged, 4 in × 6 yds
6510–00–201–1755—Bandage, Muslin, Compressed, Olive Drab Green, Camouflaged, 37″ × 37″ × 52''
6510–00–201–7425—Dressing, First Aid, Field, Camouflaged 11¾″ × 11¾″
6510–00–201–7430—Dressing, First Aid, Field, Camouflaged 7¾″ × 7¼″
6510–00–201–7680—Compress and Skullcap, Head Dressing
Mandatory Source of Supply: Elwyn, Aston, PA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Services

Service Type: Reprographics
Mandatory for: Department of Energy, Washington, DC
Mandatory Source of Supply: Sinai Hospital of Baltimore (Vocational Services Program), Baltimore, MD
Contracting Activity: ENERGY, DEPARTMENT OF, HEADQUARTERS PROCUREMENT SERVICES
Service Type: Grounds Maintenance
Mandatory for: U.S. Army Reserve, Southern Maryland Memorial USARC, Upper Marlboro, MD
Mandatory Source of Supply: Melwood Horticultural Training Center, Inc., Upper Marlboro, MD
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–PICA
Service Type: Janitorial/Custodial
Mandatory for: MICC, West Point, USMA West Point, Sherman (Bldg. 738) & Lee Barracks (Bldg. 740), West Point Academy, West Point, NY
Mandatory Source of Supply: Access: Supports for Living Inc., Middletown, NY
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–WEST POINT
Service Type: Administrative Services
Mandatory for: U.S. Department of the Treasury, Office of Technical Assistance, 740 15th Street NW, 4th Floor, Washington, DC
Mandatory for: Saudi-Arabian Joint Commission Office, Washington, DC
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: DEPARTMENTAL OFFICES, NATIONAL OFFICE—DO OTPS/TOPS

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–08713 Filed 4–23–20; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of correction.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled published a document in the **Federal Register** of March 13, 2020 and April 17, 2020, concerning deletion of Administrative Support Service, USDA, Rural Development, St. Louis, MO. This notice was in error, as these services are still being performed under the service type of Mailroom Operations at the same location.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–08712 Filed 4–23–20; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Programmatic Environmental Assessment for Real Property Master Plans on U.S. Army Installation Management Command Garrisons

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Installation Management Command (IMCOM) has completed a Programmatic Environmental Assessment (PEA) analyzing the impacts of developing, adopting, implementing, and updating Real Property Management Plans (RPMPs) and their component documents using a standardized process in accordance with Department of Defense (DoD) and Army guidance, and encouraging community partner participation in this process. The Army is making the PEA and a draft Finding of No Significant Impact (FONSI) available for public comment. The PEA identifies no significant environmental impacts from implementing the Proposed Action. The draft FONSI concludes that preparing an environmental impact statement is not required and, therefore, one will not be prepared.

DATES: The public comment period will end 30 days after publication of the Notice of Availability in the **Federal Register** by the Department of the Army.

ADDRESSES: Written comments should be sent by mail to U.S. Army Environmental Command, ATTN: Public Comments, 2450 Connell Road (Build 2264), Joint Base San Antonio-Fort Sam Houston, TX 78234–7664; or by email to *usarmy.jbsa.aec.nepa@mail.mil.*

FOR FURTHER INFORMATION CONTACT: U.S. Army Environmental Command Public Affairs Office at (210) 466–1590 or toll-free at (855) 846–3940, or at *usarmy.jbsa.aec.nepa@mail.mil.*

SUPPLEMENTARY INFORMATION: The Army has prepared this PEA in accordance with the National Environmental Policy Act of 1969 (NEPA) (Title 42 of the *United States Code* Section 4321); Council on Environmental Quality (CEQ) NEPA regulations (Title 40 of the *Code of Federal Regulations* [CFR] Parts 1500–1508); and the Army's NEPA implementing regulation, *Environmental Analysis of Army Actions* (32 CFR part 651).

The purpose of the Proposed Action is for IMCOM garrisons to plan for and manage their real property assets comprehensively to permit installation expansion, reduction, and changes in mission sustainably over a 20-year planning horizon. The Proposed Action is needed to provide a standard process to guide sustainable and energy-efficient development across IMCOM installations that supports mission requirements. It is also needed to provide a continuous analytical process to evaluate factors affecting the present and future physical development and operation of installations. Standardizing the process of developing RPMPs and component documents at IMCOM garrisons is expected to result in each garrison producing a more thoughtful and deliberative plan that contains comparable categories of information and is similarly organized across all installations.

The PEA will serve to integrate the NEPA process more efficiently into the master planning process, avoid unnecessary duplicative NEPA analyses, better inform decision makers, and encourage active public involvement.

The RPMP serves as a garrison's road map for short- and long-term investment, management and development of its real property assets, including land, facilities, and infrastructure. It provides guidelines for sustainable installation development, regulates project siting, and ensures sustainable and orderly development that supports the installation's mission.

When considering implementing an individual proposed action, IMCOM garrisons would complete the Environmental Checklist in the PEA to determine whether tiering from the PEA and FONSI would be appropriate and what type of additional site-specific NEPA documentation, if any, would be required. If a garrison determines that a specific installation RPMP, RPMP component document, or project requires additional NEPA analysis tiered from the PEA, the garrison would be required to complete the appropriate NEPA documentation before making any irreversible and irretrievable commitments of resources related to that action. Tiering from the PEA, when appropriate, would avoid or reduce the costs of repetitive, similar analyses and enable IMCOM to focus resources on only those site-specific environmental issues that require deeper analyses.

Members of the public, federally recognized Native American tribes, and federal, state, and local agencies are invited to submit written comments on the PEA and/or draft FONSI.

The PEA and draft FONSI can be accessed on the U.S. Army Environmental Command's NEPA Documents page at *https://aec.army.mil/index.php?cID=352.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2020–08737 Filed 4–23–20; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2020–OS–0017]

Submission for OMB Review; Comment Request

AGENCY: Defense Counterintelligence and Security Agency, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by May 26, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Industrial Security Program Cost Collection Survey; DSS Form 232; OMB Control Number 0704–0458.

Type of Request: Revision.

Number of Respondents: 1,014.

Responses per Respondent: 1.

Annual Responses: 1,014.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 507.

Needs and Uses: The information collection requirement is necessary as a result of Executive Order 12829, ''National Industrial Security Program,'' which requires the Department of Defense to account each year for the costs associated with implementation of the National Industrial Security Program and report those costs to the Director of the Information Security Oversight Office (ISOO).

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 21, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2020–08736 Filed 4–23–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for Point Mugu Sea Range

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality, and Presidential Executive Order 12114, the Department of the Navy (DON) has prepared and filed the Point Mugu Sea Range (PMSR) Draft Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS) with the United States Environmental Protection Agency. The PMSR Draft EIS/OEIS evaluates the potential environmental consequences associated with conducting military readiness activities within the PMSR, which include testing (research, development, acquisition, testing and evaluation (RDAT&E)) and training activities analyzed in the March 2002 PMSR Final EIS/OEIS and environmental assessments (EAs) completed since 2002. The Draft EIS/OEIS also evaluates proposed increases in military testing and training tempo at the PMSR to fully support current, emerging, and foreseeable future RDAT&E and Fleet training requirements.

DATES: The 45-day public comment period begins April 24, 2020 and ends June 8, 2020. All public comments are due by June 8, 2020. Due to current Federal and State guidance on social distancing in response to COVID–19, the Navy will not hold in-person public meetings during the Draft EIS/OEIS public comment period.

ADDRESSES: Written comments may be submitted by mail to the address in the **FOR FURTHER INFORMATION CONTACT** section or submitted electronically via the project website at: *https://www.pmsr-eis.com.* All comments submitted during the 45-day public comment period will become part of the public record, and substantive comments will be considered in the Final EIS/OEIS. All comments must be postmarked or received online by June 8, 2020, for consideration in the Final EIS/OEIS. Federal, state, and local agencies and officials, American Indian tribal governments, and other interested organizations and individuals are encouraged to provide substantive comments on the Draft EIS/OEIS during the 45-day public comment period.

FOR FURTHER INFORMATION CONTACT: Naval Air Warfare Center Weapons Division Range Sustainability Office, Point Mugu Sea Range, Building 53A, Room 106G, Code EB2R00M, 575 I Avenue, Suite 1, Attn: EIS/OEIS Project Manager, Point Mugu, CA 93042–5049, 888–238–2375, *info@pmsr-eis.com,* or project website: *https://www.pmsr-eis.com.*

SUPPLEMENTARY INFORMATION: The DON's action proponent is Naval Air Warfare Center Weapons Division (NAWCWD) Point Mugu and the National Marine Fisheries Service is a cooperating agency. The PMSR is located adjacent to Los Angeles, Ventura, Santa Barbara, and San Luis Obispo counties along the Pacific Coast of Southern California and includes 36,000 square miles of controlled sea and airspace designated for testing and training activities.

The purpose of the proposed action described in the Draft EIS/OEIS is to provide modern instrumented airspace, sea space, testing and training areas, testing and training facilities, and range infrastructure to fully support current, emerging, and foreseeable future testing and training requirements; and to ensure the long-term viability of the PMSR. The need for the proposed action is to allow for continued testing and training in support of military readiness and DoD mission requirements as required by Title 10 and to provide combat ready forces.

The DON distributed the Draft EIS/OEIS to federal agencies and federally recognized tribes with which the DON is consulting and to other stakeholders. The DON provided press releases to the local newspapers and distributed letters and postcards to stakeholders, Native American Tribes, and other interested parties. Copies of the Draft EIS/OEIS are available for public review at the following public libraries:

1. Camarillo Public Library, 4101 Las Posas Road, Camarillo, CA 93010–2539.

2. Carpinteria Branch Library, 5141 Carpinteria Avenue, Carpinteria, CA 93013–2048.

3. E.P. Foster Library, 651 E Main Street, Ventura, CA 93001–2814.

4. San Luis Obispo Library, 995 Palm Street, San Luis Obispo, CA 93401–3218.

5. Santa Barbara Public Library, 40 E Anapamu Street, Santa Barbara, CA 93101–2722.

6. South Oxnard Branch Library, 4300 Saviers Road, Oxnard, CA 93033–7129.

7. Oxnard Downtown Main Library, 251 S A Street, Oxnard, CA 93030–5742.

Depending upon COVID–19 conditions regulating access to public facilities, it is recommended to check with the library regarding its hours of operation and the availability of the document. The PMSR Draft EIS/OEIS is also available for electronic viewing or download at *https://www.pmsr-eis.com.* A compact disc of the Draft EIS/OEIS will be made available upon written request by contacting: Commander, Naval Air Warfare Center Weapons Division Range Sustainability Office, Point Mugu Sea Range, Building 53A, Room 106G, Code EB2R00M, 575 I Avenue, Suite 1, Attn: EIS/OEIS Project Manager, Point Mugu, CA 93042–5049, 888–238–2375, *info@pmsr-eis.com,* or project website: *https://www.pmsr-eis.com.*

Dated: April 20, 2020.

D.J. Antenucci,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2020–08681 Filed 4–23–20; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0062]

Agency Information Collection Activities; Comment Request; Impact Evaluation of Training in Multi-Tiered Systems of Support for Reading in Early Elementary School

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before June 23, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0062. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Lauren Angelo, 202–245–7474.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Impact Evaluation of Training in Multi-Tiered Systems of Support for Reading in Early Elementary School.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 22,560.

Total Estimated Number of Annual Burden Hours: 4,660.

Abstract: This study will provide much needed evidence on strategies to support U.S. students' development of foundational reading skills, essential to later learning.

A third of U.S. students fail to develop foundational reading skills by 4th grade that are necessary to succeed academically. In addition, the achievement gap is growing as demonstrated by The Nation's Report Card. To address, the Every Student Succeeds Act (ESSA) promotes the use of evidence-based literacy interventions. And, the Department of Education (ED) has made supporting educators with the knowledge, skills, professional development, or materials necessary to improve reading instruction a key priority. The Individuals with Disabilities Education Act (IDEA) similarly encourages high quality instruction along with better identification of students needing extra support to prevent or mitigate student reading issues.

This study will provide much needed evidence by evaluating two professional development strategies for bolstering core reading instruction and supplemental supports, guided by data, within a MTSS–R framework. MTSS–R is a widely used framework for providing high-quality reading instruction for all students, identifying students needing supplemental or more intensive supports, and providing these additional supports for those who need it.

Dated: April 21, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–08749 Filed 4–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Office of the Secretary, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy hereby publishes a notice of open meeting on May 21, 2020, of the Secretary of Energy Advisory Board. Due to the COVID–19 pandemic, this meeting will be entirely virtual on-line.

DATES: May 21, 2020; from 2:00 p.m. to 4:00 p.m. (EDT).

ADDRESSES: Virtual meeting. To receive the call-in number and passcode, please contact the Board's Designated Federal Officer (DFO) at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Kurt Heckman, SEAB Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; Phone: (202) 586–1212; email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the fourth meeting of existing and new members under Secretary Perry, and now Secretary Brouillette.

Tentative Agenda: The meeting will start at 2:00 p.m. on May 21th. The tentative meeting agenda includes: Introduction of SEAB's members, status briefings from the subcommittees (Innovation, Artificial Intelligence, and Space), a briefing on DOE's response to COVID–19, open discussion from SEAB to the Secretary, and an opportunity for comments from the public. The meeting will conclude at 4:00 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Kurt Heckman no later than 5:00 p.m. on Thursday, May 14, 2020, by email at: *seab@hq.doe.gov.*

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5 p.m. on Thursday, May 14, 2020.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Kurt Heckman, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available on the SEAB website or by contacting Mr. Heckman. He may be reached at the above postal address or email address, or by visiting SEAB's website at *www.energy.gov/seab.*

Signed in Washington, DC, on April 21, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–08742 Filed 4–23–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 20–31–LNG]

Epcilon LNG LLC; Application for Long-Term, Multi-Contract Authorization To Export Domestically Produced Natural Gas Through Mexico to Non-Free Trade Agreement Countries After Liquefaction To Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on March 23, 2020, by Epcilon LNG LLC (Epcilon). The Application requests long-term, multi-contract authorization to export domestically produced natural gas to Mexico in a volume up to 395 billion cubic feet (Bcf) per year (Bcf/yr) (1.083 Bcf per day), and to re-export a portion of this natural gas as liquefied natural gas (LNG). Epcilon seeks to re-export this LNG from the proposed AMIGO LNG production and storage facility to be located in the state of Sonora, Mexico (the LNG Facility). Epcilon filed the Application under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, May 26, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893 or (202) 586–2627, *benjamin.nussdorf@hq.doe.gov* or *amy.sweeney@hq.doe.gov.*

Cassandra Bernstein, U.S. Department of Energy (GC–76) Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793, *cassandra.bernstein@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Epcilon requests long-term, multi-contract authorization to export domestically produced natural gas to Mexico for both consumption in Mexico and to convert the natural gas to LNG for re-export to: (i) Any nation with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA nations), and (ii) any other nation with which trade is not prohibited by U.S. law or policy (non-FTA nations). This Notice applies only to Epcilon's proposed export of LNG produced from U.S.-sourced natural gas to non-FTA countries, pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). DOE/FE will review Epcilon's request for a FTA export authorization separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

Epcilon requests the authorization on its own behalf and as agent for other entities that will hold title to the LNG at the point of export. Epcilon is seeking the non-FTA authorization for a 20-year term, commencing on the earlier of the date of first export or seven years from the date of the requested authorization. Additional details can be found in Epcilon's Application, posted on the DOE/FE website at: *https://www.energy.gov/fe/downloads/epcilon-lng-llc-fe-dkt-no-20-31-lng.*

DOE/FE Evaluation

In reviewing Epcilon's request, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[1] and DOE/FE's response to public comments received on that Study.[2]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014); [3]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014); [4] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States:*

[1] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[2] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[3] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[4] The 2014 Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

2019 Update, 84 FR 49278 (Sept. 19, 2019), and DOE/FE's response to public comments received on that study.[5]

Parties that may oppose this Application should address these issues and documents in their comments and protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 20–31–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 20–31–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on April 20, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–08725 Filed 4–23–20; 8:45 am]

BILLING CODE 6450–01–P

[5] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at: *https://fossil.energy.gov/app/docketindex/docket/index/21.*

DEPARTMENT OF ENERGY

[FE Docket No. 20–28–LNG]

Sabine Pass Liquefaction, LLC; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas to Non-Free Trade Agreement Countries on a Short-Term Basis

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on March 10, 2020, by Sabine Pass Liquefaction, LLC (SPL). SPL requests blanket authorization to export liquefied natural gas (LNG) previously imported into the United States by vessel from foreign sources in a volume equivalent to 500 billion cubic feet (Bcf) of natural gas on a cumulative basis over a two-year period commencing on June 7, 2020. SPL seeks to export this LNG from the Sabine Pass LNG Terminal located in Cameron Parish, Louisiana. SPL filed the Application under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, May 26, 2020.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Beverly Howard or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387 or (202) 586–2627; *beverly.howard@hq.doe.gov* or *amy.sweeney@hq.doe.gov*

Cassandra Bernstein or Kari Twaite, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793 or (202) 586–6978; *cassandra.bernstein@hq.doe.gov* or *kari.twaite@hq.doe.gov*

SUPPLEMENTARY INFORMATION: SPL requests a short-term blanket authorization to export LNG from the Sabine Pass LNG Terminal to any country with the capacity to import LNG via ocean-going carrier and with

which trade is not prohibited by U.S. law or policy. This includes both countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) and all other countries (non-FTA countries). This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). SPL states that its existing blanket re-export authorization, set forth in DOE/FE Order No. 4197, is scheduled to expire on June 6, 2020. SPL further states that it does not seek authorization to export any domestically produced natural gas or LNG.

SPL requests this authorization on its own behalf and as agent for other parties who hold title to the LNG at the time of export. Additional details can be found in SPL's Application, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2020/03/f72/20-28-LNG.pdf.*

DOE/FE Evaluation

In reviewing SPL's Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 20–28–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 20–28–LNG. *Please note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on April 21, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–08761 Filed 4–23–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1599–000]

Richmond Spider Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Richmond Spider Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 11, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human

Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08769 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1596–000]

Pleinmont Solar 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pleinmont Solar 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 11, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08780 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1594–000]

Highlander IA, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Highlander IA, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 11, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08768 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1601–000]

Huntley Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Huntley Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 11, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08772 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–155–000]

Dakota Natural Gas, LLC; Notice of Application

Take notice that on April 10, 2020, Dakota Natural Gas, LLC (DNG), 1900 Cardinal Lane, Faribault, Minnesota 55021, filed an application in Docket No. CP20–155–000, pursuant to section 7(f) of the Natural Gas Act (NGA) and Part 157 the Federal Energy Regulatory Commission's (Commission) regulations requesting that the Commission grant it, a service area determination in Traill County, North Dakota within which DNG may, without further Commission authorization, enlarge or expand its natural gas distribution facilities and operations, without further Commission authorization. Specifically, DNG intends to construct approximately 62.74 miles of new pipeline in Minnesota and North Dakota, all of which will be located in existing public road right-of-way. Further, all construction and operations of this pipeline will be subject to the jurisdiction of the state utility commissions of those respective states; only customers in North Dakota are intended to be provided service.

All relevant information is more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the 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.

Any questions regarding this application should be directed to Kristine Anderson, Corporate Attorney, Dakota Natural Gas, LLC, 1900 Cardinal Lane, P.O. Box 798, Faribault, Minnesota 55021, by email at *kanderson@greatermngas.com.*

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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on May 11, 2020.

Dated: April 20, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08732 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1600–000]

Cubico Huntley Lessee, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cubico Huntley Lessee, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 11, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08767 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1597–000]

Pleinmont Solar 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pleinmont Solar 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 11, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08774 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–117–000.
Applicants: Huntley Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Huntley Solar, LLC.
Filed Date: 4/17/20.
Accession Number: 20200417–5283.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: EG20–118–000.
Applicants: Cubico Huntley Lessee, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Cubico Huntley Lessee, LLC.
Filed Date: 4/17/20.
Accession Number: 20200417–5284.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: EG20–119–000.
Applicants: Richmond Spider Solar, LLC.
Description: Self-Certification of EWG of Richmond Spider Solar, LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5016.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: EG20–120–000.
Applicants: Pleinmont Solar 2, LLC.
Description: Self-Certification of EG or FC of Pleinmont Solar 2, LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5017.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: EG20–121–000.
Applicants: Pleinmont Solar 1, LLC.
Description: Self-Certification of EG of Pleinmont Solar 1, LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5018.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: EG20–122–000.
Applicants: Highlander Solar Energy Station 1, LLC.
Description: Self-Certification of EG of Highlander Solar Energy Station 1, LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5019.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: EG20–123–000.
Applicants: Highlander IA, LLC.
Description: Self-Certification of EG of Highlander IA, LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5020.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: EG20–124–000.
Applicants: Lone Tree Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Lone Tree Wind, LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5079.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: EG20–125–000.
Applicants: Techren Solar III LLC.
Description: Self-Certification of Techren Solar III LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5081.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: EG20–126–000.
Applicants: Techren Solar IV LLC.
Description: Self-Certification of EG of Techren Solar IV LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5082.
Comments Due: 5 p.m. ET 5/11/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–1128–003.
Applicants: Mankato Energy Center, LLC.
Description: Notification of non-material change in status of Mankato Energy Center, LLC.
Filed Date: 4/17/20.
Accession Number: 20200417–5277.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER19–1916–002.
Applicants: Louisville Gas and Electric Company.
Description: Compliance filing: Order No. 845 and 845–A Compliance to be effective 5/22/2019.
Filed Date: 4/20/20.
Accession Number: 20200420–5044.
Comments Due: 5 p.m. ET 5/11/20.
Docket Numbers: ER19–2029–002.
Applicants: Mankato Energy Center II, LLC.
Description: Notification of non-material change in status of Mankato Energy Center II, LLC.
Filed Date: 4/17/20.
Accession Number: 20200417–5276.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER19–2821–000, TS19–4–000.
Applicants: Upper Missouri G. & T. Electric Cooperative, Inc.
Description: Supplement to September 16, 2019 Request for Waiver of Open-Access Requirements of Order Nos. 888, et al. of Upper Missouri G. & T. Electric Cooperative, Inc.
Filed Date: 4/16/20.
Accession Number: 20200416–5158.
Comments Due: 5 p.m. ET 5/7/20.

Docket Numbers: ER20–1594–000.
Applicants: Highlander IA, LLC.
Description: Baseline eTariff Filing: Highlander IA Market Based Rate Application to be effective 4/18/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5181.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1595–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA, SA No. 1816; Queue No. U1–032 re Deactivation to be effective 6/25/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5177.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1596–000.
Applicants: Pleinmont Solar 1, LLC.
Description: Baseline eTariff Filing: Pleinmont Solar 1 MBR Tariff to be effective 4/18/2020.

Filed Date: 4/17/20.
Accession Number: 20200417–5227.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1597–000.
Applicants: Pleinmont Solar 2, LLC.
Description: Baseline eTariff Filing: Pleinmont Solar 2 Market Based Rate App to be effective 4/18/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5241.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1598–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: Certificate of Concurrence to LGIA Between Northern Grid and Puget Sound Energy to be effective 4/9/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5244.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1599–000.
Applicants: Richmond Spider Solar, LLC.
Description: Baseline eTariff Filing: Richmond Spider Solar MBR App to be effective 4/18/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5245.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1600–000.
Applicants: Cubico Huntley Lessee, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority, Waivers, Blanket Authority, Confidential Treatment to be effective 4/18/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5247.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1601–000.
Applicants: Huntley Solar, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority, Waivers, Blanket Authority, Confidential Treatment to be effective 4/18/2020.
Filed Date: 4/17/20.
Accession Number: 20200417–5249.
Comments Due: 5 p.m. ET 5/8/20.

Docket Numbers: ER20–1602–000.
Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: SGIA 2526 among NYISO, NYSEG & Duke Energy Renewables Solar—Niagara Solar to be effective 4/6/2020.
Filed Date: 4/20/20.
Accession Number: 20200420–5090.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1603–000.
Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.
Description: § 205(d) Rate Filing: SGIA 2527 among NYISO, NYSEG & Duke Energy Renewables Solar—Scipio Solar to be effective 4/6/2020.
Filed Date: 4/20/20.
Accession Number: 20200420–5097.
Comments Due: 5 p.m. ET 5/11/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08775 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–52–000.
Applicants: Tenaska Lotus Holdings, LLC,41MB 8ME, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Tenaska Lotus Holdings, LLC, et al.
Filed Date: 4/20/20.
Accession Number: 20200420–5110.
Comments Due: 5 p.m. ET 5/11/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–127–000.
Applicants: Mountain Breeze Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Mountain Breeze Wind, LLC.
Filed Date: 4/20/20.
Accession Number: 20200420–5107.
Comments Due: 5 p.m. ET 5/11/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1132–003.
Applicants: NRG Cottonwood Tenant LLC.
Description: Compliance filing: Reactive Service Rate Schedule Compliance Filing to be effective 2/4/2019.
Filed Date: 4/20/20.
Accession Number: 20200420–5101.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1604–000.
Applicants: EF Oxnard LLC.
Description: Baseline eTariff Filing: Market-Based Rates Application to be effective 6/14/2020.
Filed Date: 4/20/20.
Accession Number: 20200420–5118.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1605–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Tri-State MBR Tariff to be effective 6/20/2020.
Filed Date: 4/20/20.
Accession Number: 20200420–5127.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1606–000.
Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.
Description: § 205(d) Rate Filing: 2020–04–20_SA 3470 MP-Manitoba Hydro-Electric Board 133 MW Energy Sale Agrmt to be effective 6/1/2020.
Filed Date: 4/20/20.
Accession Number: 20200420–5129.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1607–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Colstrip Trans System LGIA—Concurrence Broadview Solar to be effective 4/9/2020.
Filed Date: 4/20/20.
Accession Number: 20200420–5133.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1608–000.
Applicants: Mountain Breeze Wind, LLC.
Description: Baseline eTariff Filing: MBR Application to be effective 6/20/2020.
Filed Date: 4/20/20.
Accession Number: 20200420–5157.
Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1609–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Tri-State Rate Schedule FERC No. 56 to be effective 1/29/2020.
Filed Date: 4/20/20.
Accession Number: 20200420–5184.

Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1610–000.

Applicants: Lone Tree Wind, LLC.

Description: Baseline eTariff Filing: MBR Application to be effective 6/20/2020.

Filed Date: 4/20/20.

Accession Number: 20200420–5186.

Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1611–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5631; Queue No. AC1–098/AC1–099 to be effective 3/19/2020.

Filed Date: 4/20/20.

Accession Number: 20200420–5187.

Comments Due: 5 p.m. ET 5/11/20.

Docket Numbers: ER20–1612–000.

Applicants: Avista Corporation.

Description: § 205(d) Rate Filing: Avista Corp RS #T1166 Broadview Cert of Concurrence to be effective 4/9/2020.

Filed Date: 4/20/20.

Accession Number: 20200420–5188.

Comments Due: 5 p.m. ET 5/11/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08770 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–17–000]

Commission Information Collection Activities (FERC–600); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed extension of a currently approved information collection: FERC–600, Rules of Practice and Procedure: Complaint Procedures.

DATES: Comments on the collection of information are due June 23, 2020.

ADDRESSES: You may submit comments (identified by Docket No. IC20–17–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, at Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov.*

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–600, Rules of Practice and Procedure: Complaint Procedures.

OMB Control No.: 1902–0180.

Type of Request: Three-year extension without change of the current information collection.

Abstract: In accordance with 18 CFR 385.206, any person may file a complaint seeking Commission action against any other person alleged to be in violation of ''any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction.'' Regulations at 18 CFR part 343 provide for additional procedures and information collection requirements for complaints and other filings that pertain to oil pipelines under the Interstate Commerce Act.

Type of Respondents: Any person that files a complaint for Commission review and resolution.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden and cost [2] for the information collection as shown in the following table:

FERC–600—RULES OF PRACTICE AND PROCEDURE: COMPLAINT PROCEDURES

Number of respondents	Annual number of responses	Total number of responses	Average burden hour and cost per response	Total annual burden hour and cost	Cost per respondent
A.	B.	C. (Column A × Column B)	D.	E. (Column C × Column D)	F. (Column E ÷ Column A)
62	1	62	160 hrs.; $12,800	9,920 hrs.; $793,600	$12,800

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[2] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon the FERC's 2019 average cost for salary plus benefits, the average hourly cost is $80/hour.

of automated collection techniques or other forms of information technology.

Dated: April 20, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–08734 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1593–000]

Highlander Solar Energy Station 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Highlander Solar Energy Station 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 11, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 20, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–08773 Filed 4–23–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2020–2502; FRL–10007–77-Region 4]

Welch Group Environmental Palmetto Site; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a Settlement Agreement for Recovery of Past Response Costs with Gary Warehouse Services, LLC, concerning the Welch Group Environmental Palmetto Site located in Belton, South Carolina. The settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the settlement until May 26, 2020. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice or through the Agency's web page *https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.* Comments may be submitted by referencing the Site's name or Docket # CERCLA–04–2020–2502 through email to *Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: April 14, 2020.

Maurice Horsey,

Chief, Enforcement Branch, Superfund & Emergency Management Division.

[FR Doc. 2020–08668 Filed 4–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9050–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed April 13, 2020, 10 a.m. EST

Through April 20, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20200089, Final, BLM, OR, Tucker Hill Perlite Mine Expansion Project Plan of Operations Amendment No. 7, Review Period Ends: 05/26/2020, Contact: Paul Whitman 541–947–6110.

EIS No. 20200090, Final, USFS, OR, Calf-Copeland Restoration Project, Review Period Ends: 06/08/2020, Contact: Jennifer Christie 541–946–1465.

EIS No. 20200091, Draft, CHSRA, CA, San Jose to Merced Project Section Draft Environmental Impact Report/Environmental Impact Statement, Comment Period Ends: 06/08/2020, Contact: Dan McKell 916–330–5668.

EIS No. 20200092, Draft, NIH, MD, NIH Bethesda Surgery, Radiology, And Lab Medicine Building, Comment Period Ends: 06/08/2020, Contact: Valerie Nottingham 301–496–7775.

EIS No. 20200093, Draft, BR, NM, New Mexico Unit of the Central Arizona

Project, Comment Period Ends: 06/08/2020, Contact: Sean Heath 623–773–6250.

EIS No. 20200094, Draft, USN, CA, Point Mugu Sea Range, Comment Period Ends: 06/08/2020, Contact: Cory Scott 805–989–3885.

EIS No. 20200095, Final Supplement, DOE, KY, Disposition of Depleted Uranium Oxide Conversion Product Generated from DOE's Inventory of Depleted Uranium Hexafluoride, Review Period Ends: 05/26/2020, Contact: Julia Donkin 202–287–5598.

EIS No. 20200096, Final, USACE, CA, Westminster, East Garden Grove, CA Flood Risk Management Study, Review Period Ends: 05/26/2020, Contact: Michael Padilla 312–846–5427.

EIS No. 20200097, Final, FTA, NJ, NJ Transitgrid Traction Power System, Contact: Donald Burns 212–668–2203.

Under 23 U.S.C. 139(n)(2), FTA has issued a single document that consists of a final environmental impact statement and a record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

Amended Notice:

EIS No. 20200068, Draft, NMFS, MA, Northeast Multispecies Fishery Management Plan Draft Amendment 23, Comment Period Ends: 06/30/2020, Contact: Mark Grant 978–281–9145.

Revision to FR Notice Published 3/27/2020; Extending the Comment Period from 5/22/2020 to 6/30/2020.

Dated: April 20, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–08710 Filed 4–23–20; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

TIME AND DATE: Wednesday, April 29, 2020, 1:00 p.m. Eastern Time.

PLACE: *Note:* Because of the COVID–19 pandemic, the meeting will be held as an audio-only conference. The public may observe/listen to the audio-only conference by following the instructions that will be posted on *www.eeoc.gov* 24 hours before the meeting. Closed captioning services will be available.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

The following items will be considered at the meeting:

Announcement of Notation Votes; Formal Opinion Letter on Federal Work Opportunity Tax Credit (WOTC); Rescission of Compliance Manual Section 604: Theories of Discrimination; and Rescission of Compliance Manual Section 604 Appendix-C on Polygraph Examinations.

Note: In accordance with the Sunshine Act, the public will be able to observe/listen to the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its website, *www.eeoc.gov.,* and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) or email *commissionmeetingcomments@eeoc.gov* at any time for information on this meeting.

CONTACT PERSON FOR MORE INFORMATION: Bernadette B. Wilson, Executive Officer on (202) 663–4077.

Raymond L. Peeler,

Assistant Legal Counsel.

[FR Doc. 2020–08765 Filed 4–22–20; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1174; FRS 16675]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before May 26, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1174.

Title: Section 73.503, Licensing requirements and service; Section 73.621, Noncommercial educational TV stations; Section 73.3527, Local public inspection file of noncommercial educational stations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 2,200 respondents; 33,000 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers these information collections is contained in 47 U.S.C. 151, 154(i), 303, and 399B.

Total Annual Burden: 16,500 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: Although the Commission does not believe that any confidential information will need to be disclosed in order to comply with the information collection requirements, applicants are free to request that materials or information submitted to the Commission be withheld from public inspection. (See 47 CFR 0.459 of the Commission's Rules).

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection which are approved under this collection are as follows: Audience disclosure: The information collection requirements contained in 47 CFR 73.503(e)(1) require that a noncommercial educational FM broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising.

The information collection requirements contained in 47 CFR 73.621(f)(1) require that a noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of third-party non-profit organizations must air a disclosure during such activities clearly stating that the fundraiser is not for the benefit of the station itself and identifying the entity for which it is fundraising. The audience disclosure must be aired at the beginning and the end of each fundraising program and at least once during each hour in which the program is on the air.

Retention of information on fundraising activities in local public inspection file: The information collection requirements contained in 47 CFR 73.3527(e)(14) require that each noncommercial educational FM broadcast station and noncommercial educational TV broadcast station that interrupts regular programming to conduct fundraising activities on behalf of a third-party non-profit organization must place in its local public inspection file, on a quarterly basis, the following information for each third-party fundraising program or activity: The date, time, and duration of the fundraiser; the type of fundraising activity; the name of the non-profit organization benefitted by the fundraiser; a brief description of the specific cause or project, if any, supported by the fundraiser; and, to the extent that the station participated in tallying or receiving any funds for the non-profit group, an approximation, to the nearest $10,000, of the total funds raised. The information for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (*e.g.,* January 10 for the quarter October-December, April 10 for the quarter January-March, etc.).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–08722 Filed 4–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16684]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified System of Records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) has modified and renamed an existing system of records, FCC/PSHSB–1, FCC Emergency and Continuity Alerts and Contacts System (ECACS) (formerly: FCC/PSHSB–1, FCC Emergency and Continuity Contacts System (ECCS)), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. The FCC's Public Safety and Homeland Security Bureau (PSHSB) uses the information in ECACS to prepare for and coordinate crisis response activities wherever they occur in the United States and its territories. PSHSB is modifying FCC/PSHSB–1 to include information it will use to evaluate the effectiveness of Wireless Emergency Alerts (WEA), including participating Commercial Mobile Service Providers' (''providers'') implementation of enhanced geo-targeting for WEA.

DATES: This action will become effective on April 24, 2020. Written comments on the system's routine uses are due by May 26, 2020. The routine uses in this action will become effective on May 26, 2020 unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or via email at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov* (and to obtain a copy of the Narrative Statement and the Supplementary Document, which includes details of the modifications to this system of records).

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/PSHSB–1 to include the Commission's collection of personally identifiable information (PII) through surveys used to evaluate the effectiveness of WEA, including Participating Commercial Mobile Service (CMS) providers' implementation of enhanced geo-targeting in support of public safety. As outlined In the Matter of Wireless Emergency Alerts Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System, PS Docket Nos. 15–91 and 15–94, Second Report and Order and Second Order on

Reconsideration, 33 FCC Rcd 1320, 1324–25, para. 6 (2018) (''Second Report and Order''), the Commission's enhanced geo-targeting rules, effective December 13, 2019, require that the Participating CMS providers match a target area specified by an alert originator (*i.e.,* deliver an alert message to 100% of the geographic area that the alert originator targets with no more than a 0.1 mile overshoot). PSHSB intends to test the effectiveness of this and related functionality to inform PSHSB's coordination and mitigation work when regions and communities face potentially imminent threats of the loss of life or property. Additionally, the SORN is being modified to make various necessary changes and updates, including the use of more advanced electronic information technologies, *i.e.,* cloud technology, and format changes required by OMB Circular A–108 since its previous publication. The substantive changes and modifications to the previously published version of the FCC/PSHSB–1 system of records include:

1. Changing the name of the system of records to FCC/PSHSB–1, FCC Emergency and Continuity Alerts and Contacts System (ECACS) to show that the system now includes information PSHSB will use to evaluate the effectiveness of Wireless Emergency Alerts (WEA), including participating Commercial Mobile Service (CMS) providers' implementation of enhanced geo-targeting for WEA.

2. Updating the Security Classification to be consistent with FCC policies and Executive Order 13556.

3. Updating/revising the language in the Categories of Individuals to include individuals representing institutions, organizations, and other groups engaged in crisis management and emergency preparedness functions, activities, and actions as part of the system's emergency management contacts information; FCC employees and contractors who are members of the Bureau/Office Emergency Response Group (ERG), Devolution Emergency Response Group (DERG) and FCC and bureau and office (B/O) lines of succession; and individuals who volunteer to participate in PSHSB surveys, including surveys to evaluate the effectiveness of WEA and providers' implementation of enhanced geo-targeting for WEA.

4. Updating/revising the Categories of Records to include the information collected by PSHSB surveys pertaining to the respondents, the locations from which individuals respond to the survey, and other information that PSHSB will collect including, but not limited to type of device, operating system, and wireless service provider.

5. Updating/revising the Purposes to include coordination of activities such as emergencies and crisis management actions, responses, and related functions; enabling the FCC to manage and maintain the contact and response system for FCC employees and contractors for purposes that include, but are not limited to coordinating Continuity of Operations Plan (COOP) actions and related functions; and conducting voluntary surveys evaluating the effectiveness of WEA, including implementation of enhanced geo-targeting by providers and other related emergency notification systems, functions, and activities.

6. Updating/revising the Records Source Categories to include survey respondents' inputs transmitted through their wireless devices or through other means of communication.

7. Deleting two routine uses ((1) Emergency Response and (9) First Responders) that are covered by 5 U.S.C. 552a(b)(8) and therefore unnecessary.

8. Updating and/or revising language in eight routine uses: (1) Adjudication and Litigation; (2) Law Enforcement and Investigation; (3) Congressional Inquiries; (4) Government-Wide Program Management and Oversight; (5) Employment, Clearances, Licensing, Contract, Grant or other Benefits Decisions by the FCC; (6) Labor Relations; (7) Breach Notification, updated/revised as required by OMB Memorandum M–17–12; and (10) Contracted Third Parties (previously Routine Use (10)).

9. Adding three new routine uses: (8) Assistance to Federal Agencies and Entities, to allow the FCC to provide assistance to other Federal agencies in their data breach situations, as required by OMB Memorandum M–17–12; (9) Contract Services, Grants, or Cooperative Agreements, to allow contractors performing or working on a contract for the Federal Government access to information in this system; (11) Test Partners, to allow PSHSB's test partners, which may include state or local government entities, private sector organizations, or volunteers to help plan, conduct, and analyze the test results used to evaluate WEA's effectiveness and the provider's implementation of enhanced WEA's geo-targeting.

10. Adding two new sections: Reporting to a Consumer Reporting Agency, to address valid and overdue debts owed by individuals to the FCC under the Debt Collection Act, as recommended by OMB; and a History section referencing the previous publication of this SORN in the **Federal Register**, as required by OMB Circular A–108.

11. Updating the Policies and Practices for Retention and Disposal of Records in this system to state that the records in this system are covered by the National Archives and Records Administration's (NARA) General Records Schedule (GRS) 5.3, Continuity and Emergency Planning Records (January 2017 GRS revision).

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and procedures to contest records.

SYSTEM NAME AND NUMBER:

FCC/PSHSB–1, FCC Emergency and Continuity Alerts and Contacts System (ECACS).

SECURITY CLASSIFICATION:

The Security Operations Center (SOC) has not assigned a security classification to ECACS; however, information in this system may be designated as: Controlled Unclassified Information, Non-Public, For Internal Use Only, or For Official Use Only.

SYSTEM LOCATION:

Public Safety and Homeland Security Bureau (PSHSB), Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

SYSTEM MANAGER(S):

Public Safety and Homeland Security Bureau (PSHSB), 445 12th Street SW, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Executive Order 12472, Assignment of National Security and Emergency Preparedness Telecommunications Functions, April 3, 1984, as amended February 28, 2003 and June 26, 2006; Presidential Decision Directive 67, Enduring Constitutional Government and Continuity of Government Operations, October 21, 1998; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* November 25, 2002; National Security Presidential Directive 51/Homeland Security Presidential Directive 20, National Continuity Policy, May 9, 2007; National Communications System Directive 3–10, Minimum Requirements for Continuity Communications Capabilities, July 25, 2007; National Continuity Policy Implementation Plan, Homeland Security Council, August 2007; Federal Continuity Directive 1, Federal

Executive Branch National Continuity Program and Requirements, February 2008; Federal Continuity Directive 2, Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process, February 2008.

PURPOSE(S) OF THE SYSTEM

The FCC uses the records in this system for purposes that include, but are not limited to:

1. Enabling the FCC to respond to and coordinate activities that including emergencies and crisis management actions, responses, and related functions;

2. Enabling the FCC to manage and maintain the contact and response system for FCC employees and contractors for coordinating Continuity of Operations Plan (COOP) actions and related functions;

3. Enabling the FCC to use an automated telephone and email system to contact its Emergency Contacts and COOP Contacts;

4. Conducting voluntary surveys evaluating the effectiveness of WEA, including implementation of enhanced geo-targeting by providers, and other related emergency notification systems, functions, and activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

The categories of individuals in this system include, but are not limited to:

1. FCC employees, Federal Government contacts, State, Tribal, Territorial, Local Government and private sector contacts along with individuals representing institutions, organizations, and other groups engaged in crisis management and emergency preparedness functions, activities, and actions as part of this system's emergency management contacts information.

2. FCC employees and contractors who are members of the Bureau and Office (B/O) Emergency Response Group (ERG), Devolution Emergency Response Group (DERG), and FCC and B/O lines of succession.

3. Individuals who volunteer to participate in PSHSB surveys, including surveys to evaluate the effectiveness of WEA and providers' implementations of enhanced geo-targeting for WEA.

CATEGORIES OF RECORDS IN THE SYSTEM

The records in this system include, but are not limited to:

1. Emergency contacts include individual and/or business name(s), position title, business telephone number(s), business cell phone number(s), business satellite phone number(s), business pager number(s), business facsimile number(s), business address(es), business email address(es), home telephone number(s), personal cell phone number(s), personal pager number (s), personal facsimile number(s), and personal email address(es).

2. COOP contacts include FCC employee's and contractor's name(s), position title, security clearance information, line of succession information, work and personal telephone number(s), work and personal facsimile number(s), work and personal cell phone number(s), satellite telephone number(s), FCC Government Emergency Telecommunications System (GETS) and Wireless Priority System (WPS) information, satellite telephone number(s), Government passport numbers, work and personal pager number(s), and work and personal email address(es).

3. PSHSB survey information includes the individual respondents' identification numbers, email addresses, street addresses (street, city, state, and zip code) at the location that the individual responds to the survey, and other information that PSHSB will collect including but not limited to type of device, operating system, and wireless service provider.

RECORD SOURCE CATEGORIES

1. The sources for the emergency contacts information include, but are not limited to FCC employees, Federal Government, State, Tribal, Territorial, and Local Government contacts, and private sector contactors along with individuals representing institutions and organizations with crisis management and emergency preparedness functions.

2. The sources for the COOP contact participants' information are FCC employees and contractors.

3. The sources for the survey information that PSHSB will use include the survey respondents' inputs transmitted through their wireless devices, or through other means of communication.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

In addition to those disclosures generally permitted under section 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Adjudication and Litigation—To disclose information to the Department of Justice (DOJ), or to a court or adjudicative body before which the FCC is authorized to appear, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC have agreed to represent the employee; or (d) the United States is a party to litigation or have an interest in such litigation, and the use of such records by the DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

2. Law enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, and/or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

3. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

4. Government-Wide Program Management and Oversight—To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

5. Employment, Clearances, Licensing, Contract, Grant or other Benefits Decisions by the FCC—To disclose to a Federal, State, local or foreign, tribal, or other public agency or authority maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the hiring or retention of an employee or other personnel action, the issuance or retention of a security clearance, classifying of jobs, letting of a contract, or the issuance or retention of a license, grant, or other benefit by the Commission, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

6. Labor Relations—To officials of labor organizations recognized under 5 U.S.C. 71 upon receipt of a formal request and in accord with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

7. Breach Notification—To appropriate agencies, entities, and persons when (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with Commission efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. Contract Services, Grants, or Cooperative Agreements—To disclose information to FCC contractors, grantees, or volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

10. Contracted Third Parties—To external contracted parties throughout the United States for required maintenance, data input, and/or extraction requirements, testing, and activation of an automated telephone and email system.

11. Test Partners—To PSHSB's test partner entities who help plan, conduct, and analyze the results of tests used to evaluate the effectiveness of WEA, including providers' implementations of enhanced geo-targeting for WEA.

REPORTING TO A CONSUMER REPORTING AGENCY:

In addition to the routine uses listed above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue debt owed to the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in ECACS consists of electronic data, files, and records, which are housed in the FCC's computer network databases, and paper documents, files, and records, which are stored in file cabinets in the PSHSB office suite.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in the Emergency Contacts and the COOP Contacts databases is retrieved by searching any field in the respective database(s).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The FCC maintains and disposes of these records in accordance with the requirements of the General Records Schedules (GRS) issued by the National Archives and Records Administration (NARA) as follows:

GRS 5.3, Disposition Authorities:

Item 010: DAA–GRS–2016–0004–0001: Continuity planning and related emergency planning files; and

Item 020: DAA–GRS–2016–0004–0002: Employee emergency contact information.

GRS 4.1, Disposition Authority: Item 030: DAA–GRS–2013–0002–0008: Vital or essential records program records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. The electronic records, data, and files are stored within FCC accreditation boundaries and maintained in a database housed in the FCC computer network databases. The data in the FCC's computer network is protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the National Institute of Standards and Technology (NIST), the Office of Management and Budget (OMB), and the Federal Information Security Modernization Act of 2014 (FISMA).

2. There are a limited number of paper documents, files, and records, which are stored in file cabinets in the PSHSB office suite. These cabinets are locked when not in use and/or at the end of the business day. All access points for the PSHSB office suites are monitored.

3. Furthermore, as part of the FCC's privacy safeguards, only authorized PSHSB supervisors, employees, PSHSB's Test Partners, and contractors, including IT contractors who manage the FCC's computer network, may have access to the electronic data and the paper document files. Other FCC employees may be granted access on a need-to-know basis. The FCC's Test Partners will not have direct access to the FCC's computer network or information systems; however, PSHSB will provide the Test Partners data necessary to evaluate the effectiveness of WEA, including providers' implementation of enhanced geo-targeting. The Test Partners will be required to implement privacy safeguards against the disclosure of electronic data and paper document files provided by the FCC, unless disclosure is otherwise required by applicable federal or other laws.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about them should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request an amendment of records about them should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to Leslie F. Smith, Privacy Manager, Information Technology, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or by emailing *Leslie.Smith@fcc.gov* and following the procedures set forth in the FCC's Privacy Act regulations regarding verification of identity and access to records, 47 CFR Part 0, Subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The FCC last gave full notice of this system of records, FCC/PSHSB–1, formerly titled FCC Emergency and Continuity Contacts System (ECCS), by publication in the **Federal Register** on September 19, 2011 (76 FR 57989).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–08723 Filed 4–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16687]

Open Commission Meeting by Teleconference, Thursday, April 23, 2020

April 17, 2020.

The Federal Communications Commission will hold an Open Meeting on Thursday, April 23, 2020, which is scheduled to commence at 10:30 a.m. Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in a wholly electronic format and will be open to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel. Because of these special circumstances, the first three items on the agenda will be considered by the Commission during the teleconference meeting while the other items listed below are expected to be voted on circulation prior to the meeting.

Item No.	Bureau	Subject
1	ENGINEERING & TECHNOLOGY	TITLE: Unlicensed Use of the 6 GHz Band (ET Docket No. 18–295); Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz (GN Docket No. 17–183). SUMMARY: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that would promote innovation and the use of mid-band spectrum for broadband by allowing unlicensed operations in the 5.925–7.125 GHz band while protecting existing licensed operations.
2	WIRELINE COMPETITION	TITLE: Establishing a 5G Fund for Rural America (GN Docket No. 20–32). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking and Order that would propose to establish the 5G Fund to award up to $9 billion in support in two phases for the deployment of 5G mobile broadband services in rural areas.
3	INTERNATIONAL	TITLE: Mitigation of Orbital Debris in the New Space Age (IB Docket No. 18–313). SUMMARY: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that would comprehensively update the Commission's orbital debris rules for all Commission-authorized satellites.
4	INTERNATIONAL	TITLE: ViaSat, Inc., Petition for Declaratory Ruling Granting Access for a Non-U.S.-Licensed Non-Geostationary Orbit Satellite Network (IBFS File No. SAT–PDR–20161115–00120 and SAT–APL–20180927–00076). SUMMARY: The Commission will consider an Order and Declaratory Ruling that would grant ViaSat's request for U.S. market access to offer broadband services using a proposed constellation of non-geostationary orbit satellites.
5	MEDIA	TITLE: Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules (MB Docket No. 19–193); Modernization of Media Regulation Initiative (MB Docket No. 17–105). SUMMARY: The Commission will consider a Report and Order that would modernize the LPFM technical rules to provide more regulatory flexibility for licensees.
6	MEDIA	TITLE: Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010 (MB Docket No. 11–43). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that would propose to expand video description requirements to 40 additional local television markets over the next four years to increase the accessibility of programming to blind and visually impaired Americans.

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. 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, Office of the Secretary.

[FR Doc. 2020–08724 Filed 4–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely

related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 11, 2020.

A. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *GBank Financial Holdings, Inc., Las Vegas, Nevada;* to acquire Bankcard Services LLC, Las Vegas, Nevada, and thereby indirectly engage in data processing activities pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 21, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–08783 Filed 4–23–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 11, 2020.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *James Sexton, Scottsdale, Arizona;* as a member of the Sexton shareholder group to retain voting shares of Kensington Bancorp, Inc., and thereby indirectly retain voting shares of Kensington Bank, both of Kensington, Minnesota.

Board of Governors of the Federal Reserve System, April 21, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–08782 Filed 4–23–20; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice-MA–2020–06; Docket No. 2020–0002; Sequence No.15]

Relocation Allowances—Waiver of Certain Provisions of the Federal Travel Regulation (FTR) (Chapter 302) for Official Relocation Travel of Employees During the COVID–19 Pandemic

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of GSA Bulletin FTR 20–06.

SUMMARY: This Federal Travel Regulation (FTR) bulletin informs agencies that certain provisions of the FTR governing official relocation travel are temporarily waived for employees relocating during the national emergency issued by the President on March 13, 2020 concerning the coronavirus disease 2019 (COVID–19).

DATES: *Applicability Date:* This notice is retroactively effective for official relocation travel performed after March 13, 2019, one year prior to the date of the national emergency issued by the President concerning COVID–19.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Rodney (Rick) Miller, Senior Program Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–501–3822, or by email at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 20–06.

SUPPLEMENTARY INFORMATION:

Background: Federal agencies authorize relocation entitlements to those individuals listed at FTR § 302–1.1 and those assigned under the Government Employees Training Act (GETA) (5 U.S.C. Chapter 41). The FTR requires relocating employees to complete all aspects of their relocation within one year or meet an authorized exception. Further, temporary storage of employees' household goods is limited to 150 days maximum for continental United States (CONUS) to CONUS shipments, and 180 days maximum for shipments with an origin/destination outside the continental United States (OCONUS). Employees are also limited to 10 calendar days to complete a house hunting trip. This FTR bulletin permits agencies to apply GSA-approved waivers to the aforementioned time requirements, within the parameters set forth in the bulletin, to prevent personal hardship to relocating employees impacted by the COVID–19 pandemic. This bulletin can be viewed at *https://www.gsa.gov/ftrbulletins.*

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2020–08687 Filed 4–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Request

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Request for Information; notice of extension of comment period.

SUMMARY: For the ''*Opioid Management in Older Adults*'' project, AHRQ is seeking to identify innovative approaches to managing opioid medications for chronic pain that are particularly relevant for *older adults.* Use of long-term opioid therapy in older adults can be especially problematic because of increased risks such as delirium, falls, and dementia. Through this notice, the comment period has been extended to June 30, 2020. The subject matter content remains unchanged from the original notice which was previously published on March 18, 2020 (*https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05612.pdf*).

DATES: Information must be received by June 30, 2020.

ADDRESSES: Written comments should be submitted by email to: *Opioids_OlderAdults@abtassoc.com.*

FOR FURTHER INFORMATION CONTACT: Parivash Nourjah, *Parivash.nourjah@ahrq.gov,* or 301–427–1106.

SUPPLEMENTARY INFORMATION:

The United States is in the midst of an unprecedented opioid epidemic that is affecting people from all walks of life. Regulators and policy makers have initiated many activities to curb the epidemic, but relatively little attention has been paid to the growing toll of opioid use, opioid misuse and opioid use disorder (OUD) among older adults.

The opioid crisis in older adults is strongly related to challenges in prescription opioid management in this population. Older adults have a high prevalence of chronic pain and are especially vulnerable to suffering adverse events from opioid use, making safe prescribing more challenging even when opioids are an appropriate therapeutic choice. Identifying adverse effects due to opioid use, misuse or abuse is complicated further by factors such as co-occurring medical disorders that can mimic the effects of opioid use. There is also a risk of attributing clinical findings in older adults (*e.g.* personality changes, falls/balance problems, difficulty sleeping, and heart problems) to other conditions that are also common with age. If adverse events due to opioid prescriptions are identified, finding appropriate alternatives for pain management can be challenging if other pharmacologic options (such as NSAIDS) are contraindicated or mobility issues limit access to other therapeutic options.

Diagnosis of substance use disorders is also more complicated in this population. Clinicians may not associate drug misuse or addiction with older adults or they may be inadequately trained in identification and treatment of opioid misuse and OUD among older adults, and hence may not monitor for the signs of opioid use disorder in this population.

Successfully optimizing the prescribing and use of opioids in older adults will require addressing the issue at many points along the care continuum where older adults may need additional attention or a different approach. AHRQ wants to identify specific tools, strategies and approaches to opioid management in older adults throughout the breadth of the care delivery continuum, from avoiding opioid initiation to screening for opioid misuse and opioid use disorder, as well as approaches to opioid tapering in older adults.

AHRQ is interested in all innovative approaches that address the opioid management concerns in older adults listed above, but respondents are welcome to address as many or as few as they choose and to address additional areas of interest not listed.

Strategies and approaches could come from a variety of health care settings including, but not limited to, primary care and other ambulatory care clinics, emergency departments, home health care organizations, skilled nursing care settings, and inpatient care. Other sources of these strategies might include health care payers, accountable care organizations, and organizations that provide external quality improvement support. Some of the examples of the types of innovations we are looking for might be specific tools or workflows that support providers to assess the risk/benefit balance of opioids within a multidisciplinary approach in pain management; to optimize and monitor the opioid prescribing when appropriate, including tapering strategies; to screen and treat for opioid misuse or opioid use disorder; or to involve family or other caregivers of an older adult in conversations about opioid safety. Descriptions of strategies or approaches should include the setting where it is deployed and the type of patient population served.

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas in response to it. AHRQ will use the information submitted in response to this RFI at its discretion, and will not provide comments to any respondent's submission. However, responses to the RFI may be reflected in future solicitation(s) or policies. Respondents are advised that the Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential or sensitive information should be included in your response. The Government reserves the right to use any non-proprietary technical information in any resultant solicitation(s). The contents of all submissions will be made available to the public upon request. Submitted materials must be publicly available or able to be made public.

Dated: April 21, 2020.

Virginia L. Mackay-Smith,

Associate Director, Office of the Director, AHRQ.

[FR Doc. 2020–08727 Filed 4–23–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9124–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—January Through March 2020

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

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from January through March 2020, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone No.
I. CMS Manual Instructions	Ismael Torres	(410) 786–1864
II. Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III. CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV. Medicare National Coverage Determinations	Wanda Belle, MPA	(410) 786–7491
V. FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI. Collections of Information	William Parham	(410) 786–4669
VII. Medicare-Approved Carotid Stent Facilities	Sarah Fulton, MHS	(410) 786–2749

Addenda	Contact	Phone No.
VIII. American College of Cardiology-National Cardiovascular Data Registry Sites	Sarah Fulton, MHS	(410) 786–2749
IX. Medicare's Active Coverage-Related Guidance Documents	JoAnna Baldwin, MS	(410) 786–7205
X. One-time Notices Regarding National Coverage Provisions	JoAnna Baldwin, MS	(410) 786–7205
XI. National Oncologic Positron Emission Tomography Registry Sites	David Dolan, MBA	(410) 786–3365
XII. Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	David Dolan, MBA	(410) 786–3365
XIII. Medicare-Approved Lung Volume Reduction Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XIV. Medicare-Approved Bariatric Surgery Facilities	Sarah Fulton, MHS	(410) 786–2749
XV. Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	David Dolan, MBA	(410) 786–3365
All Other Information	Annette Brewer	(410) 786–6580

SUPPLEMENTARY INFORMATION:

I. Background

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS website or the appropriate data registries that are used as our resources. This is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the website list provides more timely access for beneficiaries, providers, and suppliers. We also believe the website offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the websites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the website. These listservs avoid the need to check the website, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a website proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

The Director of the Office of Strategic Operations and Regulatory Affairs of the Centers for Medicare & Medicaid Services (CMS), Kathleen Cantwell, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: *April 15, 2020.*

Evell J. Barco Holland,

Federal Register Liaison, Department of Health and Human Services.

BILLING CODE 4120–01–P

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: April 29, 2019 (84 FR 18040), August 9, 2019 (84 FR 39323), November 6, 2019 (84 FR 59815) and February 13, 2020 (85 FR 8282). We are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (January through March 2020)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the manual for Update to Medicare Benefit Policy Manual and Medicare Claims Processing Manual Adding New Chapters for Opioid Treatment Programs (Manual Updates Only), use (CMS-Pub. 100-02) Transmittal No. 268.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual.

Fee-For Service Transmittal Numbers

Please Note: Beginning Friday, March 20, 2020, there will be the following change regarding the Advance Notice of Instructions due to a CMS internal process change. Fee-For Service Transmittal Numbers will no longer be determined by Publication. The Transmittal numbers will be issued by a single numerical sequence beginning with Transmittal Number 10000.

For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
Medicare General Information (CMS-Pub. 100-01)	
130	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
These transmittal numbers reflect the change effective on March 20, 2020.	
10001	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction

10010	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
Medicare Benefit Policy (CMS-Pub. 100-02)	
265	Manual Updates Related to Calendar Year (CY) 2020 Home Health Payment Policy Changes, Maintenance Therapy, and Remote Patient Monitoring Home Health Prospective Payment System (HH PPS National 30-Day Period Payment Rate Adjustments to the 30-Day Period Payment Rates Continuous 60-Day Recertifications Split Percentage Payment Approach to the 30-Day Period Unit of Payment Physician Signature Requirements for the Split Percentage Payments Low Utilization Payment Adjustment (LUPA Partial Payment Adjustment Outlier Payments Discharge Issues Consolidated Billing Change of Ownership Relationship to Periods Under HH PPS Patient Confined to the Home Patient's Place of Residence Specificity of Orders Timeliness of Signature Use of Oral (Verbal) Orders Termination of the Plan of Care-Qualifying Services Sequence of Qualifying Services and Other Medicare Covered Home Health Services Physician Certification Physician Recertification General Principles Governing Reasonable and Necessary Skilled Nursing Care Observation and Assessment of the Patient's Condition When Only the Specialized Skills of a Medical Professional Can Determine Patient's Status Management and Evaluation of a Patient Care Plan Venipuncture General Principles Governing Reasonable and Necessary Physical Therapy, Speech-Language Pathology Services, and Occupational Therapy Medical Supplies The Law, Routine and Nonroutine Medical Supplies, and the Patient's Plan of Care Negative Pressure Wound Therapy Using a Disposable Device Counting Visits Under the Hospital and Medical Plans Respiratory Care Services Remote Patient Monitoring Use of Telehealth in the Delivery of Home Health Services
266	January 2020 Update of the Hospital Outpatient Prospective Payment System (OPPS) Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on January 1, 2010 through December 31, 2019 Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After January 1, 2020 - Changes to Supervision Requirements Non-Surgical Extended Duration Therapeutic Services
267	January 2020 Update of the Hospital Outpatient Prospective Payment System (OPPS) Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on January 1, 2010 through December 31, 2019 Coverage of Outpatient Therapeutic Services Incident to a Physician's Service Furnished on or After January 1, 2020 - Changes to Supervision Requirements Non-Surgical Extended Duration Therapeutic Services
268	Update to Medicare Benefit Policy Manual and Medicare Claims Processing Manual Adding New Chapters for Opioid Treatment Programs (Manual Updates Only)
Medicare National Coverage Determination (CMS-Pub. 100-03)	
	None
Medicare Claims Processing (CMS-Pub. 100-04)	
4487	CY 2020 Update for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
4488	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
4489	Home Health (HH) Patient-Driven Groupings Model (PDGM) - Split Implementation Creation of HH PPS and Subsequent Refinements The HH PPS Unit of Payment Number, Duration, and Claims Submission of HH PPS Episodes More Than One Agency Furnished Home Health Services Effect of Election of Medicare Advantage (MA) Organization and Eligibility Changes Split Percentage Payment Basis of Medicare Prospective Payment Systems and Case-Mix Coding of HH PPS Case-Mix Groups on HH PPS Claims: HHRGs and HIPPS Code Composition of HIPPS Codes for HH Grouper Links Assessment and Payment Health Insurance Beneficiary Eligibility Inquiry for Home Health Agencies Submission of Request for Anticipated Payment (RAP) Claim Submission and Processing Payment, Claim Adjustments and Cancellations Request for Anticipated Payment (RAP Transfer Situation - Payment Effects Discharge and Readmission Situation Under HH PPS - Payment Effects Adjustments of Payment - Partial Episode Payment (PEP) Payment When Death Occurs During an HH PPS Episode/Period Adjustments of Payment - Low Utilization Payment Adjustments (LUPAs) Adjustments of Payment - Special Submission Case: "No-RAP" LUPAs

	Adjustments of Payment - Confirming OASIS Assessment Items Adjustments of Episode Payment - Therapy Thresholds Adjustments of Episode Payment - Early or Later Episodes Adjustments of Payment – Validation of HIPPS Codes Adjustments of Payment - Outlier Payments Multiple Adjustments to Payments Request for Anticipated Payment (RAP) HH PPS Claims Input/Output Record Layout
4490	Update to the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) for Vaping Related Disorder
4491	Updates to CR 11152 Implementation of the Skilled Nursing Facility (SNF) Patient Driven Payment Model (PDPM) Billing SNF PPS Services Billing in Benefits Exhaust and No-Payment Situations Medicare Billing Requirements for Beneficiaries Enrolled in MA Plans
4492	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4493	January 2020 Update of the Hospital Outpatient Prospective Payment System (OPPS)
4494	January 2020 Update of the Hospital Outpatient Prospective Payment System (OPPS)
4495	Clinical Laboratory Fee Schedule – Medicare Travel Allowance Fees for Collection of Specimens
4496	2020 Durable Medical Equipment Prosthetics, Orthotics, and Supplies Healthcare Common Procedure Coding System (HCPCS) Code Jurisdiction List
4497	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 26.1, Effective April 1, 2020
4498	Calendar Year (CY) 2020 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
4499	Update to the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) for Vaping Related Disorder
4500	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4501	2020 Annual Update to the Therapy Code List
4502	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4503	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4504	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4505	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4506	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4507	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4508	Quarterly Influenza Virus Vaccine Code Update - July 2020
	Table of Preventive and Screening Services Healthcare Common Procedure Coding System (HCPCS) and Diagnosis Codes CWF Edits on A/B MAC (A) Claims CWF Edits on A/B MAC (B) Claims CWF Crossover Edits for A/B MAC (B) Claims
4509	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4510	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4511	2020 Durable Medical Equipment Prosthetics, Orthotics, and Supplies Healthcare Common Procedure Coding System (HCPCS) Code Jurisdiction List
4512	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4513	January 2020 Update of the Hospital Outpatient Prospective Payment System (OPPS) Payment Adjustment for Certain Cancer Hospitals Beginning CY 2019 Payment Adjustment for Certain Cancer Hospitals Beginning CY 2020 Use of HCPCS Modifier – CG Devices Eligible for Transitional Pass-Through Payments Bypass Edit Modifier "CG" for Claims on Which Specified Procedures are to be Reported With Device Codes Inpatient-only Services
4514	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4515	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4516	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4517	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4518	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4519	File Conversions Related to the Spanish Translation of the Healthcare Common Procedure Coding System (HCPCS) Descriptions
4520	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4521	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4522	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4523	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4524	Update to Medicare Benefit Policy Manual and Medicare Claims Processing Manual Adding New Chapters for Opioid Treatment Programs (Manual Updates Only)
4525	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - April 2020 Update

4526	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4527	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4528	January 2020 Integrated Outpatient Code Editor (I/OCE) Specifications Version 21.0
4529	Implementation of the Long Term Care Hospital (LTCH) Discharge Payment Percentage (DPP) Payment Adjustment Payment Provisions Under LTCH PPS Payment Rate Short-Stay Outliers Payment Policy for Co-Located Providers High Cost Outlier Cases Discharge Payment Percentage (DPP) Payment Adjustment Procedure for Medicare Contractors to Perform and Record Outlier Reconciliation Adjustments Provider Specific File
4530	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
4531	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4532	Quarterly Update for the Temporary Gap Period of the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) - April 2020
4533	Combined Common Edits/Enhancements Modules (CCEM) Code Set Update
4534	July 2020 Healthcare Common Procedure Coding System (HCPCS) Quarterly Update Reminder
4535	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
4536	Remittance Advice Remark Code (RARC), Claims Adjustment Reason Code (CARC), Medicare Remit Easy Print (MREP) and PC Print Update
4537	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4538	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4539	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4540	Quarterly Update to the Medicare Physician Fee Schedule Database (MPFSDB) - April 2020 Update
4541	Quarterly Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
4542	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
4543	April 2020 Integrated Outpatient Code Editor (I/OCE) Specifications Version 21.1
4544	April 2020 Update of the Hospital Outpatient Prospective Payment System (OPPS)
4545	April 2020 Update of the Ambulatory Surgical Center (ASC) Payment System
4546	NCD (20.32) Transcatheter Aortic Valve Replacement (TAVR) Transcatheter Aortic Valve Replacement (TAVR) Coding Requirements for TAVR Furnished on or After May 1, 2012, through December 31, 2012 Coding Requirements for TAVR Services Furnished on or After January 1, 2013 Claims Processing Requirements for TAVR Services on Professional Claim
4547	Instructions for Downloading the Medicare ZIP Code Files for July 2020
4548	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4549	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4550	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
4551	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
These transmittal numbers reflect the change effective on March 20, 2020.	
10000	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
10002	Update to the Internet Only Manual (IOM) Publication (Pub.) 100-04, Chapter 3, Section 90.4.2
10003	April 2020 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
10004	April Quarterly Update for 2020 Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule
10005	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
10006	Quarterly Update for the Temporary Gap Period of the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP) - July 2020
10007	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
10008	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
10009	Healthcare Common Procedure Coding System (HCPCS) Codes Subject to and Excluded from Clinical Laboratory Improvement Amendments (CLIA) Edits
10013	April 2020 Update of the Hospital Outpatient Prospective Payment System (OPPS)
10015	Quarterly Update to the National Correct Coding Initiative (NCCI) Procedure-to-Procedure (PTP) Edits, Version 26.1, Effective April 1, 2020
10026	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
10027	April 2020 Integrated Outpatient Code Editor (I/OCE) Specifications Version 21.
10028	Issued to a specific audience, not posted to Internet/Intranet due to a Sensitivity of Instruction
10030	Issued to a specific audience, not posted to Internet/Intranet due to

	Confidentiality of Instructions
Medicare Secondary Payer (CMS-Pub. 100-05)	
129	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Medicare Financial Management (CMS-Pub. 100-06)	
334	Notice of New Interest Rate for Medicare Overpayments and Underpayments -2nd Qtr Notification for FY 2020
335	Updates to Medicare Financial Management Manual Chapter 3, Section 140.1 Bankruptcy Forms
336	Pub. 100-06, Chapter 4, Section 110 (Confirmed Identity Theft) Revision Confirmed Identity Theft
Medicare State Operations Manual (CMS-Pub. 100-07)	
196	Revisions to State Operations Manual (SOM) Appendix G, Guidance for Surveyors: Rural Health Clinics
197	Revisions to the State Operating Manual (SOM) Chapter 2; Community Mental Health Center (CMHC) Citations and Definitions Citations and Definitions Special Requirements Partial Hospitalization Services Provided by CMHCs or by Others Under Arrangements with the CMHC Request to Participate Processing CMHC Initial Certification Request, SA Role Processing CMHC Initial Certification Request, RO Role Facility Alleges it is Provider-Based Voluntary Termination
198	Revisions to the State Operations Manual (SOM) Chapter 2 and Chapter 3
199	Revisions to State Operations Manual (SOM) Chapter 6 - Special Procedures for Laboratories and Chapter 9 Exhibits
200	Revisions to the State Operations Manual (SOM) Appendix A - Hospitals, Appendix AA Psychiatric Hospitals, Appendix B – Home Health Agency, Appendix D - Portable X-Ray, Appendix G - Rural Health Clinics/Federally Qualified Health Centers, Appendix H- End Stage Renal Disease Facilities (ESRD), Appendix K – Comprehensive Outpatient Rehabilitation Facility, Appendix L - Ambulatory Surgical Centers, Appendix M – Hospice, Appendix U - Religious Nonmedical Healthcare Institutions, Appendix W - Critical Access Hospitals (CAHs), Appendix X - Organ Transplant Program and Appendix Z – Emergency Preparedness
Medicare Program Integrity (CMS-Pub. 100-08)	
930	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
931	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
932	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
933	Update to Chapter 3, Section 3.2.3.1 Additional Documentation Requests (ADR) of Publication (Pub) 100-08
934	Updates to Chapter 4 and Exhibit 8 in Publication (Pub.) 100-08 Investigations Conducting Investigations Disposition of Cases Referred to Law Enforcement UCM Outages UPIC Hospice Cap Liability Process – Coordination with the MAC Immediate Advisements to the OIG/OI Identity Theft Investigations and Victimized Provider Process Victimized Provider Process Letter Templates
935	Issued to a specific audience, not posted to Internet/Intranet due to a Confidentiality of Instruction
936	Provider Enrollment Appeals Procedure Model Approval Letter Model Denial Letter Model Revocation Letter for Part B Suppliers and Certified Providers and Suppliers Model Revocation Letter for National Supplier Clearinghouse (NSC) Reserved for Future Use CAP Withdrawn Acknowledgement Template RCAP Receipt Acknowledgement Template to Provider/Supplier/Representative RCAP Decision Email Template to Provider/Supplier/Representative RCAP Not Actionable (Moot) Model Letter Untimely CAP Dismissal Model Letter Improperly Signed CAP Dismissal Model Letter No CAP Rights Dismissal Model Letter Not Eligible to Submit CAP Dismissal Model Letter CAP Signature Development Model Letter Favorable CAP Model Letter in Response to an Enrollment Denial Favorable CAP Model Letter for Revocation Determination Unfavorable CAP Model Letter in Response to an Enrollment Denial Unfavorable CAP Model Letter for Revocation Determination CAP Further Information Required for Development Model Letter Reserved for Future Use Reconsideration Request Withdrawn Acknowledgement Template Reconsideration Request Receipt Acknowledgement Template to Provider/Supplier/Representative Reconsideration Request Decision Email Template to Provider/Supplier/Representative Reconsideration Request Not Actionable (Moot) Model Letter Untimely Reconsideration Request Dismissal Model Letter Improperly Signed Reconsideration Request Dismissal Model Letter Not Eligible to Submit Reconsideration Request Dismissal Model Letter Reconsideration Request Signature Development Model Letter Favorable Reconsideration Request Model Letter in Response to an Enrollment Denial Favorable Reconsideration Request Model Letter in Response to a Reactivation Effective Date Determination

	Favorable Reconsideration Request Model Letter in Response to an Effective Date of Participation Determination (Non-Revalidation) Favorable Reconsideration Request Model Letter for Revocation Determination Unfavorable Reconsideration Request Model Letter in Response to an Enrollment Denial Unfavorable Reconsideration Request Model Letter in Response to a Reactivation Effective Date Determination Unfavorable Reconsideration Request Model Letter in Response to an Effective Date of Participation Determination (Non-Revalidation) Unfavorable Reconsideration Request Model Letter for Revocation Determination Reconsideration Further Information Required for Development Model Letter Review Procedures for Determinations that Affect Participation in the Medicare Program Corrective Action Plans (CAPs) Further Appeal Rights for Reconsidered Determinations External Reporting Requirements for CAPs and Reconsideration Requests External Reporting Requirements
937	Updates to the Prior Authorization (PA) Guidance Within Publication (Pub.) 100-08 Prior Authorization Program for Certain DMEPOS Prior Authorization Process for Certain Hospital Outpatient Department (OPD) Services
938	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
939	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
940	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
941	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
942	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
943	Updates to Chapter 4 and Exhibit 8 in Publication (Pub.) 100-08 Investigations Conducting Investigations Disposition of Cases Referred to Law Enforcement UCM Outages Hospice Cap Liability Process – Coordination with the MAC Immediate Advisements to the OIG/OI Identity Theft Investigations and Victimized Provider Process
944	Section 4.26.2 in Chapter 4 of Publication (Pub.) 100-08
945	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
44	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
Medicare Quality Improvement Organization (CMS- Pub. 100-10)	
	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
	None
Medicaid Program Integrity Disease Network Organizations (CMS Pub 100-15)	
	None
Medicare Managed Care (CMS-Pub. 100-16)	
	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
	None
Medicare Prescription Drug Benefit (CMS-Pub. 100-18)	
	None
Demonstrations (CMS-Pub. 100-19)	
235	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instructions
236	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
One Time Notification (CMS-Pub. 100-20)	
2413	New State Codes for California, Kentucky and West Virginia
2414	SUBJECT: ViPS Medicare System (VMS) Online and Print Reporting of Automated Claims Examination System (ACES) Statistics
2415	Updates to Bills Pending Report for the Fiscal Intermediary Shared System (FISS)
2416	User CR: ViPS Medicare System (VMS) - Increase Edit Code Maximum
2417	Implementation to Send Post-Pay Electronic Medical Documentation Requests (eMDR) to Participating Providers via the Electronic Submission of Medical Documentation (esMD) System
2418	Implementation to Accept Document Codes and Include Appropriate Document Code(s) in the Pre-Pay Electronic Medical Documentation Requests (eMDR) to Participating Providers, via the Electronic Submission of Medical Documentation (esMD) System
2419	Implementation to Send Pre-Pay Electronic Medical Documentation Requests (eMDR) to Participating Providers via the Electronic Submission of Medical Documentation (esMD) System
2420	Implementation to Adopt the Document Codes into the Post-Pay Electronic Medical Documentation Requests (eMDR) to Participating Providers via the Electronic Submission of Medical Documentation (esMD) System
2421	User Change Request (CR) - Adjustment Reason Code to Identify Office of the Inspector General (OIG) Initiated Overpayments and Healthcare Integrated General Ledger Accounting System (HIGLAS) Demand Letter Verbiage
2422	Add Dates of Service (DOS) for Pneumococcal Pneumonia Vaccination (PPV) Health Care Procedure Code System (HCPCS) Codes (90670, 90732), and remove Next eligible dates for PPV HCPCS
2423	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
2424	Analysis of the Combined Common Edits Module (CCEM) for Compatibility with JAVA Software Version 1.8 (also known as JAVA 8)
2425	Implementation of Usage of the K3 Segment for Reporting Line Level Ordering Provider on Institutional Claims for Advanced Diagnostic Imaging

2426	Update to the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) for Vaping Related Disorder
2427	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)—April 2020 Update
2428	Multi-Carrier System (MCS) Financial Changes for Combining Pay Alone Payments in the Healthcare General Ledger Accounting System (HIGLAS) Payment Sets
2429	Updates to Ensure the Original 1-Day and 3-Day Payment Window Edits are Consistent with Current Policy
2430	Update to the Fiscal Intermediary Shared System (FISS) Integrated Outpatient Code Editor (IOCE) Claim Return Buffer
2431	Second Update to CR 11152 Implementation of the Skilled Nursing Facility (SNF) Patient Driven Payment Model (PDPM)
2432	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
2433	Update to the Home Health Grouper for New Diagnosis Code for Vaping Related Disorder
2434	Implementation for First Coast Service Options (FCSO) and Novitas for the CMS Enterprise Identity Management OKTA/Saviynt Migration
2435	User CR: ViPS Medicare System (VMS) Analysis and Redesign of SuperOp Claim Counter Functionality
2436	User CR: ViPS Medicare System (VMS) Analysis and Design to Create Auto-Inactivation Utility for SuperOp
2437	User CR: ViPS Medicare System (VMS) Report Daily Edit Receipts
2438	Multi-Carrier System (MCS) Financial Changes for Combining Pay Alone Payments in the Healthcare General Ledger Accounting System (HIGLAS) Payment Sets
2439	International Classification of Diseases, 10th Revision (ICD-10) and Other Coding Revisions to National Coverage Determination (NCDs)--July 2020 Update
2440	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instructions
2441	Provider Education for Required Prior Authorization (PA) of Hospital Outpatient Department (OPD) Services
2443	Schedule and Policies for Termination of the Rural Community Hospital Demonstration
2444	The Supplemental Security Income (SSI)/Medicare Beneficiary Data for Fiscal Year 2018 for Inpatient Prospective Payment System (IPPS) Hospitals, Inpatient Rehabilitation Facilities (IRFs), and Long-Term Care Hospitals (LTCHs)
These transmittal numbers reflect the change effective on March 20, 2020.	
10018	Shared System Enhancement 2018: Rewrite Fiscal Intermediary Shared System (FISS) module FSSB6001, Common Working File (CWF) Unsolicited Response Function
10024	Second Update to CR 11152 Implementation of the Skilled Nursing Facility (SNF) Patient Driven Payment Model (PDPM)
10025	Update to the Home Health Grouper for New Diagnosis Codes for Vaping Related Disorder and COVID-19.
10029	Update to the International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) for Vaping Related Disorder and 2019 Novel Coronavirus (COVID-19)
Medicare Quality Reporting Incentive Programs (CMS- Pub. 100-22)	
	None
Information Security Acceptable Risk Safeguards (CMS-Pub. 100-25)	
	None

Addendum II: Regulation Documents Published in the Federal Register (January through March 2020)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: https://www.cms.gov/files/document/regs1q20qpu.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings (January through March 2020)

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Regulations-and-Guidance/Guidance/Rulings. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (January through March 2020)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we are providing only the specific updates to national coverage determinations (NCDs), or reconsiderations of completed NCDs published in the 3-month period. This information is available at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle, MPA (410 786 7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Transcatheter Aortic Valve Replacement (TAVR)	NCD (20.32)	217	03/13/2020	06/21/2019

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (January through March 2020)

(Inclusion of this addenda is under discussion internally.)

Addendum VI: Approval Numbers for Collections of Information (January through March 2020)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact William Parham (410-786-4669).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (January through March 2020)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
St Francis Hospital, Inc. d/b/a/ St Francis Downtown 1 St Francis Drive Greenville, SC 29601	420023	01/20/2020	SC
Kaiser Foundation Hospital Oakland/Richmond 275 West MacArthur Boulevard Oakland, CA 94611	050075	02/03/2020	CA
HCA Houston Healthcare Conroe 504 Medical Center Boulevard Conroe, TX 77304	1962455816	02/10/2020	TX
Javon Bea Hospital "Riverside Hospital" 8201 E. Riverside Boulevard Rockford, IL 61114	140239	02/10/2020	IL
Knox Community Hospital 1330 Coshocton Avenue Mount Vernon, OH 43050	360040	02/17/2020	OH
Medical City Weatherford	450203	03/31/2020	TX

Facility	Provider Number	Effective Date	State
713 E. Anderson Street Weatherford, TX 76086			
The following facilities have editorial changes (in bold).			
FROM: Frankford Hospital **TO: Aria Health D/B/A Jefferson Health – Northeast** 800 Knights Road Philadelphia, PA 19114	390115	10/11/2005	PA
FROM: Providence Everett Medical Center **TO: Providence Regional Medical Center Everett** 1321 Colby Avenue Everett, WA 98201	500014	12/19/2005	MI
FROM: Mount Diablo Medical Center **TO: John Muir Medical Center, Concord Campus** 2540 East Street Concord, CA 94524-4110	050496	05/10/2005	CA
Cape Cod Hospital **27 Park Street** **Hyannis, MA 02601** **P.O Box 640**	220012	11/01/2005	MA
FROM: California Pacific Medical Center – Pacific Campus **TO: California Pacific Medical Center – Van Ness Campus** **1101 Van Ness Avenue** **San Francisco, CA 94109**	050047	01/23/2006	CA
FROM: Rockford Memorial Hospital **TO: Javon Bea Hospital** 2400 N Rockton Avenue Rockford IL 61103	140239	06/14/2005	IL
FROM: Luther Hospital **TO: Mayo Clinic Health System Eau Claire** **1221 Whipple Street** **Eau Claire, WI 54703**	520070	09/08/2005	WI
FROM: St. Elizabeth Hospital **TO: Ascension NE Wisconsin, Inc** **1506 South Oneida Street** **Appleton, WI 54915**	520009	11/01/2005	WI
Cookeville Regional Medical Center **FROM: 142 West Fifth Street** **TO: 1 Medical Center Boulevard** Cookeville, TN 38501	440059	05/03/2007	TN
FROM: Hamot Medical Center	390063	05/05/2005	PA
TO: UPMC Hamot 201 State Street Erie, PA 16550-0002 **Other information:** **NPI #1487647590**			

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (January through March 2020)

The initial data collection requirement through the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) has served to develop and improve the evidence base for the use of ICDs in certain Medicare beneficiaries. The data collection requirement ended with the posting of the final decision memo for Implantable Cardioverter Defibrillators on February 15, 2018.

For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum IX: Active CMS Coverage-Related Guidance Documents (January through March 2020)

CMS issued a guidance document on November 20, 2014 titled "Guidance for the Public, Industry, and CMS Staff: Coverage with Evidence Development Document". Although CMS has several policy vehicles relating to evidence development activities including the investigational device exemption (IDE), the clinical trial policy, national coverage determinations and local coverage determinations, this guidance document is principally intended to help the public understand CMS's implementation of coverage with evidence development (CED) through the national coverage determination process. The document is available at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27. There are no additional Active CMS Coverage-Related Guidance Documents for the 3-month period. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (January through March 2020)

There were no special one-time notices regarding national coverage provisions published in the 3-month period. This information is available at http://www.cms.gov . For questions or additional information, contact JoAnna Baldwin, MS (410-786 7205).

Addendum XI: National Oncologic PET Registry (NOPR) (January through March 2020)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron cmission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no additions, deletions, or editorial changes to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (January through March 2020)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates to the list of Medicare-approved facilities that meet our standards that have occurred in the 3-month period. This information is available at http://www.cms.gov/MedicareApprovedFacilitic/VAD/list.asp#TopOfPagc. For questions or additional information, contact David Dolan, MBA, (410-786-3365).

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
The following facilities are new for this quarter.				
Carilion Roanoke Memorial Hospital (CRMH) 1906 Belleview Avenue Roanoke, VA 24014 Other information: DNV certificate #: 176238-2019-VAD	490024	12/30/2019		VA
UCI Medical Center 101 The City Drive South Orange, CA 92868 Other information: DNVGL #: 175702-2019-VAD Previous Re-certification Dates: n/a	050348	12/17/2019		CA
The following facilities have editorial changes (in bold).				
FROM: Houston Methodist Hospital **TO: The Methodist Hospital d/b/a** Houston Methodist Hospital 6565 Fannin Street Houston, TX 77030 Other information: **DNV Certification #: 306213-2019-VAD** **Previous Re-Certification Dates:** **DNV certified 12/6/16;**	450358	11/03/2003	**11/06/2019**	TX

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
JCAHO certified 10/29/08				
Northwestern Memorial Hospital 251 E. Huron Street Chicago, IL 60611 Other information: **Joint Commission ID # 7267 Previous Re-Certification Dates: 01/30/2009; 06/17/2011; 05/31/2013; 06/09/2015; 08/18/2017**	140281	01/30/2009	**11/06/2019**	IL
Riverside Methodist Hospital 3535 Olentangy River Road Columbus, OH 43214-3998 Other information: **Joint Commission ID # Joint Commission ID #: 7030 Previous Re-certification Dates: initial 2015-08-11; 2017-08-30**	360006	08/11/2015	**10/23/2019**	OH
Methodist Hospital 7700 Floyd Curl Drive San Antonio, TX 78229 Other information: **Joint Commission ID # 9219 Previous Re-Certification Dates: 01/27/2009; 07/12/2011; 07/09/2013; 07/07/2015; 08/08/2017**	450388	01/27/2009	**10/23/2019**	TX
UT Southwestern William P. Clements Jr. University Hospital 6201 Harry Hines Boulevard Dallas, TX 75390-9262 Other information: **Joint Commission ID # 9013 Previous Re-Certification Dates: 12/17/2008; 06/07/2011; 06/04/2013; 06/23/2015; 08/08/2017**	450044	12/10/2003	**10/12/2019**	TX
FROM: Christiana Hospital TO: Christiana Care Health Services, Inc. 4755 Ogletown-Stanton Road Newark, DE 19713 Other information: **Joint Commission ID #: 6237 Previous re-Certification dates: 07/25/2013; 07/21/2015; 10/24/2017**	080001	07/25/2013	**12/21/2019**	DE
North Carolina Baptist Hospital d/b/a Wake Forest Baptist Health Medical Center Boulevard Winston Salem, NC 27157 Other information: **Joint Commission ID #: 6571 Previous recertification dates: 06/28/2011; 08/13/2013; 08/04/2015; 08/18/2017**	340047	06/28/2011	**10/09/2019**	NC
Einstein Medical Center Philadelphia 5501 Old York Road Philadelphia, PA 19141 Other information: **Joint Commission ID #: 6118 Previous certification dates: 08/24/2011; 08/20/2013; 08/04/2015; 09/19/2017**	390142	08/24/2011	**10/23/2019**	PA
Hackensack University Medical Center 30 Prospect Avenue Hackensack, NJ 07601 Other information: **Joint Commission ID #: 5934 Previous recertification dates: 10/20/2015; 09/19/2017**	310001	10/20/2015	**10/05/2019**	NJ

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
FROM: Inova Fairfax Medical Campus **TO: Inova Fairfax Hospital** 3300 Gallows Road Falls Church, VA 22042 Other information: **Joint Commission ID #: 6351** **Previous recertification dates: 12/09/2008; 03/22/2011; 05/01/2013; 06/09/2015; 07/25/2017**	490063	12/09/2008	**09/25/2019**	VA
Emory University Hospital 1364 Clifton Rd NE Atlanta, GA 30322 Other information: **Joint Commission ID #: 6689** **Previous recertification: 08/18/2009; 09/09/2011; 08/29/2013; 08/11/2015; 09/26/2017**	110010	08/18/2009	**11/20/2019**	GA
Mayo Clinic Florida 4500 San Pablo Road Jacksonville, FL 32224 Other information: **Joint Commission ID #: 369946** **Previous recertifications: 03/17/2009; 10/19/2011; 09/24/2013; 09/15/2015; 10/03/2017**	100151	03/17/2009	**11/06/2019**	FL
FROM: Sacred Heart Medical Center **TO: Providence Sacred Heart Medical Center & Children's Hospital** **101 West 8th Avenue** **Spokane, WA 99204** Other information: **Joint Commission ID #: 9638** **Previous recertifications: 03/10/2009; 08/17/2011; 08/06/2013; 07/14/2015; 09/12/2017**	500054	01/12/2004	**11/06/2019**	WA
FROM: Seton Family of Hospitals/Seton Medical Center Austin **TO: Ascension Seton** 1201 West 38th Street Austin, TX 78705-1056 Other information: **Joint Commission ID #: 8939** **Recertification dates: 03/06/2009; 07/15/2011; 09/04/2013; 10/20/2015; 10/03/2017**	450056	03/06/2009	**10/23/2019**	TX
FROM: Strong Memorial Hospital; TO: University of Rochester/Strong Memorial Hospital 601 Elmwood Ave Rochester, NY 14642-0002 Other information: **Joint Commission ID # 5856** **Recertification dates: 06/17/2008; 07/02/2010; 06/06/2012; 05/13/2014; 07/26/2016**	330285	10/29/2003	**07/25/2018**	NY
New York-Presbyterian Hospital **525 East 68th Street** **New York, NY 10065** Other information: **Joint Commission ID # 5838** **Recertification dates: 03/03/2009; 07/14/2011; 08/21/2013; 09/23/2015; 10/25/2017**	330101	03/03/2009	**01/24/2020**	NY
Pitt County Memorial Hospital, Inc. DBA Vidant Medical Center 2100 Stantonsburg Road Greenville, NC 27835-6028 Other information: **Joint Commission ID #: 6506** **Previous recertification: 9/26/17**	340040	09/26/2017	**12/18/2019**	NC
FROM: Baylor University Medical Center at Dallas	450021	08/21/2007	**12/18/2019**	TX

Facility	Provider Number	Date of Initial Certification	Date of Re-certification	State
TO: Baylor University Medical Center 3500 Gaston Avenue Dallas, TX 75246 Other information: **Joint Commission ID #: 8993** **Previous recertification: 08/21/2007; 08/27/2009; 10/07/2011; 11/20/2013; 11/10/2015; 10/31/2017**				
Thomas Jefferson University Hospitals, Inc. 111 South 11th Street Philadelphia, PA 19107 Other information: **Joint Commission ID #: 6132** **Previous recertifications: 07/09/2009; 09/13/2011; 10/17/2013; 09/22/2015; 09/20/2017**	390174	07/09/2009	**11/06/2019**	PA
University of Washington Medical Center 1959 Northeast Pacific Street, Box 356151 Seattle, WA 98195-6151 Other information: **Joint Commission ID #: 9626** **Recertification dates: 02/10/2009; 10/18/2011; 11/22/2013; 12/08/2015; 12/05/2017**	500008	01/10/2009	**11/20/2019**	WA
WellStar Kennestone Hospital 677 Church Street Marietta, GA 30060 Other information: **Joint Commission ID # 6711** **Previous Re-certification Dates: 11-07-2017**	110035	11/07/2017	**11/23/2019**	GA
Hartford Hospital 80 Seymour Street Hartford, CT 06102-5037 Other information: **Joint Commission ID # 2649**	070025	03/31/2009	**12/11/2019**	CT
Previous Re-certification Dates: 03/31/2009; 11/16/2011; 10/22/2013; 10/20/2015; 11/14/2017				
Keck Hospital of USC 1500 San Pablo Street Los Angeles, CA 90033 Other information: **Joint commission ID #: 5033** **Previous Recertification dates: 03/13/2009; 08/16/2011; 09/10/2013; 10/06/2015; 10/20/2017**	050696	03/13/2009	**12/04/2019**	CA
University of Chicago Medical Center 5841 South Maryland Avenue Chicago, IL 60637 Other information: **Joint Commission ID # 7315** **Previous Re-certification Dates: 02/24/2009; 08/17/2011; 09/04/2013; 09/15/2015; 10/24/2017**	140088	02/24/2009	**12/20/2019**	IL
Ronald Reagan UCLA Medical Center 757 Westwood Plaza Los Angeles, CA 90095 Other information: **Joint Commission ID # 9944** **Previous Re-certification Dates: 02/06/2009; 08/09/2011; 08/13/2013; 09/15/2015; 10/06/2017**	050262	02/06/2009	**12/04/2019**	CA
University of California San Diego Medical Center 200 West Arbor Drive San Diego, CA 92103-8949 Other information: **Joint Commission ID # 10071** **Previous Re-Certification Dates: 11/17/2011; 11/15/2013; 11/03/2015; 10/17/2017**	050025	11/17/2017	**12/18/2019**	CA

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (January through March 2020)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no updates to the listing of facilities for lung volume reduction surgery published in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (January through March 2020)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

There were no additions, deletions, or editorial changes to Medicare-approved facilities that meet CMS' minimum facility standards for bariatric surgery that have been certified by ACS and/or ASMBS in the 3-month period. This information is available at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Sarah Fulton, MHS (410-786-2749).

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (January through March 2020)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the 3-month period.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact David Dolan, MBA (410-786-3365).

[FR Doc. 2020–08719 Filed 4–23–20; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3390–FN]

Medicare Program; Approval of Application by the Accreditation Commission for Healthcare for Initial CMS-Approval of Its Home Infusion Therapy Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Accreditation Commission for Healthcare for initial recognition as a national accrediting organization for home infusion therapy suppliers that wish to participate in the Medicare program. A home infusion therapy supplier that participates must meet the Medicare conditions for coverage (CfCs).

DATES: The approval announced in this final notice is effective April 23, 2020 through April 23, 2024.

FOR FURTHER INFORMATION CONTACT: Christina Mister-Ward, (410) 786–2441. Lillian Williams, (410) 786–8636.

SUPPLEMENTARY INFORMATION:

I. Background

Home Infusion therapy (HIT) is a treatment option for Medicare beneficiaries with a wide range of acute and chronic conditions. Section 5012 of the 21st Century Cures Act (Pub. L. 114–255, enacted December 13, 2016) added section 1861(iii) to the Social Security Act (the Act), establishing a new Medicare benefit for HIT services. Section 1861(iii)(1) of the Act defines HIT as professional services, including nursing services; training and education not otherwise covered under the Durable Medical Equipment (DME) benefit; remote monitoring; and other monitoring services. Home infusion therapy must be furnished by a qualified HIT supplier and furnished in the individual's home. The individual must:

- Be under the care of an applicable provider (that is, physician, nurse practitioner, or physician assistant); and
- Have a plan of care established and periodically reviewed by a physician in coordination with the furnishing of home infusion drugs under Part B, that prescribes the type, amount, and duration of infusion therapy services that are to be furnished.

Section 1861(iii)(3)(D)(i)(III) of the Act requires that a qualified HIT supplier be accredited by an accrediting organization (AO) designated by the Secretary in accordance with section 1834(u)(5) of the Act. Section 1834(u)(5)(A) of the Act identifies factors for designating AOs and in reviewing and modifying the list of designated AOs. These statutory factors are as follows:

- The ability of the organization to conduct timely reviews of accreditation applications.
- The ability of the organization take into account the capacities of suppliers located in a rural area (as defined in section 1886(d)(2)(D) of the Act).
- Whether the organization has established reasonable fees to be charged to suppliers applying for accreditation.
- Such other factors as the Secretary determines appropriate.

Section 1834(u)(5)(B) of the Act requires the Secretary to designate AOs to accredit HIT suppliers furnishing HIT not later than January 1, 2021. Section 1861(iii)(3)(D) of the Act defines ''qualified home infusion therapy suppliers'' as being accredited by a CMS-approved AO.

In the March 1, 2019 **Federal Register**, we published a solicitation notice entitled, ''Medicare Program; Solicitation of Independent Accrediting Organizations To Participate in the Home Infusion Therapy Supplier Accreditation Program'' (84 FR 7057). This notice informed national AOs that accredit HIT suppliers of an opportunity to submit applications to participate in the HIT supplier accreditation program. Complete applications will be considered for the January 1, 2021 designation deadline if received by February 1, 2020.

Regulations for the approval and oversight of AOs for HIT organizations are located at 42 CFR part 488, subpart L. The requirements for HIT suppliers are located at 42 CFR part 486, subpart I.

II. Approval of Accreditation Organizations

Section 1834(u)(5) of the Act and the regulations at § 488.1010 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data.

Section 488.1020(a) requires that we publish, after receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. In accordance with § 488.1010(d), we have 210 days from the receipt of a complete application to approve or deny the application.

III. Provisions of the Proposed Notice

In the November 25, 2019 **Federal Register** (84 FR 64904), we published a proposed notice announcing Accreditation Commission for Health Care's (ACHC's) request for initial approval of its Medicare HIT accreditation program. In the November 25, 2019 proposed notice, we detailed our evaluation criteria. Under section 1834(u)(5) the Act and in our regulations at § 488.1010, we conducted a review of ACHC Medicare home infusion accreditation application in accordance with the criteria specified by our regulations, which included, but are not limited to the following:

- An onsite administrative review of ACHC's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its home infusion therapy surveyors; (4) ability to investigate and respond appropriately to complaints against accredited home infusion therapies; and (5) survey review and decision-making process for accreditation.
- The ability for an ACHC to conduct timely review of accreditation applications.
- The ability of an ACHC to take into account the capacities of suppliers located in a rural area.
- The comparison of an ACHC's Medicare home infusion therapy accreditation program standards to our current Medicare home infusion therapy conditions for coverage (CfCs).
- ACHC's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and ACHC's ability to provide continuing surveyor training.

++ ACHC's processes, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited home infusion therapies.

++ Evaluate ACHC's procedures for monitoring home infusion therapies it has found to be out of compliance with ACHC's program requirements.

++ Assess ACHC's ability to report deficiencies to the surveyed home infusion therapy and respond to the home infusion therapy's plan of correction in a timely manner.

++ Establish ACHC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of ACHC's staff and other resources.

++ Confirm ACHC's ability to provide adequate funding for performing required surveys.

++ Confirm ACHC's policies with respect to surveys being unannounced.

++ Review ACHC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ Obtain ACHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

The November 25, 2019 proposed notice also solicited public comments regarding whether ACHC's requirements met or exceeded the Medicare CfCs for home infusion therapy. No comments were received in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between ACHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared ACHC's HIT accreditation requirements and survey process with the Medicare CfCs of part 486, subpart I and the survey and certification process requirements of part 488, subpart L. Our review and evaluation of ACHC's HIT application, which was conducted as described in section III. of this final notice, yielded the following areas where, as of the date of this notice, ACHC has completed revising its standards and certification processes in order to meet the condition at:

- § 486.520(c), to address the requirement of the plan of care must be periodically reviewed by the physician.
- § 486.525(a)(3), to address the requirement of remote monitoring for the provision of home infusion therapy.
- § 488.1010(a)(6)(iv), to revise ACHC's survey procedures for surveys.
- § 488.1010(a)(6)(v), to revise ACHC's procedures and timelines for notifying a surveyed or audited home infusion therapy supplier of non-compliance with the home infusion therapy accreditation program's standards.
- § 488.1010(a)(6)(vi), to revise ACHC's procedures and timelines for monitoring the home infusion therapy supplier's correction of identified non-compliance with the accreditation program's standards.

B. Term of Approval

Based on the review and observations described in section III. of this final notice, we have determined that ACHC's requirements for HITs meet or exceed our requirements. Therefore, we approve ACHC as a national accreditation organization for HITs that request participation in the Medicare program, effective April 23, 2020 through April 23, 2024.

IV. Collection of Information Requirements

This document does not impose information collection and requirements, that is, reporting, recordkeeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 14, 2020.

Evell J. Barco Holland,

Federal Register Liaison, Department of Health and Human Services.

[FR Doc. 2020–08718 Filed 4–23–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1987–P–0074]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending Bumble Bee Seafoods Inc.'s temporary permit to market test canned skinless and boneless chunk salmon packed in water that contains sodium tripolyphosphate to inhibit protein curd formation during retorting. The temporary permit is amended to allow for the canned skinless and boneless chunk salmon packed in water with or without sodium tripolyphosphate and to update the manufacturing location. This amendment will allow the applicant to continue to test market the test product and collect data on consumer acceptance of the test product.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 13, 1987 (52 FR 26186), we issued a notice announcing that we had issued a temporary permit to Bumble Bee Seafoods, Inc., San Diego, CA 92123, to market test products identified as canned skinless and boneless chunk salmon packed in water and containing added sodium tripolyphosphate to inhibit protein curd formation during retorting. The permit allowed for the test product to be manufactured at a plant located in Petersburg, AK. We issued the permit to facilitate market testing of products that deviate from the requirements of the standard of identity for canned Pacific salmon in 21 CFR 161.170, which were issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

In the **Federal Register** of April 8, 1988 (53 FR 11710), we issued a notice announcing that we had amended the temporary permit to permit the test product be manufactured at one additional plant, Chugach Alaska Fisheries, Inc., Ocean Dock Rd., Cordova, AK 99574. In the **Federal Register** of September 6, 1988 (53 FR 34354), we issued another notice announcing that we were extending the expiration date of the permit to either the effective date of a final rule for any proposal to amend the standard of identity for canned Pacific salmon that may result from the National Food Processors Association's petition, submitted on behalf of Bumble Bee Seafoods, Inc., and other salmon packers holding temporary permits, or 30 days after termination of such proposal.

Under our regulations at 21 CFR 130.17(f), we are amending the temporary permit issued to Bumble Bee Seafoods, Inc., to allow for the canned skinless and boneless chunk salmon packed in water with or without sodium tripolyphosphate and to allow the test product to be manufactured only at one

plant, Pataya Food Industries Ltd., located at 90/6 Moo 7, Settakit Road, Tambol Tarsai, Amphur Maung, Samutsakorn 74000 Thailand. All other conditions and terms of this permit remain the same.

Dated: April 20, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–08762 Filed 4–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1423]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Imports and Electronic Import Entries

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by May 26, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0046. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Imports and Electronic Import Entries

OMB Control Number 0910–0046—Revision

This information collection supports Agency regulations found in 21 CFR part 1, subparts D (§§ 1.70 through 1.81 (21 CFR 1.70 through 1.81)) and E (§§ 1.83 through 1.101 (21 CFR 1.83 through 1.101)), governing FDA import activities and related Agency guidance. Specifically, the regulations prescribe the required data elements that respondents must submit when importing, or offering for import, an FDA-regulated article into the United States. Review of the data elements allows FDA to continue to meet its responsibilities pertaining to current submission requirements established by the U.S. Customs and Border Protection (CBP) related to the submission of entry information in using its Automated Commercial Environment (ACE) system, or any CBP-authorized electronic data interchange (EDI) system. Respondents (ACE filers) submit important and useful information about FDA-regulated products being imported or offered for import into the United States so that we may effectively and efficiently review products and determine their admissibility. In addition, and as set forth in the regulations, certain product types are subject to additional data elements (for example, 21 CFR 1.77 prescribes additional data elements for radiation-emitting products), as well as those data elements applicable to all products.

We are revising the information collection to provide for a weekly entry filing program (WEF). More detailed information on Foreign Trade Zones (FTZ)/WEF, is available at *https://www.fda.gov/industry/import-basics/foreign-trade-zonesweekly-entry-filing.* The WEF program, which is available for some FDA-regulated products, allows entry filers to file a single entry estimating the amount of merchandise anticipated to be removed from an FTZ and offered for U.S. consumption during a 7-day period. To participate, we recommend respondents who wish to file a weekly entry of FDA-regulated products with CBP to first request a preliminary assessment from FDA. As part of this assessment, we recommend submission of the following information:

- FDA Import Division(s) [1] with geographic oversight over the FTZ location;
- Identification of whether products are manufactured or stored in the FTZ;
- FTZ site/subzone number and address;
- Importer of Record (IOR) Facility Establishment Identifier (FEI), if known;
- Manufacturer FEI, if known; and
- Port of entry.

The division information is necessary so that we can appropriately route the submission within the Agency. Information on whether the product is stored or manufactured in the zone is necessary for FDA to determine the applicable admissibility requirements. The FTZ and port information is necessary to ensure that basic requirements in 19 CFR part 146 are met. The IOR and manufacturer FEI information is requested by FDA to expedite the admissibility review. Requests to participate in the WEF process are submitted to the FDA Import Division Office covering the intended port of entry.

We are also revising the information collection to include our Import Trade Auxiliary Communication System (ITACS), currently approved under OMB control number 0910–0842. The ITACS is used by the import trade community and was implemented to improve communication with FDA. By utilizing ITACS, respondents to the information collection have the ability to establish an account and electronically check the status of FDA-regulated entries and lines, submit entry documentation, submit the location of goods availability for those lines targeted for examination by FDA, and check the estimated laboratory analysis completion dates for lines that have been sampled. For further information regarding ITACS, please visit our website at *https://www.fda.gov/industry/import-systems/itacs.*

In the **Federal Register** of January 3, 2020 (85 FR 318), we published a 60-day notice requesting public comment on the proposed collection of information. No comments were received. Upon review of our active information collection inventory, however, and on our own initiative, we have decided to make additional revisions to the information collection to improve the efficiency of Agency operations. Specifically, we are including Form FDA 766 ''Application for Authorization to Relabel or to Perform Other Action of the Federal Food, Drug, and Cosmetic Act and Other Related Acts'' (currently approved under OMB control number 0910–0025) as the collection instrument for 21 CFR 1.95. Form FDA 766 facilitates collection of information associated with certain general enforcement provisions for importing FDA-regulated articles into the United States. The form

[1] Some FTZs are covered by multiple Import Divisions.

is available on the internet at *https://www.fda.gov/industry/actions-enforcement/reconditioning.*

Relatedly, we also are revising the information collection to include reference to Agency guidance entitled ''Pre-Launch Activities Importation Requests (PLAIR).'' Historically, when applicants with a pending new drug application, abbreviated new drug application, or Center of Drug Evaluation and Research-regulated biologics licensing application (information collection associated with these submissions is currently approved under OMB control number 0910–0001) sought to import unapproved finished dosage form drug products into the United States in preparation for market launch, we considered such requests, informally referred to as ''PLAIRs,'' on a case-by-case basis. Since implementing the PLAIR program in 2013, interest continues to increase, so we continue to develop a more formalized process.

Accordingly, to facilitate submissions and improve our own efficiencies, we published a notice of availability in the **Federal Register** of July 24, 2013 (78 FR 44572), announcing a draft guidance document discussing our PLAIR program, including an analysis under the PRA of the burden we estimate is attributable to the applicable information collection activities. We ultimately intend to finalize the guidance document to further clarify our recommendations on what products are eligible for a PLAIR, what information should be included in a PLAIR submission, when and how a PLAIR can be submitted to FDA, and the circumstances under which the Agency intends to grant a PLAIR. We therefore are including this estimate to account for burden that may be associated with this information collection. The draft guidance is available from our website at: *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/human-drug-imports* and is being issued consistent with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment on Agency guidance documents at any time.

Description of Respondents: Respondents to the information collection are domestic and foreign importers of FDA-regulated articles being imported or offered for import into the United States and entry filers who submit import entries on behalf of these importers.

As a result of these revisions, we have adjusted our burden estimate for the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part 1, subpart D	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Importers submission of data elements (preparing the required information).	85,480	10.05	859,074	0.05576 hours (3.346 minutes)	47,902
Entry filers (unique lines only)	3,419	12,196	41,698,124	0.04466 hours (2.68 minutes)	1,862,238
WEF participants	15	1	15	0.87 hours (52 minutes)	13.05
ITACS; creation of new account	500	1	1	0.5 (30 minutes)	250
Form FDA 766	324	1	324	0.25 (15 minutes)	81
Submissions in accordance w/PLAIR	70	5	350	16	5,600
Total			42,557,888		1,916,084

[1] There are no capital or operational and maintenance costs associated with the information collection.

As reflected in table 1, rows 1 and 2, we estimate 85,480 importers and 3,419 entry filers will make submissions. An importer of record may be the owner or purchaser of the article being imported or offered for import, or a customs broker licensed by CBP under 19 U.S.C. 1641 who has been designated by the owner, purchaser, or consignee to file the import entry. There is only one importer of record per entry. We have updated the number of responses and respondents since last OMB review of the information collection to reflect the best data available to the Agency from January 1, 2018, to December 31, 2018. We retain our currently approved estimate of the number of responses per respondent and time per response as representative of the industry average.

As reflected in table 1, row 3, we estimate 15 respondents will submit WEFs. Persons wishing to file weekly entries of FDA regulated products are encouraged to provide the information identified so that FDA can conduct a preliminary admissibility assessment of the associated products and firms. This submission typically contains the information FDA requests for multiple products (*i.e.,* the respondent wishes to file weekly entries for multiple products and submits the information for each product together). Generally, submissions involving multiple products are significantly less burdensome on a per-product basis. We estimate that the burden for each product in a WEF submission is approximately 52.5 minutes, for a total of 13.125 hours annually. Depending on the product and scale of submission, this estimated burden can fall to as low as 15 minutes per product. The reason why this burden can be significantly higher than an ACE submission is that the WEF submission is done manually, typically through a spreadsheet. Filers submitting in ACE typically use software that is developed to specifically automate and expedite the entry submission process and allows filers to automatically upload entry information. While the WEF submission includes an initial one-time submission burden, we expect reduced burden over a long term because filers can subsequently submit one entry covering multiple withdrawals from the FTZ in any given 7-day period.

As reflected in table 1, row 4, we estimate that 500 new ITACS accounts will be created annually. Since developing and implementing ITACS, we believe that most users have already created an account and, therefore, we have adjusted this estimate downward since last OMB review and approval.

As reflected in table 1, row 5, we estimate the submission of 324 Forms FDA 766 in conjunction with FDA-regulated products. This figure is based on Agency import data and our experience with the information collection. We assume it takes respondents 15 minutes to complete and submit Form FDA 766. Although current instructions communicate that four copies be submitted (one copy to be returned to respondent), we plan to update the form to reduce this number.

As reflected in table 1, row 6, we estimate 70 submissions under the PLAIR program. Since implementation of PLAIR there has been significant interest. We have therefore doubled our original estimate of 35 to 70 respondents annually but retain the average burden per response of 16 hours to provide the information recommended in the draft guidance.

Cumulatively these changes and adjustments result in a reduction in annual responses by 40,111,035 and an increase in burden hours by 130,572. These changes and adjustments reflect the realization of one-time burden associated with conforming to new CBP electronic reporting requirements since last OMB approval of the information collection that we believe no longer applies. Finally, we consolidated related information collection activities associated with CFR part 1, subparts D (§§ 1.70 through 1.81) and E (§§ 1.83 through 1.101) governing FDA import activities.

Dated: April 14, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–08763 Filed 4–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0609]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Drug Supply Chain Security Act Implementation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 26, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0806. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Drug Supply Chain Security Act Implementation OMB Control Number 0910–0806—Revision

This information collection supports Agency implementation of section 582 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360eee–1) (FD&C Act) as revised by the Drug Supply Chain Security Act (DSCSA) (Pub. L. 113–54). For efficiency of Agency operations, we are revising information collection currently approved under OMB control number 0910–0806 pertaining to certain provisions of the DSCSA to also include information collection activity associated with waivers, exceptions, and exemptions from requirements. Finally, we are revising the title of the information collection from ''Identification of Suspect Product and Notification'' to ''Drug Supply Chain Security Act Implementation'' to reflect the broadening scope of this information collection request. As information collection activity is planned and undertaken by FDA, we find consolidating related collection elements better utilizes our resources. We have developed guidance to assist respondents to the information collection with this topic and are including it in the information collection accordingly.

In the **Federal Register** of May 9, 2018 (83 FR 21297), we published a notice announcing the availability of a draft guidance for industry entitled ''Waivers, Exceptions, and Exemptions From the Requirements of Section 582 of the Federal Food, Drug, and Cosmetic Act,'' including an analysis and inviting public comment under the PRA regarding the proposed information collection.

The draft guidance was issued consistent with FDA's good guidance practice regulation (21 CFR 10.115) which provides for public comment at any time. We intend to finalize the guidance document and are seeking OMB approval of the attendant information collection discussed in the document.

The most recent version of the draft guidance is available at: *https://www.fda.gov/media/113342/download.*

In the 2018 NOA, we estimated that annually 20 trading partners or stakeholders would submit approximately 20 requests for a waiver, exception, or exemption. This estimate was based on communications we had with trading partners and stakeholders since the 2013 enactment of the DSCSA. We also estimated that it would require an average of 40 hours for respondents to prepare and submit each request and to submit any additional followup information that we may request, for a total burden of approximately 800 hours.

As described in the draft guidance, a recipient of a waiver, exception, or exemption should notify us whenever there is a material change in the circumstances that is the basis for the relief. In addition, we intend to biennially review waivers, exceptions, and exemptions that extend longer than 2 years in duration and may ask the recipient to submit information to determine whether a material change in the circumstances has occurred. We estimated that annually we would receive approximately 1 notification or other information from approximately 1 respondent that there has or has not been a material change in the circumstances that warranted the waiver, exception, or exemption and that each notification will require approximately 16 hours to prepare and submit to us, for a total of approximately 16 hours.

A trading partner may request that we renew a waiver, exception, or exemption that is of limited duration. This request should include a detailed statement justifying the continuance of the relief and the desired length of the extension. We estimated that annually we would receive approximately 1 renewal request from approximately 1 respondent and that each request would require approximately 16 hours to prepare and submit to us, for a total of approximately 16 hours.

To address the comment that that it will require more than 40 hours to prepare and submit requests for a waiver, exception, or exemption from the requirements of section 582 of the FD&C Act and to submit any additional follow up information that we may request, we increased the estimate to 80 hours. Therefore, we now estimate that the total annual burden hours for submitting these requests is

approximately 1,600 hours, for a new total of 1,632 hours (table 1).

We have therefore adjusted our estimated burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Respondent activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests to FDA for a Waiver, Exception, or Exemption	20	1	20	80	1,600
Notifications to FDA of a Material Change in Circumstances Warranting the Waiver, Exception, or Exemption	1	1	1	16	16
Requests to FDA to Renew a Waiver, Exception, or Exemption	1	1	1	16	16
Total					1,632

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 15, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–08766 Filed 4–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0278]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 23, 2020.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0278–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. Information Collection Request Title: 0990–0278—Federalwide Assurance Form.

Abstract: Assistant Secretary for Health, Office for Human Research Protections is requesting a three year extension of the Federalwide Assurance (FWA). The FWA is designed to provide a simplified procedure for institutions engaged in HHS-conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and HHS Regulations for the protection of human subjects at 45 CFR 46.103.

Likely Respondents: Institutions engaged in human subjects research that is conducted or supported by HHS.

ESTIMATE ANNUALIZED BURDEN IN HOURS TABLE

Form name	Number of respondents	Number of responses per respondent	Hours per response	Response burden hours
Federalwide Assurance (FWA)	14,000	2.0	30/60	14,000

Dated: April 20, 2020.

Sherrette A. Funn,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2020–08702 Filed 4–23–20; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, May 12, 2020, 12:30 p.m. to May 13, 2020, 3:00 p.m., National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20817 which was published in the **Federal Register** on April 10, 2020, 85 FR 20285.

This notice is being amended to change the start time of the closed session on May 12, 2020, from 12:30 p.m. to 12:00 p.m. The closed session will now be held from 12:00 p.m. to 1:00 p.m. The meeting is partially closed to the public.

Dated: April 21, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08779 Filed 4–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Neurological Disorders and Stroke Council, May 27, 2020, 12:30 p.m. to May 28, 2020, 01:00 p.m., National Institutes of Health, Neuroscience Center, Bethesda, MD, 20892 which was published in the **Federal Register** on October 18, 2019, 84FR55974.

The meeting notice is to change the meeting format from in person to video assisted meeting and to change the meeting times each day. The new meeting times are Wednesday, May 27, 2020, from 1 p.m. to 5 p.m. (open session) and Thursday, May 28, 2020, from 1 p.m. to 5 p.m. (closed session). The meeting is partially Closed to the public.

Visit NINDS homepage for more info: *https://www.ninds.nih.gov/News-Events/Events-Proceedings/Events/National-Advisory-Council-NANDSC-Meeting-May-2020.*

Open session will be videocast from this link: *https://videocast.nih.gov/watch=36177.*

Dated: *April 17, 2020.*

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08683 Filed 4–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: May 26, 2020.

Time: 10:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892 (Telephone Conference Call)

Contact Person: Julio C. Aliberti, Ph.D., Scientific Review Officer, Immunology Review Branch, Division of Extramural Activities, National Institutes of Health, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Room 3G53, Rockville, MD 20892–9823 301–761–7322, *julio.aliberti@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 17, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08684 Filed 4–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Board on Medical Rehabilitation Research. May 4, 2020, 10:00 a.m. to 2:00 p.m., National Institute of Child Health & Human Development, 6710B Rockledge Drive, Room 1425/1427, Bethesda, MD 20892 (Virtual Meeting) which was published in the **Federal Register** on April 16, 2020, 85 FR 74.

The meeting of the National Advisory Board on Medical Rehabilitation Research the has been cancelled for May 4, 2020. The May 4, 2020 meeting of the National Advisory Board on Medical Rehabilitation Research will be rescheduled for a later date.

Dated: April 21, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08776 Filed 4–23–20; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Virology.

Date: May 1, 2020.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, (301) 827–7233, *susan.boyle-vavra@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 21, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08777 Filed 4–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Aging, May 26, 2020, 1:00 p.m. to May 26, 2020, 5:00 p.m., National Institute on Aging, Gateway

Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 which was published in the **Federal Register** on December 06, 2019, 84 FR 66922.

This notice is being amended to change the meeting date, time, location and contact person from May 26–27, 2020, 3:00 p.m. to 12:45 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 to May 26, 2020, 1:00 p.m. to 5:00 p.m., a virtual meeting.

Contact Person: Kenneth Santora, Ph.D., Director, Office of Extramural Activities, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *ksantora@nih.gov.* Any member of the public may submit written comments no later than 15 days after the meeting.

Dated: April 21, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08778 Filed 4–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR R35 Award Review.

Date: June 4, 2020.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 664 Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 664, Bethesda, MD 20892, 301–402–8559 *jimok.kim@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 20, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–08682 Filed 4–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on April 30, 2020. The topic for this meeting will be ''Improving Cardiovascular Outcomes in People with Type 1 Diabetes.'' The meeting is open to the public.

DATES: The meeting will be held on April 30, 2020 from noon to 3:00 p.m.

ADDRESSES: The meeting will be held via videoconference. For details, and to register, please contact *dmicc@mail.nih.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, including a draft agenda, see the DMICC website, *www.diabetescommittee.gov,* or contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–496–6623; FAX: 301–480–6741; email: *dmicc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: In accordance, with 42 U.S. Code § 202F;285c–3, the DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The April 30, 2020 DMICC meeting will focus on ''Improving Cardiovascular Outcomes in People with Type 1 Diabetes.''

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 5 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC website, *www.diabetescommittee.gov.*

Dated: April 20, 2020.

Bruce T. Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2020–08685 Filed 4–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0021; OMB No. 1660–0118]

Agency Information Collection Activities: Proposed Collection; Comment Request; Homeland Security Exercise and Evaluation Program (HSEEP) Documentation

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the After Action Report/Improvement Plans, Training and Exercise Plans, and Nominations to the National Exercise Program which are used to validate current preparedness capabilities and support future national exercise efforts.

DATES: Comments must be submitted on or before June 23, 2020.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0021. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Presidential Policy Directive 8 (PPD–8: National Preparedness), issued on March 30, 2011, establishes a National Preparedness Goal (NPG) that identifies the core capabilities necessary for preparedness and a National Preparedness System (NPS) which guides activities to enable the Nation to achieve the NPG. The NPS allows the Nation to track the progress of our ability to build and improve the capabilities necessary to prevent, protect against, mitigate the effects of, respond to, and recover from those threats that pose the greatest risk to the security of the Nation.

The NPS provides an integrated approach to preparedness that can be implemented and measured at all levels of government. This system is an all-of-Nation and whole community approach to preparedness, from neighborhood organizations to civic groups and private businesses. It contains a methodical approach integrated across the preparedness cycle and links together programs and requirements into a comprehensive system, driving rational decision-making and allowing for a direct and defensible assessment of progress against clearly defined objectives.

The NPS is based on a consistent methodology for assessing the threats and hazards facing a given jurisdiction. The findings of the assessment drive planning factors and all other components of the preparedness cycle including resource requirements, existing capabilities and capability gaps, driving investments to close those gaps, making and validating improvements in capabilities through training and exercising, and continually assessing progress.

Section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)) also provides for these exercises and states the Administrator ''shall carry out a national exercise program to test and evaluate the national preparedness goal, National Incident Management System, National Response, and other related plans and strategies.'' The Homeland Security Exercise and Evaluation Program (HSEEP) provides the program structure, multi-year planning system, tools, and guidance necessary for entities to build and sustain exercise programs that enhance homeland security capabilities, and ultimately, preparedness. The HSEEP After Action Report Improvement, Training and Exercise Plan, and National Exercise Program Nomination Forms provide the standardized methods for reporting the results of exercises, identifying exercise program priorities, and submitting exercise nominations necessary to validate national preparedness capabilities.

The HSEEP After Action Improvement Plan will now be submitted from Indian Tribal governments and an additional annual form will be required in addition to the one form per quarter requirement resulting in a small increase in the burden hours due to an increase in the number of reports estimated to be submitted.

Collection of Information

Title: Homeland Security Exercise and Evaluation Program (HSEEP) Documentation.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0118.

FEMA Forms: FEMA Form FEMA Form 091–0, After Action Report/Improvement Plan (AAR/IP); FEMA Form 008–0–26, Multi-Year Training Exercise Plan (TEP); FEMA Form 008–0–27, National Exercise Program (NEP) Nomination Form.

Abstract: The Homeland Security Exercise and Evaluation Program (HSEEP) Documentation collection provides reporting on the results of preparedness exercises and provides assessments of the respondents' capabilities so that strengths and areas for improvement are identified, corrected, and shared as appropriate prior to a real incident. This information is also required to be submitted as part of certain FEMA grant programs.

Affected Public: State, local, or Tribal governments.

Estimated Number of Respondents: 268.

Estimated Number of Responses: 704.

Estimated Total Annual Burden Hours: 23,208 hours.

Estimated Total Annual Respondent Cost: $1,469,995.

Estimated Respondents' Operation and Maintenance Costs: 0.

Estimated Respondents' Capital and Start-Up Costs: 0.

Estimated Total Annual Cost to the Federal Government: $67,950.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including

whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2020–08757 Filed 4–23–20; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7033–N–03]

60-Day Notice of Proposed Information Collection: Assessment of HUD Lead Hazard Control Grant Program Evaluation and Control Procedures

AGENCY: HUD Office of Lead Hazard Control and Healthy Homes, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 23, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Assessment of HUD Lead Hazard Control Grant Program Evaluation and Control Procedures.

OMB Approval Number: 2539–XXXX.

Type of Request: New.

Form Numbers: Not applicable. It will be an on-line survey.

Description of the need for the information and proposed use: New evaluation of the effectiveness of OLHCHH grantees in producing lead-safe housing, repairing or eliminating lead-based paint hazards.

Respondents: States, cities and municipalities that are previous or current LHC grantees.

Estimated Number of Respondents: 200.

Estimated Number of Responses: 230.

Frequency of Response: One time for all respondents and two times for a small sub-set that will receive follow-up questions.

Average Hours per Response: 11.1.

Total Estimated Burdens: 2,560 hours, $126,822.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The Director of the Office of Lead Hazard Control and Healthy Homes, Matthew Ammon, having reviewed and approved this document, is delegating the authority to electronically sign this document to Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the **Federal Register.**

Dated: April 21, 2020.

Nacheshia Foxx,

Federal Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–08745 Filed 4–23–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–04; OMB Control No.: 2502–0313]

60-Day Notice of Proposed Information Collection: Technical Suitability of Products Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 23, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing

and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Technical Suitability of Products Program.

OMB Approval Number: 2502–0313.

OMB Expiration Date: 10/31/2020.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–92005, Description of Materials.

Description of the need for the information and proposed use: This information is needed under HUD's Technical Suitability of Products Program, which provides for the acceptance of new materials and products used in buildings financed with HUD-insured mortgages. This includes new single-family homes, multi-family housing and health care type facilities.

Respondents (*i.e.* affected public): Business or other for-profit.

Estimated Number of Respondents: 41.

Estimated Number of Responses: 41.

Frequency of Response: 1.

Average Hours per Response: 26.

Total Estimated Burden: 1,189.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) 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;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The General Deputy Assistant Secretary for Housing, John L. Garvin, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the **Federal Register** Liaison for HUD, for purposes of publication in the **Federal Register**.

Dated: April 21, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Development.

[FR Doc. 2020–08729 Filed 4–23–20; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: May 4, 2020, 9:30 a.m.–11:30 a.m.

PLACE: Via tele-conference.

STATUS: Meeting of the Board of Directors, Open to the Public.

MATTERS TO BE CONSIDERED:

- Call to order
- Approval of the Minutes from the November 19, 2020, Meeting of the Board of Directors and Advisory Council
- Agenda overview and IAF President/CEO updates
- COVID–19 Impact and Response
- Management Team Updates
- New Business
- Adjournment

FOR DIAL IN INFORMATION CONTACT: Karen Vargas, Executive Assistant, (202) 524–8869.

CONTACT PERSON FOR MORE INFORMATION: Aswathi Zachariah, General Counsel, (202) 683–7118.

Aswathi Zachariah,

General Counsel.

[FR Doc. 2020–08886 Filed 4–22–20; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X LLUT912000 L13140000.PP0000]

Notice of Public Meeting, Utah Resource Advisory Council, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah RAC is scheduled to meet on June 10, 2020, from 8 a.m. to 3:30 p.m. A teleconference may substitute an in-person meeting if public health restrictions are in effect.

ADDRESSES: The meeting will be held at the Richfield Interagency Fire Center, 2031 South Industrial Park Road, Richfield, Utah 84701. Written comments to address the RAC may be sent to the BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, or via email to *BLM_UT_External_Affairs@blm.gov* with the subject line ''Utah RAC Meeting.''

FOR FURTHER INFORMATION CONTACT: Lola Bird, Public Affairs Specialist, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4033; or email *lbird@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1 (800) 877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The Utah RAC advises the Secretary of the Interior, through the BLM, on a variety of public lands issues. Agenda topics will include BLM Utah priorities, Desolation River Program and Price Field Office Campground Business Plans, wild horse and burro program

update, BLM regulations update, Washington County planning updates, a tour of the Richfield Interagency Fire Center, and other issues as appropriate. The final agenda and meeting information will be posted on the Utah RAC website 30 days before the meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/RAC.*

The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals. The RAC will offer a 30-minute public comment period. Depending on the number of people wishing to comment and the time available, the time for individual comments may be limited. Written comments may also be sent to the BLM Utah State Office at the address listed in the **ADDRESSES** section of this notice. All comments received will be provided to the Utah RAC. Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Detailed meeting minutes for the Utah RAC meeting will be maintained in the BLM Utah State Office and will be available for public inspection and reproduction during regular business hours within ninety (90) days following the meeting. Notes will also be posted to the Utah RAC website.

Authority: 43 CFR 1784.4–2.

Anita Bilbao,

Acting State Director.

[FR Doc. 2020–08781 Filed 4–23–20; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L13400000.DT0000 20X; MO 4500143086]

Notice of Availability of the Record of Decision for the Haiwee Geothermal Leasing Area Project, Inyo County, California, and Amendment to the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Record of Decision (ROD) to amend the California Desert Conservation Area (CDCA) Plan for the Haiwee Geothermal Leasing Area (HGLA) Project, and by this notice is announcing its availability. The decision amends the CDCA Plan to allow for geothermal leasing within approximately 22,800 acres, authorizes three geothermal lease applications for 4,460 acres of public lands within the HGLA, and modifies the management of four Areas of Critical Environmental Concern (ACECs) to allow for surface occupancy of geothermal development. Part of this decision is subject to appeal under Departmental regulations.

DATES: The California State Director signed the ROD on April 23, 2020.

ADDRESSES: The Record of Decision and Land Use Plan Amendment is available on the internet at *https://go.usa.gov/xEnvy.*

FOR FURTHER INFORMATION CONTACT: Greg Miller, BLM Assistant District Manager, Resources, telephone (951) 697–5216; address, Bureau of Land Management, California Desert District, 22835 Calle San Juan De Los Lagos

Moreno Valley, CA 92553; or email *blm_ca_haiwee_geothermal@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at (800) 877–8339 to contact Mr. Miller during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The HGLA Draft EIS and Draft Proposed Amendment to the CDCA was published on May 10, 2012 (77 FR 27478), and public meetings were held in June 2012. As a result of the review of the comments, the BLM conducted a more detailed study to address projected water use by geothermal facilities should they be allowed in the HGLA. Argonne National Laboratories conducted the study and provided BLM a report in January 2016. Additionally, new land use designations approved with the Desert Renewable Energy Conservation Plan amendment to the CDCA Plan in September of 2016, required analysis of a new alternative that considered the new land use designations. Based on these two developments, the BLM prepared a CDCA Plan Amendment and Draft Supplemental EIS for the project. The Draft Supplemental EIS analyzed the Proposed Action and two action alternatives, in addition to the No Action Alternative.

The BLM received three geothermal lease applications for 4,460 acres of public land within the HGLA in 2002. In addition, the BLM identified approximately 18,345 acres of public lands, also within the Haiwee Proposed Project Area and adjacent to the three geothermal lease applications, which will be considered for competitive geothermal leasing under 43 CFR 3203.10(e). The proposed action is to amend the CDCA Plan to allow project area lands to be leased under the authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*) and to modify the management of four ACECs to allow for surface occupancy of geothermal development. The leasing of public lands for geothermal resources required an amendment to the CDCA Plan, which is authorized by the FLPMA Section 202(43 U.S.C. 1712) and 43 CFR 1610.5–5. Total acreage considered for geothermal leasing is approximately 22,800 acres.

On May 3, 2019, the Draft Supplemental EIS and Draft Land Use Plan Amendment was available for a 90-day public comment period (84 FR 19106). The BLM received seven comment letters during the comment period. The BLM considered and incorporated, as appropriate, public comments on the Draft EIS, Draft Supplemental EIS, and Draft Land Use Plan Amendment and internal agency review into the proposed plan amendment. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use plan decisions. A response to substantive comments is included as an appendix to the Final EIS and Proposed Land Use Plan Amendment.

The publication of the HGLA Final EIS and Proposed Land Use Amendment initiated a 30-day protest period, which closed on February 24, 2020 (85 FR 4338). The BLM received three valid protests. The BLM has considered and resolved the protest on the HGLA Final EIS and Proposed Land Use Amendment. The BLM's protest resolution report to those protests can be found at *https://www.blm.gov/programs/planning-and-nepa/public-participation*/protest-resolution-reports.

In accordance with the regulations at 43 CFR 1610.3–2(e), the BLM submitted the Final EIS and Proposed Land Use Amendment for a 60-day Governor's Consistency Review on February 6,

2020. The Governor did not respond with any findings of inconsistency.

With this ROD, the BLM adopts the Agency Preferred Alternative. The decision to authorize the existing non-competitive geothermal lease applications may be appealed to the Interior Board of Land Appeals in accordance with the regulations contained in 43 CFR part 4. Appeal and stay procedures are outlined in Form 1842–1. All Notices of Appeal, Statement of Reasons, and mailing must follow the requirements and timelines outlined in 43 CFR part 4.

(Authority: 40 CFR 1506.6; 40 CFR 1506.10; 43 CFR 1610.2; 43 CFR 1610.5; 42 U.S.C. 4370m–6(a)(1))

Danielle Chi,

Deputy State Director, Resources.

[FR Doc. 2020–08659 Filed 4–23–20; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR01114000, 20XR0680A5, RA.5221203.0019100]

Notice of Intent to Prepare an Environmental Impact Statement and Public Scoping Virtual Meeting Room for the Leavenworth National Fish Hatchery Surface Water Intake Fish Screens and Fish Passage Project, Chelan County, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: The Bureau of Reclamation (Reclamation) intends to prepare an Environmental Impact Statement (EIS) on the Leavenworth National Fish Hatchery (LNFH) Surface Water Intake Fish Screens and Fish Passage (SWISP) Project. Reclamation is requesting public and agency comment to identify significant issues or other alternatives to be considered in the EIS.

DATES: The public will have the opportunity to participate in the scoping process by providing written scoping comments, providing input through a web-based virtual meeting room from April 24, 2020, to May 26, 2020, and/or participating in a question and answer teleconference on May 18, 2020 from 4 p.m. to 6 p.m. (PDT).

ADDRESSES: Provide written scoping comments, requests to be added to the mailing list, or other special assistance needs to Mr. Jason Sutter, EIS Team Lead, Bureau of Reclamation, Columbia–Pacific Northwest Regional Office, 1150 N. Curtis Road, Boise, ID 83706 or email *BOR-SHA-PNRLSWISP@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: For requests to be added to the mailing list, or other special assistance needs, please contact Mr. Jason Sutter, at the address or email provided in the **ADDRESSES** section or by telephone at (208) 378–5390 or facsimile (509) 454–5650. Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FedRelay) at 1–800–877–8339 TTY/ASCII to contact the above individual during normal business hours or to leave a message or question after hours. You will receive a reply during normal business hours. Information on this project, including details for the public question and answer teleconference, may also be found at: *https://www.usbr.gov/pn/programs/leavenworth/swisp/index.html.*

SUPPLEMENTARY INFORMATION: Reclamation is issuing this notice pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 *et seq.;* the Council on Environmental Quality's regulations for implementing NEPA, 43 CFR parts 1500 through 1508; and the Department of the Interior's NEPA regulations, 43 CFR part 46. The virtual meeting will be accessible at *https://virtualpublicmeeting.com/leavenworth-swisp-eis.* Website visitors will be able to view public meeting materials, pose questions, view answers, and submit comments. Please monitor the project website for any changes or updates at *https://www.usbr.gov/pn/programs/leavenworth/swisp/index.html.*

Background

The LNFH was designed and constructed in the late 1930s as mitigation for the construction of Grand Coulee Dam. The hatchery, which is operated by the U.S. Fish and Wildlife Service (USFWS) and funded by Reclamation and Bonneville Power Administration, produces 1.2 million spring Chinook Salmon smolts annually that are released into Icicle Creek.

The LNFH's primary point of diversion and water delivery system on Icicle Creek is nearly 80 years old and is reaching or exceeding its operational life. Rehabilitation, replacement, and modernization of the LNFH surface water intake and delivery system was evaluated in the 2002 USFWS Icicle Creek Restoration Project Final EIS and the 2019 Icicle Creek Water Resource Management Strategy Final Programmatic EIS prepared by the State of Washington Department of Ecology and Chelan County under the Washington State Environmental Policy Act. Currently, the intake facility does not comply with National Marine Fisheries Service (NMFS) criteria for anadromous salmonids. The 2017 NMFS biological opinion covering LNFH operations requires the LNFH to have a surface water intake and delivery system that complies with NMFS current screening and fish passage criteria for anadromous fish passage facilities in place and operating by May 2023.

In addition to meeting legal requirements, LNFH needs to improve employee safety when operating and maintaining intake and delivery facilities, improve flow control and water conservation capabilities, effectively manage sediment adversely affecting the water delivery system, and increase reliability and longevity of the system. The purpose of the SWISP Project is to minimize take of ESA-listed fish species, provide fish passage that complies with current regulatory criteria, and ensure safe, efficient, and reliable delivery of LNFH's full surface water rights from Icicle Creek.

Reclamation proposes to rehabilitate the LNFH intake and delivery system on Icicle Creek by constructing new headworks and a creek-width roughened channel, and replacing/lining the surface water conveyance pipeline to the hatchery. In addition, the current intake access road would be modified and extended to provide better entry to an expanded intake operations and maintenance area. Construction of the headworks and roughened channel would incorporate the existing low-head diversion dam and intake channel. Self-cleaning, cylindrical fish screens would be installed at the diversion headworks, and a low-flow boulder weir fishway would be integrated into the roughened channel. A new pipeline would be placed in the intake channel to connect the headworks to the conveyance pipeline. The intake channel would be filled to cover the pipeline and create the intake operations and maintenance area. The conveyance pipeline would be replaced on USFWS lands and lined with cure-in-place liner on private parcels. Several manhole access points along the existing conveyance pipeline alignment would be constructed to provide ingress and egress for pipe lining on private lands.

Reclamation is not presently aware of any known or possible Indian Trust Assets, Indian Sacred Sites, or Environmental Justice issues associated with the proposed action, but requests any information relative to this issue be submitted during the scoping period.

Reclamation intends to complete an EIS for this project pursuant to the NEPA. The EIS will analyze the potential environmental effects of the proposed action, a no-action alternative, and a reasonable range of alternatives designed to respond to the purpose and need for the project. The 30-day scoping process and the virtual meetings identified in this notice are intended to inform the public about the project and to request public and agency comment to identify significant issues or alternatives to be addressed in the EIS.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Lorri J. Gray,

Regional Director, Bureau of Reclamation, Interior Region 9—Columbia–Pacific Northwest.

[FR Doc. 2020–08671 Filed 4–23–20; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

Petitions for Duty Suspensions and Reductions; Notice That the Commission Will Accept Additional Comments Through Its Website Relating to Certain Petitions Included in Its Preliminary Report to the Congress

AGENCY: United States International Trade Commission.

ACTION: Notice that the Commission will accept additional comments from the public, during the period June 12 to June 22, 2020, on petitions for duty suspensions and reductions that the Commission places in Category VI in the preliminary report that it sends to the House Committee on Ways and Means and the Senate Committee on Finance on June 9, 2020.

SUMMARY: The Commission will provide a limited opportunity for members of the public to submit additional comments on certain petitions for duty suspensions and reductions. Under the American Manufacturing Competitiveness Act of 2016 (the Act), the Commission must submit its preliminary report on the petitions for duty suspensions and reductions that have been filed with it to the House Committee on Ways and Means and the Senate Committee on Finance on June 9, 2020.

In that report, the Commission must categorize each petition as either (a) a petition that meets the requirements of the Act with or without modification (Category I, II, III, or IV petitions), (b) a petition that does not contain the information required by the Act or that was not filed by a likely beneficiary (Category V petitions), or (c) a petition that the Commission does not recommend for inclusion in a miscellaneous tariff bill (Category VI petitions). The Commission has decided that it will accept additional comments from the public on any petitions that are listed as Category VI petitions for a ten-day period beginning on June 12, 2020, at 8:45 a.m. As provided below, all such comments must be submitted to the Commission electronically through the Commission website *https://mtbps.usitc.gov.* The Commission will not accept comments filed in paper form or in any other form or format.

DATES:

June 12, 2020, 8:45 a.m. EST: Opening date and time for submission of additional comments on Category VI petitions.

June 22, 2020, 5:15 p.m. EST: Closing date and time for submission of comments on Category VI petitions.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. You may view the public file for this proceeding on the Commission's Miscellaneous Tariff Bill Petition System (MTBPS) at *https://mtbps.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: For general inquiries, contact Jennifer Rohrbach at *mtbinfo@usitc.gov.* For filing inquiries, contact the Office of the Secretary, Docket Services, U.S. International Trade Commission, telephone (202) 205–3238. The media should contact Peg O'Laughlin, Public Affairs Officer (202–205–1819 or *margaret.olaughlin@usitc.gov*). You may obtain general information concerning the Commission at *https://www.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The American Manufacturing Competitiveness Act of 2016 (the Act), 19 U.S.C. 1332 note, established a process for the submission and consideration of requests for temporary duty suspensions and reductions. As required by the Act, the Commission initiated the process by publishing a notice in the **Federal Register** permitting members of the public to submit petitions for duty suspensions and reductions to the Commission during a 60-day period beginning October 11, 2019 (84 FR 54924). After the period for filing petitions closed on December 10, 2020, the Commission published, as required by the Act, a notice in the **Federal Register** announcing publication on its website of the petitions for duty suspensions and reductions that were submitted to the Commission and not withdrawn (85 FR 1327). The notice invited members of the public to submit comments on these petitions during a 45-day period, which ended February 24, 2020.

Pursuant to the Act, the Commission is required to submit preliminary and final reports on the petitions to the House Committee on Ways and Means and the Senate Committee on Finance (the Committees). The Commission's preliminary report must be submitted to the Committees by June 9, 2020. In its preliminary report to the Committees, the Commission must evaluate each petition to determine whether it meets the requirements of the Act and should be included in an omnibus miscellaneous tariff bill.

In preparing its report, the Act requires that the Commission take into account the report of the Secretary of the U.S. Department of Commerce (Commerce), issued April 9, 2020. In that report, the Secretary analyzed, for each petition, whether there was domestic production of the article that was the subject of a petition, and, if so, whether a domestic producer of the article objected to the petition. Based on consultations with U.S. Customs and Border Protection (CBP), the Secretary also recommended in that report whether any technical changes were necessary to make each petition's article description administrable.

In its preliminary report, the Commission must place each petition into one of six categories. Specifically, the Commission must categorize each petition as: (1) A petition that meets the requirements of the Act without modification (Category I petition); (2) a petition that meets the requirements of the Act with certain modifications (Category II, III, or IV petitions); (3) a petition that does not contain the information required by the Act or was not filed by a likely beneficiary (Category V petition); or (4) a petition that the Commission does not recommend for inclusion in a miscellaneous tariff bill (Category VI petition).

The Commission has decided to re-open its online portal for the limited purpose of allowing members of the public to submit comments on petitions that the Commission has categorized as Category VI petitions in its preliminary report. The Commission will re-open the portal for this limited purpose on June 12, 2020, at 8:45 a.m. and close the portal on June 22, 2020, at 5:15 p.m. As discussed below, the Commission will accept only information from the public that relates to the Commission's decision to place a petition into Category VI.

Content of Comments: The public will be able to comment on the administrability of the article descriptions in a petition, the existence of domestic producer objections to a petition, and other issues affecting the placement of a petition in Category VI. In particular, the Commission seeks input that would clarify the scope of a proposed article description in a Category VI petition, including the constituent materials in the intended merchandise or similar information that would help verify the classification of the goods in chapters 1–97 of the Harmonized Tariff Schedule of the United States (HTS). Similarly, the Commission seeks information that could clarify technical criteria, distinguish the intended article in a petition from other goods in the same rate line, or narrow the scope of an article description to mitigate domestic producer objections as contemplated by the Act's description of Category IV. The Commission will not consider comments that seek to broaden or materially amend the nature of the goods covered in the original article description.

Procedures for Filing a Comment

Who may file. Any member of the public may file comments, including the firm or its representative who filed the petition. However, the Commission will consider only comments that relate to petitions listed under Category VI in the preliminary report that the Commission submits to the Committees on June 9, 2020. The Commission will not consider comments that relate to petitions listed under Categories I, II, III, IV, and V in the preliminary report.

Method for filing. Comments must be filed electronically via the Commission's designated secure web portal and in the format designated by the Commission in that portal. You may access the portal through the Commission's website at *https://mtbps.usitc.gov.* The portal contains a series of prompts and links that will assist persons in providing the required information. The Commission will not accept or consider comments submitted in paper or in any other form or format. Comments must contain all information required in the portal in order to be considered properly filed. Comments, including any attachments thereto, must otherwise comply with the Commission's Rules of Practice and Procedure, as further explained in the Commission's Handbook on MTB Filing Procedures. Persons seeking to comment on more than one petition must submit a separate comment for each petition.

Persons filing comments should be aware that they must be prepared to complete their entire comment when they enter the portal. The portal will not allow them to edit, amend, or complete the comment at a later time.

Time for filing. To be considered, comments must be filed no earlier than June 12, 2020, at 8:45 a.m. and no later than the close of business (5:15 p.m. EST) on June 22, 2020. The Commission will not accept comments filed before or after these dates and times.

Amendment and withdrawal of comments. The Commission's secure web portal will not allow a person who has formally submitted a comment during this filing period to amend that comment. Instead, that person must withdraw the original comment and file a new comment that incorporates the changes. The new comment must be filed before 5:15 p.m. EST on June 22, 2020. Comments may not be withdrawn or amended after that time.

Comments containing confidential business information. The portal will permit persons submitting comments to claim that certain information should be treated either as confidential business information or as information protected from disclosure under the Privacy Act, 5 U.S.C. 552, (*e.g.,* a home address). However, because of the portal's design, the portal instructs that such information not be included in attachments to comments. Persons who include what they regard as confidential business information, or information protected under the Privacy Act, in attachments to their comments will be presumed to have waived any privilege and the information will be disclosed to the public when the comments and attachments are posted on the Commission's website. See further information below on possible disclosure of confidential business information.

Confidential Business Information: The Commission will not release information which the Commission considers to be confidential business information within the meaning of Rule 201.6(a) of its Rules of Practice and Procedure (19 CFR 201.6) unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information.

Confidential business information submitted to the Commission in comments may be disclosed to or used by (1) the Commission in calculating the estimated revenue loss required under the Act, which may be based in whole or in part on the estimated values of imports submitted in comments, as well as by petitioners in their petitions; (2) the Commission, its employees, and contract personnel (a) in processing petitions and comments and preparing reports under the Act 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; (3) Commerce, for use in preparing its report to the Commission and the Committees, and the U.S. Department of Agriculture and CBP for use in providing information for that report; or (4) U.S. government employees and contract personnel, solely for cybersecurity purposes, subject to the requirement that all contract personnel will sign appropriate nondisclosure agreements.

By order of the Commission.

Issued: April 20, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–08673 Filed 4–23–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–501 (Review)]

Chlorinated Isocyanurates From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on chlorinated isocyanurates from China would be likely to lead to continuation or recurrence of material injury to an

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on October 1, 2019 (84 FR 52132) and determined on January 6, 2020 that it would conduct an expedited review (85 FR 14704, March 13, 2020).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on April 20, 2020. The views of the Commission are contained in USITC Publication 5044 (April 2020), entitled *Chlorinated Isocyanurates from China: Investigation No. 701–TA–501 (Review).*

By order of the Commission.

Issued: April 20, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–08690 Filed 4–23–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1139]

Certain Electronic Nicotine Delivery Systems and Components Thereof; Issuance of Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a limited exclusion order (''LEO'') and cease and desist orders (''CDOs'') directed to respondent Eonsmoke, LLC (''Eonsmoke'') and defaulted respondent XFire, Inc. (''XFire'') in the above-captioned investigation. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On December 13, 2018, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed on behalf of Juul Labs, Inc. (''JLI'') of San Francisco, California. 83 FR 64156 (Dec. 13, 2018). The complaint, as amended and supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic nicotine delivery systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos.: 10,070,669 (''the '669 patent''); 10,076,139 (''the '139 patent''); 10,045,568 (''the '568 patent''); 10,058,130 (''the '130 patent''); and 10,104,915 (''the '915 patent'') (collectively, ''the Asserted Patents''). *Id.* The Commission's notice of investigation named twenty-one respondents, including Eonsmoke of Clifton, New Jersey and XFire of Stafford, Texas. *Id.* at 64157. The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation.

On February 25, 2019, the ALJ granted JLI's motion to amend the complaint and notice of investigation to change the name of respondent Bo Vaping of Garden City, New York to ECVD/MMS Wholesale LLC of Garden City, New York and the name of respondent MMS Distribution LLC of Rock Hill, New York to MMS/ECVD LLC of Garden City, New York. *See* Order No. 8 (Feb. 25, 2019), *not rev'd* by Comm'n Notice (Mar. 25, 2019).

On February 28, 2019, the ALJ granted a motion to amend the complaint and notice of investigation to change the name of respondent Limitless Mod Co. of Simi Valley, California to Limitless MOD, LLC of Simi Valley, California. *See* Order No. 10 (Feb. 28, 2019), *not rev'd* by Comm'n Notice (Mar. 27, 2019).

On May 21, 2019, the ALJ granted a motion to amend the complaint and notice of investigation to change the name of respondent Ziip Lab Co., Ltd. of Guangdong Province, China to SS Group Holdings of Guangdong Province, China. *See* Order No. 26 (May 21, 2019), *not rev'd* by Comm'n Notice (June 14, 2019).

Before the evidentiary hearing, JLI settled with the following eight respondents: J Well France S.A.S. of Paris, France; ECVD/MMS Wholesale LLC; MMS/ECVD LLC; The Electric Tobacconist, LLC of Boulder, Colorado; ALD Group Limited of Guangdong Province, China; Flair Vapor LLC of South Plainfield, New Jersey; Shenzhen Joecig Technology Co., Ltd. of Guangdong Province, China; and Myle Vape Inc. of Jamaica, New York. *See* Order No. 13 (Mar. 12, 2019), *not rev'd* by Comm'n Notice (Apr. 5, 2019); Order No. 16 (Mar. 21, 2019), *not rev'd* by Comm'n Notice (Apr. 4, 2019); Order No. 31 (July 30, 2019), *not rev'd* by Comm'n Notice (Aug. 23, 2019); Order No. 32 (July 30, 2019), *not rev'd* by Comm'n Notice (Aug. 23, 2019); Order No. 33 (July 30, 2019), *not rev'd* by Comm'n Notice (Aug. 23, 2019); Order No. 34 (July 30, 2019), *not rev'd* by Comm'n Notice (Aug. 23, 2019).

In addition, the investigation terminated as to the following six respondents based on a consent order stipulation and the issuance of a consent order: Vapor Hub International, Inc. of Simi Valley, California; Limitless MOD, LLC; Asher Dynamics, Inc. of Chino, California; Ply Rock of Chino, California; Infinite-N Technology Limited of Guangdong Province, China; and King Distribution LLC of Elmwood Park, New Jersey. *See* Order No. 9 (Feb. 27, 2019), *not rev'd* by Comm'n Notice (Mar. 27, 2019); Order No. 11 (Feb. 28, 2019), *not rev'd* by Comm'n Notice (Mar. 26, 2019); Order No. 18 (Mar. 28, 2019), *not rev'd* by Comm'n Notice (Apr. 11, 2019); Order No. 20 (Apr. 2, 2019), *not rev'd* by Comm'n Notice (Apr. 15, 2019).

On April 23, 2019, the ALJ found respondent XFire in default pursuant to Commission Rule 210.16(b), 19 CFR 210.16(b). *See* Order No. 22 (Apr. 23, 2019), *not rev'd* by Comm'n Notice (May 16, 2019). At the time XFire was found in default, it was accused of infringing claims 1, 2, 4, 5, 7, 8, 10, 12, 13, 16, 17, 20, and 21 of the '669 patent; claims 1, 2, 3, 4, 9, 10, 11, 13, 14, 19, 20, 21, 24, 28, and 29 of the '139 patent; and claims 1, 2, 3, 4, 6, 9, 11, 12, 18, 19, 20, 21, 22, 23, and 27 of the '915 patent (collectively, ''the Asserted XFire Claims'').

Also, prior to the evidentiary hearing, the ALJ granted JLI's motion for partial termination of the investigation with respect to allegations of infringement as to all asserted claims of the '139 patent and certain asserted claims of the other Asserted Patents. *See* Order No. 36 (Aug. 8, 2019), *not rev'd* by Comm'n Notice (Sep. 5, 2019). As a result, the following claims remain at issue in the investigation: claims 1, 2, and 13 of the '669 patent; claims 12, 17, and 20 of the

[2] Commissioner Jason E. Kearns not participating.

'568 patent; claims 1, 2, and 4 of the '130 patent; and claims 1, 6, and 21 of the '915 patent (collectively, ''the Asserted Eonsmoke Claims'').

JLI and the Commission were unable to serve respondent Keep Vapor Electronic Tech. Co., Ltd. of Shenzhen, China despite multiple attempts at service. The final ID states that JLI does not request any relief against this respondent. *See* ID at 2 n.1.

Only five respondents participated in the evidentiary hearing: SS Group Holdings; ZLab S.A. of Punta del Este—Maldonado, Uruguay; Shenzhen Yibo Technology Co. Ltd. Of Guangdong Province, China (collectively, ''the Ziip Respondents''); Vapor 4 Life Holdings, Inc. of Northbrook, Illinois (''V4L''); and Eonsmoke.

On August 5, 2019, one day before the prehearing conference, the ALJ issued an ID (Order No. 35), granting JLI's motion for summary determination of importation, infringement, and domestic industry. The ALJ found that JLI was entitled to summary determination of importation with respect to the Ziip Respondents and their accused products; Eonsmoke and its accused products; and V4L and certain V4L accused products. *See* Order No. 35 at 4–11 (Aug. 5, 2019). Citing to a stipulation between JLI and the Ziip Respondents, the ALJ stated in his infringement analysis with respect to the Ziip Respondents' accused products that ''the question of whether Ziip accused products contain or perform each limitation of asserted claims is moot.'' *Id.* at 11. The ALJ did not specifically state whether summary determination of infringement as to the Ziip Respondents was denied or granted nor the reasoning supporting grant or denial of the motion as to this issue. *Id.*

An evidentiary hearing was held from August 6–7, 2019.

On September 4, 2019 the Commission reviewed Order No. 35 in part. Specifically, the Commission reviewed the ALJ's analysis as to infringement and a statement regarding mootness on page 11 of the ID. The Commission remanded to the ALJ for clarification on this issue and as to whether the ID grants or denies summary determination that the Ziip Respondents infringe the Asserted Patents. *See* Comm'n Notice (Sep. 4, 2019).

In response to the Commission's September 4, 2019 Notice, the ALJ clarified that Order No. 35 denied summary determination of infringement as to the Ziip Respondents because that issue was moot in light of the stipulation between JLI and the Ziip Respondents. *See* Remand of Order No. 35 (Oct. 10, 2019).

On November 19, 2019, the ALJ granted motions to terminate the investigation as to the Ziip Respondents and V4L based on settlement agreements. *See* Order Nos. 38 and 39 (Nov. 19, 2019), *not rev'd* by Comm'n Notice (Dec. 16, 2019). Accordingly, only respondent Eonsmoke remains active in this investigation.

On December 12, 2019, the ALJ granted JLI's motion to strike portions of Eonsmoke's posthearing brief. *See* Order No. 40 (Dec. 12, 2019). Specifically, these portions relate to the issue of invalidity of asserted claim 4 of the '915 patent, which was not addressed by Respondents' expert or in their prehearing briefings. *Id.* at 3–5.

On December 13, 2019, the ALJ issued a combined final ID and recommended determination (''RD''), finding a violation of section 337 by respondent Eonsmoke. Specifically, the final ID finds, *inter alia,* that JLI satisfied the importation requirement as to Eonsmoke's accused products; that JLI has shown Eonsmoke's accused products infringe the Asserted Eonsmoke Claims; that JLI has satisfied the domestic industry requirement with respect to the '669, the '568, the '130, and the '915 patents; and that the Asserted Eonsmoke Claims have not been shown to be invalid. In addition, in the event the Commission finds a violation of section 337, the RD recommends that the Commission issue an LEO and CDOs directed at each of respondent Eonsmoke and defaulted respondent XFire, and impose a 100 percent bond during the period of Presidential review. No public interest submissions were filed in response to the **Federal Register** notice seeking such submissions, 85 FR 3720 (Jan. 22, 2020).

No petitions for review were filed, which means each party has abandoned all issues decided adversely to that party. *See* 19 CFR 210.43(b)(4).

On February 13, 2020, the Commission determined to *sua sponte* review the final ID in part. 85 FR 9803–06 (Feb. 20, 2020). Specifically, the Commission determined to review and, on review, declined to adopt the discussion of the validity of element [c] of claim 12 of the '669 patent on pages 50 and 55 of the final ID. The Commission also determined to review the discussion of Warranty and Customer Support and Regulatory Compliance on pages 265–266 of the final ID and the discussion of the quantitative significance of JLI's contract manufacturers' investments in the last paragraph on page 272 of the final ID. The Commission determined not to review the remainder of the final ID, including the other portions of the ID's domestic industry analysis, which were sufficient to support the final ID's finding that JLI has satisfied the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to the '669, the '568, the '130, and the '915 patents. Accordingly, the Commission's determination resulted in finding a violation of section 337 by reason of Eonsmoke's importation of electronic nicotine delivery systems and components thereof that infringe one or more of the Asserted Eonsmoke Claims. The Commission also determined that JLI is entitled to relief against defaulted respondent XFire pursuant to 19 U.S.C. 1337(g)(1). The parties were requested to file written submissions on remedy, the public interest, and bonding.

On February 27, 2020 JLI and OUII submitted their briefs on remedy, the public interest, and bonding. JLI and OUII further filed response briefs on March 5, 2020.

On review, the Commission has determined to affirm the discussion of Warranty and Customer Support and Regulatory Compliance as it concerns the economic prong of the domestic industry requirement on pages 265–66 of the final ID. The Commission has also determined to decline to adopt the discussion of the quantitative significance of JLI's contract manufacturers' investments as it concerns the economic prong of the domestic industry requirement in the last paragraph on page 272 of the final ID.

The Commission has further determined that the appropriate remedy in this investigation is: (1) An LEO directed to a) respondent Eonsmoke prohibiting the unlicensed importation of nicotine vaporizer devices and the associated pods sold for use with the devices, and components thereof that infringe one or more of the Asserted Eonsmoke Claims and b) respondent XFire prohibiting the unlicensed importation of nicotine vaporizer devices and the associated pods sold for use with the devices, and components thereof that infringe one or more of the Asserted XFire Claims; and (2) CDOs prohibiting respondents Eonsmoke and XFire from further importing, selling, and distributing infringing products in the United States. The Commission has also determined that the public interest factors enumerated in paragraphs 337(d)(1), (f)(1), and (g)(1) (19 U.S.C. 1337(d)(1), (f)(1), and (g)(1)), do not preclude issuance of these remedial orders. Finally, the Commission has determined that the bond during the period of Presidential review pursuant

to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance. The investigation is hereby terminated.

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate of Service and shall file proof of service on the Electronic Document Information System (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: April 20, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–08689 Filed 4–23–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–513 and 731–TA–1249 (Review)]

Sugar From Mexico

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that termination of the suspended investigations on imports of sugar from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

Background

The Commission instituted these reviews on November 29, 2019 (84 FR 65841) and determined on March 3, 2020 that it would conduct expedited reviews (85 FR 15224, March 17, 2020).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on April 21, 2020. The views of the Commission are contained in USITC Publication 5045 (April 2020), entitled *Sugar from Mexico: Investigation Nos. 701–TA–513 and 731–TA–1249 (Review).*

By order of the Commission.

Issued: April 21, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–08733 Filed 4–23–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1474 (Preliminary)]

Ultra-High Molecular Weight Polyethylene From Korea

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of ultra-high molecular weight polyethylene from Korea, provided for in subheadings 3901.10.10 and 3901.20.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'').[2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On March 4, 2020, Celanese Corporation, Irving, Texas filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of ultra-high molecular weight polyethylene from Korea. Accordingly, effective March 4, 2020, the Commission instituted antidumping duty investigation No. 731–TA–1474 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 10, 2020 (*85 FR 13922*). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference (originally scheduled for March 24, 2020) through written questions, submissions of written testimony, written responses to questions, and postconference briefs; all persons who requested the opportunity were permitted to participate.

The Commission made this determination pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determination in this investigation on April 20, 2020. The views of the Commission are contained in USITC Publication 5048 (April 2020), entitled *Ultra-High Molecular Weight Polyethylene from Korea: Investigation No. 731–TA–1474 (Preliminary).*

By order of the Commission.

Issued: April 20, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020–08691 Filed 4–23–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation (85 FR 17861, March 31, 2020).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on April 14, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 42 Lines, Champaign, IL; Chan Zuckerberg Initiative, LLC, Redwood City, CA; E-Locker, Norman, OK; Idaho Division of Career Technical Educ., Boise, ID; IQ4, Woodcliff, NJ; Ladok/Umeå University, Stockholm, SWEDEN; Michigan Virtual University, Lansing, MI; NDLA, Bergen, NORWAY; North Carolina State University c/o The Friday Institute for Educational Innovation, Raleigh, NC; Paradigm, Inc., Virginia Beach, VA; Partners4 Results, Waukesha, WI; RethinkED, New York, NY; Suitable, Philadelphia, PA; UVII, New York, NY; and Pearson K12 Learning, Chandler, AZ, have been added as parties to this venture.

Also, Learning Logistics, McKinney, TX; Questar Assessment Inc., Apple Valley, MN; Follett Corporation, Westchester, IL; and Aspire/Ability Inc., Payson, UT, have withdrawn as parties to this venture.

In addition, Academic Center for Computing and Media Studies, Kyoto University has changed its name to Institute for Information Management and Communications, Kyoto University, Kyoto, JAPAN; University of Maryland University College to University of Maryland Global Campus, Adelphi, MD; and Learning Machine to Hyland Credentials, Dallas, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on January 28, 2020. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 10, 2020 (85 FR 7605).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–08672 Filed 4–23–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–632]

Importer of Controlled Substances Application: Andersonbrecon, Inc, DBA PCI of Illinois

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before May 26, 2020. Such persons may also file a written request for a hearing on the application on or before May 26, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 31, 2020, Andersonbrecon, Inc, DBA PCI of Illinois, 4545 Assembly Drive, Rockford, Illinois 61109, applied to be registered as an importer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to import the listed controlled substance for clinical trials only. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–08669 Filed 4–23–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0052]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Applicant Information Form (1–783)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 26, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Applicant Information Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1–783, The applicable component within the Sponsoring component: Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. This collection is necessary for individuals to request a copy of their personal identification record to review it or to obtain a change, correction, or an update to the record.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Annually, the FBI receives 125,000 identification requests, therefore there are 125,000 respondents. The form requires 5 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 10,417 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: April 21, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–08741 Filed 4–23–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Generic Clearance for Pilot and Field Studies for Community Relations Service Data Collection Activities

AGENCY: Community Relations Service, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Community Relations Service (CRS), intends to request approval from the Office of Management and Budget (OMB) for a generic information collection clearance that will allow CRS to conduct a variety of participant feedback studies. CRS will submit the request for review and approval in accordance with the Paperwork Reduction Act of 1995.

Over the next three years, CRS anticipates collecting program impact evaluation data for reassessing ongoing programs across several areas within community outreach. The purpose of these collections is to gather feedback from participants who attended CRS programs and to use that information to measure the impact of the programs. This work may entail redesigning and/or modifying existing programs based upon received feedback. CRS envisions using surveys, interviews, and other electronic data collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 23, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher Chalberg, Community Relations Service, 1244 Speer Blvd., Suite 650, Denver, CO 80204 (email: *askcrs@usdoj.gov;* telephone: 202–305–2935).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Community Relations Service, including whether the information will have practical utility.
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
—Evaluate whether (and if so, how) the quality, utility, and clarity of the information to be collected can be enhanced.
—Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Generic Information Collection Request.

(2) *The Title of the Form/Collection:* Generic Clearance for Community Relations Service Program Impact Evaluations.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers not available for generic clearance. The applicable component within the Department of Justice is the Community Relations Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Participants of CRS programs in relevant jurisdictional fields; individuals; facilitators; state and local law enforcement, government officials, faith leaders, and community leaders; students; school administrators; and representatives of advocacy organizations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* We estimate that approximately 80–90 respondents will be involved in program impact evaluations conducted under this clearance over the requested 3-year clearance period. The average response time per respondent will be up to 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden for identified and future projects covered under this generic clearance over the 3-year clearance period is approximately 80–90 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–08720 Filed 4–23–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0364]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: Annual Survey of Jails in Indian Country

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until May 26, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a Currently Approved Collection.

2. *Title of the Form/Collection:* Annual Survey of Jails in Indian Country (SJIC).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The form number is CJ–5B: Survey of Jails in Indian Country (SJIC). This form is sent to approximately 84 confinement facilities, detention centers, and other correctional facilities operated by tribal authorities or the Bureau of Indian Affairs (BIA). The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public that will be asked to respond to CJ–5B includes jail administrators from approximately 84 confinement facilities, detention centers, and other correctional facilities operated by tribal authorities or the Bureau of Indian Affairs. The respondents will be asked to provide information for the following categories:

(a) At midyear (last weekday in the month of June), the number of inmates confined in jail facilities including: Male and female adult and juvenile inmates; persons under age 18 held as adults; age category (starting in 2020); convicted and unconvicted males and females; persons held for a felony and a misdemeanor; the inmates most serious offense (*i.e.,* domestic violence offense, aggravated or simple assault, rape, other violent, burglary, larceny-theft, drug law violation, DWI/DUI of alcohol or drugs, public intoxication, and other unspecified offenses);

(b) The average daily population during the 30-day period in June;

(c) The date and count for the greatest number of confined inmates during the 30-day period in June;

(d) The number of new admissions into jail, and final discharges from jail during the month of June;

(e) From July 1 of the previous year to June 30 of the current collection year: The number of inmate deaths while confined, the number of deaths attributed to suicide, and the number of confined inmates that attempted suicide;

(f) At midyear, the number of correctional staff employed by the facility and their occupation (*e.g.,* administration, jail operations, educational staff, etc.);

(g) At midyear, the number of jail operations employees who had received the basic detention officer certification and how many had received 40 hours of in-service training; and

(h) At midyear, the total rated capacity of jail facilities.

In addition to the above items, the 2020 and 2021 SJIC will include a special addendum on the COVID–19 epidemic with the following six questions:

(a) One-day inmate counts every month from January to May 2020 (July 2020 to December 2020 for the 2021 SJIC);

(b) The number of inmates that received expedited release due to COVID–19 from January 1, 2020, to June

30, 2020 (July 1, 2020, to December 31, 2020 for the 2021 SJIC);

(c) The number of inmates tested for COVID–19 and the number that tested positive from January 1, 2020, to June 30, 2020 (July 1, 2020, to December 31, 2020 for the 2021 SJIC);

(d) The number of staff tested for COVID–19 and the number that tested positive from January 1, 2020, to June 30, 2020 (July 1, 2020, to December 31, 2020 for the 2021 SJIC);

(e) Inmate deaths and staff deaths from COVID–19 from January 1, 2020, to June 30, 2020 (July 1, 2020, to December 31, 2020 for the 2021 SJIC);

(f) The number of inmates not admitted to jail due to testing positive for COVID–19 during the intake process from January 1, 2020, to June 30, 2020 (July 1, 2020, to December 31, 2020 for the 2021 SJIC).

This collection is the only national effort devoted to describing and understanding annual changes in the tribal jail population. The collection enables BJS, tribal correctional authorities and administrators, legislators, researchers, and jail planners to track growth in the number of jails and their capacities nationally, as well as to track changes in the demographics and supervision status of the tribal jail population and the prevalence of crowding. To address the public-health emergency on COVID–19, BJS modified the 2020 and 2021 survey instrument to include COVID–19 related questions.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Reporting mode	Purpose of contact	Number of responses	Average reporting time (min)	Estimated total burden hours
2019 SJIC:				
Mail, Fax, Email, telephone	Data collection	84	75	105
Email and telephone	Verify facility operational status and point-of-contact.	84	2	3
Email and telephone	Data quality follow-up validation	84	7	10
Total		84	84	118
2020 and 2021 SJIC:				
Mail, Fax, Email, telephone	Data collection	84	115	161
Email and telephone	Verify facility operational status, point-of-contact, and pre-notification of COVID–19 addendum.	84	4	6
Email and telephone	Data quality follow-up validation	84	10	14
Total		84	129	181

The 2019 SJIC questionnaire (form CJ–5B) was sent to 84 Indian country correctional facilities operated by tribal authorities or the Bureau of Indian Affairs (BIA). Based on prior years' reporting, we estimated a reporting time of 75 minutes for the 2019 SJIC questionnaire. Also in 2019, the respondents had an additional average reporting time of 2 minutes to verify facility operational status and point-of-contact, and 7 minutes for data quality follow-up validation.

For each year in 2020 and 2021, we estimate an average reporting time of 115 minutes for the survey form that includes the new question on inmate counts by age category and the addendum on COVID–19. The respondents will also have an additional average reporting time of 4 minutes to verify facility operational status, point-of-contact, and to pre-notify and answer respondent questions on the COVID–19 addendum. If needed, jail respondents will also be contacted by email or telephone to verify data quality issues (10 minutes per respondent).

The total reporting time per facility is 84 minutes in 2019 and 129 minutes each year in 2020 and 2021. In all, the total burden was 118 hours in 2019 and 181 hours each year in 2020 and 2021.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–08731 Filed 4–23–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

U.S. Marshals Service

[OMB Number 1105–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed Collection; Comments Requested: Complaint Regarding United States Marshals Service (USMS) Personnel or Programs

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 26, 2020.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* Complaint Regarding USMS Personnel or Programs.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: U.S. Marshals Service, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: [None].

Abstract: This form will allow members of the public to submit information regarding potential misconduct involving USMS personnel or programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,000 respondents will utilize the form, and it will take each respondent approximately 5 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 84 hours, which is equal to (1,000 (total # of annual responses) * 5 minutes/60.

(7) *An Explanation of the Change in Estimates:* New collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 21, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–08730 Filed 4–23–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0041]

Logging Operations Standard; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the collection of information contained in the Logging Operations Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by June 23, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0041, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2010–0041) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security number and date of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at (202) 693–2222 to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining said information (29 U.S.C. 657).

The collection of information contained in the Logging Operations Standard are necessary to reduce workers' risk of death or serious injury

by requiring employers to assure that operating and maintenance instructions are available on machines or in the area where the machine is operated. For vehicles, employers must assure that operating and maintenance instructions are available for each vehicle.

Maintenance and Operating Instructions (§§ 1910.266(f)(1)(iii) and (g)(3))

Under paragraph (f)(1)(iii) and (g)(3) of the Standard, employers must assure that operating and maintenance instructions are available on machines or in the area where the machine is being operated, and in vehicles. For those machines with no operating instructions in the cab, the employer will be required to obtain and retain a manual within the immediate work area for each machine. Because the Logging Operations final rule has been in effect since 1995, OSHA assumes that all employers are in compliance with the provision to have operating and maintenance instructions available on machines or in the area where the machines are being operated.

Certification of Training (§ 1910.266(i)(10)(i) and (i)(10)(ii))

Paragraph (i)(10)(i) requires employers to certify in writing that a worker/supervisor received the training the Standard requires. Under paragraph (i)(10)(ii), employers need only maintain the most recent certification for training that a worker/supervisor has received.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Action

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Logging Operations Standard (29 CFR 1910.266). Based on updated County Business Pattern data, the agency found that the number of establishments increased from 7,908 to 8,076, as well as the number of workers from 49,649 to 50,188. However, OSHA is requesting an adjustment decrease in the number of burden hours for the information collection requirements in the Standard from 1,603 hours to 1,507 hours for a total decrease of 96 burden hours. The decrease is due to the agency's use of a new method for rounding burden hours.

Type of Review: Extension of a currently approved collection.

Title: Logging Operations Standard (29 CFR 1910.266).

OMB Control Number: 1218–0198.

Affected Public: Business or other for-profits.

Number of Respondents: 8,076.

Number of Responses: 50,996.

Frequency of Responses: On occasion.

Estimated Total Burden Hours: 1,507 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0041). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as their social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publically available to read or download through this website.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 20, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–08771 Filed 4–23–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–043)]

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, Public Law 92–463, as amended, the National Aeronautics and Space Administration 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: Tuesday, May 12, 2020, 9:00 a.m.–2:00 p.m., Eastern Time.

ADDRESSES: Virtual meeting by dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Girten, Designated Federal Officer, NAC STEM Engagement Committee, NASA Headquarters, Washington, DC 20546, (202) 358–0212, or *beverly.e.girten@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be held virtually and will be available telephonically and by

WebEx only. 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 toll access number 1–720–259–6462, and then the numeric participant passcode: 423307 followed by the # sign. *Note:* If dialing in, please ''mute'' your telephone. To join via WebEx, use the link: *https://nasaenterprise.webex.com/*. The meeting number is 907 005 879 and the password is ckUN4wy5N$2 (password is case sensitive). The agenda for the meeting will include the following topics:

—Opening Remarks by Chair
—STEM Engagement Update
—National STEM Activities
—NASA Role with Historically Black Colleges and Universities and Tribal Colleges
—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. 2020–08747 Filed 4–23–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (20–044)]

NASA Advisory Council; Human Explorations and Operations 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 Human Explorations and Operations Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Wednesday, May 13, 2020, 10:00 a.m. to 3:00 p.m.; and Thursday, May 14, 2020, 10:00 a.m. to 3:30 p.m., Eastern Time.

ADDRESSES: Virtual meeting by dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Dr. Bette Siegel, Designated Federal Officer, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, via email at *bette.siegel@nasa.gov* or 202–358–2245.

SUPPLEMENTARY INFORMATION: This meeting will be available telephonically and by WebEx only. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll-free access number 1–800–593–9971 or toll access number 1–517–308–9316, and then the numeric participant passcode: 4648477 to participate in the meeting for both days. *Note:* If dialing in, please ''mute'' your telephone. The WebEx link is *https://nasaenterprise.webex.com*; the meeting number is 907 086 072 and the password is Exploration@2020 (case sensitive) for both days.

The agenda for the meeting includes the following topics:

—Human Exploration and Operations Update
—Budget
—Advanced Exploration Systems
—Gateway
—Human Landing System
—Exploration Systems Development
—International Space Station
—Commercial Crew
—Commercialization of Low Earth Orbit
—NASA's Plan for Sustained Lunar Exploration and Development

It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–08748 Filed 4–23–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Disclosure and Recordkeeping Requirements Under the Truth in Savings Act (TISA)

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before June 23, 2020 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; Fax No. 703–519–8579; or email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the e-address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0134.

Title: Disclosure and Recordkeeping Requirements in Connection with 12 CFR part 707 (Truth in Savings).

Type of Review: Extension of a currently approved collection.

Abstract: The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.,* requires depository institutions to disclose to consumers certain information, including interest rates, dividends, bonuses, and fees associated with their deposit accounts and accompanying services.

TISA also directed the National Credit Union Administration (NCUA) to promulgate a TISA regulation governing credit unions. Section 272(b) of TISA, 12 U.S.C. 4311(b), mandated that the NCUA regulation be ''substantially similar'' to those of the Consumer Financial Protection Bureau (CFPB), but the NCUA may take into account the unique nature of credit unions and the limitations under which they may pay dividends.

To implement TISA, the NCUA published its TISA regulation, 12 CFR part 707, which applies to all credit unions whose accounts are either insured by, or eligible to be insured by, the National Credit Union Share Insurance Fund, except for any credit union that has been designated as a corporate credit union and any non-automated credit union that has $2 million or less in assets (together, ''credit unions''). In addition, the advertising rules apply to any person who advertises an account offered by a credit union. The NCUA's TISA regulation requires credit unions to disclose fees, dividend rates and other terms concerning accounts to members or potential members before they open accounts.

The NCUA's TISA regulation requires credit unions to provide specific

disclosures when an account is opened, when a disclosed term changes or a term account is close to renewal, on periodic statements of account activity, in advertisements, and upon a member's or potential member's request. Credit unions that provide periodic statements are required to include information about fees imposed, the annual percentage yield (APY) earned during those statement periods, and other account terms. The requirements for creating and disseminating account disclosures, change in terms notices, term share renewal notices, statement disclosures, and advertising disclosures are necessary to implement TISA's purpose of providing the public with information that will permit informed comparisons of accounts at financial institutions.

The collection of information pursuant to Part 707 is triggered by specific events and disclosures and must be provided to consumers within the time periods established under the regulation. Credit unions must retain evidence of compliance for a minimum of two years after the disclosures are required to be made or an action is required to be taken.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 5,322.

Frequency: Upon occurrence of triggering action.

Estimated Total Annual Responses: 4,869,630.

Estimated Hours per Response: 0.07.

Estimated Total Annual Burden Hours: 373,870.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function 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, including the validity of the methodology and 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on April 20, 2020.

Dated: April 21, 2020.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2020–08711 Filed 4–23–20; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Week of April 20, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Via Teleconference.

Week of April 20, 2020

Thursday, April 23, 2020

11:00 a.m. Affirmation Session (Public Meeting via Teleconference) (Tentative)

a. Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4)—Referred Ruling in LBP–19–3 and FPL's Appeal of LPB–19–3 (Tentative)

b. Direct Final Rule—Social Security Number Fraud Prevention (NRC–2018–0303; RIN 3150–AK27) (Tentative)

c. Holtec International (HI–STORE Consolidated Interim Storage Facility), Appeals of LBP–19–4; Motions for New Contentions (Tentative)

d. FirstEnergy Nuclear Operating Co. and FirstEnergy Nuclear Generation, LLC (Beaver Valley Power Station, Units 1 and 2; Davis-Besse Nuclear Power Station, Unit 1; Perry Nuclear Power Plant, Unit 1), Request for Hearing in License Transfer Proceeding (Tentative)

(Contact: Denise McGovern: 301–415–0681)

ADDITIONAL INFORMATION: By a vote of 4–0 on April 20, 21, and 22, 2020, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on April 23, 2020 and will be held via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: April 22, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–08892 Filed 4–22–20; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–264; NRC–2020–0048]

In the Matter of the Dow Chemical Company; Dow TRIGA Research Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) is issuing an order approving an application filed by the Dow Chemical Company (TDCC) on November 22, 2019. The application sought NRC approval of the indirect transfer of control of Renewed Facility Operating License No. R–108 for the Dow TRIGA Research Reactor (DTRR). The indirect transfer of control resulted from the merger of TDCC with E.I. du Pont De Nemours and Company in August 2017, which established a new parent company, DowDuPont, Inc. Subsequently, in April 2019, Dow, Inc. was formed as a separate company from DowDuPont, Inc. and TDCC became a wholly-owned subsidiary of Dow, Inc. The NRC determined that TDCC

remains qualified to hold Renewed Facility Operating License No. R–108, and that the indirect transfer of the license is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. The NRC further determined that the indirect transfer of control of the license necessitated no changes to the license. The order is effective on the date it was issued.

DATES: The order was issued on April 17, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0048 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0048. 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.

- *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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided.

FOR FURTHER INFORMATION CONTACT: Geoffrey Wertz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0893, email: *Geoffrey.Wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: April 20, 2020.

For the Nuclear Regulatory Commission.

Greg A. Casto,

Chief, Non-Power Production and Utilization Facility Licensing Branch, Division of Advanced Reactors and Non-Power Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Indirect Transfer of Control of License

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–264; License No. R–108]

In the Matter of The Dow Chemical Company

Dow TRIGA Research Reactor

ORDER APPROVING INDIRECT TRANSFER OF CONTROL OF LICENSE

I.

The Dow Chemical Company (TDCC, the licensee) is the holder of Renewed Facility Operating License No. R–108 for the Dow TRIGA Research Reactor (DTRR), located on property owned by TDCC in Midland, Michigan. TDCC is a wholly-owned subsidiary of Dow, Inc.

II.

By application dated November 22, 2019, the licensee requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission) approve, pursuant to Section 184, ''Inalienability of Licenses,'' of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, ''Transfer of licenses,'' the indirect transfer of control of the license for the DTRR, without amendment. The indirect transfer of control resulted from the merger of TDCC with E.I. du Pont De Nemours and Company in August 2017, which established a new parent company, DowDuPont, Inc. Subsequently, in April 2019, Dow, Inc. was formed as a separate company from DowDuPont, Inc. and TDCC became a wholly-owned subsidiary of Dow, Inc.

A notice entitled, ''Dow TRIGA Research Reactor; Consideration of Approval of Transfer of License,'' was published in the **Federal Register** on February 11, 2020 (85 FR 7800). The NRC received one comment that was submitted anonymously and stated only: ''Good.'' No hearing requests were received.

Under 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that TDCC remains qualified to hold Renewed Facility Operating License No. R–108, and that the indirect transfer of Renewed Facility Operating License No. R–108 is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. The NRC staff has further determined that the indirect transfer of control of Renewed Facility Operating License No. R–108 necessitates no changes to the license.

The findings set forth above are supported by an NRC staff safety evaluation (SE) dated April 17, 2020.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfer is approved for the DTRR.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated November 22, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19330A244), and the SE dated April 17, 2020 (ADAMS Accession No. ML20045F356), which are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *https://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of April 2020.

For The Nuclear Regulatory Commission.

Brian W. Smith,

Deputy Director, Division of Advanced Reactors and Non-Power, Production and Utilization Facilities, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–08686 Filed 4–23–20; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88697; File No. SR–NYSENAT–2020–01]

Self-Regulatory Organizations; NYSE National, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE National Rule 6.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

I. Introduction

On January 3, 2020, NYSE National, Inc. (''NYSE National'' or ''the Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'').[3] The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[4] On March 5, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.[5] The Commission received no comments on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR–NYSENAT–2020–01.[6]

II. Description of the Proposed Rule Change

The Exchange proposes to amend the NYSE National Rule 6.6800 Series (''Compliance Rule''), which sets forth rules regarding Industry Member [7] compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants [8] of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID [9] based on a proposed amendment to the CAT NMS Plan filed with the Commission; [10] (2) amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting; [11] (3) amend the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility; [12] (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data [13] to the Central Repository; [14] (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an account, on the order reported to CAT; [15] and (6) revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, social security numbers, or account numbers for individuals.[16]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[4] *See* Securities Exchange Act Release No. 87986 (January 16, 2020), 85 FR 3974 (''Notice'').

[5] *See* Securities Exchange Act Release No. 88332, 85 FR 14249 (March 11, 2020).

[6] 15 U.S.C. 78(s)(b)(2)(B).

[7] Industry Member means a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan, *supra* note 3, at Section 1.1. *See also* proposed NYSE National Rule 6.6810(s).

[8] The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[9] As proposed, ''Firm Designated ID'' would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. *See* proposed NYSE National Rule 6.6810(r).

[10] *See* Notice, *supra* note 4, at 3975. *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

[11] *See* Notice, *supra* note 4, at 3979–84. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[12] *See* Notice, *supra* note 4, at 3983. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

[13] *See* Notice, *supra* note 4, at 3984. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

[14] The Central Repository, as defined in the CAT NMS Plan, means ''the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.'' *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[15] *See* Notice, *supra* note 4, at 3984. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in circumstances in which an Industry Member uses an established trading relationship for the individual customer. Instead, the Participant would require Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier instead of the account number, (ii) the ''account type'' as a ''relationship'', and (3) the account effective date instead of the ''date account opened.'' *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[16] *See* Notice, *supra* note 4, at 3985. The Participants requested and have received exemptive relief from the requirement of Section 6.4(d)(ii)(C) of the CAT NMS Plan for the Participants, in their Compliance Rules, to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March

Continued

The Exchange also proposes to amend the Exchange's Compliance Rule to facilitate the retirement of certain existing regulatory systems, specifically the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System, by adding additional data elements to the CAT reporting requirements for Industry Members,[17] additional reporting requirements for alternative trading systems,[18] and additional data elements related to OTC Equity Securities [19] that FINRA currently receives from alternative trading systems that trade OTC Equity Securities.[20]

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [21] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[22] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to 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.'' [24] The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [25] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[26] any request for an opportunity to make an oral presentation.[27]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 15, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 29, 2020. 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 Numbers SR–NYSENAT–2020–01 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–NYSENAT–2020–01. 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–NYSENAT–2020–01 and should be submitted on or before May 15, 2020. Rebuttal comments should be submitted by May 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

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17, 2020), 85 FR 16152 (March 20, 2020). *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[17] *See* Notice, *supra* note 4, at 3975–76.

[18] *See* Notice, *supra* note 4, at 3976–78.

[19] OTC Equity Security, as defined in the CAT NMS Plan, means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities. *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[20] *See* Notice, *supra* note 4, at 3978–79.

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 240.19b–4.

[27] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88702]

Order Granting Conditional Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 608(e) of Regulation NMS Under the Exchange Act, From Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

I. Introduction

By letter dated February 19, 2020, BOX Exchange, LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC; MIAX Pearl, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'') to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'' or ''Plan''),[1] requested that the Securities and Exchange Commission (''Commission'' or ''SEC'') grant exemptive relief from certain requirements in the CAT NMS Plan pursuant to Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 608(e) of Regulation NMS under the Exchange Act.[3] Specifically, the Participants seek exemptive relief from requirements in Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member [4] reporting of Industry Member Data [5] to the Central Repository [6] to allow for the implementation of phased reporting for Industry Members to the Consolidated Audit Trail (''CAT'') as described below.

Rule 608(c) of Regulation NMS under the Exchange Act requires that each self-regulatory organization (''SRO'') comply with and, absent reasonable justification or excuse, enforce compliance by its members with, the terms of any effective NMS plan of which it is a sponsor or a participant.[7] Section 6.4 of the CAT NMS Plan, which governs data reporting and recording by Industry Members, provides that the requirements for Industry Members under that section shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.[8] Section 6.7(a)(v) of the CAT NMS Plan provides that each Participant, through its Compliance Rule,[9] shall require its Industry Members (other than Small Industry Members) to report Industry Member Data to the Central Repository within two years after the Effective Date.[10] Section 6.7(a)(vi) of the CAT NMS Plan provides that each Participant, through its Compliance Rule, shall require its Small Industry Members to report Industry Member Data to the Central Repository within three years after the Effective Date.[11]

For the reasons set forth below, this Order grants the Participants' request for exemptions from specified provisions of the CAT NMS Plan as set forth in the February 19, 2020 Exemption Request, subject to certain conditions.

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[1] The CAT NMS Plan was published for comment in the **Federal Register** on May 17, 2016, and approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release Nos. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (''Notice of Filing of the CAT NMS Plan''); 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order''). The CAT NMS Plan is Exhibit A of the CAT NMS Plan Approval Order. *See* CAT NMS Plan Approval Order, at 84943–85034.

[2] 15 U.S.C. 78mm(a)(1).

[3] 17 CFR 242.608(e).

[4] The CAT NMS Plan defines ''Industry Member'' as a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan Approval Order, *supra* note 1, at 84946, Ex. A, Section 1.1. The CAT NMS Plan defines ''Small Industry Member'' as an Industry Member that qualifies as a small broker-dealer as defined in Rule 613. *See id.* at 84947, Ex. A, Section 1.1. Rule 613(a)(3)(v) uses the definition of ''small broker-dealer'' contained in Exchange Act Rule 0–10, ''Small entities under the Securities Exchange Act for purposes of the Regulatory Flexibility Act.'' Exchange Rule 0–10(c) defines a ''small broker-dealer'' as a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 240.17a5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section. *See* 17 CFR 242.613(a)(3)(v); *see also* 17 CFR 240.0–10(c). In a separate order, the Commission granted the Participants' request for exemptive relief from enforcing compliance with certain provisions of the CAT NMS Plan with respect to broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0–10(i)(2) under the Exchange Act, and as a result, are deemed to be affiliated with an entity that is not a small business or a small organization (''Introducing Industry Member''). *See* Order Granting Limited Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 608(e) of Regulation NMS Under the Exchange Act, Related to Certain Introducing Brokers, From the Requirements of the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 34–88703 (dated April 20, 2020). Under that Order, the Participants will be exempted from requiring compliance with the requirements of the CAT NMS Plan that apply to Large Industry Members with respect to Introducing Industry Members that meet the capital standard in Rule 0–10(c)(1) and that are Small Industry Non-OATS Reporters, provided that each Participant requires such Introducing Industry Members, through its Compliance Rule, to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.

[5] Industry Member Data is the data specified in Sections 6.4(d)(i)–(ii) of the CAT NMS Plan, which includes customer information. *See* CAT NMS Plan Approval Order, *supra* note 1, at 84961, Ex. A, Sections 6.4(d)(i)–(ii).

[6] *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 19, 2020 (''February 19, 2020 Exemption Request''). Unless otherwise noted, capitalized terms are used as defined in Rule 613 or in the CAT NMS Plan. The Participants state that this letter amends and replaces in its entirety the original exemptive request letter submitted to the Commission on September 26, 2019. *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated September 26, 2019.

[7] 17 CFR 242.608(c).

[8] *See* CAT NMS Plan Approval Order, *supra* note 1, at 84960, Ex. A, Section 6.4. The Effective Date of the CAT NMS Plan was November 15, 2016. *See supra* note 1. Therefore, two years after the Effective Date is November 15, 2018, and three years after the Effective Date is November 15, 2019.

[9] The CAT NMS Plan defines ''Compliance Rule'' as, with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11 of the CAT NMS Plan. *See* CAT NMS Plan, *supra* note 1, at Section 1.1. Section 3.11, ''Compliance Undertaking,'' requires each Participant to promulgate consistent rules requiring compliance by their respective Industry Members with the provisions of Rule 613 and the CAT NMS Plan. *See* CAT NMS Plan Approval Order, *supra* note 1, at 84945, 84950, Ex. A, Section 3.11. Between January 17, 2017 and February 2, 2017, each Participant filed a Compliance Rule reflecting the requirements in Section 6.7(a)(v) of the CAT NMS Plan that each Participant require its Industry Members (other than Small Industry Members) to report Industry Member Data to the Central Repository by November 15, 2018, and in Section 6.7(a)(vi) of the CAT NMS Plan that each Participant require its Small Industry Members to report Industry Member Data to the Central Repository by November 15, 2019. *See* Securities Exchange Act Release Nos. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (''CAT Compliance Rule Joint Approval Order''); 80255 (March 15, 2017), 82 FR 14563, (March 21, 2017) (''FINRA CAT Compliance Rule Approval Order'').

[10] *See* CAT NMS Plan Approval Order, *supra* note 1, at 84963, Ex. A, Section 6.7(a)(v). Section 1.1 of the CAT NMS Plan defines ''Effective Date'' as ''the date of approval of this Agreement by the Commission.'' *Id.* at 84946, Ex. A, Section 1.1. The Effective Date of the CAT NMS Plan was November 15, 2016. Therefore, two years after the Effective Date is November 15, 2018.

[11] *See* CAT NMS Plan Approval Order, *supra* note 1, at 84963, Ex. A, Section 6.7(a)(vi). The Effective Date of the CAT NMS Plan was November 15, 2016. *See id.* at 84946, Ex. A, Section 1.1. Therefore, three years after the Effective Date is November 15, 2019.

II. Description

The Participants state that under the CAT NMS Plan, the Participants are required, through their Compliance Rules, to require their Industry Members (other than Small Industry Members) (''Large Industry Members'') to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019.[12] As set forth in the February 19, 2020 Exemption Request, the Participants propose to implement phased reporting for Industry Member reporting to the CAT (''Phased Reporting'') in place of the CAT reporting schedule for Industry Members set forth in the CAT NMS Plan.[13] The Participants state that Phased Reporting would have five phases, Phases 2a through 2e, and further represent that the full scope of CAT Data[14] required under the CAT NMS Plan will be available when all five phases of Phased Reporting are complete, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.[15] The Participants state that each phase of Phased Reporting is described in the Technical Specifications for Industry Members, which provide detailed guidance regarding the data to be reported for each phase.[16] The Participants believe that Phased Reporting ''would facilitate significant Industry Member reporting as quickly as possible by leaving certain complex reporting requirements to later phases.'' [17]

A. Phase 2a Scope

The Participants state that in the first phase of Phased Reporting (''Phase 2a''), Large Industry Members and Small Industry OATS Reporters[18] would be required to report ''Phase 2a Industry Member Data'' to the Central Repository by April 20, 2020.[19] The Participants state that Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for the same events and scenarios during Phase 2a.[20]

The Participants state that ''Phase 2a Industry Member Data'' would be Industry Member Data that is required to be reported to the Central Repository commencing in Phase 2a as set forth in the Industry Member Technical Specifications, and that Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities.[21] Specifically, the Participants state that Phase 2a Industry Member Data would include all events and scenarios covered by OATS,[22] which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions.[23] The Participants also state that Phase 2a Industry Member Data would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.[24]

According to the Participants, Phase 2a Industry Member Data would include Firm Designated IDs (''FDIDs''), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan.[25] The Participants state that in Phase 2a, Industry Members would be required to report all street side representative orders,[26] including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications.[27] The Participants state that in Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.[28]

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[12] *See* February 19, 2020 Exemption Request at 2. The Participants state that Section 3.11 of the CAT NMS Plan requires the Participants to ''endeavor to promulgate consistent rules . . . requiring compliance by their respective Industry Members with the provisions of SEC Rule 613'' and the CAT NMS Plan. *See id.* at n.7

[13] *See* February 19, 2020 Exemption Request at 2. The Participants represent that they engaged in in-depth discussions with the industry and FINRA CAT, LLC, the Plan Processor, regarding the scope and timing of Industry Member reporting, prior to the exemption request. *See id.* The Participants plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in the February 19, 2020 Exemption Request, including revisions to testing and related dates associated with Industry Member CAT reporting. *See id.*

[14] ''CAT Data'' means data derived from Participant Data, Industry Member Data, SIP Data, and such other data as the Operating Committee may designate as ''CAT Data'' from time to time. *See* Section 1.1 of the CAT NMS Plan.

[15] *See* February 19, 2020 Exemption Request at 2.

[16] *See* February 19, 2020 Exemption Request at 2 n.10. Specifically, the Participants state that Phases 2a–2e of the Phased Reporting are described in *Table 1: Industry Specifications Phased Approach* in the CAT Reporting Technical Specifications for Industry Members (version 2.2.1 r3) (Jan. 31, 2020); *Table 1: Industry Specifications Phased Approach,* CAT Reporting Technical Specifications for Industry Member (version 3.0.0) (Jan. 31, 2020); and *Table 1: Industry Customer & Account Specifications Phased Approach,* CAT Reporting Customer & Account Technical Specifications for Industry Members (Version 1.0) (Jan. 23, 2020) (collectively with amendments, ''Industry Member Technical Specifications''), each of which is available at *www.catnmsplan.com.*

[17] February 19, 2020 Exemption Request at 2.

[18] ''Small Industry OATS Reporters'' are Industry Members that are currently required to record and report information to FINRA's Order Audit Trail System pursuant to applicable self-regulatory organization (''SRO'') rules. *See* February 19, 2020 Exemption Request at 3.

[19] *See* February 19, 2020 Exemption Request at 3. The Participants state that Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would not be required to report Phase 2a Industry Member Data to the Central Repository until December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters would begin reporting. *See* February 19, 2020 Exemption Request at 3.

[20] *See* February 19, 2020 Exemption Request at 3.

[21] *See* February 19, 2020 Exemption Request at 3. The Participants state that the items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c or Phase 2d. While the following summarizes the categories of Industry Member Data to be reported for Phase 2a, the Participants state that the Industry Member Technical Specifications provide detailed guidance regarding the data to be reported for each Phase. *See id.* at 2–3. In addition, the Participants state that they plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in the February 19, 2020 Exemption Request. *See id.*

[22] *See* FINRA Rule 7440.

[23] *See* February 19, 2020 Exemption Request at 3.

[24] *See* February 19, 2020 Exemption Request at 3–4.

[25] *See* February 19, 2020 Exemption Request at 4. Section 6.3(d)(i)(A) of the CAT NMS Plan, as applied by Section 6.4(d)(i), requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Section 6.4(d)(ii)(C) of the CAT NMS Plan requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID.

[26] *See* February 19, 2020 Exemption Request at 4. The Participants state that a representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders. *See id.*

[27] *See* February 19, 2020 Exemption Request at 4.

[28] *See* February 19, 2020 Exemption Request at 4.

The Participants state that Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events.[29] The Participants state that specifically, for each Reportable Event in Section 6.3(d) of the CAT NMS Plan, Industry Members would be required to provide a timestamp pursuant to Section 6.8(b) of the CAT NMS Plan.[30] The Participants explain that accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[31] The Participants state that Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a.[32] In addition, during Phase 2a, the Participants state that Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO'').[33]

The Participants state that in Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances.[34] The Participants explain that specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity.[35] The Participants state that if, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Member sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[36] In addition, the Participants state that in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.[37]

For Phase 2a, Participants would require Small Industry OATS Reporters to begin reporting to the Central Repository at the same time as Large Industry Members.[38] The Participants state that aligning the start of CAT reporting for Small Industry OATS Reporters with that of Large Industry Members under the Phased Reporting approach is designed to accelerate the retirement of OATS, and that having data from the Small Industry Members currently reporting to OATS available when Large Industry Members begin reporting would substantially facilitate a more expeditious retirement of OATS.[39] The Participants further state that the retirement of OATS would lead to a significant cost savings for the industry by eliminating the need to maintain two duplicative reporting systems, as described in the CAT NMS Plan and as noted by the industry.[40]

In addition, the Participants state that commencing Phase 2a CAT reporting for Small Industry OATS Reporters and Large Industry Members simultaneously should not create significant burdens for Small Industry OATS Reporters because the additional year allotted to Small Industry Members under the CAT NMS Plan was intended to give Small Industry Members additional time to comply with the new reporting requirements.[41] The Participants believe this contention is supported by language in the Rule 613 Adopting Release indicating that small broker-dealers were provided with an additional year to begin reporting because ''small broker-dealers, particularly those that operate manual systems, might be particularly impacted because of their more modest financial resources and may need additional time to upgrade to an electronic method of reporting audit trail data to the central repository.'' [42] However, the Participants state that they do not believe that this concern applies to small broker-dealers that are OATS Reporters.[43] The Participants explain that while their proposed exemption would accelerate CAT reporting obligations for approximately 230 Small Industry Members, 220 of those firms already report to OATS through clearing firms or other third-party providers, all of which will begin reporting to the CAT at the same time as Large Industry Members.[44] As a result, the Participants believe that (1) additional technical requirements or costs to accelerate reporting requirements for these firms should be limited, and (2) that this change would allow introducing and clearing firms to avoid the costs associated with maintaining two systems during the additional transition year otherwise provided to Small Industry Members.[45] Of the ten Small Industry Members that report to OATS on their own behalf, the Participants state that eight have very few reportable events and, consequently, the Participants believe that these Industry Members would not have significant burdens reporting to the CAT rather than continuing to report to OATS.[46]

The Participants also believe that Phase 2a will serve as a substantial step forward for CAT reporting because it will cover not only all OATS events and scenarios from all OATS reporters, but will also include a variety of data not covered by OATS or other SRO systems.[47] In addition, the Participants state that Large Industry Members and Small Industry OATS Reporters would be required to report the FDID during Phase 2a, and that the FDID will allow regulators to identify that the same account is trading within a single broker-dealer.[48] Furthermore, the Participants state that during Phase 2a, certain linkages between street side representative orders and the related customer order will be enabled, which will provide significant benefits to regulators using the data, and that these

[29] *See* February 19, 2020 Exemption Request at 4.

[30] *See* February 19, 2020 Exemption Request at 4. The Participants state that Section 6.8(b) of the CAT NMS Plan states that Industry Members shall be permitted to record and report: (i) Manual Order Events to the Central Repository in increments up to and including one second, provided that . . . Industry Members shall be required to record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such . . . Industry Member (''Electronic Capture Time'') in milliseconds.

[31] *See* February 19, 2020 Exemption Request at 5. The Participants state that Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Participants state that the Electronic Capture Time would not be required for other Manual Order Events. *See id.* at n.14.

[32] *See* February 19, 2020 Exemption Request at 5.

[33] *See* February 19, 2020 Exemption Request at 5. The Participants state that Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a. *See id.*

[34] *See* February 19, 2020 Exemption Request at 5.

[35] *See* February 19, 2020 Exemption Request at 5.

[36] *See* February 19, 2020 Exemption Request at 5. The Participants represent that this approach is comparable to the approach set forth in OATS Compliance FAQ 35. *See id.* at n.15.

[37] *See* February 19, 2020 Exemption Request at 5.

[38] *See* February 19, 2020 Exemption Request at 5.

[39] *See* February 19, 2020 Exemption Request at 5.

[40] *See* February 19, 2020 Exemption Request at 6.

[41] *See* February 19, 2020 Exemption Request at 6.

[42] *See* February 19, 2020 Exemption Request at 6; *see also* Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45722, 45749 (August 1, 2012) (''Rule 613 Adopting Release'').

[43] *See* February 19, 2020 Exemption Request at 6.

[44] *See* February 19, 2020 Exemption Request at 6.

[45] *See* February 19, 2020 Exemption Request at 6.

[46] *See* February 19, 2020 Exemption Request at 6. The Participants state that in one recent month, five of the ten firms submitted fewer than 100 reports during the month, with four submitting fewer than 50. *See id.* at n.19.

[47] *See* February 19, 2020 Exemption Request at 6. For example, the Participants state that during Phase 2a, Large Industry Members and Small Industry OATS Reporters will be required to report all proprietary orders, including market maker orders, whereas market making and representative proprietary orders are not required to be captured under the OATS rules. *See id.*

[48] *See* February 19, 2020 Exemption Request at 7. The Participants state that when the Customer information reporting begins, the Firm Designated ID will be used to link accounts to specific customers. *See id.* at n.20.

linkages are not required under the OATS rules.[49]

In regard to Small Industry Non-OATS Reporters, the Participants do not propose to require these reporters to commence CAT reporting at the same time as Large Industry Members on April 20, 2020.[50] Instead, the Participants propose to require Small Industry Non-OATS Reporters to begin reporting Phase 2a Industry Member Data by December 13, 2021, twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting Phase 2a Industry Member Data to the Central Repository.[51] The Participants determined not to accelerate Phase 2a CAT reporting for Small Industry Non-OATS Reporters because unlike Small Industry OATS Reporters, the burdens of CAT reporting are significantly greater for those firms that are not currently reporting to OATS.[52] In addition, because Small Industry Non-OATS Reporters do not report to OATS, the Participants state that accelerating their reporting would not have any effect on the retirement of OATS.[53]

B. Phase 2b Scope

The Participants state that in the second phase of Phased Reporting (''Phase 2b''), Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by May 18, 2020.[54] Small Industry Members, however, would not be required to report Phase 2b Industry Member Data to the Central Repository until December 13, 2021, which is nineteen months after Large Industry Members begin reporting such data to the Central Repository.[55]

The Participants state that ''Phase 2b Industry Member Data'' would be Industry Member Data required to be reported to the Central Repository commencing in Phase 2b as set forth in the Industry Member Technical Specifications.[56] Specifically, the Participants state that Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[57] The Participants explain that a simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member.[58] The Participants state that electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system.[59] The Participants state that electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member.[60] The Participants further explain that an electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange.[61] The Participants add that responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b.[62]

Furthermore, the Participants state that combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a.[63] The Participants state that a combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange.[64] The Participants state that during Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.[65]

C. Phase 2c Scope

The Participants state that in the third phase of Phased Reporting (''Phase 2c''), Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021.[66] Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is seven months after Large Industry Members begin reporting such data to the Central Repository.[67]

The Participants state that ''Phase 2c Industry Member Data'' would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data.[68] Specifically, the Participants state that Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers[69] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c;[70] (11) reporting of date

[49] *See* February 19, 2020 Exemption Request at 7.

[50] *See* February 19, 2020 Exemption Request at 7.

[51] *See* February 19, 2020 Exemption Request at 7.

[52] *See* February 19, 2020 Exemption Request at 7.

[53] *See* February 19, 2020 Exemption Request at 7.

[54] *See* February 19, 2020 Exemption Request at 7.

[55] *See* February 19, 2020 Exemption Request at 7.

[56] *See* February 19, 2020 Exemption Request at 7. The Participants state that while the following summarizes the categories of Industry Member Data to be reported for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding the data to be reported for each Phase. *See id.* at 7, 2–3.

[57] *See* February 19, 2020 Exemption Request at 7. The Participants state that the items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below. *See id.* at n.21.

[58] *See* February 19, 2020 Exemption Request a 7–8.

[59] *See* February 19, 2020 Exemption Request at 8.

[60] *See* February 19, 2020 Exemption Request at 8.

[61] *See* February 19, 2020 Exemption Request at 8.

[62] *See* February 19, 2020 Exemption Request at 8.

[63] *See* February 19, 2020 Exemption Request at 8.

[64] *See* February 19, 2020 Exemption Request at 8.

[65] *See* February 19, 2020 Exemption Request at 8.

[66] *See* February 19, 2020 Exemption Request at 8.

[67] *See* February 19, 2020 Exemption Request at 8.

[68] *See* February 19, 2020 Exemption Request at 8. The Participants state that while the following summarizes the categories of Industry Member Data to be reported for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the data to be reported for each Phase. *See id.* at 8, 2–3.

[69] *See* definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan. *See also* Rule 13h–1 under the Exchange Act.

[70] The CAT NMS Plan requires LTID to be reported to the CAT as part of Customer Account Information. As set forth in the February 19, 2020 Exemption Request, the Participants propose to require the reporting of LTID to the CAT in Phases 2c and 2d, instead of with the rest of Customer

account opened or Account Effective Date [71] (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[72]

The Participants state that Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) An equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an ''inter-dealer quotation system'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed).[73] The Participants state that with respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c.[74] The Participants explain that accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.[75]

D. Phase 2d Scope

The Participants state that in the fourth phase of Phased Reporting (''Phase 2d''), Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021.[76] The Participants state that the full scope of CAT Data other than Phase 2e Industry Member Data will be required to be reported to the CAT when Phase 2d has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.[77]

The Participants state that ''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data.[78]

The Participants state that Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.[79] The Participants state that Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: A listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed).[80] The Participants state that accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition would be reportable in Phase 2d for options.[81]

The Participants state that Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, the Participants state that subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations

Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule. *See* February 19, 2020 Exemption Request at 9–11.

[71] *See* definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan.

[72] *See* February 19, 2020 Exemption Request at 8–9. The Participants state that in Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications. *See id.* at n.24.

[73] *See* February 19, 2020 Exemption Request at 9.

[74] *See* February 19, 2020 Exemption Request at 9.

[75] *See* February 19, 2020 Exemption Request at 9.

[76] *See* February 19, 2020 Exemption Request at 9.

[77] *See* February 19, 2020 Exemption Request at 10.

[78] *See* February 19, 2020 Exemption Request at 9–10. The Participants state that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the reporting of information related to the modification or cancellation of a route (similar to the data required for the routing of an order and modification and cancellation of an order) is required pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan. *See id.* at 10 n.25. The Participants state that while the following summarizes the categories of Industry Member Data to be reported for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the data to be reported for each Phase. *See id.* at 10, 2–3.

[79] *See* February 19, 2020 Exemption Request at 10.

[80] *See* February 19, 2020 Exemption Request at 10.

[81] *See* February 19, 2020 Exemption Request at 10.

provided via email or instant messaging).[82]

E. Phase 2e Scope

The Participants state that in the fifth phase of Phased Reporting (''Phase 2e''), both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022.[83] The Participants state that ''Phase 2e Industry Member Data'' includes Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.[84] The Participants state that LTIDs and Account Effective Date are both provided in Phases 2c and 2d in certain circumstances, as discussed above.[85] The Participants state that the terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Section 1.1 of the CAT NMS Plan.[86] The Participants represent that the full scope of CAT Data will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.[87]

F. Industry Member Testing Requirements

The Participants state that the CAT NMS Plan sets forth certain timelines for testing for various aspects of the implementation of Industry Member reporting to the CAT.[88] The Participants elaborate that specifically, Section 10 of Appendix C of the CAT NMS Plan sets forth testing timelines for Large and Small Industry Members involving, in relevant part, the publication and implementation of the methods for providing information to the Customer-ID database, the submission of order and market maker quote data to Central Repository, and the linkage of the lifecycle of order events.[89] Given the Participants' proposal to shift from two specified dates for the commencement of CAT reporting for Large and Small Industry Members to Phased Reporting, which features varying commencement dates according to each Phase for Large Industry Members, Small Industry OATS Reporters, and Small Industry Non-OATS Reporters, as described above, the Participants recognize that the testing milestones set forth in Appendix C of the CAT NMS Plan do not easily correspond to Phased Reporting.[90] Accordingly, the Participants propose to replace the Industry Member testing milestones in Appendix C with the following testing milestones.[91] The Participants represent that in each case, the proposed testing timeline would provide ample testing time for Industry Members.[92] The proposed testing timeline is as follows:

- Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019;
- Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020;
- The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020;
- The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020;
- The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021;
- The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021;
- Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020;
- The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.[93]

III. Request for Relief

In order to allow for the implementation of Phased Reporting, the Participants request, in the February 19, 2020 Exemption Request, that the Commission grant each Participant exemptive relief from the requirement in Section 6.4 of the CAT NMS Plan that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members'' (*i.e.,* November 15, 2018 and November 15, 2019, respectively).[94] The Participants also request that the Commission grant each Participant exemptive relief from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members (other than Small Industry Members) to report to the Central Repository Industry Member Data within two 2 years after the Effective Date (*i.e.,* by November 15, 2018); and the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Small Industry Members to report to the Central Repository Industry Member Data

[82] *See* February 19, 2020 Exemption Request at 10.

[83] *See* February 19, 2020 Exemption Request at 11; *see supra* note 16.

[84] *See* February 19, 2020 Exemption Request at 11.

[85] *See* February 19, 2020 Exemption Request at 11.

[86] *See* February 19, 2020 Exemption Request at 11. The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, dates of birth and individual tax payer identification numbers and social security numbers (collectively, ''SSNs''). *See* Section 1.1 of the CAT NMS Plan. The Participants state that they requested exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, SEC, Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). On March 17, 2020, the Commission granted conditional exemptive relief to allow for an alternative approach to generating a CAT Customer ID without requiring Industry Members to report individual social security numbers or tax payer identification numbers and (2) to allow for an alternative approach that exempts the reporting of dates of birth and account numbers associated with natural person retail Customers to the CAT, and instead will require Industry Members to report the year of birth associated with natural person retail Customers and the FDID for each trading account associated with the Customer. *See* Securities Exchange Act Release No. 88393, 85 FR 16152, 16152 (March 20, 2020).

[87] *See* February 19, 2020 Exemption Request at 11.

[88] *See* February 19, 2020 Exemption Request at 11.

[89] *See* February 19, 2020 Exemption Request at 11.

[90] *See* February 19, 2020 Exemption Request at 11.

[91] *See* February 19, 2020 Exemption Request at 11. The Participants state that each of the testing milestones has been set forth in the updated master plan provided to the SEC. *See id.* The Division of Trading and Markets requested a master plan from the Participants detailing all the material steps necessary to fully implement both Participant and Industry Member reporting as part of completing the CAT, among other items. *See* Securities Exchange Act Release No. 86901, 84 FR 48458, 48460 (September 13, 2019) (''Proposed Transparency and Financial Accountability Amendments'').

[92] *See* February 19, 2020 Exemption Request at 11. *See* Section 10.1, Appendix D of the CAT NMS Plan.

[93] *See* February 19, 2020 Exemption Request at 11–12.

[94] *See* February 19, 2020 Exemption Request at 12.

within three 3 years after the Effective Date (*i.e.,* by November 15, 2019).[95]

In support of their request for an exemption, the Participants state that Industry Members have expressed concern about being out of compliance with the reporting deadlines as currently set forth in the Compliance Rules, and have indicated that there is a need for formal guidance as to the revised CAT reporting schedule for Industry Members.[96] The Participants state that such certainty would assist Industry Members in their efforts to ensure compliance with the regulatory requirements related to the CAT.[97] The Participants state that the full scope of CAT Data will be required to be reported when all five phases of Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.[98]

The Participants also state that, as a condition to the exemption, each Participant would implement the Phased Reporting described above through its Compliance Rule by requiring:

- *For Phase 2a Industry Member Data:* Its Large Industry Members and its Small Industry OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by April 20, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;
- *For Phase 2b Industry Member Data:* Its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by May 18, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;
- *For Phase 2c Industry Member Data:* Its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;
- *For Phase 2d Industry Member Data:* Its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and
- *For Phase 2e Industry Member Data:* Its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.[99]

The Participants also state that, as a further condition to the exemption, each Participant would implement the testing timelines described above through its Compliance Rule by requiring the following:

- Industry Member file submission and data integrity testing for Phases 2a and 2b to begin in December 2019.
- Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, to begin in February 2020.
- The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.
- The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.
- The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.
- The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.
- Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.
- The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.[100]

IV. Discussion

Section 36 of the Exchange Act grants the Commission the authority, with certain limitations, to ''conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' [101] Rule 608(e) of Regulation NMS under the Exchange Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, from the provisions of the rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.[102]

The Commission believes that exemptive relief pursuant to Section 36 of the Exchange Act to allow for the implementation of Phased Reporting for Industry Members is appropriate in the public interest, and is consistent with the protection of investors and that, pursuant to Rule 608(e), such relief is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. In accordance with the CAT NMS Plan, the Participants adopted Compliance Rules to require their Industry Members to commence reporting Industry Member Data by November 15, 2018 for Large Industry Members, and November 15, 2019 for Small Industry Members, respectively.[103] Industry Members, however, have not been able to commence reporting Industry Member Data to the CAT because there has not been a system in place capable of accepting the required Industry Member Data.

Allowing the Participants to revise the Industry Member CAT reporting requirements in the Compliance Rules to be consistent with Phased Reporting as described in this Order will facilitate an incremental approach to CAT implementation. Such an approach could contribute to more efficient development of the overall CAT system, which has been subject to delays, and could provide certainty to Industry Members as they implement their regulatory data collection systems and make any necessary adjustments.

Although the Participants proposed in the February 19, 2020 Exemption

[95] *See* February 19, 2020 Exemption Request at 12.

[96] *See* February 19, 2020 Exemption Request at 2. The Participants state that they plan to file revisions to their Compliance Rules consistent with the exemptive relief requested in the February 19, 2020 Exemption Request, including revisions to testing and related dates associated with Industry Member CAT reporting. *See id.*

[97] *See* February 19, 2020 Exemption Request at 2.

[98] *See* February 19, 2020 Exemption Request at 13.

[99] *See* February 19, 2020 Exemption Request at 12–13.

[100] *See* February 19, 2020 Exemption Request at 13.

[101] 15 U.S.C. 78mm(a)(1).

[102] 17 CFR 242.608(e).

[103] *See* FINRA CAT Compliance Rule Approval Order, *supra* note 9; CAT Compliance Rule Joint Approval Order, *supra* note 9.

Request that Phase 2a reporting would commence on April 20, 2020 and Phase 2b reporting would commence on May 18, 2020,[104] in light of COVID–19 and the Participants' subsequent March 19, 2020 No Action Request,[105] the Commission believes that the Participants should be granted an exemption from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020 and Phase 2b reporting to commence on July 20, 2020, provided that Industry Members who elect to report to the CAT prior to such dates be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting. The Participants represented in their March 19, 2020 No Action Request that the CAT will be ready to accept CAT reports from Industry Members as of April 20, 2020 [106] and that the Participants understand that the Plan Processor for the CAT will be able to meet its upcoming system build and production dates.[107]

The Commission believes that separating the reporting dates for OATS reporting firms from those that have no OATS reporting obligations is appropriate because firms that do not currently report to OATS will face a different range of costs and tasks to implement and maintain CAT reporting, since these firms are likely to have little to no regulatory data reporting infrastructure in place.[108] Unlike these firms, Small Industry OATS Reporters already have regulatory data reporting infrastructure in place to support OATS reporting, and because Phase 2a reporting would include all events and scenarios covered by OATS,[109] the Commission believes that it should be less costly for Small Industry OATS Reporters to comply with the Large Industry Member reporting deadline than it would be for Small Industry Non-OATS Reporters. In addition, Small Industry OATS Reporters, as Small Industry Members, have had notice that they were going to be required to start reporting to the CAT on November 15, 2019 since the CAT NMS Plan was approved on November 15, 2016.[110] Therefore, the Phase 2a start date associated with accelerating the CAT reporting obligations for Small Industry OATS Reporters so that they report on the same date as Large Industry Members would still serve to extend their reporting deadline by seven months beyond the compliance date in the CAT NMS Plan. Moreover, while this exemption allows the Participants' Compliance Rules to require the CAT reporting date for Small Industry OATS Reporters to be the same as that for Large Industry Members in Phase 2a, the reporting deadline for Small Industry OATS Reporters would remain the same as for Small Industry Non-OATS Reporters for Phases 2b, 2c, and 2d—*i.e.,* Small Industry Members would not be required to report Industry Member Data associated with Phases 2b, 2c, and 2d until December 13, 2021. Thus, all Small Industry Members could gain an additional 24 months beyond the compliance date in the CAT NMS Plan to prepare for CAT Reporting for Phases 2b, 2c, and 2d via the Phased Reporting schedule.

The Commission's exemption is limited to Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central Repository. The Commission's exemption does not extend to any other dates or obligations in the CAT NMS Plan. In addition, even though the Commission is permitting the start dates for Phase 2a and Phase 2b Industry Member reporting to be extended compared to what was in the February 19, 2020 Exemption Request as discussed above,[111] the exemption is conditioned upon the Participants complying with all other dates that are a part of Phased Reporting, as announced in the published timeline that has already been communicated to broker-dealers, given that Industry Member reporting was required to begin over a year ago per the CAT NMS Plan.[112] The Commission believes it is appropriate to impose such a condition because the Participants have stated that FINRA CAT has been very clear that it will be prepared to accept data from any Industry Member that has completed onboarding and certification testing by April 20, 2020 for Phase 2a reporting, and will similarly be ready by May 18, 2020 for Phase 2b reporting as described on *www.catnmsplan.com.*[113]

Based on the foregoing, the Commission is granting this conditional exemptive relief from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central Repository to allow for the implementation of Phased Reporting for Industry Members to the CAT. This order granting exemptive relief is conditioned upon each Participant implementing the Phased Reporting

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[104] *See* February 19, 2020 Exemption Request at 3, 7.

[105] On March 19, 2020 the Participants requested additional time for Industry Members to prepare for the commencement of reporting and stated that Phase 2a and Phase 2b reporting would commence on June 22, 2020 and July 20, 2020, respectively. The Participants stated that industry groups have requested extensions of CAT implementation dates for at least 60 days. *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brett Redfearn, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission, dated March 19, 2020 (''March 19, 2020 No Action Request'') *available at https://www.catnmsplan.com/sites/default/files/2020-03/Plan%20Participant%27s%20Request%20for%20No%20Action%20Relief.pdf*; *see also* Letter from Christopher Bok, Esq., Director, Financial Information Forum, to Michael Simon, Chair, CAT NMS Plan Operating Committee, dated March 16, 2020 *available at https://fif.com/comment-letters/category/?download=2129:fif-request-for-immediate-phase-2a-and-phase-2b-relief* (requesting an immediate pause of at least 60 days from near term CAT Phase 2a and Phase 2b milestones in response to COVID–19, one of the effects of which would be to shift the Phase 2a and Phase 2b compliance dates to June 22, 2020 and July 20, 2020, respectively).

[106] *See* March 19, 2020 No Action Request at 1.

[107] *See id.* at 2.

[108] *See* CAT NMS Plan Approval Order, *supra* note 1, at 84860.

[109] *See* February 19, 2020 Exemption Request at 3.

[110] The Effective Date of the CAT NMS Plan was November 15, 2016. *See supra* note 1. Section 6.4 of the CAT NMS Plan, which governs data reporting and recording by Industry Members, provides that the requirements for Industry Members under that section shall become effective on the third anniversary of the Effective Date in the case of Small Industry Members. *See id.* Therefore, November 15, 2019 is three years after the Effective Date of the CAT NMS Plan.

[111] *See supra* note 104.

[112] *See* CAT NMS Plan website, *Timeline, https://catnmsplan.com/timelines/* (last visited March 26, 2020). For example, for Phases 2a and 2b, Industry Members must comply with the full functionality associated with Production Environment Go-Live for intrafirm linkage validations (Release 2—Intrafirm Linkage) on July 27, 2020, and August 24, 2020, respectively, and Industry Members must comply with the full functionality associated with Production Environment Go-Live for firm-to-firm linkage validations (Release 3—Interfirm Linkage) on October 26, 2020, and January 4, 2021, respectively. *See id.*

Industry Members were required to start reporting to the CAT on November 15, 2018, according to Section 6.4 of the CAT NMS Plan, which governs data reporting and recording by Industry Members. *See supra* note 8.

[113] On March 27, 2020, the Participants submitted a letter to further the discussion regarding the timeline for Industry Member reporting. *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Brett Redfearn, Director, Division of Trading and Markets, U.S. Securities and Exchange Commission, dated March 27, 2020 *available at https://www.catnmsplan.com/sites/default/files/2020-03/03.27.20-%20Participant%27s%20Relief%20Request.pdf.* The Participants stated that the reporting dates included in the February 19, 2020 Exemption Request remain operable from the Participants' and Plan Processor's perspective and provide a clear path for Industry Members that have completed certification testing and are prepared to meet those deadlines. *See id.* at 1–2. The Participants also stated that the Participants and FINRA CAT have been communicating to the industry since last fall that the CAT system will be ready to receive Industry Member Data on April 20, 2020, and that this date remains operative from the perspective of both FINRA CAT and the Participants. *See id.* at 1.

described above, in a manner consistent with the February 19, 2020 Exemption Request, including each of the representations made in the February 19, 2020 Exemption Request, as modified by the discussion in Section IV of this Order. As noted above, the Participants have represented in their February 19, 2020 Exemption Request that the full scope of CAT Data required under the CAT NMS Plan will be available when all five phases of Phased Reporting are complete, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.[114]

Accordingly, *it is hereby ordered*, pursuant to Section 36 of the Exchange Act [115] and Rule 608(e) of Regulation NMS,[116] that the Commission grants the Participants' request for exemptive relief, as set forth in the February 19, 2020 Exemption Request from the requirements in Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central Repository to allow for the implementation of Phased Reporting, subject to the conditions described above.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–08705 Filed 4–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88700; File No. SR–NYSE–2020–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE Rule 6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

I. Introduction

On January 3, 2020, New York Stock Exchange LLC (''NYSE'' or ''the Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'').[3] The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[4] On March 5, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.[5] The Commission received no comments on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR–NYSE–2020–01.[6]

II. Description of the Proposed Rule Change

The Exchange proposes to amend the NYSE Rule 6800 Series (''Compliance Rule''), which sets forth rules regarding Industry Member [7] compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants [8] of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID [9] based on a proposed amendment to the CAT NMS Plan filed with the Commission; [10] (2) amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting; [11] (3) amend the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility; [12] (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data [13] to the Central

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[114] *See* February 19, 2020 Exemption Request at 2.

[115] 15 U.S.C. 78mm(a)(1).

[116] 17 CFR 242.608(e).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[4] *See* Securities Exchange Act Release No. 87990 (January 16, 2020), 85 FR 3963 (''Notice'').

[5] *See* Securities Exchange Act Release No. 88329, 85 FR 14265 (March 11, 2020).

[6] 15 U.S.C. 78(s)(b)(2)(B).

[7] Industry Member means a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan, *supra* note 3, at Section 1.1. *See also* proposed NYSE Rule 6810(s).

[8] The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[9] As proposed, ''Firm Designated ID'' would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. *See* proposed NYSE Rule 6810(r).

[10] *See* Notice, *supra* note 4, at 3964. *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

[11] *See* Notice, *supra* note 4, at 3967–72. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[12] *See* Notice, *supra* note 4, at 3972. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

[13] *See* Notice, *supra* note 4, at 3972–73. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

Repository; [14] (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an account, on the order reported to CAT; [15] and (6) revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, social security numbers, or account numbers for individuals.[16]

The Exchange also proposes to amend the Exchange's Compliance Rule to facilitate the retirement of certain existing regulatory systems, specifically the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System, by adding additional data elements to the CAT reporting requirements for Industry Members,[17] additional reporting requirements for alternative trading systems,[18] and additional data elements related to OTC Equity Securities [19] that FINRA currently receives from alternative trading systems that trade OTC Equity Securities.[20]

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [21] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[22] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to 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.'' [24] The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [25] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[26] any request for an opportunity to make an oral presentation.[27]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 15, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 29, 2020. 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 Numbers SR–NYSE–2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–01. 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

[14] The Central Repository, as defined in the CAT NMS Plan, means ''the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.'' *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[15] *See* Notice, *supra* note 4, at 3973. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in circumstances in which an Industry Member uses an established trading relationship for the individual customer. Instead, the Participant would require Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier instead of the account number, (ii) the ''account type'' as a ''relationship'', and (3) the account effective date instead of the ''date account opened.'' *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[16] *See* Notice, *supra* note 4, at 3973. The Participants requested and have received exemptive relief from the requirement of Section 6.4(d)(ii)(C) of the CAT NMS Plan for the Participants, in their Compliance Rules, to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[17] *See* Notice, *supra* note 4, at 3965–67.

[18] *See* Notice, *supra* note 4, at 3964–65.

[19] OTC Equity Security, as defined in the CAT NMS Plan, means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities. *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[20] *Id.* at 3967.

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 240.19b–4.

[27] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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–NYSE–2020–01 and should be submitted on or before May 15, 2020 Rebuttal comments should be submitted by May 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08701 Filed 4–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88692; File No. SR–NYSENAT–2020–16]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1.1 To Include Managed Portfolio Shares in the Definition of ''UTP Exchange Traded Product''

April 20, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 16, 2020, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1.1 to include Managed Portfolio Shares in the definition of ''UTP Exchange Traded Product.'' The proposed rule change is available on the Exchange's website at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1.1(m), which sets forth the meanings of ''Exchange Traded Product'' and ''UTP Exchange Traded Product'' as those terms are used in Exchange rules. Specifically, the Exchange proposes to amend the definition of ''UTP Exchange Traded Product'' to include Managed Portfolio Shares[4] as an additional type of Exchange Traded Product (''ETP'') that may trade on the Exchange pursuant to unlisted trading privileges (''UTP'').

To effect this change, the Exchange proposes to add a bullet point listing ''Managed Portfolio Shares'' in Rule 1.1(m) to include them in the enumerated list of ETPs that may trade on the Exchange on a UTP basis. The Exchange also proposes a non-substantive grammatical change to accommodate the addition of ''Managed Portfolio Shares'' as the final item in the bulleted list in Rule 1.1(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, because it is designed to remove impediments to and perfect the mechanism of a free and open market, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and, in general, to protect investors and the public interest because it ensures that Rule 1.1(m) correctly identifies and publicly states the complete list of ETPs that may trade on a UTP basis on the Exchange, providing additional specificity, clarity, and transparency in the Exchange's rules. Moreover, the proposed rule change will facilitate the trading of an additional type of ETP on the Exchange pursuant to UTP, thereby enhancing competition among market participants for the benefit of investors and the marketplace.

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 proposed change would provide the public and investors with up-to-date information about the types of ETPs that can trade on the Exchange on a UTP basis and would promote competition by adding an additional type of ETP that may trade on the Exchange pursuant to UTP.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Managed Portfolio Shares are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. *See, e.g.,* Cboe BZX Exchange, Inc. (''BZX'') Rule 14.11(k). On April 2, 2020, BZX commenced trading its first securities listed under BZX Rule 14.11(k) (American Century Focused Dynamic Growth ETF (FDG) and American Century Focused Large Cap Value ETF (FLV)).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) & (5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change,

Continued

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] 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 proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow trading of Managed Portfolio Shares on the Exchange on a UTP basis without delay. The Exchange further states that Managed Portfolio Shares listed on BZX commenced trading on April 2, 2020. Based on the foregoing, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSENAT–2020–16 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–NYSENAT–2020–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent 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–NYSENAT–2020–16 and should be submitted on or before May 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08694 Filed 4–23–20; 8:45 am]

BILLING CODE 8011–01–P

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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88699; File No. SR–NYSEAMER–2020–03]

Self-Regulatory Organizations; NYSE American LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE American Rule 6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

I. Introduction

On January 3, 2020, NYSE American LLC (''NYSE American'' or ''the Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'').[3] The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[4] On March 5, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.[5] The Commission received no comments on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR–NYSEAMER–2020–03.[6]

II. Description of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Rule 6800 Series (''Compliance Rule''), which sets forth rules regarding Industry Member [7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[4] *See* Securities Exchange Act Release No. 87989 (January 16, 2020), 85 FR 3995 (''Notice'').

[5] *See* Securities Exchange Act Release No. 88331, 85 FR 14252 (March 11, 2020).

[6] 15 U.S.C. 78(s)(b)(2)(B).

[7] Industry Member means a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan, *supra* note 3, at Section 1.1. *See also* proposed NYSE American Rule 6810(s).

compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants [8] of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID [9] based on a proposed amendment to the CAT NMS Plan filed with the Commission; [10] (2) amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting; [11] (3) amend the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility; [12] (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data [13] to the Central Repository; [14] (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an account, on the order reported to CAT; [15] and (6) revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, social security numbers, or account numbers for individuals.[16]

The Exchange also proposes to amend the Exchange's Compliance Rule to facilitate the retirement of certain existing regulatory systems, specifically the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System, by adding additional data elements to the CAT reporting requirements for Industry Members,[17] additional reporting requirements for alternative trading systems,[18] and additional data elements related to OTC Equity Securities [19] that FINRA currently receives from alternative trading systems that trade OTC Equity Securities.[20]

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [21] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[22] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

[8] The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[9] As proposed, ''Firm Designated ID'' would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. *See* proposed NYSE American Rule 6810(r).

[10] *See* Notice, *supra* note 4, at 3995. *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

[11] *See* Notice, *supra* note 4, at 3999–4003. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[12] *See* Notice, *supra* note 4, at 4003. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

[13] *See* Notice, *supra* note 4, at 4004. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

[14] The Central Repository, as defined in the CAT NMS Plan, means ''the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.'' *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[15] *See* Notice, *supra* note 4, at 4004. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in circumstances in which an Industry Member uses an established trading relationship for the individual customer. Instead, the Participant would require Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier instead of the account number, (ii) the ''account type'' as a ''relationship'', and (3) the account effective date instead of the ''date account opened.'' *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[16] *See* Notice, *supra* note 4, at 4005. The Participants requested and have received exemptive relief from the requirement of Section 6.4(d)(ii)(C) of the CAT NMS Plan for the Participants, in their Compliance Rules, to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[17] *See* Notice, *supra* note 4, at 3996.

[18] *See* Notice, *supra* note 4, at 3996–99.

[19] OTC Equity Security, as defined in the CAT NMS Plan, means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities. *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[20] *See* Notice, *supra* note 4, at 3999.

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 15 U.S.C. 78f(b)(5).

investors and the public interest.'' [24] The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [25] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,[26] any request for an opportunity to make an oral presentation.[27]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 15, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 29, 2020. 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 Numbers SR–NYSEAMER–2020–03 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–NYSEAMER–2020–03. 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–NYSEAMER–2020–03 and should be submitted on or before May 15, 2020. Rebuttal comments should be submitted by May 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08700 Filed 4–23–20; 8:45 am]

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[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 240.19b–4.

[27] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88694; File No. SR–MSRB–2020–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide Dealers and Municipal Advisors Additional Time To Comply With Certain Obligations for a Temporary Period of Time and Temporarily Suspend Late Fees on Payments Owed to the MSRB

April 20, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2020 the Municipal Securities Rulemaking Board (''MSRB'') 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 MSRB. 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 MSRB filed with the Commission a proposed rule change to provide dealers and municipal advisors additional time to comply with certain obligations for a temporary period of time and temporarily suspend late fees on payments owed to the MSRB (the ''proposed rule change''). The MSRB has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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 MSRB 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 MSRB is closely monitoring the impact of the coronavirus disease (COVID–19) pandemic on municipal market participants, including brokers, dealers, municipal securities dealers (''dealers''), municipal advisors, issuers and investors. The MSRB recognizes that dealers and municipal advisors (collectively, ''regulated entities'') are experiencing operational challenges with a vast number of individuals working from home, coupled with unprecedented conditions in the municipal market due to the COVID–19 pandemic.[4] In an effort to provide regulated entities an opportunity to better manage and allocate resources during these exigent circumstances, the MSRB is proposing to (i) suspend late fees owed for the period of March 1, 2020 through July 31, 2020; (ii) modify the date by which compliance obligations must be completed under certain MSRB rules for a temporary period; and (iii) extend the compliance date of rule changes that have yet to be implemented.[5]

The MSRB will continue monitoring the impact of the COVID–19 pandemic and work in close coordination with other financial regulators and governmental authorities.

Temporary Suspension of Late Fees

The MSRB assesses late fees under MSRB Rule A–11, on assessments for municipal advisor professionals, and MSRB Rule A–12, on registration. The MSRB is proposing to suspend the assessment of such late fees on overdue balances that may be owed to the MSRB for a temporary period. Specifically, the proposed rule change would temporarily suspend, for the period of March 1, 2020 through July 31, 2020, the late fees assessed under:

- MSRB Rule A–11(b), for the annual municipal advisor professional fees owed by each municipal advisor pursuant to Rule A–11(a) for each person associated with the municipal advisor who is qualified as a municipal advisor representative pursuant to Rule A–11(a);
- MSRB Rule A–12(d), for the:
- Initial registration fee owed by each dealer and municipal advisor pursuant to Rule A–12(b);
- Annual registration fee owed by each dealer and municipal advisor pursuant to Rule A–12(c);
- Any underwriting assessments owed by each dealer, pursuant to MSRB Rule A–13(a), for municipal securities purchased from an issuer by or through a dealer as part of a primary offering; [6]
- Any underwriting assessment for a primary offering of municipal fund securities owed, pursuant to Rule A–13(b), by each underwriter of a primary offering of a plan, as the terms ''underwriter'' and ''plan'' are defined under Rule G–45(d)(xiv) and Rule G–45(d)(ix), respectively;
- Any transaction assessment owed by each dealer for certain inter-dealer municipal securities sales pursuant to Rule A–13(d)(i); and
- Any technology assessment owed by each dealer for certain sales to customers pursuant to Rule A–13(d)(ii).

Late fees are generally assessed during the last week of the month on outstanding balances subject to late fees per applicable Rule at that point in time. In this instance, beginning on August 1, 2020, outstanding balances will be subject to late fees as specified by MSRB Rule A–11(b) and MSRB Rule A–12(d), respectively. During the last week of August, outstanding balances subject to late fees under those Rules will be assessed such fees in accordance with those Rules. Late fees will not be assessed retroactively for the period of March 1, 2020 through July 31, 2020.

Extension of Time To Complete Certain Supervisory Functions

The MSRB is proposing to provide dealers additional time to complete certain annual supervisory functions under MSRB Rule G–27, on supervision. Specifically, the following supervisory obligations shall be deemed to have been timely completed for calendar year 2020, provided that such supervisory obligations are completed on or before March 31, 2021:

- An inspection of an office of municipal supervisory jurisdiction, branch office or non-branch location pursuant to Rule G–27(d)(i)(A), (B) and (C), as applicable, recognizing that, consistent with Rule G–27 (g)(ii)(A)(7), a temporary location established in response to the implementation of a business continuity plan is not deemed an office for purposes of complying inspection obligations;
- The annual compliance interview or meeting pursuant to Rule G–27(b)(vii); and
- The submission of a report from the designated principal(s) to the firm's senior management detailing the review of the firm's supervisory controls pursuant to Rule G–27(f)(i).

Similarly, the MSRB is also proposing to provide municipal advisors until March 31, 2021 to complete the annual certification for calendar year 2020 required pursuant to MSRB Rule G–44, on supervisory and compliance obligations of municipal advisors. Pursuant to Rule G–44(d), the chief executive officer(s) (or equivalent officer(s)) of a municipal advisor must annually certify in writing that the municipal advisor has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable rules.[7]

Extension of Previously Announced Compliance Dates

On January 31, 2020, the MSRB announced a compliance date of November 30, 2020 for the amended and restated guidance regarding the fair dealing obligations underwriters owe to issuers of municipal securities under MSRB Rule G–17, on conduct of municipal securities and municipal advisory activities (the ''Revised Interpretive Notice'').[8] The MSRB is proposing to extend the compliance date until March 31, 2021; underwriting relationships commenced by dealers on or after the revised compliance date will be subject to the Revised Interpretive Notice.[9]

[4] Wall Street Journal: How the Muni Market Became the Epicenter of the Liquidity Crisis (April 2, 2020) *https://www.wsj.com/articles/how-the-muni-market-became-the-epicenter-of-the-liquidity-crisis-11585823404*

[5] *See* 17 CFR 240.19b–4(f)(6).

[6] Rule A–13, on underwriting and transaction assessments for brokers, dealers, and municipal securities dealers, section A–13(a) provides that the underwriting assessment does not apply to a primary offering of securities if all such securities in the primary offering are commercial paper as defined in MSRB Rule G–32(d) or constitute municipal fund securities. An underwriting assessment for a primary offering of municipal fund securities is addressed under Rule A–13(b).

[7] As provided in Rule G–44(d), this requirement shall not apply to municipal advisors that are subject to a substantially similar certification requirement of the Financial Industry Regulatory Authority (FINRA) with respect to all applicable rules.

[8] MSRB Notice 2020–03 (Jan 31, 2020) announcing the effective date for the Revised Interpretive Notice, which the SEC had approved on November 6, 2019. *See* Release No. 34–87478 (Nov. 6, 2019), 84 FR 61660 (Nov. 13, 2019) (File No. SR–MSRB–2019–10).

[9] As stated in the Revised Interpretive Notice, an underwriting relationship is deemed to commence

Continued

On December 20, 2019, the MSRB announced a compliance date of November 30, 2020 for amendments to Form G–32.[10] These amendments to Form G–32 are designed to collect new data elements from underwriters related to primary offerings of municipal securities through the MSRB's Electronic Municipal Market Access Dataport system, the majority of which is data underwriters are presently required to input into the Depository Trust Company's New Issue Information Dissemination Service. The MSRB is proposing to extend the compliance date until March 31, 2021.[11]

Extension of Time To Complete Certain Professional Qualification Standards

FINRA, as appointed by the Commission, provides test administration services to the MSRB for the delivery of MSRB-owned professional qualification examinations.[12] FINRA uses Prometric [13] as its single vendor for the delivery of the professional qualification examinations that FINRA is charged with administering, including MSRB-owned professional qualification examinations. In March 2020, Prometric announced that, due to the COVID–19 pandemic, it was temporarily closing all of its test center locations in the United States and Canada through April 15, 2020.[14] While, at this time, Prometric has not announced a deviation from its planned resumption of operations effective April 16, 2020, there is no certainty as to when Prometric will resume operation of its testing centers. Moreover, there is no certainty as to when individuals would be able to visit any open testing centers due to stay-at-home orders that may be in place.

For those reasons, the MSRB is proposing to provide additional time to allow firms and individuals to fulfill certain professional qualification standards established under MSRB Rule G–3, on professional qualification requirements, consistent with MSRB Rule G–2, on standards of professional qualification as follows:

- The date by which an individual functioning in the capacity as a principal before passing the applicable MSRB-owned principal qualification examination pursuant to Rule G–3(b)(ii)(D),G–3(b)(iv)(B)(4) and G–3(c)(ii)(D), as applicable, would be extended 120 days from the time the MSRB announces that Prometric has resumed access to its testing centers; [15]
- The date by which an individual has to complete their Regulatory Element component of continuing education training, as required pursuant to Rule G–3(i)(i)(A)(1), would be extended 120 days from the time the MSRB announces that Prometric has resumed access to its testing centers; [16]
- The date by which certain individuals are required to become qualified with the Municipal Advisor Principal Qualification Examination (Series 54) would be extended until March 31, 2021. On October 11, 2019, the MSRB announced that a municipal advisor principal, [17] as defined under Rule G–3(e), would have a one-year grace period, sunsetting on November 12, 2020, to pass the Series 54.[18] The MSRB is proposing to extend the grace period until March 31, 2021. As a result, individuals qualified with the Municipal Advisor Representative Qualification Examination (Series 50) will be able to continue to engage in principal-level activities without passing the Series 54 until March 31, 2021; and
- The annual needs analysis and the delivery of continuing education pursuant to Rule G–3(i)(i)(B) and G–3(i)(ii), as applicable, shall be deemed to have been timely completed for calendar year 2020, provided that the needs analysis and the delivery of continuing education are completed on or before March 31, 2021.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[19] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is designed to provide dealers and municipal advisors additional time to comply with certain obligations for a temporary period of time and suspend late fees on payments owed to the MSRB; it does not relieve such regulated entities from compliance with underlying obligations that directly serve investor protection or market transparency goals. In a time when faced with unique challenges resulting from the COVID–19 pandemic, the proposed rule change will afford regulated entities the ability to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest during these unprecedented market conditions. In addition, the proposed rule change will also alleviate some of the operational challenges regulated entities may be experiencing, which will allow them to more effectively allocate resources to operations facilitate transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products.

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at the time the obligation to deliver the first disclosure is triggered (*i.e.,* the earliest stages of an underwriter's relationship with an issuer with respect to an issue, such as in a response to a request for proposal or in promotional materials provided to an issuer).

[10] MSRB Notice 2019–21 (Dec 20, 2019) announcing the effective date for amendments to Form G–32, which the SEC had approved on June 27, 2019. *See* Release No. 34–86219 (June 27, 2019), 84 FR 31961 (July 3, 2019) (File No. SR–MSRB–2019–07).

[11] Consistent with its prior pronouncement, the MSRB will make the amended Form G–32 available in advance of the revised compliance date so that dealers can operationalize processes for compliance with the amended form.

[12] *See, e.g.,* Release No. 34–75714 (Aug. 17, 2015) (Designation of the Financial Industry Regulatory Authority to Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors).

[13] Prometric is a leading provider of technology-enabled testing and assessment solutions to many of the world's most recognized licensing and certification organizations, academic institutions, and government agencies. *See https://www.prometric.com.*

[14] *See https://www.prometric.com/corona-virus-update.*

[15] The MSRB will publish a notice on its website announcing when Prometric resumes operations in its testing centers so regulated entities are on notice of when the 120-day period begins to toll.

[16] This extension is only for purposes of compliance with MSRB Rule G–3(i)(i)(A)(1) and is not intended to provide relief to individuals who may need to complete the Regulatory Element component of continuing education pursuant to the rules of another regulatory authority.

[17] The term ''municipal advisor principal'' means a natural person associated with a municipal advisor who is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons. To become qualified as a municipal advisor principal a person must, as a pre-requisite, take and pass the Municipal Advisor Representative Qualification Examination; and take and pass the Municipal Advisor Principal Qualification Examination.

[18] MSRB Notice 2019–18 (October 21, 2019) announcing the launch of the Series 54 exam, which the SEC had approved on November 20, 2018. *See* Release No. 34–84630 (Nov. 20, 2018), 80 FR 60927 (Nov. 27, 2018) (File No. SR–MSRB–2018–07).

[19] 15 U.S.C. 78*o*–4(b)(2)(C).

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act [20] requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the Act. The goal of the proposed rule change is to relieve the burden on regulated entities during the exigent circumstances of the COVID–19 pandemic. The proposed rule change will only provide temporary relief for regulated entities; excluding the suspension on the assessment of late fees, regulated entities will still be required to fulfill their underlying obligations under MSRB rules.

Additionally, Section 15B(b)(2)(L)(iv) of the Act, requires that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.[21] The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Act in that, while the proposed rule change will affect all municipal advisors, including small municipal advisors, there is no new regulatory burden that results, and each municipal advisor continues to be obligated to meet baseline competence standards and complete requisite supervisory functions. Small municipal advisors typically have fewer associated persons and, as a result, during the COVID–19 pandemic their resources may be more limited. As the proposed rule change is designed to provide regulated entities an opportunity to better manage and allocate resources during these exigent circumstances, the proposed rule change may be of greater benefit to small municipal advisors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

[20] *Id.*

[21] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) [22] of the Act and Rule 19b–4(f)(6) [23] thereunder, the MSRB has designated the proposed rule change as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate. A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[24] However, Rule 19b–4(f)(6)(iii) [25] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[26] The MSRB has requested that the Commission designate the proposed rule change operative upon filing,[27] as specified in Rule 19b–4(f)(6)(iii),[28] which would make the proposed rule change operative on April 13, 2020.

The MSRB notes that the proposed rule change does not relieve regulated entities from compliance with underlying obligations. Rather, the proposed rule change provides regulated entities with additional time to complete certain compliance obligations, suspends late fees due to the MSRB for a temporary period of time, and extends the compliance date of MSRB rule changes not yet implemented. The MSRB believes the proposed rule change will afford regulated entities the ability to more effectively allocate resources to serve and promote the protection of investors, municipal entities, obligated persons and the public interest during unprecedented market conditions. Further the MSRB has stated, in light of the operational challenges and unprecedented conditions in the municipal market due to the COVID–19 pandemic, the proposed rule change would alleviate operational challenges and facilitate transactions in municipal securities and municipal financial products.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change does not relieve regulated entities from compliance with underlying obligations and will allow regulated entities to more effectively allocate resources during unprecedented municipal securities market conditions. Waiver of the 30-day operative period will alleviate operational challenges and facilitate transactions in the municipal securities market in light of the exigent circumstances presented by the COVID–19 pandemic. Accordingly, the Commission hereby waives the 30-day operative delay specified in Rule 19b–4(f)(6)(iii) and designates the proposed rule change to be operative upon filing.[29]

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.

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–MSRb– 2020–01 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–MSRB–2020–01. 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/*

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] *Id.*

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has designated a shorter time for delivery of such written notice.

[27] *See* SR–MSRB–2018–10.

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] For the purpose of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 MSRB. 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–MSRB–2020–01 and should be submitted on or before May 15, 2020.

For the Commission, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08696 Filed 4–23–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88691; File No. SR–MIAX–2020–07]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay Implementation of an Amendment to Rule 518, Complex Orders, To Permit Legging Through the Simple Market

April 20, 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 April 14, 2020, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to delay implementation of the change to allow a component of a complex order[3] that legs into the Simple Order Book[4] to execute at a price that is outside the NBBO.[5]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 22, 2019, the Exchange filed a proposed rule change to amend subsection (c)(2)(iii) of Exchange Rule 518, Complex Orders, to remove the provision which provides that a component of a complex order that legs into the Simple Order Book may not execute at a price that is outside the NBBO.[6] The proposed rule change indicated that the Exchange would announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular. The Exchange now proposes to further delay the implementation of this functionality until the fourth quarter of 2020.

The Exchange proposes this delay in order to allow the Exchange to re-prioritize its software delivery and release schedule as a result of a shift in priorities resulting from the impact the Coronavirus pandemic has had on Exchange operations. The Exchange will issue a Regulatory Circular notifying market participants prior to implementing this functionality.

2. Statutory Basis

The Exchange believes that its 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 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by allowing the Exchange additional time to implement the proposed functionality.

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's proposal to delay the implementation of the proposed functionality does not impose an undue burden on competition. Delaying the implementation will simply allow the Exchange additional time to properly

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. *See* Exchange Rule 518(a)(5).

[4] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[5] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[6] *See* Securities Exchange Release No. 87440 (November 1, 2019), 84 FR 60117 (November 7, 2019) (SR–MIAX–2019–45).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

plan and implement the proposed functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] 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 operative delay to allow the Exchange to provide notice of the implementation delay as early as possible. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to promptly notify its members of the delay in implementing the functionality that will allow the component legs of a complex order to execute outside the NBBO when they execute against orders on the Simple Order Book. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–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–MIAX–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 office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2020–07 and should be submitted on or before May 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 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).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88696; File No. SR–NYSEArca–2020–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE Arca Rule 11.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

I. Introduction

On January 3, 2020, NYSE Arca, Inc. (''NYSE Arca'' or ''the Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'').[3] The proposed rule change was published for comment in the **Federal Register** on January 23, 2020.[4] On March 5, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.[5] The Commission received no comments on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[4] *See* Securities Exchange Act Release No. 87987 (January 16, 2020), 85 FR 4011 (''Notice'').

[5] *See* Securities Exchange Act Release No. 88330, 85 FR 14284 (March 11, 2020).

disapprove File No. SR–NYSEArca–2020–01.[6]

II. Description of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Rule 11.6800 Series (''Compliance Rule''), which sets forth rules regarding Industry Member[7] compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants[8] of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID[9] based on a proposed amendment to the CAT NMS Plan filed with the Commission;[10] (2) amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting;[11] (3) amend the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility;[12] (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data[13] to the Central Repository;[14] (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an account, on the order reported to CAT;[15] and (6) revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, social security numbers, or account numbers for individuals.[16]

The Exchange also proposes to amend the Exchange's Compliance Rule to facilitate the retirement of certain existing regulatory systems, specifically the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System, by adding additional data elements to the CAT reporting requirements for Industry Members,[17] additional reporting requirements for alternative trading systems,[18] and additional data elements related to OTC Equity Securities[19] that FINRA currently receives from alternative trading systems that trade OTC Equity Securities.[20]

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[21] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[22] the Commission is providing

[6] 15 U.S.C. 78(s)(b)(2)(B).

[7] Industry Member means a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan, *supra* note 3, at Section 1.1. *See also* proposed NYSE Arca Rule 11.6810(s).

[8] The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[9] As proposed, ''Firm Designated ID'' would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. *See* proposed NYSE Arca Rule 11.6810(r).

[10] *See* Notice, *supra* note 4, at 4012. *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

[11] *See* Notice, *supra* note 4, at 4016–4020. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[12] *See* Notice, *supra* note 4, at 4020. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

[13] *See* Notice, *supra* note 4, at 4021. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

[14] The Central Repository, as defined in the CAT NMS Plan, means ''the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.'' *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[15] *See* Notice, *supra* note 4, at 4021. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in circumstances in which an Industry Member uses an established trading relationship for the individual customer. Instead, the Participant would require Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier instead of the account number, (ii) the ''account type'' as a ''relationship'', and (3) the account effective date instead of the ''date account opened.'' *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[16] *See* Notice, *supra* note 4, at 4022. The Participants requested and have received exemptive relief from the requirement of Section 6.4(d)(ii)(C) of the CAT NMS Plan for the Participants, in their Compliance Rules, to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[17] *See* Notice, *supra* note 4, at 4012–13.

[18] *See* Notice, *supra* note 4, at 4013–15.

[19] OTC Equity Security, as defined in the CAT NMS Plan, means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities. *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[20] *See* Notice, *supra* note 4, at 4015.

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 15 U.S.C. 78s(b)(2)(B).

notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to 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.'' [24] The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [25] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[26] any request for an opportunity to make an oral presentation.[27]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 15, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 29, 2020. 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 Numbers SR–NYSEArca-2020–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–01 and should be submitted on or before May 15, 2020. Rebuttal comments should be submitted by May 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

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[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 240.19b–4.

[27] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88690; File No. SR–OCC–2020–003]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Related to Proposed Changes to The Options Clearing Corporation's Framework for Liquidity Risk Management

April 20, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 2020, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's Rules, adopt a new Liquidity Risk Management Framework (''LRMF''), and revise OCC's Clearing Fund and stress testing methodology (''Methodology Description'') to enhance OCC's management of liquidity risk and the sizing and monitoring of OCC's liquidity resources. Specifically, the proposed changes would:

(1) Establish a new LRMF document to provide a comprehensive overview of OCC's liquidity risk management practices and govern OCC's policies and procedures as they relate to liquidity risk management;

(2) enhance OCC's Methodology Description to describe OCC's approach to stress testing and determining the adequacy, sizing, and sufficiency of its liquidity resources;

(3) modify OCC's authority to set and increase the Clearing Fund Cash Requirement;

(4) implement a new two-day notice period for substitutions for Clearing Fund cash in excess of a Clearing Member's minimum requirement;

(5) enhance OCC's Rules and Contingency Funding Plan for collecting additional liquidity resources when a Clearing Member Group's projected or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

actual liquidity risk exceeds certain defined thresholds;

(6) amend Chapter VI of the Rules to allow OCC to require cash margin as a protective measure if a Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under the Corporation's watch level reporting process;

(7) amend Chapter X of the Rules to clarify OCC's authority to borrow Clearing Fund assets for liquidity risk management purposes;

(8) amend Chapter III of the Rules regarding the financial requirements applicable to Clearing Members to require that Clearing Members maintain adequate procedures and controls to ensure that it can meet its obligations when owed in connection with membership; and

(9) make a number of other clarifying, conforming, and organizational changes to OCC's Rules, Risk Management Framework Policy (''RMF Policy''), Clearing Fund Methodology Policy (''CFM Policy''), Collateral Risk Management Policy, Counterparty Credit Risk Management Policy (''CCRM Policy''), and Default Management Policy as described herein.

The proposed amendments to OCC's Rules can be found in Exhibit 5A. The proposed LRMF and Methodology Description have been submitted in confidential Exhibits 5B and 5C, respectively. Proposed changes to the RMF Policy, CFM Policy, Collateral Risk Management Policy, CCRM Policy, and Default Management Policy (collectively, ''Risk Policies'') have been submitted in confidential Exhibits 5D–5H. Material proposed to be added to the Rules, Methodology Description, and OCC Risk Policies as currently in effect is marked by underlining, and material proposed to be deleted is marked in strikethrough text. The LRMF has been submitted without marking to facilitate review and readability of the document as it is being submitted in its entirety as new rule text.

All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

As a central counterparty (''CCP''), OCC is exposed to liquidity risk, which is the risk that a counterparty, whether a participant or other entity, will have insufficient funds to meet its financial obligations as and when expected, although it may be able to do so in the future.[4] OCC's primary liquidity demands in a Clearing Member default originate from settlement obligations related to mark-to-market settlements on securities financing and futures transactions, expiring options, and liquidation of the Clearing Member's portfolio. Given the critical role OCC plays within the U.S. financial markets, it is vital that OCC maintains a robust framework for managing its liquidity risks. Such a framework should set forth the manner in which OCC effectively identifies, measures, monitors, and manages its liquidity risk. This includes, but is not limited to, how OCC: (1) Maintains sufficient liquid resources in all relevant currencies that enable OCC to meet its intraday, same-day, and multiday settlement obligations; (2) maintains a reliable and diverse set of committed liquidity resources with the flexibility and capacity to increase those resources should circumstances warrant; (3) conducts daily stress testing of potential liquidity demands under a wide range of historical and hypothetical scenarios; (4) maintains a contingent funding plan that allows OCC to collect additional liquidity resources when potential liquidity demands exceed liquidity resources; and (5) maintains a reliable and diverse set of liquidity providers and settlement banks that are risk managed through a comprehensive onboarding and monitoring process.

OCC maintains liquidity resources in the form of its ''committed liquidity facilities'' [5] and a minimum cash contribution requirement for its Clearing Fund to ensure that it can meet its daily forecasted settlement obligations. From a committed liquidity facility perspective, OCC currently endeavors to maintain immediate liquid resources to meet observed peak settlements generated by any Clearing Member Group with a high degree of confidence. OCC also requires its Clearing Members to collectively contribute $3 billion in cash to the Clearing Fund to provide an additional source of committed liquidity to OCC.

OCC sizes its liquidity resources based on historically observed liquidity demands and analysis of potential large forecasted liquidity demands. In certain cases, OCC's primary liquidity demands can be forecasted, and as a result, OCC currently establishes certain limits to ensure that it can detect aggregations of risk approaching its risk tolerances and mitigates these risks by requiring that the Clearing Member(s) driving the risk fulfill a specified portion of their margin requirement in cash (as discussed in further detail below). OCC forecasts its future daily settlement activity under normal market conditions (*e.g.,* mark-to-market settlements and settlements resulting from the expiration of derivatives contracts) and compares such demands to its resources to ensure that it will maintain a positive liquidity position to meet settlement obligations.

Proposed Changes

OCC is proposing a number of enhancements to its rules intended to strengthen its overall resiliency, particularly with respect to OCC's management of liquidity risk and the sizing and monitoring of OCC's liquidity resources. Specifically, the proposed changes would:

(1) Establish a new LRMF document to provide a comprehensive overview of OCC's liquidity risk management practices and govern OCC's policies and procedures as they relate to liquidity risk management;

(2) enhance OCC's Methodology Description to describe OCC's approach to stress testing and determining the adequacy, sizing and sufficiency of its liquidity resources;

(3) modify OCC's authority to set and increase the Clearing Fund Cash Requirement;

(4) implement a new two-day notice period for substitutions for Clearing Fund cash in excess of a Clearing Member's minimum requirement;

[3] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[4] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Principles for financial market infrastructures* (April 16, 2012), available at *http://www.bis.org/publ/cpss101a.pdf.*

[5] OCC's committed liquidity facilities may be comprised of both bank and non-bank committed facilities.

(5) enhance OCC's Rules and Contingency Funding Plan for collecting additional liquidity resources when a Clearing Member Group's projected or actual liquidity risk exceeds certain defined thresholds;

(6) amend Chapter VI of the Rules to allow OCC to require cash margin as a protective measure if a Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under the Corporation's watch level reporting process;

(7) amend Chapter X of the Rules to clarify OCC's authority to borrow Clearing Fund assets for liquidity risk management purposes;

(8) amend Chapter III of the Rules regarding the financial requirements applicable to Clearing Members to require that Clearing Members maintain adequate procedures and controls to ensure that it can meet its obligations when owed in connection with membership; and

(9) make a number of other clarifying, conforming, and organizational changes to the OCC Rules and Risk Policies as described herein.

1. Liquidity Risk Management Framework

OCC proposes to adopt a new LRMF to set forth the manner in which OCC effectively measures, monitors, and manages its liquidity risks, including how OCC measures, monitors, and manages its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. Specifically, the LRMF would describe: (1) The identification of OCC's liquidity risks; (2) the categories and types of OCC's liquidity resources; (3) the stress testing and sizing of OCC's liquidity resources; (4) OCC's Contingency Funding Plan for collecting additional liquidity resources from Clearing Members; (5) the risk management of supporting institutions (*e.g.,* settlement banks, custodian banks, and liquidity providers) that may present liquidity risks to OCC; and (6) the governance and reporting requirements concerning OCC's liquidity risk management. The proposed LRMF would govern OCC's policies and procedures as they relate to liquidity risk management and is described in further detail below.

Identification of Liquidity Risk

The LRMF would describe the primary liquidity risks OCC faces, which occur between the point of a Clearing Member default and the completion of the liquidation and settlement of the defaulted Clearing Member's obligations. OCC collects its credit resources with an assumption of a two-day margin period of risk, and potential liquidity obligations are evaluated using that same concept and assuming the liquidation processes detailed in OCC's Default Management Policy.[6] If the liquidity demands result from a Clearing Member as part of an external cross-margin relationship, then potential liquidity obligations are evaluated in accordance with the provisions of the applicable cross-margin agreement. The potential liquidity obligations arising from a Clearing Member default that may require OCC to make same-day settlement obligations during the period between default and the conclusion of a liquidation of a defaulting Clearing Member's portfolio are included when estimating the size of OCC's liquidity demands for purposes of sizing its liquidity resources. These obligations may include mark-to-market obligations on futures and stock loan positions, trade premiums, cash-settled exercise and assignment (''E&A'') activity, auction payments, settlements resulting from the E&A of physically-settled options, and funding of OCC's liquidation agents.

The LRMF would describe other factors and considerations identified by OCC that are not part of its liquidity resource determinations, such as margin deficits and other payments associated with a liquidation (*e.g.,* brokerage, bank, and legal fees). These factors are not included in OCC's liquidity resource determinations because, by their nature, they do not generally create immediate liquidity demands that could impede settlement. OCC also does not consider hedging costs in its liquidity resource determinations because OCC's primary goal is to liquidate positions prior to the need for hedging, and hedging would only be employed if OCC's liquidation activities were unexpectedly delayed. In addition, the LRMF would identify other liquidity risks that are not included in its liquidity resource sizing evaluation but have a potential impact on the management of liquidity risk, such as liquidity provider failures, custodian or settlement bank failures or operational disruptions, and concentration risks from settlement banks and liquidity providers. These risks are mitigated through various tools and processes discussed further below.

[6] *See* Securities Exchange Act Release No. 82310 (December 13, 2017), 82 FR 60265 (December 19, 2017) (SR–OCC–2017–010) (Order Approving Proposed Rule Change Relating to The Options Clearing Corporation's Default Management Policy).

Liquidity Resources

The proposed LRMF would describe the various categories and types of liquidity resources maintained by OCC, including the qualifying liquid resources (as defined in Exchange Act Rule 17Ad–22(a)(14))[7] maintained by OCC to meet its minimum liquidity resource requirement for effecting same-day, intraday and multiday settlement of OCC's payment obligations. Under the proposed LRMF, OCC would maintain the following categories of liquidity resources: (1) ''Base Liquidity Resources,'' (2) ''Available Liquidity Resources,'' (3) ''Required Liquidity Resources,'' and (4) ''Other Liquidity Resources.'' The proposed LRMF would set forth OCC's requirements for Base Liquidity Resources, which are comprised of qualifying liquid resources in the form of assets that are readily available and convertible into cash through prearranged funding arrangements[8] and required Clearing Fund cash on deposit.[9] Base Liquidity Resources would be set at an amount determined by OCC's Board of Directors (''Board'') based on comprehensive analysis including stress testing so that OCC maintains sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for OCC in extreme

[7] 17 CFR 240.17Ad–22(a)(14).

[8] As noted above, OCC endeavors to maintain committed liquidity facilities with both bank and non-bank counterparties. OCC currently maintains a committed credit facility syndicated among various commercial banks. OCC also attempts to maintain committed repurchase agreements, which may be with both bank and non-bank counterparties. Under the proposed LRMF, OCC would endeavor to enter into agreements with liquidity providers (*i.e.,* committed lines of credit and committed repurchase agreements) that do not contain material adverse change (''MAC'') provisions. In the event OCC is unable to obtain an agreement without a MAC provision, OCC would attempt to enter into other prearranged funding agreements. In order to qualify as Base Liquidity Resources, these other arrangements must be highly reliable in extreme but plausible market conditions, as determined by OCC's Board, following a review conducted prior to execution, and on an ongoing basis, but not less than annually.

[9] OCC Rule 1002(a)(i) currently requires Clearing Members to collectively contribute $3 billion in U.S. dollar cash, the currency of all OCC liquidity obligations, to the Clearing Fund, which is held at either the Federal Reserve Bank of Chicago or a commercial bank approved as an OCC cash custodian. Cash held at a commercial bank may be invested in overnight reverse repurchase agreements.

but plausible market conditions. The LRMF would also describe how OCC ensures that it is continuously able to access the full amount of its committed liquidity facilities. Further, the LRMF would require that any borrowing from Base Liquidity Resources must be approved by OCC's Executive Chairman, Chief Executive Officer, or Chief Operating Officer (collectively referred to as the ''Office of the Chief Executive Officer,'' ''Office of the CEO,'' or ''OCEO'').

The LRMF would further describe how OCC uses the Clearing Fund as a source of liquidity (either directly or by using Clearing Fund assets to borrow or obtain funds from third parties) in the event a Clearing Member defaults on an obligation to OCC, in the event any bank or securities or commodities clearing organization defaults on its obligations to OCC, or to facilitate OCC's completion of same-day settlement obligations in the event of an operational disruption at a bank or securities or commodities clearing organization, consistent with OCC's Rules.[10]

The proposed LRMF also defines OCC's Available Liquidity Resources, which are comprised of OCC's Base Liquidity Resources plus Clearing Fund cash deposits in excess of the minimum required amount.[11] These resources are intended to supplement OCC's Base Liquidity Resources and are included in the calculation to determine liquidity resources available to OCC on a given day. As described further below, OCC would generally require a two-day notification period if a Clearing Member requests to substitute Government Securities for cash deposits above their minimum requirement. Once the substitution request is made, OCC would remove the cash deposits in question from subsequent Contingency Funding Plan calculations.

The proposed LRMF would describe OCC's Required Liquidity Resources, which are comprised of OCC's Available Liquidity Resources plus any amount of cash margin deposits of a Clearing Member Group required under the Contingency Funding Plan (described in further detail below). These required cash margin deposits supplement OCC's Base Liquidity Resources and are only included as a Required Liquidity Resource for the Clearing Member Group from which they are called.

In addition, the LRMF would describe Other Liquidity Resources, which are those liquid resources that may or may not be available to OCC in a default situation (*e.g.,* non-compulsory cash deposits of the defaulting Clearing Member; other margin deposits of the defaulting Clearing Member, including letters of credit, Government Securities, and Government Sponsored Entity securities that may be liquidated for same-day or next day settlement). Other Liquidity Resources are not committed resources; therefore, they are not included in OCC's Base, Available, or Required Liquidity Resource calculations. These resources may, however, be available in a default situation and could be used to address foreseeable liquidity shortfalls that would not be covered by OCC's committed resources and help OCC seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.

In addition, the LRMF would describe generally how OCC would utilize its liquidity resources in accordance with its Default Management Policy and the actions OCC would take if it needs to increase its liquidity resources to respond to changing business or market conditions (such as increasing the Clearing Fund Cash Requirement pursuant to Rule 1002(a) or using any uncommitted accordion[12] features embedded in any syndicated credit facility).

Stress Testing and Liquidity Resource Sizing

The proposed LRMF would describe OCC's overall approach to liquidity stress testing and liquidity resource sizing. Under the proposed LRMF, OCC would perform daily stress testing using standard and predetermined parameters and assumptions. The proposed approach to liquidity stress testing would rely on the stressed scenarios and prices generated under OCC's current stress testing and Clearing Fund methodology.[13] The scenarios used are pre-identified by OCC's Stress Test Working Group (''STWG'') and the output of these scenarios would be used for liquidity resource evaluation and would be reviewed daily by OCC's Financial Risk Management department (''FRM'').[14] The stress tests in question consider a range of relevant stress scenarios and possible price changes in liquidation periods, including but not limited to: (1) Relevant peak historic price volatilities; (2) shifts in other market factors including, as appropriate, price determinants and yield curves; (3) the default of one or multiple members; (4) forward-looking stress scenarios; and (5) reverse stress tests aimed at identifying extreme default scenarios and extreme market conditions for which the OCC's resources would be insufficient.

Under the proposed LRMF, the minimum amount of OCC's Base Liquidity Resources would be determined by OCC's Board based on a recommendation from OCC's Risk Committee. On an annual basis (or more frequently as needed),[15] FRM would present to the Board and Risk Committee an analysis summarizing the projected liquidity demands OCC may face under a variety of stress scenarios, including the sufficiency of OCC's Base Liquidity Resources against OCC's liquidity risk tolerance, extreme historical scenarios such as a 1987 historical market event and 2008 historical market event, and certain scenarios used to size OCC's Clearing Fund.[16] This analysis may also include the results of a comprehensive review of

[10] *See* Securities Exchange Release No. 82296 (December 12, 2017), 82 FR 59685 (December 15, 2017) (SR–OCC–2017–806). *See also* Securities Exchange Release No. 82501 (January 12, 2018), 83 FR 2843 (January 19, 2018) (SR–OCC–2017–808).

[11] These excess amounts are only included in Available Liquidity Resources by the amount the required Clearing Fund size exceeds the minimum Clearing Fund sized as determined by OCC Rule 1001(b). Cash deposits in excess of a Clearing Member's total Clearing Fund requirement would not be included.

[12] An accordion is an uncommitted expansion of the credit facility generally on the same terms as the credit facility.

[13] *See infra* notes 21 and 22 and associated text.

[14] Under the proposed LRMF and Methodology Description, the output of these stress test scenarios would assume that the National Securities Clearing Corporation (''NSCC'') accepts and guarantees all E&A activity under the Stock Options and Futures Settlement Agreement by and between OCC and NSCC. *See* OCC Rule 901 and Securities Exchange Act Release No. 81266 (July 31, 2017), 82 FR 36484 (August 4, 2017) (SR–OCC–2017–013) (Order Approving Proposed Rule Changes Concerning the Adoption of a New Stock Options and Futures Settlement Agreement Between the National Securities Clearing Corporation and The Options Clearing Corporation) and Securities Exchange Act Release No. 81260 (July 31, 2017), 82 FR 36476 (August 4, 2017) (SR–OCC–2017–804) (Notice of No Objection to Advance Notices Concerning the Adoption of a New Stock Options and Futures Settlement Agreement Between the National Securities Clearing Corporation and The Options Clearing Corporation). OCC plans to submit separate regulatory filings to address liquidity risk that may be posed by limited scenarios where NSCC may not accept and guaranty all E&A transactions associated with a defaulted Clearing Member.

[15] See the ''Governance and Reporting'' section below, which discusses the proposed process for reporting and escalating material issues identified with respect to the adequacy of OCC's liquidity resources.

[16] Given the different coverage standards used by OCC to calculate its credit and liquidity resources (*i.e.,* Cover 2 versus Cover 1, respectively) and the potential limitations on the frequency with which OCC would be able to adjust the size of certain of its liquidity resources (*e.g.,* its committed credit facilities and repurchase agreements), the Board and Risk Committee could consider the analysis provided in part, or its entirety, for the purposes of determining the size of Base Liquidity Resources.

any parameters and assumptions used by OCC's stress testing system, the output of which is used to project potential liquidity demands under stressed market conditions.[17] In addition, the analysis may include the current composition of OCC's various liquidity resources and recommended changes, if applicable.

OCC's approach to liquidity stress testing and the proposed changes to OCC's Methodology Description are discussed in further detail below.

Contingency Funding Plan

The proposed LRMF would describe OCC's Contingency Funding Plan, which enables OCC to: (1) Collect additional liquidity resources from a Clearing Member Group when that Clearing Member Group's projected or actual liquidity risk exceeds certain thresholds or (2) quickly supplement OCC's Available Liquidity Resources outside of the annual sizing process, should the circumstances warrant. The Contingency Funding Plan and associated OCC Rule changes are discussed in more detail in the ''Contingency Funding Plan'' section below.

Supporting Institutions

OCC's management of liquidity risk is dependent on a number of supporting institutions, such as settlement banks, custodian banks, central banks, and liquidity providers. The LRMF would describe OCC's overall framework for monitoring, managing, and limiting its risks and exposures to theses supporting institutions, which is primarily governed by OCC's CCRM Policy.[18] This includes rigorous onboarding and monitoring processes, including but not limited to: (1) Conducting initial and ongoing due diligence to confirm each commercial institution meets OCC's financial and operational standards; (2) confirming that each commercial institution has access to liquidity to meet its commitments to OCC; (3) monitoring and managing direct, affiliated, and concentrated exposures; and (4) meeting with these commercial institutions and conducting operational reviews as required by OCC's policies and procedures. The proposed LRMF would also set forth OCC's requirements for performing due diligence to confirm it has a reasonable basis to believe each of its liquidity providers has (1) sufficient information to understand and manage the potential liquidity demands of OCC and its associated liquidity risk and (2) the capacity to perform as required under its commitments, including the execution of periodic test borrows no less than once every 12 months to measure the performance and reliability of the liquidity facilities. The proposed LRMF would also describe OCC's use of accounts and services at the Federal Reserve Bank of Chicago, and in particular, its use of accounts at the Federal Reserve Bank of Chicago to custody funds to reduce counterparty credit risks.

Governance and Reporting

The proposed LRMF would set forth the governance, review, monitoring, and reporting activities performed by OCC with respect to liquidity risk management. On a daily basis, FRM would be responsible for reviewing the results of OCC's liquidity stress test exposures and the sufficiency of OCC's Base Liquidity Resources and Required Liquidity Resources, including the adequacy of such resources in covering OCC's risk tolerance. The chair of the STWG or the Executive Vice President of FRM would immediately escalate any material issues identified with respect to the adequacy of OCC's liquidity resources to the Credit and Liquidity Risk Working Group (''CLRWG'') [19] to determine if it would be appropriate to recommend a change the size of OCC's Base Liquidity Resources in accordance with relevant procedure(s).

On at least a monthly basis, FRM would prepare reports that provide details and trend analysis of daily stress tests with respect to the Base Liquidity Resources, including the results of daily stress tests and a review of the adequacy of OCC's liquidity resources, and provide these reports to the STWG. The STWG would perform a comprehensive review of the existing stress test results and scenarios, and their underlying parameters and assumptions, the output of which is used to project liquidity demands, and consequently evaluate their appropriateness for determining the level of liquidity resources that OCC must maintain under current and evolving market conditions and consider proposed enhancements to the scenarios used for stress testing based on the results of this comprehensive review. Such an analysis would be conducted more frequently than monthly when products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by OCC's participants increases significantly.[20] In addition, FRM would be responsible for preparing a summary of the adequacy of OCC's Base and Available Liquidity Resources, as well as actions taken under the Continency Funding Plan, and results from its monthly comprehensive review to provide to OCC's Management Committee and Risk Committee to demonstrate compliance with OCC's minimum liquidity resource requirements. If needed, any issues that are detected with respect to the adequacy of OCC's Base Liquidity Resources would be promptly escalated to the Management Committee intra-month pursuant to FRM procedures. In the performance of monthly review of liquidity results and analysis, and when considering whether escalation is appropriate, due consideration would be given to the intended purpose of the proposed LRMF to: (1) Assess the adequacy of, and adjust as necessary, OCC's Base Liquidity Resources; (2) support compliance with the minimum requirements under applicable regulations; and (3) and any other relevant aspects of OCC's liquidity risk management.

On at least an annual basis, FRM would assesses the adequacy of OCC's stress testing methodology, the output of which is used to evaluate OCC's liquidity resource risks. Proposed changes resulting from such review would be sent to the Risk Committee for approval. In addition, the CLRWG would be responsible for reviewing the LRMF and any and liquidity resource sizing recommendations, with proposed changes resulting from such review being sent to the Risk Committee for approval. Finally, on at least an annual basis, OCC's Model Validation Group would perform a review of risk methodologies and the usage of any models to inform the management of liquidity risk.

2. Liquidity Stress Testing

OCC proposes to enhance its management of liquidity risk by introducing a new approach to stress testing and determining the adequacy, sizing, and sufficiency of its liquidity resources. OCC's liquidity stress testing would be based on output of its current

[17] These parameters and assumptions are routinely reviewed by STWG, on at least a monthly basis.

[18] *See* Securities Exchange Act Release No. 82312 (December 13, 2017), 82 FR 60242 (December 19, 2017) (SR–OCC–2017–009) (Order Approving Proposed Rule Change Relating to The Options Clearing Corporation's Counterparty Credit Risk Management Policy).

[19] If escalation to the CLRWG is not practical, issues would be escalated to OCC's Management Committee.

[20] FRM would maintain procedures for determining whether, and in what circumstances, such intra-month reviews shall be conducted, and which officers have responsibility for making the determination.

stress testing and Clearing Fund methodology,[21] which would be used to project OCC's potential liquidity demands under stressed market conditions.

Current Stress Testing Approach for Clearing Fund

OCC determines its Clearing Fund size based on the results of stress tests conducted daily using standard predetermined parameters and assumptions. These daily stress tests consider a range of relevant stress scenarios and possible price changes in liquidation periods, including but not limited to: (1) Relevant peak historic price volatilities; (2) shifts in other market factors including, as appropriate, price determinants and yield curves; and (3) the default of one or multiple Clearing Members. OCC also conducts reverse stress tests for informational purposes aimed at identifying extreme default scenarios and extreme market conditions for which the OCC's financial resources may be insufficient.

As set forth in the Methodology Description, the methodology includes two primary types of scenarios: ''Historical Scenarios'' and ''Hypothetical Scenarios.'' Historical Scenarios attempt to replicate historical events in current market conditions, which includes the set of currently existing securities, their prices, and volatility levels. These scenarios provide OCC with information regarding pre-defined reference points determined to be relevant benchmarks for assessing OCC's exposure to Clearing Members and the sufficiency of its financial resources. Hypothetical Scenarios represent events in which market conditions change in ways that have not yet been observed. The Hypothetical Scenarios are derived using statistical methods (*e.g.,* draws from estimated multivariate distributions) or created based on a mix of statistical techniques and expert judgment (*e.g.,* a 15% decline in market prices and 50% increase in volatility). These scenarios give OCC the ability to change the distribution and level of stress in ways necessary to produce an effective forward-looking stress testing methodology. OCC uses these pre-determined stress scenarios in stress tests, conducted on a daily basis, to determine OCC's risk exposure to each Clearing Member Group by simulating the profits and losses of the positions in their respective account portfolios under each such stress scenario.

OCC performs daily stress testing using a wide range of scenarios, both Hypothetical and Historical, designed to serve multiple purposes. OCC's stress testing inventory contains scenarios designed to: (1) Determine whether the financial resources collected from all Clearing Members collectively are adequate to cover OCC's risk tolerance (''CF Adequacy Scenarios''); (2) establish the monthly size of the Clearing Fund necessary for OCC to maintain sufficient pre-funded financial resources to cover losses arising from the default of the two Clearing Member Groups that would potentially cause the largest aggregate credit exposure to OCC as a result of a 1-in-80 year hypothetical market event (''CF Sizing Scenarios''); (3) measure the exposure of the Clearing Fund to the portfolios of individual Clearing Member Groups, and determine whether any such exposure is sufficiently large as to necessitate OCC calling for additional resources so that OCC continues to maintain sufficient financial resources to guard against potential losses under a wide range of stress scenarios, including extreme but plausible market conditions (''CF Sufficiency Scenarios''); [22] and (4) monitor and assess the size of OCC's pre-funded financial resource against a wide range of stress scenarios that may include extreme but implausible and reverse stress testing scenarios (''CF Informational Scenarios'').

Proposed Liquidity Stress Testing

OCC proposes to revise its Methodology Description to enable OCC to use the output of its current stress testing methodology to determine the adequacy, sizing, and sufficiency of OCC's liquidity resources. The proposed revisions to the Methodology Description would primarily address the construction and aggregation of stress test portfolios and add a new section to discuss how OCC would calculate its stressed liquidity demands.

Portfolio Construction and Aggregation

The revised Methodology Description would describe how OCC endeavors to construct Clearing Member portfolios and aggregate results consistent with business practices that would be followed in an actual liquidation of a defaulter's portfolio. Currently, the Methodology Description describes OCC's process for creating the ''Synthetic Accounts'' used in credit stress testing. When aggregating results for credit purposes, the focus is on calculating the liquidating value of the portfolio. OCC would revise the Methodology Description to describe OCC's process for portfolio construction and aggregation for liquidity stress testing purposes under the proposed LRMF. Specifically, the Methodology Description would be revised to highlight the importance of the timing of the cashflows from the liquidation since an offsetting debit and credit may occur on different days thus creating a liquidity demand when there is no credit demand. The Methodology Description would also be revised to clarify that Clearing Member positions are held in accounts based on a business type classification and/or by cross margining relationships with other clearing houses, and in many instances, Clearing Members maintain several accounts of the same business type.

OCC also proposes to revise the Methodology Description to streamline the description of how OCC aggregates positions into stress test accounts and closes certain positions out to account for differences in aggregation for credit and liquidity purposes. For example, Rule 1106(d) provides that, in lieu of closing long positions and short positions in the same series of cleared contract carried by a suspended Clearing Member through closing transactions on an Exchange, OCC is permitted to close long and short positions of a suspended Clearing Member in the same series by offset. OCC refers to this process of closing long and short positions in the same series in the same account type as ''netting'' [23] and closing long and short positions in the same series between

[21] *See* Securities Exchange Act Release No. 83714 (July 26, 2018), 83 FR 37570 (August 1, 2018) (SR–OCC–2018–803) (Notice of No Objection to Advance Notice, as Modified by Amendments No. 1 and 2, Concerning Proposed Changes to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology) and Securities Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (August 2, 2018) (SR–OCC–2018–008) (Order Approving Proposed Rule Change, as Modified by Amendments No. 1 and 2, Related to The Options Clearing Corporation's Stress Testing and Clearing Fund Methodology).

[22] Under OCC Rule 609, the Policy, and the Methodology Description, if a CF Sufficiency Stress Test identifies exposures that exceed 75% of the current Clearing Fund requirement less deficits (the ''75% threshold'' or ''Sufficiency Stress Test Threshold 1''), OCC may require additional margin deposits from the Clearing Member Group(s) driving the breach. All such margin calls must be approved by a Vice President (or higher) of FRM; however, if the margin call imposed on an individual Clearing Member exceeds $500 million, OCC's Stress Testing and Liquidity Risk Management group (''STLRM'') must provide written notification to the Office of the CEO.

[23] For example, a customer account may be long 10 contracts and short 5 contracts in the same series. After netting, the customer account will be long 5 contracts in the series, but there is no need to transfer a marking price associated with the effective sale of the 5 long contracts because the closure by offset is accomplished within the same account type.

account types as ''internalization.'' [24] For internalization, proceeds associated with the close out would be debited and credited, as applicable, between the account types involved and the proceeds would be tracked and included in subsequent calculations of the liquidating value associated with each account type.[25] The aggregation of results from an account to a Clearing Member or Clearing Member Group level is designed to follow how OCC would account for the proceeds during an actual Clearing Member liquidation. For instance, positions and collateral credited to a particular type of Clearing Member account (*e.g.,* customer, firm or market-maker) are, depending on the account type, potentially subject to a lien [26] in favor of OCC. Specifically, OCC's By-Laws and Rules contemplate that the positions and collateral in an account may be subject to a ''general lien'' [27] or a ''restricted lien'' [28] in favor of OCC. It is also the case that in some instances there is no lien in favor of OCC (*e.g.,* segregated long options positions in the customers' account).[29] These liens (or the absence of any lien) are respected when summing results from a business account type level to the Clearing Member level, and then all Clearing Member results are summed to a Clearing Member Group level; however, OCC may not use a credit of one legal entity to offset losses of another affiliated legal entity.

Liquidity Stress Testing

OCC proposes to revise the Methodology Description to describe how OCC would use the output from its current stress testing system to measure and monitor the sufficiency of OCC's liquidity resources. The Methodology Description would be revised to generally summarize OCC's LRMF and to set forth key assumptions in the construction of its liquidity calculations. For example, for purposes of its liquidity calculations, OCC would assume: (1) A liquidation horizon of two days (which aligns with its two-day margin period of risk); (2) that a Clearing Member default occurs sometime after the collection of collateral on the day before the default (D–1) up to or at settlement on day of default (D); (3) that cash-settled option liquidity demands due on the morning of default are conservatively calculated using gross positions; (4) NSCC normally guarantees the settlement of any E&A transactions; [30] (5) OCC accounts for liquidity demands as required by relevant cross-margin agreements; (6) that auction bids are represented by stressed prices at the contract level; (7) that credits that occur on the first day of a liquidation persist and are available to offset debits on subsequent days; (8) that auction proceeds settle on D+2; (9) liquidity demands associated with Specific Wrong Way Risk (''SWWR'') positions are included in the appropriate calculations; and (10) early exercise is not assumed in estimating liquidity demands.[31]

Under the proposed approach, OCC would assume that positions [32] with an expiration date of D+1 or greater will be liquidated via auction. With respect to collateral positions, accounts with excess collateral would be evaluated and adjusted since excess collateral may be withdrawn prior to default. If there is excess collateral, the portfolio would be adjusted by removing excess cash, letters of credit, government securities, and valued securities in that order until no excess collateral remains. In addition, any option positions expiring on D–1 or D would be evaluated for moneyness,[33] and then assumed to be liquidated through normal OCC cash settlement processes or through physical settlement at NSCC. Moreover, under the proposed approach, credits from earlier dates would only reduce debits for later dates when evaluating liquidity demands.

As discussed above, the proposed approach to liquidity stress testing would assume that NSCC accepts and guarantees all E&A activity under the Stock Options and Futures Settlement Agreement by and between OCC and NSCC.[34] In the unlikely event there is a rejection by NSCC, OCC would attempt to use a liquidation agent acting as a substitute broker to settle the E&A activity through NSCC. This method of settlement would not be used in OCC's liquidity resource sizing assumptions, but OCC would monitor the potential liquidity demands through the use of informational stress test scenarios, which would be part of OCC's daily stress testing and monitored and reported regularly to the STWG.

OCC's proposed approach to liquidity stress testing would utilize output from its current stress testing methodology, and the same scenarios would be used for Sufficiency and Adequacy stress testing. OCC would perform daily liquidity risk stress testing using standard and predetermined parameters and assumptions, and the output of these scenarios would be used for

[24] For example, if the customer account is long 10 contracts in a particular series and the firm account is short 5 contracts in the same series, OCC would effectively create an ''internalized transaction'' to sell 5 contracts in the series from the customer account and purchase 5 contracts in the series from the firm account. OCC would debit the firm account for the marking price associated with the sale of the 5 contracts and credit the customer account in connection with the purchase. As a matter of the positions in the series maintained in each account, after the internalization, there would be 5 contracts remaining in the customer account and no positions in the firm account.

[25] *Id.*

[26] Pursuant to Article I, Section 1L(3) of OCC's By-Laws, a ''lien'' is a ''security interest'' as defined in applicable provisions of the Uniform Commercial Code as in effect in the relevant jurisdictions and, where used in respect of OCC's security interest in cleared contracts carried in the account of Clearing Members, shall include an ''issuer's lien'' within the meaning of the 1977 amendments to the Uniform Commercial Code.

[27] ''General lien'' means that OCC has a security interest in all or specified assets in a Clearing Member account as security for all of the Clearing Member's obligations to OCC regardless of the source or nature of such obligations. *See* Article I, Section 1G(1) of OCC's By-Laws.

[28] A ''restricted lien'' is a security interest of OCC in specified assets (including any proceeds thereof) in an account of a Clearing Member with OCC as security for the Clearing Member's obligations arising from such account or, to the extent so provided in the By-Laws or Rules, a specified group of accounts that includes such account including, without limitation, obligations in respect of all confirmed trades effected through such account or group of accounts, short positions maintained in such account or group of accounts, and exercise notices assigned to such account or group of accounts. *See* Article I, Section 1R(7) of OCC's By-Laws.

[29] *See* Article VI, Section 3(e) of OCC's By-Laws.

[30] OCC also projects liquidity demands for using a liquidation agent to act as a ''substitute broker'' for informational purposes. ''Substitute broker'' refers to the use of another OCC clearing member that remains in good standing at NSCC and that, on OCC's behalf, will facilitate settlement of OCC's delivery obligations of the E&A transactions at NSCC.

[31] OCC recognizes that early exercises may potentially be incentivized by certain situations, such as a favorable present value of interest income that can be earned on strike premium over the remaining life of a contract for deep in-the-money puts or with dividend capture strategies on call contracts, where the dividend amount exceeds the costs associated with purchasing the underlying stock and a related put contract having an identical strike and expiration. However, OCC believes standard expiration is generally more meaningful than early exercise risk when calculating the liquidity risk associated with E&A activity. For example, OCC reviewed early exercises during a period of market stress, specifically, the days leading up to, and immediately following, the events of February 5, 2018. In comparison to all long equity put option open interest during this period, OCC found that less than one percent of equity put contracts were exercised early on February 5, 2018 and February 6, 2018, as opposed to the standard monthly February expiration, where a total of approximately six percent of equity calls and five percent of equity puts were exercised on February 16, 2018.

[32] Neither stock loan nor futures would be included in this calculation. Stock loan positions are handled through a separate buy-in/sell-out process. Futures positions are included in the auction portfolio, but mark-to-market calculations capture the liquidity risk that arises from futures.

[33] The term ''moneyness'' refers to the relationship between the current market price of the underlying interest and the exercise price.

[34] *See supra* note 14.

liquidity resource evaluation and reviewed daily by FRM. Specifically OCC's proposed liquidity stress tests would consist of a range of Historical and Hypothetical Scenarios, and the output would be used to: (1) Assess OCC's projected liquidity demands under stressed scenarios against OCC's Base and Available Liquidity Resources; (2) assess OCC's Base and Available Liquidity Resources against OCC's liquidity risk tolerance (''Adequacy Scenarios''); (3) measure the sufficiency of potential exposures in excess of OCC's liquidity resources to determine if additional risk mitigation is needed when those exposures indicate potential breaches of certain thresholds under OCC's Contingency Funding Plan (''Sufficiency Scenarios''); and (4) monitor and assess OCC's liquidity resources under a variety of stress conditions, which may include extreme but implausible scenarios and reverse stress test scenarios (''Informational Scenarios''). Under the proposed LRMF, Adequacy Scenarios would be used to evaluate OCC's Base Liquidity Resources against OCC's risk tolerance of a 1-in-50-year market event at a 99.5% confidence interval over a two-year look back period. The output of Sufficiency Scenarios would be used to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources under a wide range of historical and hypothetical stress scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event, and if a Clearing Member Group's exposures breach certain thresholds, OCC would require the breaching Clearing Member Group to maintain cash deposits in lieu of other forms of acceptable collateral to supplement OCC's Available Liquidity Resources pursuant to the Contingency Funding Plan (discussed further below). The output of Informational Scenarios would be used to assess OCC's liquidity under a variety of extreme stress conditions, both plausible and implausible, as well as reverse stress tests.[35]

OCC also proposes to make other conforming and organizational changes to the Methodology Description to reflect the implementation of the new liquidity stress testing approach and make other non-substantive clarifications to the document. For example, OCC would reorganize the document to relocate content specific to credit stress testing to sections of the document focused only on credit stress testing. OCC would also make clarifying and conforming changes to differentiate the usage of Adequacy, Sizing, Sufficiency, and Informational Scenarios for credit and liquidity purposes. OCC also proposes changes to more accurately describe the scope of volatility instruments cleared by OCC. In addition, OCC would clarify that in most SWWR stress test scenarios, SWWR Equity and ETN charges computed for margins are added to stress scenario profit and loss calculations in order to account for SWWR in the stress testing system.[36] OCC would also remove duplicative language regarding Idiosyncratic Scenarios, Sizing Scenarios, and certain key assumptions from the executive summary of the Methodology Description as this information is covered in greater detail later in later sections of the document.

3. Clearing Fund Cash Requirement

Current Rules

Pursuant to OCC Rule 1002(a), Clearing Members are required to collectively contribute $3 billion in cash to the Clearing Fund. In addition, OCC's Executive Chairman, Chief Executive Officer, and Chief Operating Officer each have the authority, upon providing notice to the Risk Committee, to temporarily increase the amount of cash required to be maintained in the Clearing Fund up to an amount that includes the size of the Clearing Fund for the protection of OCC, Clearing Members or the general public. Any such determination must (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. Moreover, any temporary increase in the Cash Clearing Fund Requirement must be reviewed by the Risk Committee as soon as practical (but in any event, such review must occur within 20 calendar days of such increase) and, if such temporary increase is still in effect, the Risk Committee shall determine whether (A) the increase in the Cash Clearing Fund Requirement is no longer required, or (B) OCC's rules should be modified to ensure that OCC continues to maintain sufficient liquidity resources.

In addition, Interpretation and Policy .03 to Rule 1002 Clearing Fund currently requires that any increase in the Cash Clearing Fund Requirement be satisfied no later than one hour before the close of the Fedwire on the business day following the issuance of an instruction to increase cash contributions.

Proposed Changes

OCC proposes to amend Rule 1002(a) to modify its authority to set and to temporarily increase the minimum amount of cash required in its Clearing Fund.[37] The proposed rule change is intended to provide OCC with the flexibility to periodically set its Base Liquidity Resources and to adjust Base Liquidity Resources in response to changing market and business conditions to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times. OCC's Board would have the authority to periodically adjust the Clearing Fund Cash Requirement (typically during the annual review of OCC's Base Liquidity Resources as required under the proposed LRMF based on analysis of OCC's projected liquidity demands under a variety of stress scenarios.[38] However, revised Rule 1002(a) would require that the Clearing Fund Cash Requirement never be at set at an amount lower than $3 billion.

In addition, OCC proposes to remove the description of the specific OCC officers authorized to temporarily increase the size of the Clearing Fund as this authority is already discussed in

[35] Under the LRMF, the output of Informational Scenarios may inform decisions about the adequacy of OCC's liquidity resources but would not be directly used to make decisions regarding the size of OCC's liquidity resources. Informational Scenarios may, however, be re-categorized as Adequacy or Sufficiency upon the approval of the Risk Committee.

[36] *See* Securities Exchange Act Release No. 87673 (December 6, 2019), 84 FR 67981 (December 12, 2019) (SR–OCC–2019–807) (Notice of No Objection To Advance Notice Related to Proposed Changes to The Options Clearing Corporation's Rules, Margin Policy, Margin Methodology, Clearing Fund Methodology Policy, and Clearing Fund and Stress Testing Methodology To Address Specific Wrong-Way Risk) and Securities Exchange Act Release No. 87718 (December 11, 2019), 84 FR 68992 (December 17, 2019) (SR–OCC–2019–010) (Order Approving Proposed Rule Change Related to Proposed Changes to the Options Clearing Corporation's Rules, Margin Policy, Margin Methodology, Clearing Fund Methodology Policy, and Clearing Fund and Stress Testing Methodology To Address Specific Wrong-Way Risk).

[37] OCC also proposes non-substantive revisions to its Rules and OCC Risk Policies to redefine this requirement as the ''Clearing Fund Cash Requirement.''

[38] OCC's Risk Committee has initially determined that OCC's Clearing Fund Cash Requirement should be increased to $3.5 billion based on an analysis of stress test results demonstrating that this amount, combined with OCC's committed liquidity facilities, should be sufficient to cover OCC's liquidity risk tolerance of a 1-in-50 year statistical market event at a 99.5% confidence level over a two-year look back period. In evaluating the proposed size of the Clearing Fund Cash Requirement, OCC analyzed stress test results for the period January 2017–June 2019. OCC would inform Clearing Members of any change in the Clearing Fund Cash Requirement through Information Memoranda and Clearing Fund sizing reports.

OCC's CFM Policy and will also be described in the proposed LRMF.[39] Rule 1002(a)(i) would be revised to instead state that ''the Corporation'' shall have the authority to increase the amount of cash required to be maintained in the Clearing Fund. OCC believes the internal governance process for temporary increases in the Clearing Fund Cash Requirement are appropriately documented in its filed policies (and proposed LRMF) and that the proposed change would reduce the risk of potential inconsistencies between OCC's Rules and its filed policies.

OCC also proposes to modify Rule 1002(a)(i)(A) to provide that the Clearing Fund Cash Requirement may be temporarily increased ''to respond to changing business or market conditions'' for the protection of OCC, Clearing Members or the general public and to move certain existing criteria (*i.e.,* that any determination to implement a temporary increase in the Clearing Fund Cash Requirement (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants) to be applied to the Risk Committees review of any such increase. The proposed change would provide flexibility for OCC's executive management to increase liquidity resources as circumstances warrant and put into place more detailed criteria for the Risk Committee's review of such an increase when determining whether changes should be made on a more permanent basis.

Under the requirements of the proposed LRMF, the Risk Committee's review would include a determination as to whether the increase was appropriately made on a temporary basis or whether OCC's Liquidity Risk Management Framework, stress testing methodology, Base Liquidity Resources, or Contingency Funding Plan should be modified to ensure that OCC continues to maintain sufficient liquidity resources to meet its regulatory obligations. This determination would (1) be based upon then-existing facts and circumstances, (2) be in furtherance of the integrity of OCC and the stability of the financial system, and (3) take into consideration the legitimate interests of Clearing Members and market participants. In addition, the Risk Committee would maintain sole authority to decrease the amount of the Clearing Fund Cash Requirement, incrementally or in full, to any amount greater than or equal to the amount set during the last yearly sizing process.[40] The LRMF would also clarify that any such increase may occur during the monthly Clearing Fund sizing process, or on an intra-month basis. The proposed rule change is designed to ensure that OCC maintains appropriate flexibility to manage its liquidity risks in response to changing market and business conditions while also providing an appropriate governance structure for making such decisions on a temporary basis (*i.e.,* through authority limited to OCC's executive management team) and for reviewing such decisions and making determinations on further enhancements to OCC's framework for managing liquidity risk (*i.e.,* through oversight and ultimate decision-making authority by OCC's Board-level Risk Committee).

OCC also proposes to amend Interpretation and Policy .03 to Rule 1002 to require that any increase in the Clearing Fund Cash Requirement be satisfied no later than the second business day following notification unless the Clearing Member is notified by an officer of OCC an alternative time to satisfy such obligation. Interpretation and Policy .03 to Rule 1002 currently requires Clearing Members to fund an increase in Clearing Fund Cash Requirement no later than one hour before the close of Fedwire on the business day following notification by OCC. The proposed change is intended to more closely align timeframes for meeting an increase in the Clearing Fund Cash Requirement with the timing for satisfying Clearing Fund deficits in the monthly and intra-month sizing processes. OCC believes that standardizing these timeframes would provide more clarity and simplicity in OCC's Rules and would help Clearing Members better understand and manage their obligations to OCC.

4. Two-Day Notice Period for Substitutions Involving Excess Clearing Fund Cash

Under OCC's current operational practices, Clearing Members may substitute Government Securities for cash deposits in the Clearing Fund in excess of their minimum cash requirements, and such substitutions are generally completed on the same day of the request. OCC proposes to adopt new Rule 1002(a)(iv) to introduce a two-day notice period for any Clearing Member requesting to substitute Government Securities for cash deposits in excess of such Clearing Member's proportionate share of the Clearing Fund Cash Requirement. For purposes of determining permitted substitution amounts and eligible cash withdrawals during any two-day notification period, deposits of Government Securities or any other non-cash collateral transactions that result in excess Clearing Fund contributions of the Clearing Member will not be deemed to be excess until the completion of the two-day notification period. The proposed rule change is intended to provide additional certainty around the level of liquidity resources available to OCC at any given time by fixing the amount of cash in the Clearing Fund, and thereby fixing the amount of OCC's Available Liquid Resources, for any given two-day liquidation horizon. Under the proposed LRMF, once the substitution request is made, OCC would remove the cash deposits in question from subsequent Contingency Funding Plan calculations (discussed below). OCC believes that the proposed change would also eventually result in a natural equilibrium of excess cash in Clearing Fund as Clearing Members determine how best to fund their Clearing Fund requirement. OCC notes that Clearing Members would continue to be able to immediately withdraw cash deposits that are above their Clearing Fund Cash Requirement provided that they have an equivalent amount of excess Clearing Fund deposits (as provided under Rule 1008).

Proposed Rule 1002(a)(iv) would also provide OCC with the discretion to waive the two-day notification period if the substitution would not result in any Clearing Member's settlement obligations, including potential settlement obligations under stressed market conditions, exceeding the liquidity resources available to satisfy such settlement obligations.

5. Contingency Funding Plan

OCC proposes several enhancements to its Contingency Funding Plan, which would be described in the proposed Rules, LRMF, and Methodology Description. OCC's current Contingency Funding Plan and proposed changes thereto are discussed in detail below.

Current Process

OCC's Contingency Funding Plan primarily consists of a process by which OCC monitors and evaluates the reasonably anticipated settlement obligations of its Clearing Members

[39] OCC also proposes similar changes to Rule 1001(d) concerning temporary increases to the overall Clearing Fund Size. This authority is also discussed in OCC's CFM Policy.

[40] OCC notes that the Clearing Fund Cash Requirement would initially be set at $3.5 billion.

against OCC's liquidity resources and calls for cash margin deposits in circumstances where such settlement obligations may exceed OCC's liquidity resources. In 2014, OCC filed a proposed rule change for immediate effectiveness that, among other things, required OCC to issue an intra-day margin call [41] in situations in which a Clearing Member's reasonably anticipated settlement obligations to OCC exceeded the liquid financial resources available to satisfy such obligations.[42] The filing made it clear that such action would be taken even if OCC has made no adverse determination as to the financial condition of the Clearing Member, the market risk of the Clearing Member's positions or the adequacy of the Clearing Member's total margin deposit in the accounts in question. One primary circumstance in which such action may be required is the ''unwinding'' of a ''box spread'' position.[43] Box spreads can be used as financing transactions, and they may require very large fixed payments upon expiration. In this situation, if the margin deposited by a Clearing Member participating in such a box spread is in the form of common stock, and if the Clearing Member failed to make the settlement payment, OCC's available liquid financial resources may be insufficient to cover the settlement obligation. In anticipation of such a settlement, OCC requires the Clearing Member to deposit intra-day margin in the form of cash so that OCC's liquid financial resources would be sufficient to cover the Clearing Member's obligations.[44]

Currently, OCC generally monitors for potential liquidity shortfalls beginning thirty days prior to a given settlement. For purposes of determining whether the reasonably anticipated settlement obligations of a Clearing Member Group may exceed the liquid financial resources available to satisfy such obligations, OCC compares the forecasted liquidity amount against the drawable amount of its committed liquidity facilities.[45]

Proposed Changes

OCC proposes to make several enhancements to its Contingency Funding Plan, which are discussed in detail below.

Stress Test-Based Forecasting

As discussed above, OCC's proposed approach to liquidity stress testing would include the use of certain Sufficiency Scenarios designed to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources. OCC proposes to use the output of these Sufficiency Scenarios in place of its current process for forecasting reasonably anticipated settlement obligations to determine whether to require additional cash deposits from its Clearing Members. These Sufficiency Scenarios may include a range of Historical and Hypothetical Scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event. OCC notes that the proposed change would involve assessing OCC's projected settlement obligations against OCC's Available Liquidity Resources as opposed to its committed liquidity facilities in order to fully account for the amount of cash committed to OCC beyond its liquidity facilities (*e.g.,* the Clearing Fund Cash Requirement). The proposed change would allow OCC to more appropriately monitor its liquidity exposures under a variety of foreseeable stress scenarios, including the default of the Clearing Member Group that would generate the largest aggregate payment obligation to OCC in extreme but plausible market conditions, and to call for additional liquid resources in the form of cash deposits to ensure that OCC continues to maintain sufficient liquid resources to meet its settlement obligations with a high degree of confidence.

Required Cash Deposits

Under the proposed LRMF, OCC would produce projections of near-term potential liquidity demands using its Sufficiency Scenarios for each Clearing Member Group. In the event OCC projects that a Clearing Member Group's projected liquidity demands exceed 80% of OCC's Available Liquidity Resources, FRM would initiate enhanced monitoring of the Clearing Member Group's liquidity demand. If any stressed liquidity demand from a Sufficiency Scenario is greater than, or equal to, 90% of Available Liquidity Resources, OCC may require the Clearing Member Group to post deposits or substitute collateral in the form of cash (''Required Cash Deposits'') to supplement OCC's Available Liquidity Resources.[46] In addition, the proposed LRMF would establish other thresholds designed to monitor the impact of Required Cash Deposits on individual Clearing Members. Specifically, if a Required Cash Deposit for an individual Clearing Member exceeds $500 million or 75% of the Clearing Member's excess net capital, STLRM would be required to notify the OCEO. If the Required Cash Deposit imposed on an individual Clearing Member would exceed 100% of an individual Clearing Member's net capital, the Required Cash Deposit shall be escalated to the OCEO, and any member of the OCEO would have the authority individually to determine whether OCC should continue calling for additional liquidity resources in excess of 100% of the net capital amount. OCC believes that this notification and escalation process would enable OCC to appropriately require those Clearing Members that bring elevated liquidity exposures to OCC to bear the costs of those risks in the form of Required Cash Deposits while also allowing OCC to take into consideration a particular Clearing Member's ability to meet the call based on its financial condition and the amount of collateral it has available to pledge when certain pre-identified thresholds have been exceeded.

These thresholds and any recommend changes thereto would be reviewed by the CLRWG and sent to the Risk Committee for approval during an annual review. Under the proposed LRMF, each member of OCC's Office of the Chief Executive Officer would maintain separate authority to approve temporary changes to the thresholds outside of the annual review process due to changing market or business

[41] OCC Rule 609 provides OCC with the discretion to require the deposit of additional margin by any Clearing Member in any account at any time during a given business day.

[42] *See* Securities Exchange Act Release No. 72266 (May 28, 2014), 79 FR 32009 (June 3, 2014) (SR–OCC–2014–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Require That Intraday Margin be Collected and Margin Assets Not be Withdrawn When a Clearing Member's Reasonably Anticipated Settlement Obligations to OCC Would Exceed the Liquidity Resources Available to OCC to Satisfy Such Settlement Obligations).

[43] A box spread position involves a combination of two long and two short options on the same underlying interest with the same expiration date that results in an amount to be paid or received upon settlement that is fixed regardless of fluctuations in the price of the underlying interest. *See http://www.cboe.com/learncenter/glossary.aspx#b.*

[44] In advance of such margin call being made, a Clearing Member may elect to deposit margin in the form of cash, thereby increasing liquid resources available to OCC. If a margin deposit in the form of cash is made by the Clearing Member before the call is issued, it may obviate the need for the call altogether.

[45] *See supra* note 5.

[46] The amount of any Required Cash Deposit would be determined by calculating the value of 90% of the total Available Liquidity Resources for the Clearing Member Group in question less amount of the largest stressed liquidity demand for that member resulting from OCC's Sufficiency Scenarios. Required Cash Deposits would be re-calculated daily and remain in place until the projected demand no longer exceeds 90% of Available Liquidity Resources.

conditions. Any temporary change in Contingency Funding Plan thresholds shall be reviewed by the Risk Committee within 20 calendar days of such increase to determine whether the increase was appropriate on a temporary basis, or whether OCC's Liquidity Risk Management Framework, stress testing methodology, Base Liquidity Resources, or Contingency Funding Plan should be modified to ensure that OCC continues to maintain sufficient liquidity resources to meet its regulatory obligations. Such a determination would (i) be based upon then-existing facts and circumstances, (ii) be in furtherance of the integrity of OCC and the stability of the financial system, and (iii) take into consideration the legitimate interests of Clearing Members and market participants. If the Risk Committee determines that a permanent change is required to OCC's Liquidity Risk Management Framework, stress testing methodology, Base Liquidity Resources, or Contingency Funding Plan, OCC would continue to maintain any temporary changes in Contingency Funding Plan thresholds through the completion of any necessary regulatory filings to ensure that it maintains sufficient liquidity resources during the regulatory review and approval process.

Pursuant to procedures maintained by OCC's FRM department, a Clearing Member Group would be required to maintain a Required Cash Deposit in the account(s) where the demand is being generated until the stressed liquidity demand falls below established thresholds or until the settlement demand is met. OCC would generally require funding of Required Cash Deposits five business days before the date of the projected demand but may require funding up to 20 business days before the projected date as facts and circumstances may warrant.

Increases to Base Liquidity Resources

Under the proposed LRMF, the Contingency Funding Plan would also include increases in OCC's Base Liquidity Resources through an increase in the Clearing Fund Cash Requirement pursuant to proposed Rule 1002(a) as discussed above.[47] Additionally, OCC endeavors to have an uncommitted accordion [48] feature embedded in any syndicated credit facility, potentially allowing OCC to borrow additional funds from existing or new bank syndicate liquidity providers. The availability of an accordion is based on the willingness and ability of the syndicate members to fund the additional borrowing request. OCC can initiate a request to utilize an accordion at any time and it can be expected that it would take a period of weeks to exercise this feature.

Changes to OCC's Rules

OCC proposes changes to Chapters VI (Margins) and X (Clearing Fund) of its Rules to implement the proposed enhancements to its Contingency Funding Plan. OCC proposes to adopt new Rule 601(g) and Rule 609(b) to provide that, in cases when OCC forecasts that a Clearing Member's potential settlement obligations, including potential settlement obligations under stressed market conditions, could be in excess of OCC's committed liquidity resources available to satisfy such obligations, OCC may impose Required Cash Deposits either as part of the Clearing Member's normal daily margin requirement under Rule 601 or through the deposit of intra-day margin in the form of cash under Rule 609. Proposed Rules 601(g) and 609(b) would also provide that OCC would generally require funding of Required Cash Deposits five business days before the date of the projected demand but may require funding up to 20 business days before the projected date as facts and circumstances may warrant. Rule 609(b) would further provide that any such deposit of intra-day margin must be satisfied within one hour of the issuance of an instruction debiting the applicable bank account of the Clearing Member unless the Clearing Member is notified by an officer of OCC of an alternative time to satisfy such obligation, which is generally consistent with OCC's current intra-day margin authority under Rule 609 (and newly amended Rule 609(a)). OCC believes the proposed changes would provide additional clarity and transparency around its authority to impose Required Cash Deposits.

OCC also proposes clarifying changes to Rule 608 concerning withdrawals of margin to provide that the existing prohibition on withdrawing margin for liquidity purposes would now be based on liquidity demands forecasted by OCC that may include potential settlement obligations under stressed market conditions. OCC also would adopt new Interpretation and Policy .08 to Rule 601 and amend Interpretation and Policy .02 to Rule 608 and Interpretation and Policy .01 to Rule 609 to clarify that, for purposes of determining whether a Clearing Member's forecasted settlement obligations to the Corporation could exceed the liquidity resources available to satisfy such obligations, OCC would consider, as forecasted settlement obligations, the settlement obligations of the Clearing Member and any Member Affiliates of the Clearing Member, as well as consider as liquidity resources the margin assets remaining on deposit with respect to such accounts that are in the form of U.S. dollars.

6. Required Cash Deposits for Clearing Members on Watch Level

In addition to the proposed enhancements to the Contingency Funding Plan discussed above, OCC proposes to add new Rule 604(g) to provide OCC with authority to require Clearing Members to deposit a specified amount of cash to satisfy its margin requirements as a protective measure if a Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under OCC's watch level reporting process.[49] Under the proposed rule, Clearing Members may be required to satisfy such required cash deposits through their daily margin requirements under Rule 601 or through intra-day margin calls under Rule 609. The proposed rule change is designed to provide OCC with an additional tool to mitigate potential liquidity risks of those Clearing Members identified as presenting increased risk to OCC through its ongoing monitoring processes outside of the forecasting process in the Contingency Funding Plan.

7. Enhancements to Rules Concerning the Borrowing of Clearing Fund Assets

Under Chapter X of OCC's Rules, OCC has authority in certain circumstances to take possession of cash or securities contributed to the Clearing Fund and to use such assets for borrowings. OCC also generally requires Clearing Members to collectively contribute a minimum of $3 billion in cash to the Clearing Fund, which is intended to provide OCC with a reliable amount of qualifying liquid resources to account for the event that there is an extreme scenario in the financial markets and OCC has to address any resultant liquidity demands. In addition to providing OCC with sufficient pre-funded financial resources to cover potential credit losses, these Clearing Fund contributions serve as an important source of liquidity for OCC to manage potential liquidity risks associated with a Clearing Member default or the failure or operational disruption of a bank or securities or

[47] *See supra* notes 37–40 and associated text.

[48] An accordion is an uncommitted expansion of a credit facility generally on the same terms as a credit facility.

[49] OCC's watch level reporting process is outlined in its CCRM Policy. *See supra* note 18.

commodities clearing organization. OCC is proposing several changes to its rules to clarify its authority to borrow Clearing Fund contributions to address potential liquidity needs.

Authority To Borrow Cash Clearing Fund Contributions for Liquidity Purposes

OCC Rule 1006(f) describes OCC's use of the Clearing Fund for liquidity purposes, specifically, the use of Clearing Fund for borrowing or otherwise obtaining funds to be used for liquidity purposes. Rule 1006(f) primarily discusses the use of Clearing Fund securities to borrow or otherwise obtain funds from third parties to meet its settlement obligations; however, OCC would be unlikely to use Clearing Fund cash deposits to borrow collateral from a third party in the same, fungible form, incur costs associated with the borrowing, and then use that fungible collateral to meet OCC's obligations. Rather, OCC would directly borrow Clearing Fund cash under the same general terms and conditions as it would to effect a borrowing pursuant to Rule 1006(f). This is further reinforced by OCC's Default Management Policy, which provides that ''[i]n order to meet financial resource obligations as a result of a clearing member suspension. OCC is able to utilize the following resources . . . *Clearing Fund deposits of the suspended member.* OCC may utilize any cash, convert Clearing Fund deposits to cash, or effect borrowing or other transactions using such deposits. *Clearing Fund deposits of non-defaulting members.* OCC may utilize any cash, convert Clearing Fund deposits to cash, or effect borrowing or other transactions using such deposits.'' (emphasis in original).[50]

OCC proposes to amend Rules 1006(a) and (f) to clarify that, where the Clearing Fund is already allowed to be used for borrowings, OCC has authority to borrow cash directly instead of pledging Clearing Fund cash or securities to a third party to borrow or otherwise obtain funds. Making this authority explicit will provide OCC with clear and transparent flexibility to access cash contributions to the Clearing Fund in relevant circumstances rather than pledging Clearing Fund securities to borrow on a secured basis. Consistent with OCC's current rules applicable to using Clearing Fund assets to effect borrowings, OCC would be permitted to borrow Clearing Fund cash directly for any means determined to be reasonable by the Executive Chairman, Chief Executive Officer, or Chief Operating Officer in his discretion and shall not be deemed to be a charge against the Clearing Fund for a period not to exceed thirty days, and, during said period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund pursuant to Chapter X of the Rules. OCC believes the proposed rule change would provide additional clarity and transparency to its Clearing Members regarding OCC's use of Clearing Fund cash as a liquidity resource and would help Clearing Members better understand their and OCC's rights and obligations as they relate to the Clearing Fund.

Authority To Reject Substitution Requests for Clearing Fund Collateral

OCC proposes to amend Rule 1006(f) to permit OCC to reject a Clearing Member's substitution request regarding a security contributed to the Clearing Fund where OCC has already used the security to borrow or otherwise obtain funds. OCC's current By-Laws and Rules do not explicitly address its right to reject a request by a Clearing Member to substitute Government Securities that have been pledged to its liquidity facilities; however, OCC's Rules provide it with plenary authority to use such securities for the purposes of borrowing from its liquidity facilities without restriction or limitation on OCC regarding any obligation or timing for making a substitution. Specifically, Rule 1006(f) provides OCC with broad authority to take possession of cash or securities deposited by Clearing Members as contributions to the Clearing Fund and use such assets to borrow or otherwise obtain funds, including through its committed liquidity facilities, to meet obligations arising out of the default or suspension of a Clearing Member, the failure of a bank or securities or commodities clearing organization to meet its obligations, or where OCC believes it necessary to borrow to meet its liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization. Rule 1006(f) further provides OCC with the authority to pledge such cash and securities to borrow from its liquidity facilities for a period of up to thirty days.[51]

OCC proposes to amend Rule 1006(f) to explicitly permit OCC to reject a Clearing Member's substitution request regarding a security contributed to the Clearing Fund where OCC has already used the security to borrow or otherwise obtain funds. OCC believes that providing this discretion will strengthen OCC's access to liquidity through secured borrowing arrangements by ensuring OCC is able to preserve the pledge of particular securities where necessary or appropriate.

Timeframe To Determine Losses Resulting From Borrowing

OCC Rule 1006(f) currently provides, in part, that funds obtained by OCC through a borrowing shall not be deemed to be charges against the Clearing Fund for a period not to exceed thirty days, and, during that period, shall not affect the amount or timing of any charges otherwise required to be made against the Clearing Fund; however, if all or a part of any transaction effected by OCC under Rule 1006(f) remains outstanding after thirty days, OCC shall consider the amount of Clearing Fund assets used to support its obligations under the outstanding transaction as an actual loss to the Clearing Fund and immediately allocate such loss in accordance with Chapter X of the Rules.

OCC proposes to amend Rule 1006(f) to clarify that OCC is not required to wait thirty days prior to determining that any borrowing represents an actual loss to the Clearing Fund. Making this authority more explicit will help ensure that OCC is able to make proportionate charges against Clearing Member contributions to the Clearing Fund in a timely manner to make good the related losses and replenish its credit and liquidity resources.

8. Requirement for Clearing Members To Maintain Contingency Plans for Settlement

OCC Rule 301(d) currently requires that every Clearing Member have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions. OCC rules do not address circumstances in which a Clearing Member has sufficient resources to meet its obligations but is unable to meet settlement obligations due to, for example, a failure or operational issue at its primary settlement bank. As a result, OCC proposes to amend Rule 301(d) to further require that every Clearing Member maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise. OCC believes that it is

[50] *See supra* note 6.

[51] OCC notes that while the terms of its committed liquidity facilities may generally permit OCC to substitute pledged collateral during the course of a borrowing, nothing in the agreements requires OCC to make such a substitution at the request of a Clearing Member.

important that OCC and its members maintain processes that are resilient to a variety of potential operational and financial disruptions and that Clearing Members maintain robust contingency plans designed to effect timely settlement of their obligations to reduce the likelihood member would be unable to satisfy their settlement obligations, risking possible suspension. Examples of such arrangements could include maintaining ability to wire funds directly to OCC via Fedwire or by providing instructions to another bank to effect the movement of funds.

9. Other Clarifying and Conforming Changes

OCC also proposes to make conforming changes to the OCC Risk Policies to replace references to OCC's Liquidity Risk Management Policy with references to the LRMF, align descriptions of OCC's liquidity risk management practices with the proposed LRMF, and make other non-substantive administrative changes to enhance the accuracy and clarity of the Risk Policies. In addition, OCC would revise the definition of Committed Liquidity Facilities to better align that term with (1) the discussion of such facilities in the LRMF and (2) the definition of ''qualifying liquid resources'' (as defined in Exchange Act Rule 17Ad–22(a)(14)).[52]

Finally, OCC proposes to revise the policy exception and violation reporting requirements in the Risk Policies and make other administrative updates to policy cross-references. OCC's Compliance Department is responsible for maintaining OCC's internal policy concerning the governance and content of OCC's policies and procedures. This includes the development of standard templates for OCC policy documentation and ensuring that those templates include appropriate and consistent requirements for the reporting and escalation of policy exceptions and violations. OCC proposes to revise the Risk Policies to incorporate new, standardized policy exception and violation reporting requirements, which apply to all internal OCC policies and procedures. The proposed change would simplify and centralize the escalation path for policy document owners and ensure that OCC's Compliance department, and if appropriate the Enterprise Risk Management department, is notified in a consistent manner of any exceptions or violations. OCC does not believe the proposed change would have a material impact on operations under the Risk Policies. The proposed change is intended to ensure that the administration of policy exception and violation reporting is done in a consistent manner throughout OCC's policies.

Clearing Member Outreach

To inform Clearing Members of the proposed changes, OCC has provided an overview of the proposed changes to the Financial Risk Advisory Council (''FRAC''), a working group comprised of exchanges, Clearing Members and indirect participants of OCC and the OCC Roundtable, which was established to bring Clearing Members, exchanges and OCC together to discuss industry and operational issues.[53] OCC will also provide parallel testing prior to implementation and perform direct outreach to Clearing Members most likely to be materially impacted by the proposed changes and answer any questions Clearing Members may have. To-date, OCC has not received any material objections or concerns in response to this outreach.

Implementation Timeframe

OCC expects to implement the proposed changes within sixty (60) days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce the implementation date of the proposed change by an Information Memorandum posted to its public website at least two (2) weeks prior to implementation.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[54] which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible and, in general, protect investors and the public interest. OCC also believes the proposed rule change is reasonably designed to comply with relevant rules promulgated under the Exchange Act, and in particular, Rule 17Ad–22(e)(7)[55] requirements concerning the measurement, monitoring, and management of liquidity risk.

1. Liquidity Risk Management Framework

The proposed LRMF would set forth the manner in which OCC effectively measures, monitors, and manages its liquidity risks, including how OCC measures, monitors, and manages its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. Specifically, the LRMF would describe: (1) The identification of OCC's liquidity risks; (2) the categories and types of OCC's liquidity resources; (3) the stress testing and sizing of OCC's liquidity resources; (4) OCC's Contingency Funding Plan for collecting additional liquidity resources from Clearing Members; (5) the risk management of supporting institutions (*e.g.,* settlement banks, custodian banks, and liquidity providers) that may present liquidity risks to OCC; and (6) the governance and reporting requirements concerning OCC's LRMF. Taken together, the proposed LRMF is designed to ensure that OCC comprehensively manages its liquidity risks and maintains sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, notwithstanding a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. The proposed LRMF would thereby enhance OCC's resilience as a systemically important financial market utility, which in turn would promote the protection of investors and the public interest. Therefore, OCC believes the proposed LRMF is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[56]

Rule 17Ad–22(e)(7)[57] requires generally that a covered clearing agency (''CCA'') establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the CCA, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. The proposed LRMF

[52] 17 CFR 240.17Ad–22(a)(14).

[53] The OCC Roundtable is comprised of representatives of the senior OCC staff, participant exchanges and Clearing Members, representing the diversity of OCC's membership in industry segments, OCC-cleared volume, business type, operational structure and geography.

[54] 15 U.S.C. 78q–1(b)(3)(F).

[55] 17 CFR 240.17Ad–22(e)(7).

[56] 15 U.S.C. 78q–1(b)(3)(F).

[57] 17 CFR 240.17Ad–22(e)(7).

would describe OCC's overall framework for effectively measuring, monitoring, and managing its liquidity risks, including how OCC measures, monitors, and manages its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. The proposed LRMF would govern OCC's policies and procedures as they relate to liquidity risk management, including any policies and procedures concerning: (1) The identification of OCC's liquidity risks; (2) the categories and types of OCC's liquidity resources; (3) the stress testing and sizing of OCC's liquidity resources; (4) OCC's Contingency Funding Plan for collecting additional liquidity resources from Clearing Members; (5) the risk management of supporting institutions (*e.g.,* settlement banks, custodian banks, and liquidity providers) that may present liquidity risks to OCC; and (6) the governance and reporting requirements concerning OCC's LRMF. OCC therefore believes the proposed LRMF is reasonably designed to comply with the requirements of Rule 17Ad–22(e)(7).[58]

Rules 17Ad–22(e)(7)(i) and (ii)[59] require a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the CCA in extreme but plausible market conditions and to maintain such resources in the form of qualifying liquid resources and in each relevant currency for which the CCA has payment obligations owed to clearing members. The proposed LRMF would describe: (1) OCC's approach to liquidity stress testing; (2) OCC's process for determining the size of OCC's liquidity resources based on analyses of projected liquidity demands under a variety of stress scenarios (*e.g.,* stress scenarios representing OCC's liquidity risk tolerance, extreme historical scenarios such as a 1987 historical market event and 2008 historical market event, and certain scenarios used to size OCC's Clearing Fund); (3) OCC's process for testing the sufficiency of its liquidity resources and Contingency Funding Plan for collecting additional liquidity resources when necessary; and (4) the various categories and types of liquidity resources maintained by OCC, including the qualifying liquid resources maintained by OCC to meet its minimum liquidity resource requirement for effecting same-day, intraday and multiday settlement of OCC's payment obligations. OCC therefore believes the proposed LRMF is reasonably designed to comply with the requirements of Rules 17Ad–22(e)(7)(i) and (ii).[60]

Rule 17Ad–22(e)(7)(iii)[61] requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to use access to accounts and services at a Federal Reserve Bank, or other relevant central bank, when available and where determined to be practical by the board of directors of the CCA, to enhance its management of liquidity risk. The proposed LRMF would describe OCC's use of accounts and services at the Federal Reserve Bank of Chicago in accordance with this requirement.

Rules 17Ad–22(e)(7)(iv) and (v)[62] require that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to: (1) Undertake due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers has sufficient information to understand and manage the liquidity provider's liquidity risks and the capacity to perform as required under its commitments to provide liquidity to the CCA and (2) maintain and test with each liquidity provider, to the extent practicable, the CCA's procedures and operational capacity for accessing each type of relevant liquidity resource at least annually. The proposed LRMF would set forth OCC's requirements for performing due diligence to confirm it has a reasonable basis to believe each of its liquidity providers has sufficient information to understand and manage OCC's liquidity risk profile and the capacity to perform as required under its commitments. The proposed LRMF would also require the execution of periodic test borrows no less than once every 12 months to measure the performance and reliability of the liquidity facilities. As a result, OCC believes the proposed LRMF is consistent with Rules 17Ad–22(e)(7)(iv) and (v).[63]

Rule 17Ad–22(e)(7)(vi)(A)[64] requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement by conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions. Under the proposed LRMF, OCC would perform daily stress tests using its Sufficiency Scenarios to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources under a range of stress scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event, and if a Clearing Member Group's exposures breach certain thresholds, OCC would require the breaching Clearing Member Group to maintain cash deposits in lieu of other forms of acceptable collateral to supplement OCC's Available Liquidity Resources pursuant to the Contingency Funding Plan.[65] OCC therefore believes that the proposed LRMF is reasonably designed to comply with the requirements of Rule 17Ad–22(e)(7)(vi)(A).[66]

Rules 17Ad–22(e)(7)(vi)(B)–(D)[67] further require a CCA to maintain policies and procedures for: (1) Conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the clearing agency's identified liquidity needs and resources in light of current and evolving market conditions; (2) conducting a comprehensive analysis more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by the clearing agency's participants increases significantly, or in other appropriate circumstances described in such policies and procedures; and (3) reporting the results of such analyses to appropriate decision makers at the CCA, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its liquidity risk management methodology, model parameters, and any other relevant

[58] *Id.*

[59] 17 CFR 240.17Ad–22(e)(7)(i) and (ii).

[60] *Id.*

[61] 17 CFR 240.17Ad–22(e)(7)(iii).

[62] 17 CFR 240.17Ad–22(e)(7)(iv) and (v).

[63] *Id.*

[64] 17 CFR 240.17Ad–22(e)(7)(vi)(A).

[65] OCC also would perform daily stress tests using Adequacy and Informational Scenarios to evaluate the sufficiency of its liquidity resources under a wide range of historical and hypothetical stress scenarios.

[66] 17 CFR 240.17Ad–22(e)(7)(vi)(A).

[67] 17 CFR 240.17Ad–22(e)(7)(vi)(B)–(D).

aspects of its liquidity risk management framework. The proposed LRMF would set forth the governance, review, monitoring, and reporting activities performed by OCC with respect to liquidity risk management. This would include the comprehensive review of existing stress test results and scenarios, and their underlying parameters and assumptions, the output of which is used to project liquidity demands, and evaluation of their appropriateness for determining the level of liquidity resources that OCC must maintain under current and evolving market conditions, with such an analysis being conducted more frequently than monthly when products cleared or markets served display high volatility or become less liquid, or when the size or concentration of positions held by OCC's participants increases significantly. In addition, under the proposed LRMF, FRM would be responsible for preparing a summary of the adequacy of OCC's Base Liquidity Resources and results from its monthly comprehensive review to provide to OCC's Management Committee and Risk Committee and any issues would be promptly escalated to OCC's Management Committee intra-month when circumstance warrant. Accordingly, OCC believes that the proposed LRMF is reasonably designed to comply with the requirements of Rules 17Ad–22(e)(7)(vi)(B)–(D).[68]

2. Liquidity Stress Testing

OCC proposes to adopt a liquidity stress testing approach to effectively measure and monitor the sufficiency of OCC's liquidity resources. OCC would perform daily liquidity risk stress testing using standard and predetermined parameters and assumptions, and the output of these scenarios would be used for liquidity resource evaluation. OCC's proposed liquidity stress tests would consist of a range of Historical and Hypothetical Scenarios, and the output would be used to: (1) Assess OCC's projected liquidity demands under stressed scenarios against OCC's Base and Available Liquidity Resources; (2) assess OCC's liquidity resources against OCC's liquidity risk tolerance; (3) measure the sufficiency of potential exposures in excess of OCC's liquidity resources to determine if additional risk mitigation is needed when those exposures indicate potential breaches in scenarios including but not limited to, a 1987 historical market event and a 2008 historical market event; and (4) monitor and assess OCC's liquidity resources under a variety of stress conditions, which may include extreme but implausible scenarios and reverse stress test scenarios. The proposed change is designed to ensure that OCC comprehensively manages its liquidity risks and maintains sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, notwithstanding a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. The proposed rule change would thereby enhance OCC's resilience as a systemically important financial market utility, which in turn would promote the protection of investors and the public interest. Therefore, OCC believes the proposed change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[69]

Rule 17Ad–22(e)(7)(i)[70] requires a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the CCA in extreme but plausible market conditions. Rule 17Ad–22(e)(7)(vi)(A)[71] further requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement by conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions. As described above, OCC's proposed liquidity stress tests would consist of a range of Historical and Hypothetical Scenarios, the output of which would be used to: (1) Assess OCC's projected liquidity demands under stressed scenarios against OCC's Base and Available Liquidity Resources; (2) assess OCC's liquidity resources against OCC's liquidity risk tolerance; (3) measure the sufficiency of potential exposures in excess of OCC's liquidity resources to determine if additional risk mitigation is needed when those exposures indicate potential breaches in scenarios including but not limited to, a 1987 historical market event and a 2008 historical market event; and (4) monitor and assess OCC's liquidity resources under a variety of stress conditions, which may include extreme but implausible scenarios and reverse stress test scenarios. The proposed change is designed to ensure that OCC maintains sufficient liquid resources to settle its payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the Clearing Member Group that would generate the largest aggregate payment obligation for in extreme but plausible market conditions. It would also allow OCC to conduct daily sufficiency stress tests to assess potential liquidity exposures in excess of its Available Liquidity Resources under a range of stress scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event, and if a Clearing Member Group's exposures breach certain thresholds, OCC would require the breaching Clearing Member Group to maintain cash deposits in lieu of other forms of acceptable collateral to supplement OCC's Available Liquidity Resources pursuant to the Contingency Funding Plan.[72] OCC therefore believes that the proposed LRMF is reasonably designed to comply with the requirements of Rule 17Ad–22(e)(7)(i) and (e)(vi)(A).[73]

3. Clearing Fund Cash Requirement

The proposed changes to OCC's Clearing Fund Cash Requirement are designed to improve the resiliency of OCC's liquidity resources by providing OCC with the flexibility to periodically set its Base Liquidity Resources and to adjust Base Liquidity Resources in response to changing market and business conditions to ensure that OCC maintains sufficient liquidity resources to cover its potential liquidity risk exposures so that it can continue to meet its settlement obligations in a timely manner. Specifically, the proposed changes would provide OCC's Risk Committee with the authority to initially reset the Clearing Fund Cash Requirement to $3.5 billion based on an analysis of stress test results

[68] *Id.*

[69] 15 U.S.C. 78q–1(b)(3)(F).

[70] 17 CFR 240.17Ad–22(e)(7)(i).

[71] 17 CFR 240.17Ad–22(e)(7)(vi)(A).

[72] OCC also would perform daily stress tests using Adequacy and Informational Scenarios to evaluate the sufficiency of its liquidity resources under a wide range of historical and hypothetical stress scenarios.

[73] 17 CFR 240.17Ad–22(e)(7)(i) and (e)(vi)(A).

demonstrating that this amount, in combination with OCC's committed liquidity facilities, should be sufficient to cover OCC's liquidity risk tolerance of a 1-in-50 year statistical market event at a 99.5% confidence level over a two-year look back period [74] and to further adjust OCC's Base Liquidity Resources based on future stress test results in a more timely manner. It would also allow OCC's executive management team to adjust OCC's Base Liquidity Resources on a temporary basis, subject to notification and review by the Risk Committee, in response to changing market and business conditions. For these reasons, OCC believes the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions, assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible and, in general, protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Act.[75]

Additionally, Rule 17Ad–22(e)(7)(i) [76] requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage liquidity risk that arises in or is borne by the CCA, including by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day settlement, and where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of stress scenarios, that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. As explained above, OCC has performed an analysis of its stressed liquidity demands, including Adequacy Scenarios that demonstrate that its potential stressed liquidity demands may exceed the size OCC's committed liquidity facilities and current Cash Clearing Fund Requirement. The proposed changes would allow OCC to adjust its Base Liquidity Resources to account for extreme scenarios that may result in liquidity demands exceeding OCC's Cover 1 liquidity resources. In this regard, OCC believes the proposed changes concerning the Clearing Fund Cash Requirement are designed to satisfy the requirements of Rule 17Ad–22(e)(7)(i).[77]

Further, Rule 17Ad–22(e)(7)(viii) [78] requires that a CCA address foreseeable liquidity shortfalls that would not be covered by its liquid resources and Rule 17Ad–22(e)(7)(ix) [79] requires that a CCA describe its process to replenish any liquid resources that it may employ during a stress event. OCC believes that additional flexibility for temporarily increasing the Clearing Fund Cash Requirement up to an amount that includes the size of the Clearing Fund would provide OCC with an additional means of addressing liquidity shortfalls that otherwise would not be covered by OCC's liquid resources. Further, because the Clearing Fund is a resource that is replenished in accordance with OCC Rule 1006(h), to the extent that Clearing Members are required to replenish their required contributions—in whole or in part—with cash following a proportionate charge, the proposed change would provide a form of replenishment of OCC's liquid resources. In this regard, OCC believes the proposed change is consistent with the requirements of Rules 17Ad–22(e)(7)(viii) and (ix).[80]

4. Two-Day Notice Period for Substitutions Involving Excess Clearing Fund Cash

OCC proposes to introduce a two-day notice period for any Clearing Member requesting to substitute Government Securities for cash deposits in excess of such Clearing Member's proportionate share of the Clearing Fund Cash Requirement. The proposed rule change is intended to provide additional certainty around the level of liquidity resources available to OCC at any given time by fixing the amount of cash in the Clearing Fund, and thereby fixing the amount of OCC's Available Liquid Resources, for any given two-day liquidation horizon.[81] The proposed change would enhance OCC's management of liquidity risk by providing additional certainty around its liquidity resource calculations and thereby help to ensure that OCC maintains sufficient liquidity resources to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible in the event of a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. The proposed change would thereby enhance OCC's resilience as a systemically important financial market utility, which in turn would promote the protection of investors and the public interest. Therefore, OCC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[82]

Rules 17Ad–22(e)(7)(i) and (ii) [83] require a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the CCA in extreme but plausible market conditions and to maintain such resources in the form of qualifying liquid resources and in each relevant currency for which the CCA has payment obligations owed to clearing members. The proposed change would provide additional certainty around the level of OCC's Available Liquidity Resources (which would be comprised of qualifying liquid resources) for any given two-day liquidation horizon, thereby enhancing OCC's ability to ensure that it maintains sufficient qualifying liquid resources to effect settlement of its payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. OCC therefore believes the proposed change is consistent with the requirements of Rules 17Ad–22(e)(7)(i) and (ii).[84]

5. Contingency Funding Plan

The proposed enhancements to the Contingency Funding Plan would include the use of certain Sufficiency Scenarios designed to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources in place

[74] *See supra* note 38.

[75] 15 U.S.C. 78q–1(b)(3)(F).

[76] 17 CFR 240.17Ad–22(e)(7)(i).

[77] *Id.*

[78] 17 CFR 240.17Ad–22(e)(7)(viii).

[79] 17 CFR 240.17Ad–22(e)(7)(ix).

[80] 17 CFR 240.17Ad–22(e)(7)(viii) and (ix).

[81] OCC notes that Clearing Members would continue to be able to immediately withdraw cash deposits that are above their Clearing Fund Cash Requirement provided that they have equivalent amount of excess Clearing Fund deposits (as provided under Rule 1008).

[82] 15 U.S.C. 78q–1(b)(3)(F).

[83] 17 CFR 240.17Ad–22(e)(7)(i) and (ii).

[84] *Id.*

of OCC's current process for forecasting reasonably anticipated settlement obligations to determine whether to require additional cash deposits from its Clearing Members. The proposed changes would allow OCC to more appropriately monitor its liquidity exposures under a variety of foreseeable stress scenarios, and to call for additional liquid resources in the form of cash deposits to ensure that OCC continues to maintain sufficient liquid resources to meet its settlement obligations with a high degree of confidence, or to respond to a reduction in the amount of OCC's Base Liquidity Resources in an extreme event, such as the potential failure of a liquidity provider. OCC's Contingency Funding Plan is designed to enable OCC to meet its settlement obligations in all relevant currencies when OCC experiences or projects a liquidity shortfall exceeding its financial resources without unwinding, revoking, or delaying same-day and where appropriate, intraday and multiday, settlement obligations. The proposed changes are designed to ensure that OCC comprehensively manages its liquidity risks and maintains sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The proposed changes would thereby enhance OCC's resilience as a systemically important financial market utility, which in turn would promote the protection of investors and the public interest. As a result, OCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[85]

Rule 17Ad–22(e)(7)(vi)(A)[86] requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement by conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions. Further, Rule 17Ad–22(e)(7)(viii)[87] requires such policies and procedures to address foreseeable liquidity shortfalls that would not be covered by the CCA's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. Under the proposed LRMF and changes to the Contingency Funding Plan, OCC would perform daily stress tests using its Sufficiency Scenarios to assess potential liquidity exposures in excess of OCC's Available Liquidity Resources under a range of stress scenarios, including but not limited to, a 1987 historical market event and a 2008 historical market event, and if a Clearing Member Group's exposures breach certain thresholds, OCC would require the breaching Clearing Member Group to maintain cash deposits in lieu of other forms of acceptable collateral to supplement OCC's Available Liquidity Resources pursuant to the Contingency Funding Plan. Accordingly, the Contingency Funding Plan enhancements also allow OCC to address foreseeable liquidity shortfalls that would not be covered by its currently available liquid resources. OCC therefore believes that the proposed LRMF and changes to the Contingency Funding Plan are reasonably designed to comply with the requirements of Rules 17Ad–22(e)(7)(vi)(A) and 17Ad–22(e)(7)(viii).[88]

6. Required Cash Deposits for Clearing Members on Watch Level

OCC proposes to add new Rule 604(g) to provide OCC with authority to require Clearing Members to deposit a specified amount of cash to satisfy its margin requirements as a protective measure if a Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under OCC's watch level reporting process. Under the proposed rule, Clearing Members may be required to satisfy such required cash deposits through their daily margin requirements under Rule 601 or through intra-day margin calls under Rule 609. The proposed rule change is designed to provide OCC with an additional tool to mitigate potential liquidity risks of those Clearing Members identified as presenting increased risk to OCC through its ongoing monitoring processes outside of the forecasting process in the Contingency Funding Plan. The proposed change would allow OCC to collect additional liquid resources from a Clearing Member demonstrating potentially increasing levels of risk through the watch level review process so that OCC can continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible in the event such Clearing Member defaults. The proposed change is therefore designed to enhance OCC's resilience as a systemically important financial market utility, which in turn would promote the protection of investors and the public interest. As a result, OCC believes the proposed change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[89]

Additionally, Rule 17Ad–22(e)(7)[90] requires generally that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage liquidity risk that arises in or is borne by the CCA. OCC believes that the proposed change is reasonably designed to comply with the requirements of Rule 17Ad–22(e)(7)[91] because it would provide OCC with an additional tool to manage potential liquidity risks of those Clearing Members identified as presenting increased risk to OCC through its ongoing monitoring processes.

7. Enhancements to Rules Concerning the Borrowing of Clearing Fund Assets

OCC is proposing several changes to its rules to clarify its authority to use Clearing Fund assets to address potential liquidity needs. First, OCC proposes to amend Rules 1006(a) and (f) to clarify that, where the Clearing Fund is already allowed to be used for borrowings, OCC has authority to borrow cash directly instead of pledging Clearing Fund cash or securities to a third party to borrow or otherwise obtain funds. The proposed change would provide additional clarity and transparency to OCC's Clearing Members regarding OCC's use of Clearing Fund cash as a liquidity resource and would help Clearing Members better understand their and OCC's rights and obligations as they relate to the Clearing Fund.[92] Second, OCC proposes to amend Rule 1006(f) to permit OCC to reject a Clearing

[85] 15 U.S.C. 78q–1(b)(3)(F).

[86] 17 CFR 240.17Ad–22(e)(7)(vi)(A).

[87] 17 CFR 240.17Ad–22(e)(7)(viii).

[88] 17 CFR 240.17Ad–22(e)(7)(vi)(A) and (e)(7)(viii).

[89] 15 U.S.C. 78q–1(b)(3)(F).

[90] 17 CFR 240.17Ad–22(e)(7).

[91] *Id.*

[92] OCC notes that the proposed changes to Rule 1006 are aligned with OCC's existing Default Management Policy, which provides that ''[i]n order to meet financial resource obligations as a result of a clearing member suspension. OCC is able to utilize the following resources . . . *Clearing Fund deposits of the suspended member.* OCC may utilize any cash, convert Clearing Fund deposits to cash, or effect borrowing or other transactions using such deposits. *Clearing Fund deposits of non-defaulting members.* OCC may utilize any cash, convert Clearing Fund deposits to cash, or effect borrowing or other transactions using such deposits.'' (emphasis in original). *See supra* note 50 and associated text.

Member's collateral substitution request concerning a security contributed to the Clearing Fund where OCC has already used the security to borrow or otherwise obtain funds. Explicitly providing this discretion in OCC's Rules will strengthen OCC's access to liquidity through secured borrowing arrangements by ensuring OCC is able to preserve the pledge of particular securities where necessary or appropriate. Finally, OCC proposes to amend Rule 1006(f) to clarify that OCC is not required to wait thirty days prior to determining that any borrowing represents an actual loss to the Clearing Fund. Making this authority more explicit will help ensure that OCC is able to make proportionate charges against Clearing Member contributions to the Clearing Fund in a timely manner and make good the related losses. OCC believes that these proposed changes provide important clarity around its ability to borrow and use Clearing Fund assets for liquidity risk management purposes, and to replenish such resources in a timely fashion, thereby helping to promote the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible in the event such Clearing Member defaults. The proposed change is therefore designed to enhance OCC's resilience as a systemically important financial market utility, which in turn would promote the protection of investors and the public interest. As a result, OCC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.[93]

Rule 17Ad–22(e)(7)[94] requires generally that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor and manage liquidity risk that arises in or is borne by the CCA. Rule 17Ad–22(e)(7)(ix)[95] further requires such policies and procedures to describe the CCA's process to replenish any liquid resources that the clearing agency may employ during a stress event. OCC believes that these proposed changes are reasonably designed to provide important clarity around its ability to borrow and use Clearing Fund assets for liquidity risk management purposes, and to replenish such resources in a timely fashion, in a manner consistent with Rules 17Ad–22(e)(7) and (e)(7)(ix).[96]

8. Requirement for Clearing Members to Maintain Contingency Plans for Settlement

OCC proposes to amend Rule 301(d) to require that every Clearing Member maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise. The proposed rule change is intended to reduce liquidity risk at OCC by requiring that Clearing Members have adequate contingency planning designed to effect timely settlement of their obligations with OCC despite a disruption by their primary settlement bank. OCC believes that it is important that OCC and its members maintain processes that are resilient to a variety of potential operational and financial disruptions and that Clearing Members maintain robust contingency plans designed to effect timely settlement of their obligations to reduce the likelihood member would be unable to satisfy its settlement obligations, risking possible suspension. As a result, OCC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible in accordance with Section 17A(b)(3)(F) of the Act.[97]

Rule 17Ad–22(e)(18)[98] requires, in part, that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by participants and, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency. OCC believes the proposed amendments to Rule 301(d) are objective and risk-based in that they would apply to all Clearing Members and are intended to reduce the likelihood that a Clearing Member would be unable to satisfy their settlement obligations to OCC by requiring that Clearing Members have adequate contingency plans for financial resources and robust operational capacity to meet such obligations. The proposed requirement would also be publicly disclosed in OCC's Rules. OCC therefore believes the proposed change is consistent with Rule 17Ad–22(e)(18).[99]

9. Other Clarifying and Conforming Changes

OCC proposes to make a number of other clarifying, conforming, and organizational changes to the OCC Rules and Risk Policies to ensure the accuracy and consistency of its liquidity risk management rules and practices. The proposed changes are therefore designed to ensure that OCC is able to effectively manage its liquidity risks and maintain sufficient liquid resources to allow OCC to continue the prompt and accurate clearance and settlement of securities and assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, notwithstanding a default of the Clearing Member Group that would generate the largest aggregate payment obligation for OCC in extreme but plausible market conditions. As a result, OCC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act[100] and Rule 17Ad–22(e)(7) thereunder.[101]

In addition, Rules 17Ad–22(e)(2)(i) and (v)[102] require each covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. As discussed above, OCC would revise its Risk Policies to incorporate standardized policy exception and violation reporting requirements, which would apply to all internal OCC policies and procedures. The proposed change would simplify and centralize the escalation path for policy document owners and ensure that OCC's Compliance department, and if appropriate the Enterprise Risk Management department, is notified in a consistent manner of any exceptions or violations. OCC therefore believes the proposed rule change is consistent with Rule 17Ad–22(e)(2)(i) and (v).[103]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[104] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. While aspects of

[93] 15 U.S.C. 78q–1(b)(3)(F).

[94] 17 CFR 240.17Ad–22(e)(7).

[95] 17 CFR 240.17Ad–22(e)(7)(ix).

[96] 17 CFR 240.17Ad–22(e)(7) and (e)(7)(ix).

[97] 15 U.S.C. 78q–1(b)(3)(F).

[98] 17 CFR 240.17Ad–22(e)(18).

[99] *Id.*

[100] 15 U.S.C. 78q–1(b)(3)(F).

[101] 17 CFR 240.17Ad–22(e)(7).

[102] 17 CFR 240.17Ad–22(e)(2)(i) and (v).

[103] *Id.*

[104] 15 U.S.C. 78q–1(b)(3)(I).

the proposal would have an impact on certain Clearing Members, specifically in terms of the amount of cash Clearing Members must deposit at OCC in connection with potential liquidity obligations, OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The potential impact on Clearing Members, and the appropriateness of those changes to further of the purposes of the Act, is described in detail below.

1. Liquidity Risk Management Framework

OCC does not believe that the adoption of the LRMF would have any impact, or impose any burden, on competition. The proposed LRMF would set forth the manner in which OCC effectively measures, monitors, and manages its liquidity risks, including how OCC measures, monitors, and manages its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity. The LRMF is an internal OCC document intended to comprehensively describe OCC's liquidity risk management practices, many of which are current practices of OCC; however, to the extent changes in any of OCC's current practices would impact competition (*e.g.,* changes in the Contingency Funding Plan), those impacts are addressed below. OCC believes that the adoption of the LRMF would not affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user.

2. Liquidity Stress Testing

The proposed liquidity stress testing approach is designed to allow OCC to more appropriately measure, monitor, and manage its liquidity exposures under a variety of foreseeable stress scenarios, including the default of the Clearing Member Group that would generate the largest aggregate payment obligation to OCC in extreme but plausible market conditions. OCC would perform daily stress testing using standard and predetermined parameters and assumptions. The proposed approach to liquidity stress testing would rely on the stressed scenarios and prices generated under OCC's current stress testing and Clearing Fund methodology.[105] The scenarios used are pre-identified by OCC's the STWG and the output of these scenarios would be used for liquidity resource evaluation and would be reviewed daily by FRM. The stress tests in question consider a range of relevant stress scenarios and possible price changes in liquidation periods, including but not limited to: (1) Relevant peak historic price volatilities; (2) shifts in other market factors including, as appropriate, price determinants and yield curves; (3) the default of one or multiple members; (4) forward-looking stress scenarios; and (5) reverse stress tests aimed at identifying extreme default scenarios and extreme market conditions for which the OCC's resources would be insufficient. OCC believes the proposed approach to liquidity stress testing is designed to appropriately measure and allow OCC to monitor and manage its liquidity risk. It would also provide for new stress scenarios to be used by OCC to call for additional liquid resources in the form of cash deposits from those Clearing Members driving OCC's largest liquidity demands to ensure that OCC continues to maintain sufficient liquid resources to meet its settlement obligations with a high degree of confidence. While the proposed rule change could result in OCC requiring an increased amount of cash deposits from its Clearing Members, either in the form of margin or Clearing Fund, OCC believes the proposed changes are necessary for OCC to maintain compliance with its regulatory obligations under the Exchange Act and Rule 17Ad–22(e)(7) thereunder, as discussed in detail above. OCC therefore believes that any impact on competition or OCC's Clearing Members would be necessary and appropriate in furtherance of the protection of investors and the public interest under the Act. In any event, OCC does not believe the proposed rule change would affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user.

3. Clearing Fund Cash Requirement

OCC does not believe the proposed changes to the Clearing Fund Cash Requirement would have any impact, or impose any burden, on competition. The primary purpose of the proposed rule change is to provide OCC with the flexibility to periodically set its Base Liquidity Resources and to adjust Base Liquidity Resources in response to changing market and business conditions to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times. The proposed rule change would apply to all Clearing Members equally and any potential change in the Clearing Fund Cash Requirement would continue to be allocated to Clearing Members based on their proportionate share of the overall Clearing Fund size as determined by Rule 1003(a)(y). OCC does not believe the proposed rule change would affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user.

4. Two-Day Notice Period for Substitutions Involving Excess Clearing Fund Cash

OCC does not believe the proposed introduction of a two-day notice period for any Clearing Member requesting to substitute Government Securities for cash deposits in excess of such Clearing Member's proportionate share of the Clearing Fund Cash Requirement would have any impact, or impose any burden, on competition. The proposed rule change is intended to provide additional certainty around the level of liquidity resources available to OCC at any given time by fixing the amount of cash in the Clearing Fund, and thereby fixing the amount of OCC's Available Liquid Resources, for any given two-day liquidation horizon. The proposed rule change would apply equally to all Clearing Members. OCC notes that Clearing Members would continue to be able to immediately withdraw cash deposits that are above their Clearing Fund Cash Requirement provided that they have equivalent amount of excess Clearing Fund deposits (as provided under Rule 1008). Moreover, OCC notes that it would retain the discretion to waive the two-day notification period if the substitution would not result in any Clearing Member's settlement obligations exceeding the liquidity resources available to satisfy such settlement obligations. OCC does not believe the proposed rule change would affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user.

5. Contingency Funding Plan

OCC proposes to enhance its Contingency Funding Plan by using the output of certain stress test scenarios (*i.e.,* Sufficiency Scenarios) in place of its current process for forecasting reasonably anticipated settlement obligations to determine whether to require additional cash deposits from its Clearing Members. While the use of stress scenarios in the Contingency Funding Plan process could potentially result in a wider or different subset of Clearing Members being subject to Required Cash Deposits than those currently subject to calls under the current Contingency Funding Plan, OCC does not believe the proposed rule change would affect Clearing Members'

[105] *See supra* notes 21 and 22 and associated text.

access to OCC's services or disadvantage or favor any particular user in relationship to another user. The purpose of the proposed change is to allow OCC to more appropriately monitor its liquidity exposures under a variety of foreseeable stress scenarios, including the default of the Clearing Member Group that would generate the largest aggregate payment obligation to OCC in extreme but plausible market conditions, and to call for additional liquid resources in the form of cash deposits from those Clearing Members driving OCC's largest liquidity demands to ensure that OCC continues to maintain compliance with its regulatory obligations under the Exchange Act and Rule 17Ad–22(e)(7) thereunder. OCC therefore believes that any impact on competition or OCC's Clearing Members would be necessary and appropriate in furtherance of the protection of investors and the public interest under the Act.

6. Required Cash Deposits for Clearing Members on Watch Level

OCC proposes to add new Rule 604(g) to provide OCC with authority to require Clearing Members to deposit a specified amount of cash to satisfy its margin requirements as a protective measure if a Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under OCC's watch level reporting process. OCC does not believe the proposed rule change would impose any burden on competition. OCC notes that this rule would apply to all Clearing Members equally and would only be applicable if a Clearing Member was identified as presenting increased risk through OCC's watch level reporting process. OCC does not believe the proposed rule change would affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user. OCC believes that, to the extent there would be any competitive impact, it would not constitute a burden on competition, and would be necessary and appropriate in furtherance of the protection of investors and the public interest under the Act.

7. Enhancements to Rules Concerning the Borrowing of Clearing Fund Assets

OCC does not believe the proposed changes concerning its authority to borrow and use Clearing Fund assets for liquidity risk management purposes would have any impact, or impose any burden, on competition. The proposed rule change is intended to provide further clarity around OCC's existing authority to borrow Clearing Fund assets, and to replenish its liquidity resources when necessary, and would apply equally to all Clearing Fund contributions. OCC does not believe the proposed rule change would affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user.

8. Requirement for Clearing Members To Maintain Contingency Plans for Settlement

OCC does not believe the proposed rule change to require that every Clearing Member maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership, would have any impact, or impose any burden, on competition. The proposed rule change is intended to reduce liquidity risk at OCC by requiring that Clearing Members have adequate contingency planning designed to effect timely settlement of their obligations with OCC despite a disruption by their primary settlement bank. These arrangements could include maintaining ability to wire funds directly to OCC via Fedwire or by providing instructions to another bank to effect the movement of funds. OCC notes that this rule would apply equally to all Clearing Members. Moreover, OCC does not believe the proposed rule change would affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user.

9. Other Clarifying and Conforming Changes

Finally, OCC proposes to make a number of other non-substantive clarifying, conforming, and organizational changes to the OCC Rules and Risk Policies in connection with the implementation of the proposed change described herein. The proposed changes would not have any impact, or impose any burden, on competition and would not affect Clearing Members' access to OCC's services or disadvantage or favor any particular user in relationship to another user.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self- regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2020–003 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–OCC–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for

inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2020–003 and should be submitted on or before May 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[106]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08692 Filed 4–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88703]

Order Granting Limited Exemptive Relief, Pursuant to Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') and Rule 608(e) of Regulation NMS Under the Exchange Act, Related to Certain Introducing Brokers, From the Requirements of the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

By letter dated February 3, 2020, BOX Exchange LLC; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Cboe C2 Exchange, Inc.; Cboe Exchange, Inc.; Financial Industry Regulatory Authority, Inc. (''FINRA''); Investors Exchange LLC; Long-Term Stock Exchange, Inc.; Miami International Securities Exchange, LLC; MIAX Emerald, LLC; MIAX Pearl, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq PHLX LLC; The Nasdaq Stock Market LLC; New York Stock Exchange LLC; NYSE American LLC; NYSE Arca, Inc.; NYSE Chicago, Inc.; and NYSE National, Inc. (collectively, the ''Participants'' to the National Market System (''NMS'') Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'')) [1] requested that the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to its authority under Section 36 of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 608(e) of Regulation NMS under the Exchange Act,[3] grant exemptive relief from certain provisions of the CAT NMS Plan related to broker-dealers that do not qualify as Small Industry Members solely because such broker-dealers satisfy Rule 0–10(i)(2) under the Exchange Act [4] in that they introduce transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations (for purposes of this order, such broker-dealers are referred to as ''Introducing Brokers'' or ''Introducing Industry Members'').[5] Specifically, the Participants request that the Commission provide exemptive relief from requiring Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Industry Members other than Small Industry Members (''Large Industry Members''), provided that the Participants require such Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Small Industry Members.[6] The Participants state that the CAT NMS Plan permits Small Industry Members to begin reporting to the CAT later than Large Industry Members.[7]

Under the CAT NMS Plan, a Small Industry Member is an Industry Member that qualifies as a small broker-dealer as defined in Rule 613 under the Exchange Act.[8] Rule 613 incorporates the definition of small broker-dealer in Rule 0–10(c) under the Exchange Act.[9] Exchange Act Rule 0–10(c) defines a small broker or dealer to mean a broker or dealer that:

(1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and

(2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section.

Under Exchange Act Rule 0–10(i),[10] a broker or dealer is affiliated with another person for purposes of Exchange Act Rule 0–10(c) if:

(1) Such broker or dealer controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25 percent or more of the voting securities of such other person or is entitled to receive 25 percent or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person; or

(2) Such broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person, or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.

In the CAT NMS Plan Approval Order, the Commission stated that the CAT NMS Plan provides a capital level-based definition of Small Industry Members for purposes of the CAT NMS Plan implementation schedule.[11] The Commission further stated that the definition is derived from Exchange Act Rule 0–10, which defines small entities under the Exchange Act for purposes of the Regulatory Flexibility Act, and reflects an ''existing regulatory standard that is an indication of small entities for which regulators should be sensitive when imposing regulatory burdens.'' [12] The Commission stated that the definition of Small Industry Member is a reasonable means to identify market participants for which it would be appropriate to provide, and that would benefit from, an additional year to prepare for CAT reporting due to their relatively limited resources.[13]

Under Exchange Act Rule 0–10(i)(2), an Introducing Broker would not be a small broker-dealer as defined in Exchange Act Rule 0–10(c) if the

[106] 17 CFR 200.30–3(a)(12).

[1] The Commission approved the CAT NMS Plan, as modified, on November 15, 2016. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order'').

[2] 15 U.S.C. 78mm(a)(1).

[3] 17 CFR 242.608(e).

[4] 17 CFR 240.0–10(i)(2).

[5] *See* letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated February 3, 2020 (''Exemption Request''). Unless otherwise noted, capitalized terms are used as defined in Rule 613 of Regulation NMS, in the CAT NMS Plan, or in this letter. ''Industry Member'' means ''a member of a national securities exchange or a member of a national securities association.'' ''Small Industry Member'' means ''an Industry Member that qualifies as a small broker-dealer as defined in SEC Rule 613.'' *See* CAT NMS Plan at Section 1.1.

[6] *See* Exemption Request.

[7] *See id.* at 2.

[8] 17 CFR 242.613. *See* CAT NMS Plan at Section 1.1.

[9] 17 CFR 240.0–10(c).

[10] 17 CFR 240.0–10(i).

[11] *See* CAT NMS Plan Approval Order, 81 FR at 84771.

[12] *See id.* (citing Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45804 (August 1, 2012) (''Rule 613 Adopting Release'')).

[13] *See* CAT NMS Plan Approval Order, 81 FR at 84771.

Introducing Broker introduced transactions in securities on a fully disclosed basis to a clearing firm that was not a small broker-dealer, regardless of the Introducing Broker's capital level.[14] The Participants believe that excluding Introducing Brokers from the definition of a small broker-dealer based on the introducing relationship described in Exchange Act Rule 0–10(i)(2) is not consistent with the intention to provide small broker-dealers with additional time to comply with the CAT NMS Plan.[15] The Participants state that Introducing Brokers, as defined herein, are excluded from the definition of a small broker-dealer solely because of their introducing relationship with a clearing firm, and that Introducing Brokers otherwise satisfy the capital threshold in Exchange Act Rule 0–10(c)(1) for small broker-dealers.[16] Accordingly, the Participants request exemptive relief for Introducing Industry Members from the requirements in the CAT NMS Plan applicable to Large Industry Members.[17]

The Participants state that the CAT NMS Plan permits Small Industry Members to commence reporting to the CAT later than Large Industry Members.[18] As a condition to the exemption, the Participants would require Introducing Industry Members to comply with the provisions of the CAT NMS Plan applicable to Small Industry Members.[19] As a result, Introducing Industry Members would report information pursuant to the CAT NMS Plan when Small Industry Members begin reporting.[20] The Participants state that the requested exemptive relief would affect only the timing for when data would be reported, but not the type or amount of data that would be reported.[21]

In a separate order, the Commission granted the Participants' request for exemptive relief from certain requirements in the CAT NMS Plan related to Industry Member reporting of Industry Member Data to the Central Repository to allow for the implementation of phased reporting for Industry Members to the CAT.[22] The reporting schedule in the Phased Reporting Order addresses Large Industry Members, Small Industry Members that are required to record and report information to FINRA's Order Audit Trail System pursuant to applicable self-regulatory organization (''SRO'') rules (''Small Industry OATS Reporters''), and Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters''). Under the relief requested herein, the Participants would be exempt from requiring Introducing Brokers to comply with the requirements of the Plan applicable to Large Industry Members and the Participants would require Introducing Brokers to comply with the requirements of the Plan applicable to Small Industry Members. The implementation schedule that an Introducing Broker would follow would depend upon whether the Introducing Broker was an OATS Reporter or a Non-OATS Reporter. Specifically, by providing this relief, Introducing Brokers who are OATS Reporters would follow the schedule established for Small Industry OATS Reporters and Introducing Brokers who are Non-OATS Reporters would follow the schedule for Small Industry Non-OATS Reporters, as described in more detail in the Phased Reporting Order.[23]

Section 36 of the Exchange Act grants the Commission the authority, with certain limitations, to ''conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' [24] Rule 608(e) of Regulation NMS under the Exchange Act provides that the Commission may exempt from the provisions of an NMS plan, either unconditionally or on specified terms and conditions, any self-regulatory organization or its members, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and perfection of the mechanisms of, a national market system.

The Commission believes that, pursuant to Exchange Act Section 36, this exemption is appropriate in the public interest and consistent with the protection of investors, and that pursuant to Rule 608(e), this exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and the perfection of the mechanisms of, a national market system. This relief will provide Introducing Industry Members that meet the capital standard in Exchange Act Rule 0–10(c)(1) with additional time to prepare effectively for certain CAT reporting phases depending on whether they are OATS Reporters, as described in more detail in the Phased Reporting Order. The Commission believes that the introducing relationship described in Exchange Act Rule 0–10(i)(2) should not prevent an Introducing Broker that meets the capital standard in Exchange Act Rule 0–10(c)(1) from being considered a Small Industry Member. The Commission understands that despite their clearing relationships, these Introducing Industry Members have the same resource limitations as other small broker-dealers that are similarly capitalized. Additionally, although an Introducing Broker may rely on its clearing firm to meet its regulatory obligations, an Introducing Broker is not obligated to choose its clearing firm as its CAT reporting agent. As the Commission stated in adopting Rule 613, providing small broker-dealers with a longer implementation time would assist small broker-dealers in identifying the most cost-effective and the most efficient manner to comply with Rule 613.[25] The Commission believes that this rationale applies equally to all broker-dealers that meet the capital threshold required to be considered a Small Industry Member, including Introducing Brokers. This relief affects only the time when certain Introducing Industry Members begin CAT reporting, but not the type or amount of information that they will be required to report. Accordingly, the Commission believes that the Participants should be exempt from requiring Introducing Industry Members that meet the capital standard in Exchange Act Rule 0–10(c)(1) to comply with the requirements of the CAT NMS Plan applicable to Large Industry

[14] Only broker-dealers that perform their own trading and either self-clear or clear on an omnibus basis, rather than on a fully disclosed basis, would be a small broker-dealer under Exchange Act Rule 0–10(i)(2). *See* Exemption Request at 3.

[15] *See id.*

[16] *See id.*

[17] *See id.* at 4.

[18] *See id.* at 2.

[19] *See id.* Each Participant would be required to require through its Compliance Rule that an Introducing Industry Member comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. ''Compliance Rule'' means, ''with respect to a Participant, the rule(s) promulgated by such Participant as contemplated by Section 3.11.'' *See* CAT NMS Plan at Section 1.1.

[20] *See id.*

[21] *See id.*

[22] *See* Securities Exchange Act Release No. 88702 (April 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from Sections 6.4, 6.7(a)(v) and 6.7(a)(vi) of the National Market System Plan Governing the Consolidated Audit Trail) (''Phased Reporting Order'').

[23] *See id.*

[24] 15 U.S.C. 78mm(a)(1).

[25] *See* Rule 613 Adopting Release, 77 FR at 45804.

Members, provided that such Introducing Industry Members comply with the requirements of the CAT NMS Plan applicable to Small Industry OATS Reporters and Small Industry Non-OATS Reporters, as applicable.

Accordingly, *it is hereby ordered*, pursuant to Section 36(a)(1) of the Exchange Act,[26] and Rule 608(e) of the Exchange Act,[27] that the Participants are exempt from requiring Introducing Industry Members to comply with the requirements of the CAT NMS Plan that apply to Large Industry Members, provided that each Participant, through its Compliance Rule, requires such Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–08704 Filed 4–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88698; File No. SR–NYSECHX–2020–01]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the NYSE Chicago Rule 6.6800 Series, the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail

April 20, 2020.

I. Introduction

On January 3, 2020, NYSE Chicago, Inc. (''NYSE Chicago'' or ''the Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan'').[3] On January 14, 2020, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on January 23, 2020.[4] On March 5, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to April 22, 2020.[5] The Commission received no comments on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR–NYSECHX–2020–01.[6]

II. Description of the Proposed Rule Change

The Exchange proposes to amend the NYSE Chicago Rule 6.6800 Series (''Compliance Rule''), which sets forth rules regarding Industry Member[7] compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants[8] of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID[9] based on a proposed amendment to the CAT NMS Plan filed with the Commission; [10] (2) amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting; [11] (3) amend the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility; [12] (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data [13] to the Central Repository; [14] (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an

[26] 15 U.S.C. 78mm(a)(1).

[27] 17 CFR 242.608(e).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. *See* Securities Exchange Act Release No79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[4] *See* Securities Exchange Act Release No. 87988 (January 16, 2020), 85 FR 4028 (''Notice'').

[5] *See* Securities Exchange Act Release No. 88335, 85 FR 14256 (March 11, 2020).

[6] 15 U.S.C. 78(s)(b)(2)(B).

[7] Industry Member means a member of a national securities exchange or a member of a national securities association. *See* CAT NMS Plan, *supra* note 3, at Section 1.1. *See also* proposed NYSE Chicago Rule 6.6810(s).

[8] The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

[9] As proposed, ''Firm Designated ID'' would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. *See* proposed NYSE Chicago Rule 6.6810(r).

[10] *See* Notice, *supra* note 4, at 4029. *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

[11] *See* Notice, *supra* note 4, at 4033–37. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[12] *See* Notice, *supra* note 4, at 4037. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

[13] *See* Notice, *supra* note 4, at 4038. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

[14] The Central Repository, as defined in the CAT NMS Plan, means ''the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.'' *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

account, on the order reported to CAT; [15] and (6) revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, social security numbers, or account numbers for individuals.[16]

The Exchange also proposes to amend the Exchange's Compliance Rule to facilitate the retirement of certain existing regulatory systems, specifically the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System, by adding additional data elements to the CAT reporting requirements for Industry Members,[17] additional reporting requirements for alternative trading systems,[18] and additional data elements related to OTC Equity Securities [19] that FINRA currently receives from alternative trading systems that trade OTC Equity Securities.[20]

[15] *See* Notice, *supra* note 4, at 4038. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in circumstances in which an Industry Member uses an established trading relationship for the individual customer. Instead, the Participant would require Industry Members to record and report to the Central Repository for the original receipt or origination of an order: (i) The relationship identifier instead of the account number, (ii) the ''account type'' as a ''relationship'', and (3) the account effective date instead of the ''date account opened.'' *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[16] *See* Notice, *supra* note 4, at 4039. The Participants requested and have received exemptive relief from the requirement of Section 6.4(d)(ii)(C) of the CAT NMS Plan for the Participants, in their Compliance Rules, to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See also* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[17] *See* Notice, *supra* note 4, at 4030.

[18] *See* Notice, *supra* note 4, at 4030–32.

[19] OTC Equity Security, as defined in the CAT NMS Plan, means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities. *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[20] *See* Notice, *supra* note 4, at 4032–33.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [21] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change, as modified by Amendment No 1.

Pursuant to Section 19(b)(2)(B) of the Act,[22] the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to 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.'' [24] The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) [25] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[26] any request for an opportunity to make an oral presentation.[27]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by May 15, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by May 29, 2020. 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 Numbers SR–NYSECHX–2020–01 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–NYSECHX–2020–01. 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

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 240.19b–4.

[27] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Pulic Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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–NYSECHX–2020–01 and should be submitted on or before May 15, 2020. Rebuttal comments should be submitted by May 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08699 Filed 4–23–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88693 File No. SR–NYSECHX–2020–13]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1.1 To Include Managed Portfolio Shares in the Definition of ''UTP Exchange Traded Product''

April 20, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on April 16, 2020, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1.1 to include Managed Portfolio Shares in the definition of ''UTP Exchange Traded Product.'' The proposed rule change is available on the Exchange's website at *www.nyse.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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1.1(k), which sets forth the meanings of ''Exchange Traded Product'' and ''UTP Exchange Traded Product'' as those terms are used in Exchange rules. Specifically, the Exchange proposes to amend the definition of ''UTP Exchange Traded Product'' to include Managed Portfolio Shares[4] as an additional type of Exchange Traded Product (''ETP'') that may trade on the Exchange pursuant to unlisted trading privileges (''UTP'').

To effect this change, the Exchange proposes to add a bullet point listing ''Managed Portfolio Shares'' in Rule 1.1(k) to include them in the enumerated list of ETPs that may trade on the Exchange on a UTP basis. The Exchange also proposes a non-substantive grammatical change to accommodate the addition of ''Managed Portfolio Shares'' as the final item in the bulleted list in Rule 1.1(k).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, because it is designed to remove impediments to and perfect the mechanism of a free and open market, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and, in general, to protect investors and the public interest because it ensures that Rule 1.1(k) correctly identifies and publicly states the complete list of ETPs that may trade on a UTP basis on the Exchange, providing additional specificity, clarity, and transparency in the Exchange's rules. Moreover, the proposed rule change will facilitate the trading of an additional type of ETP on the Exchange pursuant to UTP, thereby enhancing competition among market participants for the benefit of investors and the marketplace.

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 proposed change would provide the public and investors with up-to-date information about the types of ETPs that can trade on the Exchange on a UTP basis and would promote competition by adding an additional type of ETP that may trade on the Exchange pursuant to UTP.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Managed Portfolio Shares are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. *See, e.g.,* Cboe BZX Exchange, Inc. (''BZX'') Rule 14.11(k). On April 2, 2020, BZX commenced trading its first securities listed under BZX Rule 14.11(k) (American Century Focused Dynamic Growth ETF (FDG) and American Century Focused Large Cap Value ETF (FLV)).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) & (5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its 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

Continued

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] 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 proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow trading of Managed Portfolio Shares on the Exchange on a UTP basis without delay. The Exchange further states that Managed Portfolio Shares listed on BZX commenced trading on April 2, 2020. Based on the foregoing, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSECHX–2020–13 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–NYSECHX–2020–13. 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–NYSECHX–2020–13 and should be submitted on or before May 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–08695 Filed 4–23–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11101]

Notice of Public Meeting of the International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings

This notice announces a conference call of the Department of State's International Telecommunication Advisory Committee (ITAC). The ITAC session will be on conference call only on Tuesday, May 5, 2020 to review the results of recent meetings on international telecommunication policy meetings and preview upcoming related activities.

The meeting will focus on the following topics:

1. The World Telecommunication Standardization Assembly (WTSA–20) taking place in the fourth quarter of 2020, including positions on study program restructuring and leadership. The WTSA, the quadrennial assembly of the ITU Telecommunication Standardization Sector (ITU–T), will consider the reports of the ITU–T Study Groups, approve the sector's program of work, decide the Study Group structure, and appoint chairmen and vice-chairmen. At the ITAC meeting, we invite comment from the public on the U.S. priorities for WTSA 2020.

The meeting will also highlight preparations for the 2020 session of the ITU Council taking place from June 9, 2020 to June 19, 2020 and related ITU Council Working Groups. The Council acts as the governing body between plenipotentiary conferences.

2. Other ITU–T meetings.

3. ITU–D Telecommunication Development Sector.

4. Inter-American Telecommunication Commission (CITEL).

5. Council Working Groups (CWG).

6. Organization for Economic Cooperation and Development (OECD) Committee on Digital Economy Policy (CDEP).

7. Asia Pacific Economic Corporation Telecommunications (APECTEL).

Participation on the ITAC call is open to the public. The public will have an opportunity to provide comments on the call at the invitation of the chair. Persons wishing to request reasonable accommodation during the meeting should send their requests to *ITAC@state.gov* no later than April 29, 2020. Accommodations may not be possible for requests made after that time.

Further details on this ITAC conference call will be announced through the Department of State's email list, *ITAC@lmlist.state.gov.* Use of the ITAC list is limited to International Communication Information Policy (CIP) personnel and is used for meeting announcements and confirmations, distribution of agendas and other relevant meeting documents. The Department welcomes any U.S. citizen or legal permanent resident to join the ITAC listserv by emailing *ITAC@state.gov* and providing their name, email address, telephone contact and company, organization, or community that will be represented.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of

as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

State finds that there is an exceptional circumstance in that this advisory committee meeting must be held on May 5, due to the need to brief the community on the issues noted above, and because of difficult scheduling issues brought about by the ongoing public health emergency.

Please send all inquiries to *ITAC@state.gov.*

Zachary A. Parker,

Director, Office of Directives Management, U.S. Department of State.

[FR Doc. 2020–08676 Filed 4–23–20; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice: 11095]

Notice of Public Teleconference Concerning the Use of Digital Sequence Information of Genetic Resources

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of State (DOS) invites submission of comments from the public, academia, industry, and other stakeholders on the topic of ''digital sequence information (DSI) on genetic resources,'' also known as genetic sequence data (GSD). The United States will use these comments to inform policy development and international messaging on GSD, particularly regarding the Convention on Biological Diversity (CBD) and the Nagoya Protocol. The Department will hold a public meeting and information session to discuss these issues, on May 14, 2020 at 10:00 a.m., by teleconference. This teleconference is in place of the postponed in-person public meeting on DSI originally scheduled for March 12, 2020 [Public Notice 11037].

DATES: A teleconference is planned on Thursday, May 14, 2020. The meeting will begin at 10:00 a.m. EDT and last for up to two hours. Dial-in details will be made available upon registration. Electronic comments are due on or before June 30, 2020.

ADDRESSES: The meeting will be held by phone. You will receive dial-in details upon registration. One electronic submission per person by the June 30 deadline is welcome, with no more than 10 pages of single-spaced text including relevant examples, with no more than one page per example. Submissions should be made via the internet at *www.regulations.gov* docket number [DOS–2020–2017]. Note that relevant comments submitted to regulations.gov will be posted without editing and will be available to the public; therefore, business-confidential information should be clearly identified as such and submitted by email instead to *ReillyPK2@state.gov.* The public is required to file submissions electronically rather than by facsimile or mail. You do not need to resubmit comments if you submitted comments for the original **Federal Register** Notice [Public Notice 11037] announcing the now postponed, in-person public meeting on DSI originally scheduled for March 12, 2020.

FOR FURTHER INFORMATION CONTACT: Questions regarding the submission of comments should be directed to Patrick Reilly (202) 647–4827, *ReillyPK2@state.gov.*

SUPPLEMENTARY INFORMATION: The Secretariat of the CBD released three studies on ''Digital Sequence Information on Genetic Resources'' (*https://www.cbd.int/dsi-gr/2019-2020/studies/*) that examine the scope, present use, traceability, access, and current benefit-sharing schemes relating to DSI/GSD. These studies were commissioned to inform decisions by the Parties to the CBD and the Nagoya Protocol at the 2020 Conference of Parties (COP) to the CBD and the Conference of Parties serving as the Meeting of the Parties to the Nagoya Protocol. (Originally planned for October 15–18, 2020 in Kunming, China, the CBD COP and related meetings have been postponed due to COVID–19; new dates have not yet been announced.) During the teleconference, DOS will provide a brief overview of the ongoing discussions regarding DSI/GSD in the context of the CBD and the Nagoya Protocol and public participants will have the opportunity to share their comments, concerns, and questions about this issue. The information obtained from these meetings will help the U.S. Government prepare for U.S. participation in international meetings, in particular, U.S. participation in upcoming CBD and Nagoya Protocol meetings. Documents and other information related to the CBD and Nagoya Protocol can be found at this website: *www.cbd.int.*

We welcome examples, information, and comment on:

(1) The CBD studies cited above;

(2) practices regarding the collection, management, and use of DSI/GSD;

(3) experiences with access and benefit-sharing (ABS) approaches or requirements related to DSI/GSD;

(4) specific examples of actual and potential impacts that could occur if tracking and benefit sharing for the utilization of DSI/GSD were required by domestic legislation in other countries, or encouraged under the Nagoya Protocol or other international instruments, such as the International Treaty on Plant Genetic Resources for Food and Agriculture and the World Health Organization Pandemic Influenza Preparedness Framework;

(5) specific examples of actual and potential impacts that could occur if tracking and benefit sharing for the utilization of DSI/GSD were required on research collaborations, international sample sharing, academic and commercial research, pandemic and epidemic preparedness and response, and food security;

(6) monetary or non-monetary benefits that are facilitated by international sharing of DSI/GSD;

(7) how organizations can still advance science if national-level ABS frameworks in other countries require tracking and benefit sharing for the utilization of DSI/GSD;

(8) non-ABS challenges and barriers to sharing DSI/GSD that have significant implications for global research efforts that might merit additional attention or analysis; and

(9) issues and/or examples related to the items described above or other items that could affect the scientific process.

Representatives from DOS will review written submissions and share them, as appropriate, with other Federal Agencies to inform U.S. Government policy and our international engagements on these issues. U.S. officials may contact individuals making submissions for further information or clarification.

Status: The meeting will be open to the public. Persons wishing to dial-in should submit their full name and organization to Patrick Reilly at *ReillyPK2@state.gov* and copy *RSVP–ECW@state.gov* at least three days prior to the meeting. Requests made after that time will be considered but might not be accommodated.

Zachary A. Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2020–08784 Filed 4–23–20; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36395]

Puget Sound & Pacific Railroad—Lease Amendment and Operation Exemption Including Interchange Commitment—Union Pacific Railroad Company

Puget Sound & Pacific Railroad (PSAP), a Class III rail carrier, has filed

a verified notice of exemption under 49 CFR 1150.41 to amend an existing rail line lease between PSAP and Union Pacific Railroad Company (UP).[1] PSAP states that, under the Amended Lease, it will continue to lease and operate 3.65 miles of rail line: Between milepost 53.83 and milepost 54.23 and between milepost 55.28 and milepost 56.70, in Aberdeen and Hoquiam, Wash.; and between milepost 2.41 at Blakeslee Junction, Wash., and milepost 4.26 at Raisch, Wash. (collectively, the Line).

PSAP states that the Current Lease was entered into in 2000 and amended in 2002. *See Ariz. & Cal. R.R.—Lease & Operation Exemption—Union Pac. R.R.,* FD 33886 (STB served July 7, 2000); *Puget Sound & Pac. R.R.—Lease & Operation Exemption—Union Pac. R.R.,* FD 34213 (STB served Dec. 13, 2002). PSAP further states that the term of the Current Lease was extended in 2010, in accordance with its terms, for an additional 10 years. According to PSAP, the Amended Lease would extend the lease term for an additional 10 years and revise other commercial terms.

PSAP certifies that the projected annual revenues as a result of the proposed transaction will not exceed those that would qualify it as a Class III carrier. Additionally, PSAP certifies that its total revenues exceed $5 million. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed $5 million, it must, at least 60 days before the exemption becomes effective, post notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, PSAP's verified notice includes a request for waiver of the 60-day advance labor notice requirements. PSAP's waiver request will be addressed in a separate decision.

As required under 49 CFR 1150.43(h)(1), PSAP has disclosed in its verified notice that the Amended Lease contains an interchange commitment.[2] PSAP has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).

The verified notice states that the Amended Lease will be effective upon the effective date of the verified notice of exemption and that PSAP will continue to operate under the terms of the Current Lease until then. The Board will establish the effective date in its separate decision on the waiver request.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than May 1, 2020.

All pleadings, referring to Docket No. FD 36395, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on PSAP's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to PSAP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: April 21, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–08740 Filed 4–23–20; 8:45 am]

BILLING CODE 4915–01–P

[1] The existing lease, as previously amended from time to time, is referred to as the Current Lease; the Current Lease with the addition of the new amendment for which authority is sought here is referred to as the Amended Lease.

[2] A copy of the Amended Lease with the interchange commitment was submitted under seal. *See* 49 CFR 1150.43(h)(1).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: In September 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated a product exclusion process in June 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice, and corrects a technical error in a previously announced exclusion.

DATES: The product exclusions announced in this notice will apply as of September 24, 2018, the effective date of the $200 billion action, and extend to August 7, 2020. The amendments announced in this notice are retroactive to the date that the original exclusions were published.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FRN 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012 (December 17, 2019), 85 FR 549 (January 6, 2020), 85 FR 6674 (February 5, 2020), 85 FR 9921 (February 20, 2020), 85 FR 15015 (March 16, 2020), and 85 FR 17158 (March 26, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent *ad valorem* duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the U.S. Trade Representative established a process by which stakeholders could request exclusion of particular products

classified within an 8-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 24 notice, requests for exclusion were required to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit HTSUS subheading covered by the $200 billion action. Requestors were also required to provide the 10-digit HTSUS subheading most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The June 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative would periodically announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September 2019, October 2019, November 2019, December 2019, January 2020, February 2020, and March 2020. *See* 84 FR 49591, 84 FR 57803, 84 FR 61674, 84 FR 65882, 84 FR 69012, 85 FR 549, 85 FR 6674, 85 FR 9921, 85 FR 15015, and 85 FR 17158. The Office of the United States Trade Representative (USTR) regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0005.*

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set forth in the June 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set forth in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set forth in the Annex, the exclusions are reflected in one 10-digit HTSUS subheading, which covers 20 separate exclusion requests, and 107 specially prepared product descriptions, which cover 157 separate exclusion requests.

In accordance with the June 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer benefitting from the product exclusion filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex, and not by the product descriptions found in any particular request for exclusion.

Paragraph A, subparagraphs 3 through 5 of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex. Paragraph B of the Annex contains an amendment reflecting a technical correction to a certain note to the HTSUS, specifically U.S. note 20(mm)(11), published at 84 FR 61674 (November 13, 2019).

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018, to August 7, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

BILLING CODE 3290–F0–P

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.45 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
"9903.88.45	Articles the product of China, as provided for in U.S. note 20(xx) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative	The duty provided in the applicable subheading"		

2. by inserting the following new U.S. note 20(xx) to subchapter III of chapter 99 in numerical sequence:

"(xx) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.03 and provided for in U.S. notes 20(e) and (f) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.03. See 83 Fed. Reg. 47974 (September 21, 2018) and 84 Fed. Reg. 29576 (June 24, 2019). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.03 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

1) 8424.90.9080
2) Seeds of mung beans (Vigna radiata (L.) Wilczek) of a kind used for sowing (described in statistical reporting number 0713.31.1000)
3) Preparations of chopped garlic, certified organic, packaged with water, citric acid, and salt, put up for retail sale (described in statistical reporting number 2005.99.9700)
4) Aluminum hydroxide (CAS No. 21645-51-2) in powder form (described in statistical reporting number 2818.30.0000)
5) Cubic boron nitride (CAS No. 10043-11-5) (described in statistical reporting number 2850.00.5000)

6) 2-Ethoxynaphthalene (CAS No. 93-18-5) (described in statistical reporting number 2909.30.2000)
7) 1-(4-tert-Butyl-2,6-dimethyl-3,5-dinitrophenyl)ethanone (Musk ketone) (CAS No. 81-14-1) (described in statistical reporting number 2914.79.1000)
8) 2-Cyclohexylethyl acetate (CAS No. 21722-83-8) (described in statistical reporting number 2915.39.4550)
9) Glyoxylic acid (IUPAC name: 2-oxoacetic acid) (CAS No. 298-12-4), imported as a 50-percent aqueous solution (described in statistical reporting number 2918.30.9000)
10) 1-Cyanoguanidine (Dicyandiamide) (CAS No. 461-58-5) (described in statistical reporting number 2926.20.0000)
11) 1,2-Dibromo-2,4-dicyanobutane (IUPAC Name: 2-bromo-2-(bromomethyl)pentanedinitrile) (CAS No. 356-65-7) (described in statistical reporting number 2926.90.5050)
12) Mixtures of hydrofluorocarbons, containing 40 to 44 percent by weight of 1,1,1,2-tetrafluoroethane (CAS No. 811-97-2), 56 to 60 percent by weight of pentafluoroethane (CAS No. 354-33-6) and up to 2 percent by weight of lubricating oil (described in statistical reporting number 3824.78.0020)
13) Mixtures containing 2-(dimethylamino)ethanol (CAS No. 108-01-0) (described in statistical reporting number 3824.99.9297)
14) Sacks and bags of plant-based materials including cornstarch, biodegradable, not containing polyethylene (described in statistical reporting number 3923.29.0000)
15) Wall panels of cellulose polyvinyl chloride, each measuring not less than 123 cm but not more than 245 cm in length, not more than 184 cm in height, and not more than 3 cm in width, put up for retail sale in packs of 6 panels weighing not less than 13.5 kg and not more than 29 kg (described in statistical reporting number 3925.90.0000)
16) Cable protectors of rubber, each measuring not more than 91 cm in length, not more than 51 cm in width and not more than 5.2 cm in height, with 5 channels for multiple cables or hoses not more than 3.8 cm in diameter, with a lid of polyvinyl chloride, weighing not more than 14.5 kg, with a load capacity of not more than 8,200 kg (described in statistical reporting number 4016.99.6050)
17) Parking stops of recycled rubber, each measuring not more than 123 cm in length, not more than 15.5 cm in width and not more than 10.5 cm in height, weighing not more than 16 kg (described in statistical reporting number 4016.99.6050)
18) Messenger bags of polyester, each measuring not more than 50 cm by 38 cm by 11 cm, weighing not more than 2.5 kg (described in statistical reporting number 4202.12.8130)
19) Backpacks with hydration system, each measuring not more than 51 cm by 28 cm by 9 cm, weighing not more than 1 kg (described in statistical reporting number 4202.92.0400)
20) Backpacks of 66.66 tex polyester, without hydration systems, each measuring not more than 57 cm by 44 cm by 11 cm (described in statistical reporting number 4202.92.3120)
21) Duffel bags of polyester, each measuring not more than 81 cm by 39 cm by 11 cm, weighing not more than 7 kg (described in statistical reporting number 4202.92.3131)

22) Duffel bags made predominantly of man-made fibers, each measuring not more than 98 cm by 52 cm by 17 cm, weighing not more than 7 kg, with wheels (described in statistical reporting number 4202.92.3131)

23) Garment bags of polyester, each measuring not more than 69 cm by 46 cm by 11 cm, weighing not more than 2 kg (described in statistical reporting number 4202.92.3131)

24) Shaving/toiletry bags of polyester, each measuring not more than 30 cm by 28 cm by 11 cm, weighing not more than 1 kg (described in statistical reporting number 4202.92.3131)

25) Padfolios of faux leather or polyester, with or without zippers, each containing a writing pad (described in statistical reporting number 4820.10.2020)

26) Binders with polyester covers, weighing less than 800 g, each measuring less than 36 cm in length, less than 25 cm in width, and less than 6 cm in depth (described in statistical reporting number 4820.30.0040)

27) Chinstraps designed for use on football helmets, each with webbing of woven polyester fabric encased in PVC, foam padding of closed cell foam and buckle clasp of stainless steel (described in statistical reporting number 6507.00.0000)

28) Front pads and side pads designed for use on football helmets, each helmet with a vinyl top and bottom of PVC, foam padding of closed cell foam and a buckle clasp of stainless steel (described in statistical reporting number 6507.00.0000)

29) Fiber optic faceplates in the form of sealed glass funnels, for actual use in cathode-ray tubes (CRTs), round, each not more than 5.4 cm in diameter, weighing not more than 78 g, with a maximum thickness of 1.15 cm (described in statistical reporting number 7011.20.4500)

30) Glass faceplates for cathode-ray tubes (CRTs), round, each measuring not more than 8 cm in diameter, not more than 0.36 cm at center thickness, and weighing not more than 50 g (described in statistical reporting number 7011.20.4500)

31) Railroad air brake pipe fitting branch pipe tees of carbon or alloy steel (cast steel), not threaded, with welded sockets, each measuring not less than 7 cm by 5 cm by 5 cm but not more than 11 cm by 13 cm by 13 cm, weighing not less than 0.4 kg but not more than 2.4 kg, conforming to the Association of American Railroads (AAR) specifications S-400 (described in statistical reporting number 7307.19.9080)

32) Railroad tank car serpentine pipe fittings of carbon or alloy steel (cast steel), not threaded but welded to connect to pipes, each weighing not less than 0.9 kg but not more than 3.4 kg, measuring not less than 12 cm by 7 cm by 2 cm but not more than 16 cm by 13 cm by 11 cm, conforming to the Association of American Railroads (AAR) specifications M-1002 (described in statistical reporting number 7307.19.9080)

33) Tire chains of iron or nonalloy steel, with links not over 10 mm in diameter (described in statistical reporting number 7315.82.5000)

34) Bolts of galvanized steel, each with hexagonal heads which are fitted with plastic knobs to facilitate installation into a steel nut incorporated in awnings, having threads with a diameter of 6 mm or more (described in statistical reporting number 7318.15.2065)

35) Hose crimp collars of stainless steel, each weighing not more than 0.1 kg, measuring not more than 2.7 cm in diameter, not less than 1.4 cm but not more than 4.2 cm in length, not less than 1.3 cm but not more than 4.3 cm round (described in statistical reporting number 7326.90.8688)

36) Quick connect body sleeve couplings of steel, with cylinder shape, each measuring not more than 3 cm in length and not more than 4 cm in diameter (described in statistical reporting number 7326.90.8688)

37) Bismuth metal (described in statistical reporting number 8106.00.0000)

38) Flexible tubing of stainless steel, each with an inner hose with garden hose fittings, weighing not more than 1.5 kg, measuring not less than 760 cm but not more than 3,052 cm in length (described in statistical reporting number 8307.10.3000)

39) Buckles of stainless steel, each incorporating a snap fastener socket and adjustment teeth, designed for use with football helmet chin straps (described in statistical reporting number 8308.90.6000)

40) Sign plates, name plates, address plates, or similar plates of chromium plated base metals or of nickel or aluminum, each weighing not less than 4 g (described in statistical reporting number 8310.00.0000)

41) Parts suitable for use solely or principally with spark-ignition internal combustion piston engines of heading 8407 for marine propulsion (other than cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery or connecting rods) (described in statistical reporting number 8409.91.9290)

42) Parts suitable for use solely or principally with spark-ignition internal combustion piston engines of heading 8407 (other than for aircraft engines, cast-iron parts, not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues and risers or to permit location in finishing machinery, for vehicles of subheading 8701.20 or heading 8702, 8703 or 8704, for marine propulsion engines or connecting rods) (described in statistical reporting number 8409.91.9990)

43) DC blowers for use in motor vehicle climate control systems, each measuring no less than 328 mm by 127 mm by 107 mm and no more than 352 mm by 209 mm by 162 mm (described in statistical reporting number 8414.59.6540)

44) DC centrifugal radial blowers, each measuring not less than 350 mm by 127 mm by 107 mm and not more than 350 mm by 168 mm by 140 mm, of an output of 115 W to 280 W, and weighing at least 1.85 kg and no more than 2.08 kg (described in statistical reporting number 8414.59.6560)

45) Electrical/battery operated axial leaf blowers (described in statistical reporting number 8414.59.6590)

46) Parts of fans, consisting of column assemblies comprising telescoping steel tubes, each with a mechanism to lock the assembly at a desired length, and front grills of steel, the foregoing for use in the manufacture of household pedestal fans (described in statistical reporting number 8414.90.1040)

47) Retail computing scales, digital with tactile keypad or VGA display, with a maximum weighing capacity of not less than 10 kg but not more than 15.5 kg, measuring not

less than 15 cm in width by 21 cm depth but not more than 41 cm in width by 25 cm in depth (described in statistical reporting number 8423.81.0030)

48) Compact portable shipping scales, of stainless steel, with a maximum weighing capacity of not more than 16 kg, with a digital display, weight below hook, and handles, measuring not less than 19 cm in width, not less than 21 cm in depth, not less than 3 cm in height but not more than 52 cm in width, not more than 41 cm in depth, not more than 13 cm in height (described in statistical reporting number 8423.81.0040)

49) Hand-operated trunnion mounted ball valves of steel, each measuring over 5 cm but not exceeding 60 cm in diameter (described in statistical reporting number 8481.80.3070)

50) Parts of spark-ignition internal combustion piston engines or rotary engines, consisting of transmission shafts (including camshafts and crankshafts) and cranks, the foregoing of machined cast iron or other ferrous metals, other than for engines of vehicles of chapter 87 (described in statistical reporting number 8483.10.1050)

51) Manual valve actuators, traveling nut type, of iron, each measuring over 20 cm but not exceeding 200 cm in length, suitable for use with ball, butterfly, plug or quadrosphere valves (described in statistical reporting number 8483.40.5010)

52) Electric gear motors, single-phase AC, 4-pole permanent split capacitor type, of an output of 38 W or more but not exceeding 74.5 W, each enclosed in a housing of plastics measuring 12 cm or more but not more than 17 cm in length, which pivots at the end of a support of plastics, the other end of which houses on-off-oscillate and speed controls (described in statistical reporting number 8501.40.2020)

53) Electric gear motors, single-phase AC, 4-pole permanent split capacitor type, of an output of 38 W or more but not exceeding 74.5 W, each enclosed in a housing of plastics measuring 13 cm or more but not more than 16 cm in length, which pivots at the end of a support of plastics, the other end of which houses on-off and speed controls (described in statistical reporting number 8501.40.2020)

54) Electric gear motors, single-phase AC, 4-pole permanent split capacitor type, of an output of 38 W or more but not exceeding 74.5 W, each enclosed in a housing of plastics with on-off and speed controls (described in statistical reporting number 8501.40.2020)

55) Electric motors other than gear motors, single-phase AC, 4-pole permanent split capacitor type, of an output of 60 W or more but not exceeding 74.5 W, each with a rotary switch attached by insulated conductors, enclosed in a housing of base metals (described in statistical reporting number 8501.40.2040)

56) Electric gear motors, single phase AC, of an output of 74.6 W or more but not exceeding 228 W, each with a spring, a coupling, and a locking connector, the assembly measuring not more than 30 cm in length, not more than 11 cm in width, not more than 16 cm in height (described in statistical reporting number 8501.40.4020)

57) Electric gear motors, single-phase AC, 4-pole permanent split capacitor type, of an output of 75 W or more but not exceeding 95 W, enclosed in a housing of plastics

which pivots at the end of a support of plastics, the other end of which houses on-off-oscillate and speed controls (described in statistical reporting number 8501.40.4020)

58) Electric motors other than gear motors, single-phase AC, 4-pole permanent split capacitor type, of an output of 75 W or more but not exceeding 110 W, each with a switch attached by insulated conductors, enclosed in a round housing of base metals with outside diameter measuring 85 mm or more but not exceeding 95 mm (described in statistical reporting number 8501.40.4040)

59) Power supplies for automatic data processing machines, each with a power output exceeding 50 W but not exceeding 150 W, weighing not more than 0.5 kg, measuring not more than 12.5 cm in length, not more than 5.6 cm in width and not more than 3.4 cm in depth, with integrated surge protection (described in statistical reporting number 8504.40.7007)

60) Rectifiers for charging of batteries, each measuring at least 275 mm but not more than 281 mm in length, at least 243 mm but not more than 249 mm in width and at least 102 mm but not more than 116 mm in height; weighing less than 5 kg, with input and output wires with connectors and attached mounting bracket (described in statistical reporting number 8504.40.9550)

61) Power adapters for a weather sensor or weather station display (described in statistical reporting number 8504.40.9580)

62) Robotic vacuum cleaners designed for residential use, each with a self-contained electric motor of a power not exceeding 50 W and dust bag/receptacle capacity not exceeding 1 L, whether or not shipped with accessories (described in statistical reporting number 8508.11.0000)

63) Ignition coils for spark-ignition internal combustion engines of a kind used in outdoor power equipment (described in statistical reporting number 8511.30.0080)

64) Solenoid switches used in starter systems of internal combustion engines suitable for use in outdoor power equipment (described in statistical reporting number 8511.80.6000)

65) Fan-forced portable electric heaters, each with a ceramic heating element (described in statistical reporting number 8516.29.0030)

66) Fan-forced portable electric heaters, each with a resistance heating element (described in statistical reporting number 8516.29.0030)

67) Portable countertop air fryers of a kind used for domestic purposes (described in statistical reporting number 8516.60.4070)

68) Tubular electric heating resistors (described in statistical reporting number 8516.80.8000)

69) Closed-loop, digital, video security systems, each consisting of one 4- or 8-channel network video recorder (NVR) or one 4- channel gateway that connects wirelessly at least 2 but no more than 8 color television cameras in housings of plastics, cables and power adapters, put up for retail sale (described in statistical reporting number 8525.80.3010)

70) Closed-loop, digital, video security systems, each consisting of one 4-, 8- or 16-channel digital video recorder (DVR) that connects via cables to at least 2 but no more than 16 color television cameras in housings of plastics, cables and power

adapters, put up for retail sale (described in statistical reporting number 8525.80.3010)

71) Indicator panels incorporating light emitting diodes (LEDs), black plastic vacuum form or injection molding backing, with digital or illuminated border, capable of displaying words (described in statistical reporting number 8531.20.0040)

72) Printed circuit board assemblies specially designed to control sound signals (alarms) in medical infusion pumps (described in statistical reporting number 8531.90.3000)

73) Wall-mounted receptacles conforming to types 1-15R, 5-15R or 5-20R of the National Electrical Manufacturers Association (NEMA), for a voltage not exceeding 1,000 V, with one or more standard sockets, whether or not incorporating one or more USB ports (described in statistical reporting number 8536.69.8000)

74) Controllers rated at 120 V, 60 Hz, suitable for electrically controlling hospital beds (described in statistical reporting number 8537.10.9170)

75) Electric power control bases, which switch an electric load between sources, either manually or automatically, for a voltage not exceeding 1,000 V (described in statistical reporting number 8537.10.9170)

76) Electric power control boards, designed for use in gas absorption refrigerators for recreational vehicles (described in statistical reporting number 8537.10.9170)

77) Printed circuit board assemblies specially designed to control medical infusion pumps (described in statistical reporting number 8537.10.9170)

78) T8 tubular fluorescent lamps, each measuring not less than 60 cm but not exceeding 118 cm in length (described in statistical reporting number 8539.31.0070)

79) Insulated electrical wiring harnesses with control cords, fitted with connectors, for a voltage not exceeding 1,000 V, for incorporation into gas absorption refrigerators for recreational vehicles (described in statistical reporting number 8544.42.9090)

80) Electrical insulators of ceramics, used in high-voltage, low-frequency electrical systems (described in statistical reporting number 8546.20.0030)

81) Ceramic electrical insulators of alumina for gas ignition electrode assemblies, each measuring at least 6.6 cm but not more than 11.5 cm in length and not more than 0.95 cm in diameter, weighing not more than 25 g (described in statistical reporting number 8546.20.0090)

82) Tire carrier attachments, roof racks, fender liners, side protective attachments, the foregoing of steel (described in statistical reporting number 8708.29.5060)

83) Road wheels of cast aluminum for vehicles of heading 8703, each measuring 30 cm or more but not exceeding 56 cm in diameter and 15 cm or more but not over 31 cm in width (whether described in statistical reporting number 8708.70.4545 prior to January 1, 2020 or described in statistical reporting number 8708.70.4548 post January 1, 2020)

84) Heater coils for use with the motor vehicles of headings 8701 to 8705, composed of steel, copper, aluminum and plastic, each not less than 184 mm and not more than 355 mm in height, not less than 350 mm and not more than 774 mm in length and not less than 32 mm and not more than 308 mm in width, each rated at not less than 6,300 kcal per hour and not more than 22,700 kcal per hour (described in statistical reporting number 8708.99.8180)

85) Hitch riser plates of AISI 8620 alloy steel, each weighing not less than 94 g and not more than 96 g (described in statistical reporting number 8708.99.8180)

86) Hitches of powder-coated steel for use with the motor vehicles of headings 8701 to 8705, designed to distribute weight, incorporating an adjustable sway control clamp, an adjustable hitch head and a chrome-plated hitch ball, each ball not less than 5.5 cm and not more than 6 cm in diameter, each hitch weighing not less than 40 kg and not more than 41 kg (described in statistical reporting number 8708.99.8180)

87) Hitches of powder-coated steel for use with the motor vehicles of headings 8701 to 8705, for mounting in the bed of a truck, each incorporating two stationary legs, a head, a cross member, a slider, rail adapters, automatic locking jaws and a secondary handle lock, with an adjustable height not less than 36 cm and not more than 46 cm, with a gross trailer weight (GTW) capacity of not more than 9,980 kg (described in statistical reporting number 8708.99.8180)

88) Bicycles having both wheels exceeding 63.5 cm in diameter, weighing less than 16.3 kg complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 4.13 cm, multi-speed (described in statistical reporting number 8712.00.2500)

89) Bicycles of aluminum having both wheels exceeding 25 cm but not exceeding 70 cm, each valued at less than $45 (described in statistical reporting number 8712.00.4800)

90) Bicycle wheel rims, each not less than 30 cm and not more than 75 cm in diameter (described in statistical reporting number 8714.92.1000)

91) Bicycle wheel rims of aluminum, each not less than 451 mm and not more than 622 mm in diameter (described in statistical reporting number 8714.92.1000)

92) Wheel hubs and spoke hubs for use on trailers or semi-trailers (described in statistical reporting number 8716.90.5060)

93) Levels, each with a frame of ABS plastics and a paraffin mineral oil filled glass vial, measuring 10.16 cm in length and 3.81 cm in width (described in statistical reporting number 9015.30.8000)

94) Parts and accessories of meteorological instruments and appliances, each consisting of a wind vane made of plastics and base metal weighing no more than 25 g (described in statistical reporting number 9015.90.0190)

95) Parts and accessories of meteorological instruments and appliances, each consisting of an assembly comprising 3 rotating wind cups, bearings, an internal aspirating fan and one or more solar panels (described in statistical reporting number 9015.90.0190)

96) Parts and accessories of meteorological instruments and appliances, each consisting of an assembly made of plastic and metal comprising 3 wind cups weighing no more than 35 g (described in statistical reporting number 9015.90.0190)

97) Laboratory balances with sensitivity of 5 cg or better, with weighing capacity not exceeding 220 g, with touchscreen display, with chemical resistant full metal housing (described in statistical reporting number 9016.00.2000)

98) Portable electrical balances with sensitivity of 5 cg or better, of stainless steel (described in statistical reporting number 9016.00.2000)

99) 60-minute mechanical count-down kitchen timers (described in statistical reporting number 9106.90.8500)

100) Toddler beds, bassinets and cradles, of metal (described in statistical reporting number 9403.20.0017)
101) Adjustable height folding tables of aluminum, each measuring no more than 183 cm by 122 cm by 72 cm (described in statistical reporting number 9403.20.0090)
102) Steel mobile tool carts on castors, each measuring not less than 40 cm by 40 cm by 46 cm but not more than 184 cm by 108 cm by 184 cm fitted with two locking cabinets, drawers, and trays (described in statistical reporting number 9403.20.0090)
103) Tables of stainless steel, each measuring not less than 60 cm but not more than 189 cm in width, not less than 50 cm and not more than 77 cm in depth and not more than 92 cm in height, with adjustable legs (described in statistical reporting number 9403.20.0090)
104) Work benches of steel, each measuring not less than 152 cm in width and not more than 49 cm in depth, fitted with castors, wood work surfaces of rubberwood and multiple drawers (described in statistical reporting number 9403.20.0090)
105) Changing tables of wood (described in statistical reporting number 9403.60.8081)
106) Bed rails, each of which attaches to the side of a bed to prevent the occupant of the bed from rolling out, with a nylon mesh fabric cover (described in statistical reporting number 9403.90.8041)
107) Candle-shaped lamps, each measuring at least 15 cm but not more than 39 cm in height, incorporating a light-emitting diode (LED) and a switch, powered by batteries or 120 V mains (described in statistical reporting number 9405.40.8440)
108) Tripods of galvanized steel, each measuring not over 1.2 m in height by 0.2 m in width by 0.2 m in depth, weighing not over 5.5 kg (described in statistical reporting number 9620.00.3090)"

3. by amending the last sentence of the first paragraph of U.S. note 20(e) to subchapter III of chapter 99:

   a. by deleting the word "or" where it appears after the phrase "U.S. note 20(tt) to subchapter III of chapter 99;"; and

   b. by inserting the phrase "; or (12) heading 9903.88.45 and U.S. note 20(xx) to subchapter III of chapter 99" after the phrase "U.S. note 20(vv) to subchapter III of chapter 99".

4. by amending U.S. note 20(f) to subchapter III of chapter 99;

   a. by deleting the word "or" where it appears after the phrase "U.S. note 20(tt) to subchapter III of chapter 99;"; and

b. by inserting the phrase "; or (12) heading 9903.88.45 and U.S. note 20(xx) to subchapter III of chapter 99" after the phrase "U.S. note 20(vv) to subchapter III of chapter 99".

5. by amending the Article Description of heading 9903.88.03:

a. by deleting "9903.88.41 or" and inserting "9903.88.41," in lieu thereof; and

b. by inserting "or 9903.88.45," after "9903.88.43,".

B. Effective with respect to goods entered for consumption, or withdrawn from the warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018:

a. U.S. note 20(mm)(11) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting "21 cm or more but not over 23 cm in length" and inserting "31 cm or more but not over 33 cm in length" in lieu thereof.

[FR Doc. 2020–08670 Filed 4–23–20; 8:45 am]
BILLING CODE 3290–F0–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Record of Decision (ROD) Written Re-Evaluation (WR) of Final Environmental Impact Statement (FEIS) for the Proposed Airport, Angoon, Alaska

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of availability (NOA); record of decision (ROD).

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and Council on Environmental Quality (CEQ) regulations, the FAA issues this notice to advise the public that the FAA has issued the ROD of the WR of the FEIS for the proposed airport in Angoon, Alaska. The ROD constitutes the final decision of the FAA and summarizes the WR of FEIS analyses and selected mitigation measures.

SUPPLEMENTARY INFORMATION:

In the ROD, the FAA selected the following realignment for implementation:

Airport 12A-Echo, which involves the construction of a land-based airport consisting of a paved, 3,300-foot-long and 75-foot-wide runway and associated access road. The project will be located on lands owned or managed by private landowners; Kootznoowoo, Inc.; and the City of Angoon.

The FAA has included determinations on the project based upon evidence set forth in the WR, FEIS, public input, and the supporting administrative record. *http://dot.alaska.gov/sereg/projects/angoon_airport_new/index.shtml.*

ADDRESSES: Copies of the WR are available at the following locations. While restrictions on in-person interactions are in place due to COVID–19, online access to the WR is encouraged:

1. Online at *http://dot.alaska.gov/sereg/projects/angoon_airport_new/index.shtml.*
2. Juneau Public Library
   - Downtown Branch, 292 Marine Way, Juneau, AK 99801
   - Douglas Branch, 1016 3rd Street, Douglas, AK 99824
   - Mendenhall Mall Branch, 9109 Mendenhall Mall Rd, Juneau, AK 99801
3. Angoon Community Association Building, 315 Heendae Rd, Angoon, AK 99820
4. Angoon City Government Office, 700 Aan Deina Aat Street, Angoon, AK 99820
5. The FAA, Airports Division. Please contact Venus Larson at (907) 271–3813 for a copy or access online at *https://www.faa.gov/airports/alaskan/environmental/.*
6. ADOT Southcoast
   - Email: *angoonairport@alaska.gov;*
   - U.S. Mail: Chris Goins, PE, Project Manager, DOT&PF Southcoast Region, P.O. Box 112506, Juneau, AK 99811–2506.
   - Phone: Contact Chris Goins, PE at (907) 465–4443.

FOR FURTHER INFORMATION CONTACT: Venus Larson, AAL–624, Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. 7th Avenue Box #14, Anchorage, AK 99513. Ms. Larson may be contacted during business hours at (907) 271–3813 (telephone) and (907) 271–2851 (fax), or by email at *Venus.Larson@faa.gov.*

Kristi A. Warden,

Director, Alaskan Region Airports Division, AAL–600.

[FR Doc. 2020–08674 Filed 4–23–20; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Madawaska International Bridge Project Connecting Madawaska, Maine, USA and Edmundston, New Brunswick, Canada

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Action by FHWA.

SUMMARY: This notice announces an action taken by FHWA and other Federal agencies that are final. The actions relate to the Madawaska International Bridge connecting

Madawaska, Aroostook County, Maine and Edmundston, New Brunswick.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before September 21, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Todd D. Jorgensen, Division Administrator, Federal Highway Administration, Edmund S. Muskie Federal Building, 40 Western Avenue, Room 614, Augusta, ME 04330, Telephone (207) 512–4911; or Kristen Chamberlain, Coordination, Assessments, & Permits Division Manager, Maine Department of Transportation, Child Street, 16 State House Station, Augusta, ME 04333, Telephone (207) 557–5089.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Maine: International Bridge Project (Bridge #2399), which crosses the Saint John River. The project proposes to replace the International Bridge, which connects Madawaska in Aroostook County, Maine, USA and Edmundston, New Brunswick, Canada. The proposed action (Bridge Alternative 2) would include the construction of a new steel girder bridge approximately 1,840 feet in length with six spans. Of the five piers needed, one will be near the top of the riverbank in Madawaska, three piers will be in the river, and one will be near the bottom of the riverbank in Edmundston. The new International Bridge will connect the new Madawaska Land Port of Entry (LPOE) to the existing Edmundston Port of Entry. The existing bridge will be removed. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Supplemental Final Environmental Impact Statement/Final Programmatic Section 4(f) Evaluation for the new United States LPOE and International Bridge which was noticed in the **Federal Register** on October 4, 2019, in the Record of Decision (ROD) approved on February 12, 2020, and in other documents in the administrative record. The Supplemental Final Environmental Impact Statement/Final Programmatic Section 4(f) Evaluation, ROD, and other documents in the FHWA project file are available by contacting FHWA or the MaineDOT at the addresses provided above. The Supplemental Final Environmental Impact Statement/Final Programmatic Section 4(f) Evaluation and ROD can be viewed and downloaded from the project website at: *https://www.maine.gov/mdot/projects/madawaska/internationalbrg/*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109, 23 U.S.C. 128].

2. *Air:* Clean Air Act, [42 U.S.C. 7401–7671(q)] (Transportation Conformity).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 153 1–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Marine Mammal Protection Act [16 U.S.C. 1361], Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq*.].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306108 *et seq*.].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(I)].

7. *Water Resources:* Coastal Zone Management Act, 16 U.S.C. 1451–1465.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Authority: 23 U.S.C. 139(1)(1), as amended by Moving Ahead for Progress in the 21st Century Act, (PL 112–141, 126 Stat. 405).

Issued on: April 14, 2020.

Todd D. Jorgensen,

Division Administrator Augusta, Maine.

[FR Doc. 2020–08221 Filed 4–23–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Office of Accountability and Whistleblower Protection (OAWP), Department of Veterans Affairs (VA).

ACTION: Notice of a New System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records known as the ''Matter Tracking System (MTS)-VA,'' (190VA70).

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to the ''Matter Tracking System (MTS)-VA,'' (190VA70). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Tanya Guimont, Supervisory FOIA Officer, Office of Accountability and Whistleblower Protection, 810 Vermont Ave. NW, Mail Stop 70, Washington, DC 20420; telephone (202) 461–6100. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Systems of Records

The MTS is an accountability matter management and reporting solution to fulfill the requirements of 38 U.S.C. 323. Microsoft Dynamics 365 (MD 365)

fulfills OAWP's need for an accountability matter management solution to track the office's workload and administrative functions. The MD Azure Cloud 365 application is hosted on the Federal Risk and Authorization Management Program (FedRAMP) High Government cloud.

II. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following Routine Use disclosures of information maintained in the system. To the extent that records contained in the system include information protected by 38 U.S.C. 7332 (*i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, 38 U.S.C. 5705 (*i.e.,* quality assurance records); or information protected 45 CFR parts 160 and 164 (*i.e.,* individually identifiable health information), such information cannot be disclosed under a routine use unless there is also specific statutory authority permitting the disclosure.

1. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.

a. *Effective Response.* A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. To ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

3. VA may disclose information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of Veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

4. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

5. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is

consistent with the Office of Management and Budget (OMB) guidance in OMB Circular A–108, paragraph 6(j) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors to perform the services contracts for the agency.

6. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

7. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

9. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA to determine the proper disposition of such records.

10. Data breach response and remedial efforts with another Federal agency: VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. VA may disclose information from this system of records to a former VA employee or contractor, as well as the authorized representative of a current or former VA employee or contractor in pending or reasonably anticipated litigation, or in proceedings before any court, adjudicative, or administrative body, or in an action or proposed action by VA, when it is relevant or necessary to the litigation or administrative proceedings and one of the following is a party or has an interest in in the actions described above:

(a) VA or any Component thereof;

(b) Any employee or former employee of VA in his or her official capacity;

(c) Any employee or former employee of VA in his or her individual capacity when VA has agreed to represent the employee; or

(d) The U.S. Government or any agency thereof.

13. Federal Agencies, for Litigation: VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceeding conducted by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

14. VA may disclose information from this system of records to individuals and/or their representatives to provide updates on the status of an OAWP investigation, disclosure, allegations, and the outcome of that investigation. VA may also disclose information to VA employees regarding the status and outcome of a complaint made against them.

15. VA may disclose information from this system of records when requested from another agency as part of a mandatory background check of the employee. VA must be able to provide information to assist other agencies in its duties to conduct complete and thorough background checks as required by statute and regulation.

III. Compatibility of the Proposed Routine Uses

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which VA collected the information. In all the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs, to provide a benefit to the VA, or to disclose information as required by law.

The disclosures of individually-identifiable health information contemplated in the routine uses published in this new system of records notice are permitted under the Privacy Rule or required by law. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule, before VA may disclose the covered information.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director, Office of Management and Budget, as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on December 20, 2019.

Dated: April 20, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Matter Tracking System (MTS)–VA, (190VA70).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Veterans Affairs (VA), Office of Accountability and Whistleblower Protection (OAWP), 810 Vermont Ave. NW, Mail Stop 70, Washington, DC 20420.

SYSTEM MANAGER(S):

FOIA Officer, Office of Accountability and Whistleblower Protection, 810 Vermont Ave. NW, Mail Stop 70, Washington, DC 20420; telephone at (202) 461–4119. (This is not a toll-free number.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 323.

PURPOSE(S) OF THE SYSTEM:

The MTS is a matter management solution to assist in meeting the need for real-time reporting and tracking of incidents contemplated by the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 (Pub. L. 115–41). The solution will allow OAWP to track workload and administrative functions. The system is an integral component of the OAWP information technology (IT) architecture and allows for more efficient operations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The MTS contains the following categories of individuals: Disclosing Party (DP), Whistleblowers, and Persons of Interest (POI). DPs are individuals who submit a matter to OAWP. Whistleblowers are DPs who are VA employees or applicants for employment that have submitted a disclosure which the individual reasonably believes evidences a violation of a law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. Per 38 U.S.C. 323, the Assistant Secretary of OAWP, cannot disclose the identity of a Whistleblower who is an employee without the employee's consent, unless otherwise provided for under law.

A POI is an individual who is alleged to have committed a violation of law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. A POI could also be an individual against whom an allegation of whistleblower retaliation or senior leader misconduct or poor performance is made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and information in this system include submissions of disclosures, matters, persons of interest, disciplinary actions, and recommendations of the Government Accountability Office (GAO), the VA Office of Inspector General (OIG), the Office of Medical Inspector (OMI), and the Office of Special Counsel (OSC).

RECORD SOURCE CATEGORIES:

Information entered into the system by OAWP employees is obtained from VA employees, third parties (*e.g.,* a Veteran, VA beneficiary, VA contractor, or private party), VA records, congressional, federal, state, and local offices or agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. VA may disclose information from this system in response to an inquiry from the congressional office made at the request of that individual.

2. VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. VA may disclose information from this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may only disclose the names and addresses of Veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. 552a(b)(7).

4. VA may disclose information from this system to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–84 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

5. VA may disclose information from this system to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to

perform services under the contract or agreement. This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with the Office of Management and Budget (OMB) guidance in OMB Circular A–108, paragraph 6(j) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors to perform the services contracts for the agency.

6. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

7. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

9. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records.

10. VA may disclose information from this system to another Federal agency or Federal entity when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

12. VA may disclose information from this system of records to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA Attorneys representing individuals conducting litigation in pending or reasonably anticipated litigation, or in proceedings before any court, adjudicative, or administrative body, or in an action or proposed action by VA, when it is relevant or necessary to the litigation or administrative proceeding, and one of the following is a party or has an interest in the actions described above:

a. VA or any Component thereof;

b. Any employee or former employee of VA in his or her official capacity;

c. Any employee or former employee of VA in his or her individual capacity when VA has agreed to represent the employee; or

d. The U.S. Government or any agency thereof.

13. VA may, on its own initiative, disclose information to another federal agency, court, or party in litigation before a court or other administrative proceeding conducted by an agency, if VA is a party to the proceeding and needs to disclose the information to protect its interests.

14. VA may disclose information from this system of records to individuals and/or their representatives to provide updates on the status of an OAWP investigation, disclosure, allegations and the outcome of that investigation. VA may also disclose information to VA employees regarding the status and outcome of a complaint made against them.

15. VA may disclose information from this system of records when requested from another agency as part of a mandatory background check of the employee. VA must be able to provide information to assist other agencies in its duties to conduct complete and thorough background checks as required by statute and regulation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records within the Matter Tracker are stored on a FedRAMP cloud database, protected by certified ''High'' security controls.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information and records are retrieved by matter, disclosing party name, or person of interest name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be maintained and disposed of in accordance with VA Directive 6300. VA will use NARA regulations (36 CFR 1234.6) for managing electronic records.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Information in the system is protected from unauthorized access through administrative, physical, and technical safeguards. Access to computerized information is restricted to authorized OAWP personnel on a need-to-know basis. Computer system documentation is maintained in a secure environment in the FedRAMP cloud database, protected by certified ''High'' security controls. Routine vulnerability reviews are conducted under the 'Dynamics 365 for Government Assessing' Authority to Operate.

RECORD ACCESS PROCEDURES:

An individual who seeks access to or wishes to contest records maintained under his or her name in this system must submit an email to *oawpfoiarequests@va.gov.*

CONTESTING RECORD PROCEDURES:

(See records access procedures above.)

NOTIFICATION PROCEDURES:

An individual who wishes to determine whether a record is being maintained under his or her name in this system must email *oawpfoiarequests@va.gov.*

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to subsection (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), this system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Act.

HISTORY:

None.

[FR Doc. 2020–08615 Filed 4–23–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0051]

Agency Information Collection Activity: State Approving Agency Reports and Notices

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VBA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 23, 2020.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0051'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 CFR 21.4154, 21.4250(b), 21.4258, 21.4259: 38 CFR 21.4154 which, addresses reporting SAA activities (38 U.S.C. 3674(c)), 38 CFR 21.4250(b) which addresses notices of approvals, suspension of approvals, and disapprovals (38 U.S.C. 3678, 3679), 38 CFR 21.4258 which addresses notices of approvals, and 38 CFR 21.4259 which addresses notices of suspension or disapproval.

Title: State Approving Agency Reports and Notices.

OMB Control Number: 2900–0051.

Type of Review: Revision of a currently approved collection.

Abstract: Information collected under 38 CFR 21.4154—The SAA reports its activities to VA quarterly. The SAA does so electronically by completing a web-based screen. VA uses the information in the reports to support the reimbursement of activities of the SAA. Information collected under 38 CFR 21.4250(b), 21.4258, and 21.4259—The SAA prepares notices of approval to inform educational institutions, training establishments, and organizations or entities that their courses, training, or tests are not approved or the approval of previously approved courses, training, or tests is suspended. The SAA must also send VA a copy of each of these notices. There are 57 SAAs, each with its own jurisdiction for approval of courses, training, or tests. Some States have more than one SAA because one internal agency is responsible for schools, another for workplace training. Additionally, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have authorized SAA jurisdictions.

The SAA approves, disapproves, or suspends program approval based on the criteria in 38 U.S.C. chapter 36. Some of the criteria used in these determinations include site visits; and review of course materials, training programs, instructors' credentials, or review of tests for licensure and certification.

VA uses the approval notice information (or lack thereof) to determine if payment of educational assistance is appropriate. Under 38 U.S.C. 3680, VA may not provide educational assistance to any eligible veteran or eligible person if his or her educational program or training program does not meet the requirements of 38 U.S.C. 3670 *et seq.* Without these notices, VA would not know which programs the SAA determined met the criteria in 38 U.S.C. chapter 36. Without disapproval notices, or notices of suspended approval, VA would make inappropriate payments to Veterans and their dependents. 38 CFR 21.4258(a) requires the SAA list individual programs approved in the notice. This requirement is needed since not all courses/programs an educational institution provides are approvable under 38 U.S.C. chapter 36. For example, some schools offer courses that are recreational in nature. Payment for recreational courses is prohibited under 38 U.S.C. 3680A. Listing approved courses in the notice ensures VA pays educational assistance for only those courses/programs approved.

Affected Public: Individuals and households.

Estimated Annual Burden: 68,043 hours.

Estimated Average Burden per Respondent: 15 hours.

Frequency of Response: Once Quarterly.

Estimated Number of Respondents: 4,578.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–08678 Filed 4–23–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled, ''Education Debt Reduction Program-VA'' (115VA10). VA is amending the system of records by revising the System Number; System Location; System Manager; Record Source Categories; Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses; Policies and Practices for Retention and Disposal of Records; Physical, Administrative and Procedural Safeguards; Record Access Procedure; and Notification Procedure.

VA is republishing the system notice in its entirety.

DATES: Comments on this amended system of records must be received no later than May 26, 2020. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by the VA, the new system will become effective May 26, 2020.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (*Note:* Not a toll-free number). Comments should indicate they are submitted in response to ''Education Debt Reduction Program-VA'' (115VA102). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (*Note:* not a toll-free number). In addition, comments may be viewed online at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephania Griffin, Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The System Number will be changed from 115VA10 to 115VA10A2 to reflect the current organizational alignment.

The System Location is being amended to replace Austin Automation Center (AAC) with Austin Information Technology Center (AITC). Also being removed, ''Address locations for VA facilities are listed in VA Appendix 1 of the biennial publication of VA Privacy Act Issuances.'' which is replaced with ''Address locations for VA facilities may be found at *https://www.va.gov/directory/guide/home.asp.*''

The System Manager, Record Source Categories, Record Access Procedure, and Notification Procedure has been amended to replace, ''Director, Health Care Staff Development and Retention Office (10A2D), Veterans Health Administration, Department of Veterans Affairs, 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112. The telephone number is (504) 589–5267.'' with ''Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102. The telephone number is (405) 552–4346.''

The Routine Uses of Records Maintained in the System has been amended by amending the language in Routine Use #11 which states that disclosure of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. This routine use will now state that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

Routine Use #15 is clarifying the language to state, ''VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.''

Routine use #16 is being added to state, ''VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach. VA needs this routine use for the data breach response and remedial efforts with another Federal agency.''

The Policies and Practices for Retention and Disposal of Records is being amended to remove, ''Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.'' This section will now state that these records are under the following records schedule; Record Control Schedule (RCS) 10–1 item 1000.40a, Educational Activity Records. Temporary; destroy 7 years after the education activity is closed. (N1–015–11–4, Item 1) or 1140.1. Clinical Trainee Onboarding Case File (CTOCF). Temporary; cutoff, case files at the end of the calendar year in which the academic year is completed. Transfer to Federal Record Center (FRC) when 7 years old. Destroy 25 years after cutoff. (DAA–0015–2016–0004, item 1).

The Physical, Administrative and Procedural Safeguards is being amended to replace Austin Automation Center (AAC) with Austin Information Technology Center (AITC).

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by the Privacy Act and guidelines issued by OMB on December 12, 2000.

Signing Authority: The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on March 6, 2020 for publication.

Dated: April 20, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

''Education Debt Reduction Program-VA'' (115VA10).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records will be maintained at the Health Care Staff Development and Retention Office (HCSDRO/10A2A7), Veterans Health Administration, Department of Veterans Affairs (VA), 1555 Poydras Street, Suite 1971, New Orleans, Louisiana 70112; the Austin Information Technology Center (AITC).

Department of Veterans Affairs, 1615 East Woodward Street, Austin, Texas 78772; and the VA health care facilities and VISN offices where scholarship recipients are employed. Address locations for VA health care facilities may be found at *https://www.va.gov/directory/guide/home.asp.* Complete records will be maintained only at the HCSDRO address.

SYSTEM MANAGER(S):

Crystal Cruz, Deputy Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), *Crystal.Cruz@va.gov,* (405) 552–4339, 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, sections 501, 503, 7451, 7452, and 7431–7440.

PURPOSE(S) OF THE SYSTEM:

The records and information may be used for determining and documenting individual applicant eligibility for debt reduction awards; determining the debt reduction payment amounts and the related service periods for award recipients; ensuring that award amounts are consistent with applicable law, regulations and policy; monitoring the employment status of scholarship recipients during their service periods; terminating an employee's participation in the program; and evaluating and reporting program results and effectiveness.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

VA employees who apply for and are granted or denied educational assistance awards under the provisions of the VA Education Debt Reduction Program (EDRP) serving under an appointment under Title 38 U.S.C., Section 7402(b) in a position for which retention of qualified healthcare personnel is difficult.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records (or information contained in records) in this system may include: Personal identification information related to the application material, award processes, employment, and EDRP service periods such as (1) name, (2) employing facility number, (3) telephone number(s), (4) social security number, (5) debt reduction payment amounts, (6) dates of service periods, (7) name and address of the lending institution, (8) academic degree obtained for which EDRP funding is requested, (9) name and address of academic institution, (10) original amount of loan, and (11) current loan balance. Most of this information is contained on the application for an EDRP award including the applicant's full name, employing facility number, home and work telephone numbers, social security number, job title, degree obtained for which funding is requested, name and address of the academic institution, and the amount and number of debt reduction payments requested. The EDRP Loan Verification Form contains the candidate's name and social security number, name and address of the lending institution, original loan amount, current loan amount, and the purpose of the loan as stated on the loan application. The EDRP Acceptance of Conditions contains the name of a candidate approved for an award and the authorized number of debt reduction payments and their related amounts.

RECORD SOURCE CATEGORIES:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102. The telephone number is (405) 552–4346.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164, *i.e.,* individually identifiable health information, and 38 U.S.C. 7332, *i.e.,* medical treatment information related to drug abuse, alcoholism or alcohol abuse, sickle cell anemia or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160 and 164 permitting disclosure.

1. Disclosure of any information in this system that is necessary to verify authenticity of the application may be made to lending institutions and other relevant organizations or individuals.

2. Disclosure of any information in this system may be made to a Federal agency in order to determine if an applicant has any obligation under another Federal program that would render the applicant ineligible to participate in the Education Debt Reduction Program.

3. Any information in the system may be used to evaluate and report program results and effectiveness to appropriate officials including members of Congress on a routine and ad hoc basis.

4. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Disclosure may be made to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of Title 44, Chapter 29 of the United States Code.

6. Disclosure of information to the Federal Labor Relations Authority (FLRA), including its General Counsel, when requested in connection with the investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised, in connection with matters before the Federal Service Impasses Panel, and to investigate representation petitions and conduct or supervise representation elections.

7. Disclosure may be made to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

8. Disclosure may be made to the VA appointed representative of an employee, including all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by VA under medical evaluation (formerly fitness-for duty) examination procedures or Department-filed disability retirement procedures.

9. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

10. Disclosure may be made to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions of the Commission as authorized by law or regulation.

11. VA may disclose information in this system of records to the Department of Justice (DoJ), either on VA's initiative

or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is limited to circumstances where relevant and necessary to the litigation. VA may disclose records in this system of records in legal proceedings before a court or administrative body after determining that release of the records to the court or administrative body is limited to circumstances where relevant and necessary to the litigation.

12. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

13. VA may disclose any information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

14. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

15. VA may disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, or persons is reasonably necessary to assist in connection with VA efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

16. VA may disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained on paper, electronic media and computer printouts.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by use of the award number or an equivalent participant account number assigned by HCSDRO, Social Security Number and the name of the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are under the following records schedule; Record Control Schedule (RCS) 10–1 item 1000.40a, Educational Activity Records. Temporary; destroy 7 years after the education activity is closed. (N1–015–11–4, Item 1) or 1140.1. Clinical Trainee Onboarding Case File (CTOCF). Temporary; cutoff, case files at the end of the calendar year in which the academic year is completed. Transfer to Federal Record Center (FRC) when 7 years old. Destroy 25 years after cutoff. (DAA–0015–2016–0004, item 1).

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Access to the basic file in HCSDRO is restricted to authorized VA employees and vendors. Access to the office spaces where electronic media is maintained within HCSDRO is further restricted to specifically authorized employees and is protected by contracted building security services. Records (typically computer printouts) at HCSDRO will be kept in locked files and made available only to authorized personnel on a need-to-know basis. During non-working hours the file is locked, and the building is protected by contracted building security services. Records stored on electronic media are maintained on a VA-approved and managed, password protected, secure local area network (LAN) located within HCSDRO office spaces and safeguarded as described above. Records stored on electronic media at Veterans Integrated Service Network (VISN) Offices, VA health care facilities and the AITC in Austin, Texas, are provided equivalent safeguards subject to local policies mandating protection of information subject to Federal safeguards.

RECORD ACCESS PROCEDURE:

Individuals seeking information regarding access to and contesting of VA records in this system may write, call or visit the Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102. The telephone number is (405) 552–4346.

CONTESTING RECORD PROCEDURES:

(See Record Access Procedures above.)

NOTIFICATION PROCEDURE:

Any individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such records, should submit a written request or apply in person to Director, Human Capital Management (10A2A4) (HCM), Education Loan Repayment Services (ELRS), 55 N Robinson Avenue, Suite 1010, Oklahoma City, OK 73102. The telephone number is (405) 552–4346.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Last full publication provided in 74 FR 21432 dated May 8, 2009.

[FR Doc. 2020–08616 Filed 4–23–20; 8:45 am]

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Part II

Department of Justice

Antitrust Division

United States v. United Technologies Corporation, et al.; Proposed Final Judgment and Competitive Impact Statement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. United Technologies Corporation, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *United Technologies Corporation, et al.,* Civil Action No. 1:20–cv–00824. On March 26, 2020, the United States filed a Complaint alleging that the proposed merger of United Technologies Corporation (''UTC'') and Raytheon Company (''Raytheon'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires the Defendants to divest the military GPS and optical systems businesses of UTC and the military airborne radios business of Raytheon.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Suzanne Morris,

Chief, Premerger and Division Statistics.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 8700, Washington, DC 20530, Plaintiff, v. *United Technologies Corporation, 10 Farm Springs Road, Farmington, CT 06032,* and *Raytheon Company, 870 Winter Street, Waltham, MA 02451,* Defendants.

Civil Action No. 1:20–cv–00824

Judge: Hon. Dabney L. Friedrich

Complaint

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against Defendants United Technologies Corporation (''UTC'') and Raytheon Company (''Raytheon'') to enjoin the proposed merger of UTC and Raytheon. The United States complains and alleges as follows:

I. Nature of the Action

1. Pursuant to an agreement and plan of merger dated June 9, 2019, UTC and Raytheon propose to merge in a transaction that would create the nation's second-largest aerospace and defense contractor. UTC is an aerospace company whose core products include engines, aerostructures, aircraft subsystems, and other aircraft components. Raytheon is a defense company whose core businesses include missiles, air defense systems, radars, sensors, and electronic warfare systems. Although the core businesses of UTC and Raytheon are different, they overlap in the supply of multiple products to the Department of Defense (''DoD'') and U.S. intelligence community.

2. UTC and Raytheon are the primary suppliers of radios for use in military aircraft (''military airborne radios'') operated by DoD. UTC's AN/ARC–210 is the standard radio for Air Force and Navy aircraft, and Raytheon's AN/ARC–231 is the standard radio for Army helicopters. As the only military airborne radios that have been supplied to DoD customers for years, the parties' products represent the two competitive alternatives to DoD customers, and the sole constraint on either company exercising market power. The proposed merger would eliminate competition between UTC and Raytheon for military airborne radios, likely resulting in higher prices, lower quality, and diminished innovation for these critical defense products.

3. UTC and Raytheon are two of the leading suppliers of military global positioning system (''GPS'') receivers and anti-jam products (collectively, ''military GPS systems'') to DoD. To enhance security, in 2012, DoD began the process of developing a new generation of military GPS systems for aviation/maritime and ground-based applications. UTC and Raytheon are likely to be the only competitors for military GPS systems for aviation/maritime applications, and two of only three competitors for military GPS systems for ground-based applications. The proposed merger would eliminate competition between UTC and Raytheon for military GPS systems for these applications, likely resulting in higher prices, lower quality, and diminished innovation for these critical defense products.

4. The merger also would substantially lessen competition through the vertical integration of the two companies. UTC and Raytheon each have capabilities in critical inputs for electro-optical/infrared (''EO/IR'') reconnaissance satellites, which provide images for DoD and U.S. intelligence community customers. Specifically, Raytheon has a dominant position in electronic detectors known as focal plane arrays (''FPAs''), and is one of several builders of EO/IR satellite payloads. The payload is the system that performs the reconnaissance mission of a satellite, and includes components such as FPAs. UTC is one of only two companies with the capability to build large space-based optical systems for EO/IR satellite payloads. Today, Raytheon has no incentive to favor one optical systems provider over the other when it sells its FPAs to EO/IR payload builders, and UTC has no incentive to favor one EO/IR payload builder over another when it sells its optical systems.

5. The combination of UTC and Raytheon will bring these EO/IR reconnaissance satellite components under control of a single company and provide it with the incentive and ability to harm competition in two ways. First, the merger would provide the combined company with the incentive and ability to refuse to supply EO/IR payload builders with FPAs, or supply them only at higher cost, if the payload builders did not also agree to purchase UTC's optical system. Second, the merger would give the combined company the incentive and ability to harm Raytheon's satellite payload builder rivals by raising the prices for UTC's optical systems, or denying them access to these systems altogether. The proposed merger therefore likely would result in higher prices, lower quality, and diminished innovation for large space-based optical systems and EO/IR reconnaissance satellite payloads.

6. As a result, the proposed acquisition likely would substantially lessen competition in the markets for the design, development, production, and sale of military airborne radios, military GPS systems for aviation/maritime applications, military GPS systems for ground-based applications, large space-based optical systems, and EO/IR reconnaissance satellite payloads in the United States in violation of

Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

7. UTC is a Delaware corporation with its headquarters in Farmington, Connecticut. UTC produces a wide range of products for the aerospace and defense industries, including military airborne radios, military GPS systems, and large space-based optical systems. UTC had sales of approximately $77 billion in 2019.

8. Raytheon is a Delaware corporation with its headquarters in Waltham, Massachusetts. Raytheon is one of the world's largest defense manufacturers, with significant capabilities in radars and missiles. It also produces military airborne radios, military GPS systems, and FPAs and payloads for EO/IR reconnaissance satellites. Raytheon had sales of approximately $29 billion in 2019.

III. Jurisdiction and Venue

9. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, as amended, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. Defendants develop, manufacture, and sell military airborne radios, military GPS systems, large space-based optical systems, and EO/IR reconnaissance satellite payloads throughout the United States, and their activities in these areas substantially affect interstate commerce. This Court therefore has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Defendants have consented to venue and personal jurisdiction in this judicial district. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22 and under 28 U.S.C. 1391(c).

IV. Military Airborne Radios

A. Background

12. Military airborne radios allow for secure voice, data, and video communication between aircraft and from aircraft to the ground. This communication occurs either through direct communications links or through a satellite uplink system. Military airborne radios have two main components: Radios (transmitter and receiver) and waveforms (communication protocols and related hardware/software). Specialized elements in both the radios and waveforms protect military airborne radio transmissions from being intercepted and decrypted.

13. There are multiple military airborne radios on every airplane and helicopter used by DoD today, as well as thousands of spares in military depots throughout the world. DoD regularly purchases new military airborne radios as new aircraft are developed and to replace those currently in the field as military airborne radio suppliers develop improved radios with additional waveforms and other features.

14. UTC's AN/ARC–210 military airborne radio is specified on almost all Air Force and Navy aircraft. Raytheon's AN/ARC–231 military airborne radio is specified on almost all Army helicopters. Military airborne radios from UTC and Raytheon are each the closest substitute for the other, and represent the only competitive alternative for a DoD customer in the event that either UTC or Raytheon increases prices for its military airborne radios or otherwise exercises market power.

B. Relevant Markets

1. Product Market

15. The quality and usefulness of a military airborne radio is defined by several characteristics, the most important of which are reliability, security, and the ability to access numerous communications networks. For instance, DoD requires highly ruggedized radios that can withstand the extreme environments encountered by military aircraft, including the rapid temperature changes and G-forces experienced on fighter jets. To ensure constant contact and to enable the flow of information throughout the battlefield, DoD radios must also communicate with multiple platforms—including aircraft, ships, ground forces, and smart weapons—using various waveforms, and must also keep those communications secure and encrypted to prevent signals from being intercepted by adversaries.

16. Other communications technologies are not substitutes for military airborne radios. Radios developed for other military purposes, including ground and ship-based radios, cannot withstand the high G-forces and extreme temperature fluctuations experienced by military aircraft, particularly fighter jets. Furthermore, military airborne radios are smaller and more power-efficient than those designed for ground and ship-based uses.

17. Airborne radios developed for commercial purposes—including commercial aviation—are also not substitutes for military airborne radios. Commercial airborne radios lack the high level of encryption and jamming resistance required for military airborne radios. In addition, while commercial airborne radios can access numerous civil and governmental communications networks, they do not incorporate the waveforms and software algorithms necessary to access the numerous specialized networks used by purchasers of military airborne radios.

18. For the foregoing reasons, substitution away from military airborne radios in response to a small but significant and non-transitory increase in price will not be sufficient to render such a price increase unprofitable. Accordingly, the design, development, production, and sale of military airborne radios is a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Market

19. For national security reasons, DoD, which is the only purchaser of these products in the United States, strongly prefers domestic suppliers of military airborne radios. DoD is unlikely to turn to any foreign suppliers in the face of a small but significant and non-transitory price increase by domestic suppliers of military airborne radios.

20. The United States is therefore a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Anticompetitive Effects of the Proposed Transaction

21. UTC and Raytheon today are the leading suppliers of military airborne radios to DoD. The merger would therefore give the merged firm a dominant share of the market for the design, development, production, and sale of military airborne radios, leaving DoD few competitive alternatives for this critical component of military communications.

22. UTC and Raytheon compete in the market for the design, development, production, and sale of military airborne radios on the basis of quality, price, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, and shorter delivery times for military airborne radios. Competition between UTC and Raytheon has also fostered important industry innovation. The combination of UTC and Raytheon would eliminate this competition and its future benefits to DoD customers. Post-acquisition, the merged firm likely would have the incentive and ability to increase prices, offer less favorable contractual terms, and diminish investments in research

and development efforts that lead to innovative and high-quality products.

23. The proposed acquisition, therefore, likely would substantially lessen competition in the design, development, production, and sale of military airborne radios in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

D. Difficulty of Entry

24. Sufficient timely entry or expansion of additional competitors into the market for the design, development, production, and sale of military airborne radios is unlikely to prevent the harm to competition that is likely to result if the proposed acquisition is consummated. Because UTC's AN/ARC–210 and Raytheon AN/ARC–231 are established designs produced in high volumes for many years, they are well-understood by DoD customers and have significant economies of scale. Any new products manufactured by an alternative supplier would require extensive testing and qualification before they would be acceptable to DoD, and even at the end of that process the new supplier still would not have the reputation of UTC and Raytheon with DoD. Moreover, no potential alternative supplier has the large-scale military airborne radio production facilities of UTC or Raytheon, or the expertise of those firms in developing the complex software algorithms necessary for military airborne radios. Accordingly, entry or expansion would be costly and time-consuming.

25. As result of these barriers, entry or expansion of additional competitors into the market for the design, development, production, and sale of military airborne radios would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from UTC's merger with Raytheon.

V. Military GPS Systems

A. Background

26. Military GPS systems allow ground vehicles, ships, and planes to receive and process information regarding their position, navigation, and timing. Military GPS systems guide missiles and projectiles to their intended targets, locate friendly fighters in theaters of war, and enable remote operators to fly unmanned aerial vehicles thousands of miles away.

27. Military GPS systems contain technology that protects them from two forms of enemy interference: ''Spoofing,'' a signal disruption causing a GPS system to calculate a false position, and ''jamming,'' which occurs when a GPS system's satellite signals are overpowered. To ensure that spoofing and jamming do not interfere with U.S. military missions, military GPS systems contain encryption modules and anti-jamming technology.

28. In 2011, the U.S. government announced that ''M-Code,'' a modernized encryption system, would be incorporated into military GPS systems. In September 2012, DoD awarded technology development contracts (and accompanying funds) to UTC, Raytheon, and a third firm to develop M-Code compliant GPS systems that the military could implement quickly. DoD requested two discrete types of GPS systems—one for ground applications and another for aviation/maritime applications. UTC and Raytheon have been working to develop products for both applications—ground and aviation/maritime—while to date the third firm is under contract only for ground applications.

29. While other defense contractors may eventually develop acceptable military GPS systems for these applications, those contractors are years behind, will not be eligible for funding from the U.S. government, and will not enjoy the incumbent's advantage held by the three leading suppliers.

B. Relevant Markets

1. Product Markets

30. Military GPS systems for aviation/maritime applications and military GPS systems for ground applications serve different functions and cannot be substituted for one another. For example, there are different power, performance, and form factor requirements for aviation/maritime GPS systems and ground GPS systems. Customers therefore cannot substitute an aviation/maritime GPS system for a ground GPS system (or vice versa) without sacrificing important functionality.

31. Military GPS systems for both applications are highly customized to suit the needs of military end users. With each competition, DoD specifies the form factor (*i.e.,* the physical size and shape), performance metrics, and encryption standards that must be met. Due to the mission-critical nature of military GPS systems, DoD is far more exacting than commercial customers, and as a result, commercial GPS systems cannot be substituted for military GPS systems for either application. Nor can any alternative technology provide the functionality that a GPS system provides, such as instantaneous position, navigation, and timing information.

32. For the foregoing reasons, customers would not switch to a commercial GPS system or to an alternative technology, nor would they switch between military GPS systems for different applications, in the face of a small but significant and non-transitory increase in the price of a military GPS system for aviation/maritime applications or a military GPS system for ground applications. Accordingly, the design, development, production, and sale of (i) military GPS systems for aviation/maritime applications and (ii) military GPS systems for ground applications are lines of commerce and relevant product markets within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Market

33. For national security reasons, DoD, which is the sole purchaser of these products within the United States, prefers domestic suppliers of military GPS systems. DoD is unlikely to turn to any foreign suppliers in the face of a small but significant and non-transitory price increase by domestic suppliers of military GPS systems.

34. The United States is therefore a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Anticompetitive Effects of the Proposed Transaction

35. UTC and Raytheon are the only suppliers of military GPS systems for aviation/maritime applications in the United States. The merger therefore would give the combined firm a monopoly in the market for this product and leave DoD without any competitive alternatives. The merger also would create a duopoly in the supply of military GPS systems for ground applications, as UTC and Raytheon are two of only three suppliers of those products.

36. UTC and Raytheon compete to design, develop, produce, and sell military GPS systems for aviation/maritime applications and ground applications on the basis of quality, price, technological capabilities, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, innovation, and shorter delivery times for military GPS systems for both applications. The combination of UTC and Raytheon would eliminate this competition and its future benefits to DoD customers. Post-acquisition, the merged firm likely would compete less along the dimensions of innovation, quality, price, or contractual terms.

37. The proposed acquisition, therefore, likely would substantially lessen competition in the design, development, production, and sale of military GPS systems for aviation/maritime applications and for ground applications in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

D. Difficulty of Entry

38. Sufficient, timely entry of additional competitors into the markets for the design, development, production, and sale of military GPS systems for aviation/maritime applications and for ground applications is unlikely to prevent the harm to competition likely to result if the proposed acquisition is consummated. A new entrant would need significant capital to develop prototypes and establish a manufacturing operation. Even with a prototype, an entrant would need a network of government and prime contractor contacts to assist with testing and troubleshooting. Finally, an entrant would need to clear the qualification process to become a supplier to DoD. Together, these steps would take years to complete. Accordingly, entry would be costly and time-consuming.

39. Timely and sufficient expansion of capabilities by a producer of military GPS systems for ground-based applications is also unlikely to prevent the harm to competition in military GPS systems for aviation/maritime applications that is likely to result if the proposed acquisition is consummated. A producer of ground-based military GPS systems would need to ruggedize its product to withstand the high G-forces and temperature extremes experienced by military aircraft. It would also need to match its system to the size, weight, and power restrictions imposed on all aircraft based electronic systems. These modifications would require substantial investments in skilled personnel and modification of production, and the product would require extensive development and subsequent testing by customers. Accordingly, expansion into this different application would be costly and time-consuming.

40. As result of these barriers, entry into the markets for the design, development, production, and sale of military GPS systems for aviation/maritime applications and military GPS systems for ground applications would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from UTC's merger with Raytheon.

VI. EO/IR Reconnaissance Satellites

A. Background

41. Space-based reconnaissance systems provide essential information to end-users in DoD and the intelligence community, including communications intelligence, early warning of missile launches, and near real-time imagery to United States armed forces to support the war on terrorism and other operations. They also provide data essential for managing disaster relief, monitoring global warming, and assessing crop production.

42. Space-based reconnaissance systems generally are deployed on satellites, where they constitute the ''payload,'' a term for the system that performs the primary mission of the satellite. Payload suppliers are subcontractors to satellite prime contractors, who combine payloads, structural components, power supply systems, ground communications systems, and other components into a complete satellite for delivery to the DoD or intelligence community end-user customer.

43. One important type of reconnaissance satellite payload is an electro-optical/infrared (''EO/IR'') payload, which is a camera-based system that collects visible and infrared light. The components of an EO/IR reconnaissance satellite payload are advanced versions of the components found in consumer digital cameras: An optical system—a lens or mirror—focuses light onto an electronic detector, known as a focal plane array (''FPA''), which converts light to digital images for transmission via radio signals. Optical systems and FPAs are critical inputs in EO/IR reconnaissance satellite payloads.

44. Raytheon has industry-leading capabilities in the provision of FPAs for EO/IR reconnaissance satellite payloads, having been the beneficiary of decades of large investments by government end-user customers. Specifically, Raytheon is the leading provider of FPAs sensitive to visible light and one of the two leading providers of FPAs sensitive to infrared light. Raytheon is also one of multiple firms that supply EO/IR reconnaissance satellite payloads to the satellite prime contractors who assemble the satellite for the DoD or intelligence community customer.

45. UTC is one of only two firms capable of producing large space-based optical systems such as those used in EO/IR reconnaissance satellite payloads. While other suppliers have the capability to produce smaller optical systems for use in space, none can produce optical systems in sizes comparable to those produced by UTC and the other industry leader.

46. The FPAs and large space-based optical system used in a particular EO/IR reconnaissance satellite payload usually are selected by the payload supplier. In some cases, however, the DoD or intelligence community customer will specify the FPA or large space-based optical system supplier. As explained below, the combination of UTC's market-leading position in large-space based optical systems and Raytheon's market-leading position in FPAs will provide the merged firm with the ability and incentive to foreclose or otherwise harm its rivals in large space-based optical systems and EO/IR reconnaissance satellite payloads.

B. Relevant Markets

1. Product Markets

a. Large Space-Based Optical Systems

47. Large space-based optical systems have specific requirements that distinguish them from other optical systems. Smaller space-based optical systems have insufficient light-gathering and resolving power. Optical systems designed for use on the ground do not possess the high strength, rigidity, low weight, temperature stability, and radiation-hardening that large space-based optical systems require to be safely and cost-effectively launched into orbit and used in space.

48. Customers would not switch to smaller optical systems or optical systems designed for use on the ground in the face of a small but significant and non-transitory increase in the price of large space-based optical systems. Accordingly, the design, development, production, and sale of large space-based optical systems is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

b. EO/IR Reconnaissance Satellite Payloads

49. EO/IR reconnaissance satellite payloads have specific capabilities that distinguish them from other reconnaissance satellite payloads. Other types of payloads such as radar and electronic intelligence payloads do not provide the same type of information as imagery.

50. Aerial reconnaissance imagery cannot substitute for the imagery produced by EO/IR reconnaissance satellite payloads. Many parts of the globe that are of critical interest to DoD and the intelligence community are effectively closed to reconnaissance aircraft operated by the United States. Even for areas open to overflight,

satellite surveys are quicker and more efficient than aerial reconnaissance.

51. Consequently, customers will not switch to other types of payloads or to aerial reconnaissance imagery in the event of a small but significant and non-transitory price increase for EO/IR reconnaissance satellite payloads. The design, development, production, and sale of EO/IR reconnaissance satellite payloads therefore is a line of commerce and product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Geographic Market

52. Much of the information regarding EO/IR reconnaissance satellites is highly sensitive, and data concerning the capabilities required in such satellites is released only to a select group of U.S.-based manufacturers that possess the necessary security clearances and are subject to close government oversight. For this reason, DoD and intelligence community customers, who are the only customers for these products in the United States, are unlikely to purchase large space-based optical systems or EO/IR reconnaissance satellite payloads from sources located outside the United States in the event of small but significant and non-transitory price increases by domestic producers of those products.

53. The United States is therefore a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Anticompetitive Effects of the Proposed Transaction

54. As discussed below, the vertical integration of Raytheon and UTC will change the merged firm's incentives to sell FPAs and large space-based optical systems and enable the merged firm to use its significant market position in these products to harm its large space-based optical systems and EO/IR satellite payload competitors.

1. Large Space-Based Optical Systems

55. First, by combining UTC's capabilities in large space-based optical systems with Raytheon's dominant position in FPAs, the merger would give the combined company the incentive and ability to reduce competition from UTC's only large space-based optical systems competitor. Because Raytheon does not build large space-based optical systems today, it has no incentive to demand that a particular optical system supplier be selected by the payload builder. Following the merger, this incentive would change. The combined company likely would refuse to supply payload builders with FPAs, or supply them only at higher cost, if the payload builders do not also agree to purchase UTC's optical system. With visible-light FPAs, and in situations where the DoD or intelligence community end-user directed payload providers to use Raytheon's infrared FPAs, the payload provider would have no alternative but to accept UTC's large space-based optical system, even if it was of lower quality or higher priced than large space-based optical systems available from the other source. As a result, the merged company would be able to charge higher prices for its optical system, or provide a system of lower quality, than would have been possible before the merger.

56. UTC competes to design, develop, produce, and sell large space-based optical systems on the basis of quality, price, and innovation, as well as contractual terms such as delivery times. This competition leads to more innovation, higher quality, lower prices, and shorter delivery times. The combination of UTC and Raytheon would give the merged firm the incentive and ability to weaken this competition and its future benefits to DoD and intelligence community end-users, likely resulting in less innovative, more expensive products with lower quality and longer delivery times.

57. The proposed acquisition, therefore, likely would substantially lessen competition in the design, development, production, and sale of large space-based optical systems in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. EO/IR Reconnaissance Satellite Payloads

58. Second, by combining Raytheon's position as a producer of EO/IR reconnaissance satellite payloads with UTC's position as one of only two companies with the capability to build large space-based optical systems, the merger would give the combined company the incentive and ability to harm its payload rivals. Because UTC does not produce payloads today, it has a strong incentive to make its optical systems available to all payload builders. Following the merger, this incentive would change, and, particularly in situations where the DoD or intelligence community end-user directed payload providers to use UTC's large space-based optical systems, the combined company likely would raise prices for UTC's optical systems to rival payload builders, or simply refuse to provide UTC's optical systems at any price. As a result, the merged company would be able to charge higher prices for its payload, or provide a payload of lower quality, than would have been possible before the merger.

59. Raytheon competes with other EO/IR reconnaissance satellite payload suppliers on the basis of quality, price, and innovation, as well as contractual terms such as delivery times. This competition leads to innovation, higher quality, lower prices, and shorter delivery times. The combination of UTC and Raytheon would give the merged firm the incentive and ability to weaken this competition and its future benefits to DoD and intelligence community end-users, likely resulting in less innovative, more expensive products with lower quality and longer delivery times.

60. The proposed acquisition, therefore, likely would substantially lessen competition in the design, development, production, and sale of EO/IR reconnaissance satellite payloads in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

D. Difficulty of Entry

61. Sufficient, timely entry of additional competitors into the markets for the design, development, production, and sale of visible-light or infrared FPAs for EO/IR reconnaissance satellite payloads is unlikely. Production facilities for these FPAs require a substantial investment in both capital equipment and human resources, and a new entrant would largely need to re-create the investment made in Raytheon by the United States government over the course of several decades. A new entrant would need to set up a foundry to produce electronic components, establish production lines capable of manufacturing read-out integrated circuits and other electronic components, and build assembly lines and testing facilities. Engineering and research personnel would need to be assigned to develop, test, and troubleshoot the detailed manufacturing processes, involving hundreds of steps, that are necessary to produce these FPAs. Any new products would require extensive testing and qualification before they could be used in payloads. These steps would require years to complete.

62. Sufficient, timely entry of additional competitors into the market for the design, development, production, and sale of large space-based optical systems is also unlikely. A new entrant would require significant investment in the facilities and skilled personnel required to grind and polish the complex curved surfaces required for large-space based optical systems, and then test these optics in an

environment that replicates conditions in space. In addition, because spaceflight is an exceptionally demanding and high-risk endeavor, payload builders, satellite prime contractors, and end-user customers have a strong preference to purchase from established suppliers. Years of dedicated and costly effort would be required for a new entrant to demonstrate expertise comparable to UTC.

63. As result of these barriers, entry into the markets for the design, development, production, and sale of visible-light and infrared FPAs for EO/IR reconnaissance satellite payloads and large space-based optical systems would not be timely, likely, or sufficient to defeat the anticompetitive effects in the markets for the design, development, production, and sale of large space-based optical systems and EO/IR reconnaissance satellite payloads likely to result from UTC's merger with Raytheon.

VII. Violations Alleged

64. The merger of UTC and Raytheon likely would substantially lessen competition in the relevant markets alleged above in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

65. Unless enjoined, the acquisition likely would have the following anticompetitive effects, among others, in the relevant markets:

(a) Actual and potential competition between UTC and Raytheon would be eliminated;

(b) competition generally likely would be substantially lessened; and

(c) prices likely would increase, quality and innovation likely would decrease, and contractual terms likely would be less favorable to customers.

VIII. Request for Relief

66. The United States requests that this Court:

(a) Adjudge and decree that the proposed merger of UTC and Raytheon would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) preliminarily and permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed merger of UTC and Raytheon, or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine UTC with Raytheon;

(c) award the United States its costs for this action; and

(d) award the United States such other and further relief as the Court deems just and proper.

Dated: March 26, 2020.

Respectfully submitted,
FOR PLAINTIFF UNITED STATES:

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *United Technologies Corporation*, and *Raytheon Company*, Defendants.

Civil Action No. 1:20–cv–00824

Judge: Hon. Dabney L. Friedrich

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on March 26, 2020, the United States and Defendants, United Technologies Corporation and Raytheon Company, by their respective attorneys, have consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law and without this Final Judgment constituting any evidence against or admission by a party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants represent that the divestitures and other relief required by this Final Judgment can and will be made and that Defendants will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom Defendants divest any of the Divestiture Assets.

B. ''Acquirer of the Military Airborne Radios Divestiture Assets'' means BAE or another entity to whom Defendants divest the Military Airborne Radios Divestiture Assets.

C. ''Acquirer of the Military GPS Divestiture Assets'' means BAE or another entity to whom Defendants divest the GPS Divestiture Assets.

D. ''Acquirer of the Optical Systems Divestiture Assets'' means the entity to whom Defendants divest the Optical Systems Divestiture Assets.

E. ''Divestiture Assets'' means the Military Airborne Radios Divestiture Assets, the Military GPS Divestiture Assets, and the Optical Systems Divestiture Assets.

F. ''UTC'' means Defendant United Technologies Corporation, a Delaware corporation with its headquarters in Farmington, Connecticut, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''Raytheon'' means Defendant Raytheon Company, a Delaware corporation with its headquarters in Waltham, Massachusetts, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

H. ''BAE'' means BAE Systems, Inc., a Delaware corporation with its headquarters in Arlington, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint

ventures, and their directors, officers, managers, agents, and employees.

I. ''Military Airborne Radios'' means radios that enable military aircraft to communicate with other aircraft and with the ground, either as standalone devices or as part of an integrated communication, navigation, and identification suite. ''Military Airborne Radios'' does not include Cryptographic Modules, identification friend or foe systems, or data links.

J. ''Cryptographic Modules'' means hardware and software for encryption and decryption of radio signals and related application-specific integrated circuits and field-programmable gate arrays for the Military Airborne Radios Business.

K. ''Military Airborne Radios Business'' means the business of the design, development, production, and sale of Military Airborne Radios by Raytheon's Tactical Communication Systems division.

L. ''Military Airborne Radios Divestiture Assets'' means the Military Airborne Radios Business, including:

1. All of Defendants' rights, title, and interests in the facilities located at the following addresses:

a. 5001 U.S. 30 Highway, Fort Wayne, Indiana 46818 (the ''Fort Wayne Facility'');

b. Office 135 of Building 100 located at the county-owned facility at 7887 Bryan Dairy Road, Largo, Florida 33777;

2. All tangible assets related to or used in connection with the Military Airborne Radios Business, including but not limited to: All manufacturing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

3. All intangible assets related to or used in connection with the Military Airborne Radios Business, including but not limited to: All patents; licenses and sublicenses; intellectual property; copyrights; trademarks, trade names, service marks, and service names (excluding any trademarks, trade names, service marks, or service names containing the name ''Raytheon''); technical information; computer software and related documentation; customer relationships, agreements, and contracts; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Raytheon provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments; and

4. At the option of the Acquirer of the Military Airborne Radios Divestiture Assets, a worldwide, non-exclusive, royalty-free, irrevocable, paid-up, perpetual license to any intellectual property related to Cryptographic Modules that is held by Raytheon at the time of the filing of the Complaint in this action, or is developed by Raytheon during the term of the supply contract required by Paragraph IV(H) of this Final Judgment, including any extensions of that term approved by the United States; *Provided, however,* that the assets specified in Paragraphs II(L)(1)–(4) above, do not include (i) the space leased by Raytheon at 1010 Production Road, Fort Wayne, Indiana 46818; (ii) the space leased by Raytheon in Buildings 100, 400, and 600 at the county-owned facility located at 7887 Bryan Dairy Road, Largo, Florida 33777 (other than Office 135 of Building 100); or (iii) intellectual property solely related to Cryptographic Modules, except as set forth in Paragraph II(L)(4).

M. ''Military Airborne Radios Personnel'' means all full-time, part-time, or contract personnel who are or were, at any time between June 9, 2019 and the date on which the Military Airborne Radios Divestiture Assets are divested, (i) employees of the Military Airborne Radios Business, (ii) employees of Raytheon primarily involved in the design, development, production, and sale of Military Airborne Radios (except for Raytheon employees primarily engaged in human resources, legal, or other general or administrative support functions), or (iii) at the option of the Acquirer of the Military Airborne Radios Divestiture Assets, up to sixteen (16) employees of Raytheon knowledgeable in the design, development, production, and use of Cryptographic Modules, to be selected by the Acquirer of the Military Airborne Radios Divestiture Assets. The United States, in its sole discretion, will resolve any disagreement regarding which employees are Military Airborne Radios Personnel.

N. ''Military Airborne Radios Transition Assets'' means those Military Airborne Radios Divestiture Assets required for Defendants to comply with their obligations under the supply contract required by Paragraph IV(H) of this Final Judgment.

O. ''Military GPS Systems'' means military receivers and anti-jam products for global positioning satellite systems.

P. ''Military GPS Business'' means UTC's business in the design, development, production, and sale of Military GPS Systems.

Q. ''Military GPS Divestiture Assets'' means the Military GPS Business, including:

1. All tangible assets related to or used in connection with the Military GPS Business, including but not limited to: All manufacturing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

2. All intangible assets related to or used in connection with the Military GPS Business, including but not limited to: All patents; licenses and sublicenses; intellectual property; copyrights; trademarks, trade names, service marks, and service names (excluding any trademarks, trade names, service marks, or service names containing the name ''United Technologies,'' ''Rockwell,'' ''Collins,'' ''UTC,'' or ''UTX''); technical information; computer software and related documentation; customer relationships, agreements, and contracts; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information UTC provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research

and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments; *Provided, however,* the assets specified in Paragraphs II(Q)(1)–(2) above do not include (i) the facility located at 855 35th Street NE, Cedar Rapids, Iowa 52498 (the ''Cedar Rapids Facility'') or (ii) the facility located at 2855 Heartland Drive, Coralville, Iowa 52241 (the ''Coralville Facility'').

R. ''Military GPS Personnel'' means all full-time, part-time, or contract personnel who are or were, at any time between June 9, 2019 and the date on which the Military GPS Divestiture Assets are divested, (i) employees of the Military GPS Business, or (ii) employees of UTC primarily involved in the design, development, production, and sale of Military GPS Systems (except for UTC employees primarily engaged in human resources, legal, or other general or administrative support functions). The United States, in its sole discretion, will resolve any disagreement regarding which employees are Military GPS Personnel.

S. ''Military GPS Transition Assets'' means those Military GPS Divestiture Assets required for Defendants to comply with their obligations under the supply contract required by Paragraph V(H) of this Final Judgment.

T. ''Optical Systems'' means electro-optical/infrared systems for national security space missions and defense laser warning survivability subsystems.

U. ''Optical Systems Business'' means UTC's business in the design, development, production, and sale of Optical Systems.

V. ''Optical Systems Divestiture Assets'' means the Optical Systems Business, including:

1. All of Defendants' rights, title, and interests in the facility located at 100 Wooster Heights, Danbury, Connecticut 06810;

2. All tangible assets related to or used in connection with the Optical Systems Business, including but not limited to: All manufacturing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records; and

3. All intangible assets related to or used in connection with the Optical Systems Business, including but not limited to: All patents; licenses and sublicenses; intellectual property; copyrights; trademarks, trade names, service marks, and service names (excluding any trademarks, trade names, service marks, or service names containing the name ''United Technologies,'' ''Rockwell,'' ''Collins,'' ''UTC,'' or ''UTX''); technical information; computer software and related documentation; customer relationships, agreements, and contracts; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information UTC provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments.

W. ''Optical Systems Personnel'' means all full-time, part-time, or contract personnel who are or were, at any time between June 9, 2019 and the date on which the Optical Systems Divestiture Assets are divested, (i) employees of the Optical Systems Business, or (ii) employees of UTC involved in the design, development, production, and sale of Optical Systems (except for UTC employees primarily engaged in human resources, legal, or other general or administrative support functions). The United States, in its sole discretion, will resolve any disagreement regarding which employees are Optical Systems Personnel.

X. ''Transaction Regulatory Approvals'' means any approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States (''CFIUS'') or under antitrust or competition laws required for the Transaction to proceed.

Y. ''Military Airborne Radios Divestiture Assets Regulatory Approvals'' means any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws or regulations required for the acquisition of the Military Airborne Radios Divestiture Assets by the Acquirer of the Military Airborne Radios Divestiture Assets.

Z. ''Military GPS Divestiture Assets Regulatory Approvals'' means any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws or regulations required for the acquisition of the Military GPS Divestiture Assets by the Acquirer of the Military GPS Divestiture Assets.

AA. ''Optical Systems Divestiture Assets Regulatory Approvals'' means any approvals or clearances pursuant to filings with CFIUS, or under antitrust, competition, or other U.S. or international laws or regulations required for the acquisition of the Optical Systems Divestiture Assets by the Acquirer of the Optical Systems Divestiture Assets.

BB. The ''Transaction'' means the proposed merger between UTC and Raytheon.

III. Applicability

A. This Final Judgment applies to UTC and Raytheon, as defined above, and all other persons, in active concert or participation with any Defendant, who receive actual notice of this Final Judgment.

B. If, prior to complying with Section IV, Section V, Section VI, and Section VII of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants must require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from Acquirers.

IV. Divestiture of the Military Airborne Radios Business

A. Defendants are ordered and directed, within the later of forty-five (45) calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, or fifteen (15) calendar days after the Transaction Regulatory Approvals and the Military Airborne Radios Divestiture Assets Regulatory Approvals have been received, to divest the Military Airborne Radios Divestiture Assets in a manner consistent with this Final Judgment to BAE or an alternative Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total and will notify the Court of any extensions. Defendants agree to use their best efforts to divest the Military Airborne Radios Divestiture

Assets as expeditiously as possible. Notwithstanding the foregoing, at the option of the Acquirer of the Military Airborne Radios Divestiture Assets, and subject to approval by the United States in its sole discretion, Defendants may, for the sole purpose of fulfilling the supply contract required by Paragraph IV(H) of this Final Judgment, retain the Military Airborne Radios Transition Assets until the earlier of (i) thirty (30) calendar days after the Acquirer of the Military Airborne Radios Divestiture Assets terminates the supply contract required by Paragraph IV(H) of this Final Judgment and requests the transfer of such assets or (ii) thirty (30) calendar days following the expiration of the supply contract required by Paragraph IV(H) of this Final Judgment.

B. In the event Defendants are attempting to divest the Military Airborne Radios Divestiture Assets to an Acquirer other than BAE, Defendants promptly must make known, by usual and customary means, the availability of the Military Airborne Radios Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Military Airborne Radios Divestiture Assets that the Military Airborne Radios Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Military Airborne Radios Divestiture Assets customarily provided in a due-diligence process; provided, however, that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make this information available to the United States at the same time that the information is made available to any other person.

C. Defendants must cooperate with and assist the Acquirer of the Military Airborne Radios Divestiture Assets in identifying and hiring all Military Airborne Radios Personnel, including:

1. Within ten (10) business days following the filing of the Complaint in this matter, Defendants must identify all Military Airborne Radios Personnel to the Acquirer of the Military Airborne Radios Divestiture Assets and the United States, including by providing organization charts covering all Military Airborne Radios Personnel.

2. Within ten (10) business days following receipt of a request by the Acquirer of the Military Airborne Radios Divestiture Assets or the United States, Defendants must provide to the Acquirer of the Military Airborne Radios Divestiture Assets and the United States the following additional information related to Military Airborne Radios Personnel: Name; job title; current salary and benefits including most recent bonus paid, aggregate annual compensation, current target or guaranteed bonus, if any, and any other payments due to or promises made to the employee; descriptions of reporting relationships, past experience, responsibilities, and training and educational histories; lists of all certifications; and all job performance evaluations. If Defendants are barred by any applicable laws from providing any of this information, within ten (10) business days following receipt of the request, Defendants must provide the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information.

3. At the request of the Acquirer of the Military Airborne Radios Divestiture Assets, Defendants must promptly make Military Airborne Radios Personnel available for private interviews with the Acquirer of the Military Airborne Radios Divestiture Assets during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any efforts by the Acquirer of the Military Airborne Radios Divestiture Assets to employ any Military Airborne Radios Personnel. Interference includes but is not limited to offering to increase the salary or improve the benefits of Military Airborne Radios Personnel unless the offer is part of a company-wide increase in salary or benefits that was announced prior to June 9, 2019 or has been approved by the United States, in its sole discretion. Defendants' obligations under this paragraph will expire (i) for Military Airborne Radios Personnel whose services are not required for Defendants to perform under the supply contract required by Paragraph IV(H) of this Final Judgment, six (6) months after the divestiture of the Military Airborne Radios Divestiture Assets pursuant to this Final Judgment, and (ii) for Military Airborne Radios Personnel whose services are required for Defendants to perform under the supply contract required by Paragraph IV(H) of this Final Judgment, six (6) months after the expiration of that supply contract.

5. For Military Airborne Radios Personnel who elect employment with the Acquirer of the Military Airborne Radios Divestiture Assets within the periods set forth in Paragraph IV(C)(4), Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that those Military Airborne Radios Personnel otherwise would have been provided had the Military Airborne Radios Personnel continued employment with Defendants, including but not limited to any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Military Airborne Radios Personnel of Defendants' proprietary non-public information that is unrelated to Military Airborne Radios Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of twelve (12) months from the date on which the Military Airborne Radios Divestiture Assets are divested to the Acquirer of the Military Airborne Radios Divestiture Assets, Defendants may not solicit to rehire Military Airborne Radios Personnel who were hired by the Acquirer of the Military Airborne Radios Divestiture Assets within the period set forth in Paragraph IV(C)(4)(i), unless (a) an individual is terminated or laid off by the Acquirer of the Military Airborne Radios Divestiture Assets or (b) the Acquirer of the Military Airborne Radios Divestiture Assets agrees in writing that Defendants may solicit to rehire that individual. Nothing in this paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements.

7. For a period of twelve (12) months following the expiration of the supply contract required by Paragraph IV(H) of this Final Judgment, Defendants may not solicit to rehire Military Airborne Radios Personnel whose services were required for Defendants to perform under that supply contract and who were hired by the Acquirer of the Military Airborne Radios Divestiture Assets within the period set forth in Paragraph IV(C)(4)(ii), unless (a) an individual is terminated or laid off by the Acquirer of the Military Airborne Radios Divestiture Assets or (b) the Acquirer of the Military Airborne Radios Divestiture Assets agrees in writing that Defendants may solicit to rehire that individual. Nothing in this paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements.

D. Defendants must permit prospective Acquirers of the Military Airborne Radios Divestiture Assets to have reasonable access to make inspections of the physical facilities and access to all environmental, zoning, and other permit documents and information, and all financial,

operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants must warrant to the Acquirer of the Military Airborne Radios Divestiture Assets that each asset to be divested will be fully operational and without material defect on the date of their transfer to the Acquirer of the Military Airborne Radios Divestiture Assets.

F. Defendants must not take any action that will impede in any way the permitting, operation, or divestiture of the Military Airborne Radios Divestiture Assets.

G. Defendants must make best efforts to assign, subcontract, or otherwise transfer all contracts related to the Military Airborne Radios Divestiture Assets, including all supply and sales contracts, to the Acquirer of the Military Airborne Radios Divestiture Assets. Defendants must not interfere with any negotiations between the Acquirer of the Military Airborne Radios Divestiture Assets and a contracting party.

H. At the option of the Acquirer of the Military Airborne Radios Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the date on which the Military Airborne Radios Divestiture Assets are divested to the Acquirer of the Military Airborne Radios Divestiture Assets, Defendants must enter into a supply contract for Military Airborne Radios sufficient to meet the needs of the Military Airborne Radios Business, as determined by the Acquirer of the Military Airborne Radios Divestiture Assets, for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for Military Airborne Radios. The United States, in its sole discretion, may approve one or more extensions of this supply contract, for a total of up to an additional twelve (12) months. If the Acquirer of the Military Airborne Radios Divestiture Assets seeks an extension of the term of this supply contract, Defendants must notify the United States in writing at least three (3) months prior to the date the supply contract expires. The Acquirer of the Military Airborne Radios Divestiture Assets may terminate this supply contract without cost or penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with supporting this supply contract must not share any competitively sensitive information of the Acquirer of the Military Airborne Radios Divestiture Assets with any other employee of Defendants.

I. At the option of the Acquirer of the Military Airborne Radios Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the date on which the Military Airborne Radios Divestiture Assets are divested to the Acquirer of the Military Airborne Radios Divestiture Assets, Defendants must enter into a supply contract for the manufacture of Cryptographic Modules sufficient to meet the needs of the Military Airborne Radios Business, as determined by the Acquirer of the Military Airborne Radios Divestiture Assets, for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for Cryptographic Modules. The United States, in its sole discretion, may approve one or more extensions of this supply contract, for a total of up to an additional twelve (12) months. If the Acquirer of the Military Airborne Radios Divestiture Assets seeks an extension of the term of this supply contract, Defendants must notify the United States in writing at least three (3) months prior to the date the supply contract expires. The Acquirer of the Military Airborne Radios Divestiture Assets may terminate this supply contract without cost or penalty at any time upon commercially reasonable notice. Defendants must maintain any National Security Agency certifications or approvals necessary to supply the products manufactured under the supply contract entered into pursuant to this paragraph. The employee(s) of Defendants tasked with supporting this supply contract must not share any competitively sensitive information of the Acquirer of the Military Airborne Radios Divestiture Assets with any other employee of Defendants.

J. At the option of the Acquirer of the Military Airborne Radios Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the date on which the Military Airborne Radios Divestiture Assets are divested to the Acquirer of the Military Airborne Radios Divestiture Assets, Defendants must enter into a contract to provide transition services for back office, human resource, and information technology services and support for the Military Airborne Radios Business for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for the transition services. The United States, in its sole discretion, may approve one or more extensions of this contract for transition services, for a total of up to an additional twelve (12) months. If the Acquirer of the Military Airborne Radios Divestiture Assets seeks an extension of the term of this contract for transition services, Defendants must notify the United States in writing at least three (3) months prior to the date the contract expires. The Acquirer of the Military Airborne Radios Divestiture Assets may terminate a contract for transition services without cost or penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with providing these transition services must not share any competitively sensitive information of the Acquirer of the Military Airborne Radios Divestiture Assets with any other employee of Defendants.

K. At the option of the Acquirer of the Military Airborne Radios Divestiture Assets, Defendants must provide the Acquirer of the Military Airborne Radios Divestiture Assets with complete and sole access to the laboratories located in rooms 01–007V004 and 01–002V001 in Building C1–SW, 1010 Production Road, Fort Wayne, Indiana 46818, until the Acquirer of the Military Airborne Radios Divestiture Assets receives any necessary certifications for its own laboratory space, for a period not to exceed three (3) months. The United States, in its sole discretion, may approve one or more extensions of this period, for a total of up to an additional three (3) months. If the Acquirer of the Military Airborne Radios Divestiture Assets seeks an extension of this period, Defendants must notify the United States in writing at least thirty (30) days prior to the date this period expires.

L. At the option of the Acquirer of the Military Airborne Radios Divestiture Assets, Defendants must provide the Acquirer of the Military Airborne Radios Divestiture Assets with complete and sole access to rooms C1–W–HWL–M, C1–W–Demo, and C1–W–TCS–CR in Building C1–SW, 1010 Production Road, Fort Wayne, Indiana 46818, for three (3) pre-scheduled, 8-hour shifts per room each week, selected by the Acquirer of the Military Airborne Radios Divestiture Assets, until the Acquirer of the Military Airborne Radios Divestiture Assets receives any necessary certifications for its own laboratory space, for a period not to exceed six (6) months. The United States, in its sole discretion, may approve one or more extensions of this period, for a total of up to an additional six (6) months. If the Acquirer of the Military Airborne Radios Divestiture Assets seeks an extension of this period, Defendants must notify the United States in writing at least thirty (30) days prior to the date this period expires.

M. Defendants must warrant to the Acquirer of the Military Airborne Radios Divestiture Assets that there are no material defects in the environmental, zoning, or other permits

pertaining to the operation of the Military Airborne Radios Divestiture Assets. Following the sale of the Military Airborne Radios Divestiture Assets, Defendants must not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Military Airborne Radios Divestiture Assets.

N. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV or by a Divestiture Trustee appointed pursuant to Section VII of this Final Judgment must include the entire Military Airborne Radios Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Military Airborne Radios Divestiture Assets can and will be used by the Acquirer of the Military Airborne Radios Divestiture Assets as part of a viable, ongoing business in the design, development, production, and sale of Military Airborne Radios, and will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section VII of this Final Judgment:

(1) Must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the design, development, production, and sale of Military Airborne Radios; and

(2) must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer of the Military Airborne Radios Divestiture Assets' costs, to lower the Acquirer of the Military Airborne Radios Divestiture Assets' efficiency, or otherwise to interfere in the ability of the Acquirer of the Military Airborne Radios Divestiture Assets to compete effectively.

P. If any term of an agreement between Defendants and the Acquirer of the Military Airborne Radios Divestiture Assets to effectuate the divestiture required by this Final Judgment varies from a term of this Final Judgment then, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

V. Divestiture of the Military GPS Business

A. Defendants are ordered and directed, within the later of forty-five (45) calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, or fifteen (15) calendar days after the Transaction Regulatory Approvals and the Military GPS Divestiture Assets Regulatory Approvals have been received, to divest the Military GPS Divestiture Assets in a manner consistent with this Final Judgment to BAE or an alternative Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total and will notify the Court of any extensions. Defendants agree to use their best efforts to divest the Military GPS Divestiture Assets as expeditiously as possible. Notwithstanding the foregoing, at the option of the Acquirer of the Military GPS Divestiture Assets, and subject to approval by the United States in its sole discretion, Defendants may retain, for the sole purpose of fulfilling the supply contract required by Paragraph V(H) of this Final Judgment, the Military GPS Transition Assets until the earlier of (i) thirty (30) calendar days after the Acquirer of the Military GPS Divestiture Assets terminates the supply contract required by Paragraph V(H) of this Final Judgment and requests the transfer of such assets or (ii) thirty (30) calendar days following the completion of the supply contract required by Paragraph V(H) of this Final Judgment.

B. In the event Defendants are attempting to divest the Military GPS Divestiture Assets to an Acquirer other than BAE, Defendants promptly must make known, by usual and customary means, the availability of the Military GPS Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Military GPS Divestiture Assets that the Military GPS Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Military GPS Divestiture Assets customarily provided in a due-diligence process; provided, however, that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make this information available to the United States at the same time that the information is made available to any other person.

C. Defendants must cooperate with and assist the Acquirer of the Military GPS Divestiture Assets in identifying and hiring all Military GPS Personnel, including:

1. Within ten (10) business days following the filing of the Complaint in this matter, Defendants must identify all Military GPS Personnel to the Acquirer of the Military GPS Divestiture Assets and the United States, including by providing organization charts covering all Military GPS Personnel.

2. Within ten (10) business days following receipt of a request by the Acquirer of the Military GPS Divestiture Assets or the United States, Defendants must provide to the Acquirer of the Military GPS Divestiture Assets and the United States the following additional information related to Military GPS Personnel: Name; job title; current salary and benefits including most recent bonus paid, aggregate annual compensation, current target or guaranteed bonus, if any, and any other payments due to or promises made to the employee; descriptions of reporting relationships, past experience, responsibilities, and training and educational histories; lists of all certifications; and all job performance evaluations. If Defendants are barred by any applicable laws from providing any of this information, within ten (10) business days following receipt of the request, Defendants must provide the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information.

3. At the request of the Acquirer of the Military GPS Divestiture Assets, Defendants must promptly make Military GPS Personnel available for private interviews with the Acquirer of the Military GPS Divestiture Assets during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any efforts by the Acquirer of the Military GPS Divestiture Assets to employ any Military GPS Personnel. Interference includes but is not limited to offering to increase the salary or improve the benefits of Military GPS Personnel unless the offer is part of a company-wide increase in salary or benefits that was announced prior to June 9, 2019 or has been approved by the United States, in its sole discretion. Defendants' obligations under this paragraph will expire (i) for Military GPS Personnel whose services are not required for Defendants to perform under the supply contract required by Paragraph V(H) of this Final Judgment, six (6) months after the divestiture of the Military GPS Divestiture Assets pursuant to this Final Judgment, and (ii) for Military GPS Personnel whose services are required for Defendants to perform under the supply contract

required by Paragraph V(H) of this Final Judgment, six (6) months after the expiration of that supply contract.

5. For Military GPS Personnel who elect employment with the Acquirer of the Military GPS Divestiture Assets within the periods set forth in Paragraph V(C)(4), Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that those Military GPS Personnel otherwise would have been provided had the Military GPS Personnel continued employment with Defendants, including but not limited to any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Military GPS Personnel of Defendants' proprietary non-public information that is unrelated to Military GPS Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of twelve (12) months from the date on which the Military GPS Divestiture Assets are divested to the Acquirer of the Military GPS Divestiture Assets, Defendants may not solicit to rehire Military GPS Personnel who were hired by the Acquirer of the Military GPS Divestiture Assets within the period set forth in Paragraph V(C)(4)(i) unless (a) an individual is terminated or laid off by the Acquirer of the Military GPS Divestiture Assets or (b) the Acquirer of the Military GPS Divestiture Assets agrees in writing that Defendants may solicit to rehire that individual. Nothing in this paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements.

7. For a period of twelve (12) months following the expiration of the supply contract required by Paragraph V(H) of this Final Judgment, Defendants may not solicit to rehire Military GPS Personnel whose services were required for Defendants to perform under that supply contract and who were hired by the Acquirer of the Military GPS Divestiture Assets within the period set forth in Paragraph V(C)(4)(ii) unless (a) an individual is terminated or laid off by the Acquirer of the Military GPS Divestiture Assets or (b) the Acquirer of the Military GPS Divestiture Assets agrees in writing that Defendants may solicit to rehire that individual. Nothing in this paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements.

D. Defendants must permit prospective Acquirers of the Military GPS Divestiture Assets to have reasonable access to make inspections of the physical facilities and access to all environmental, zoning, and other permit documents and information, and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants must warrant to the Acquirer of the Military GPS Divestiture Assets that each asset to be divested will be fully operational and without material defect on the date of their transfer to the Acquirer of the Military GPS Divestiture Assets.

F. Defendants must not take any action that will impede in any way the permitting, operation, or divestiture of the Military GPS Divestiture Assets.

G. Defendants must make best efforts to assign, subcontract, or otherwise transfer all contracts related to the Military GPS Divestiture Assets, including all supply and sales contracts, to the Acquirer of the Military GPS Divestiture Assets. Defendants must not interfere with any negotiations between the Acquirer of the Military GPS Divestiture Assets and a contracting party.

H. At the option of the Acquirer of the Military GPS Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the date on which the Military GPS Divestiture Assets are divested to the Acquirer of the Military GPS Divestiture Assets, Defendants must enter into a supply contract for Military GPS Systems sufficient to meet the needs of the Military GPS Business, as determined by the Acquirer of the Military GPS Divestiture Assets, for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for Military GPS Systems. The United States, in its sole discretion, may approve one or more extensions of this supply contract, for a total of up to an additional twelve (12) months. If Acquirer of the Military GPS Divestiture Assets seeks an extension of the term of this supply contract, Defendants must notify the United States in writing at least three (3) months prior to the date the supply contract expires. The Acquirer of the Military GPS Divestiture Assets may terminate this supply contract without cost or penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with supporting this supply contract must not share any competitively sensitive information of the Acquirer of the Military GPS Divestiture Assets with any other employee of Defendants.

I. At the option of Acquirer of the Military GPS Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the date on which the Military GPS Divestiture Assets are divested to the Acquirer of the Military GPS Divestiture Assets, Defendants must enter into a contract to provide transition services for back office, human resource, and information technology services and support for the Military GPS Business for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for the transition services. The United States, in its sole discretion, may approve one or more extensions of this contract for transition services, for a total of up to an additional twelve (12) months. If the Acquirer of the Military GPS Divestiture Assets seeks an extension of the term of this contract for transition services, Defendants must notify the United States in writing at least three (3) months prior to the date the contract expires. The Acquirer of the Military GPS Divestiture Assets may terminate a contract for transition services without cost or penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with providing these transition services must not share any competitively sensitive information of the Acquirer of the Military GPS Divestiture Assets with any other employee of Defendants.

J. At the option of the Acquirer of the Military GPS Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the date on which the Military GPS Divestiture Assets are divested to the Acquirer of the Military GPS Divestiture Assets, Defendants must enter into a lease for the Cedar Rapids Facility for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions. The United States, in its sole discretion, may approve one or more extensions of this lease, for a total of up to an additional six (6) months. If the Acquirer of the Military GPS Divestiture Assets seeks an extension of the term of this lease, Defendants must notify the United States in writing at least three (3) months prior to the date the contract expires. The Acquirer of the Military GPS Divestiture Assets may terminate a lease without cost or penalty at any time upon commercially reasonable notice.

K. For a period of six (6) months following the divestiture of the Military GPS Divestiture Assets, Defendants must provide the Acquirer of the Military GPS Divestiture Assets with complete and sole access to Laboratories 43, 44, 44 Room 6, 53B, 53C, 53D, 60A, 60B, 60C, 60D, 60F, and 60G located in the Cedar Rapids Facility and Laboratories 2, 4, 1CD100, 1CB100, and 1C0200 located in the Coralville Facility

for two (2) pre-scheduled, 8-hour shifts per laboratory each day, with the Acquirer of the Military GPS Divestiture Assets having first choice among the shifts at each laboratory for three business days per week. After that six (6) month period, until the expiration of the supply contract required by Paragraph V(H) of this Final Judgment, Defendants must provide the Acquirer of the Military GPS Divestiture Assets with unlimited complete and sole access to all the laboratories identified in this Paragraph located in the Cedar Rapids Facility and the Coralville Facility, except that the access to Laboratories 1CB100, 1C0200, and 2 of the Coralville Facility and Laboratories 60A, 60D, and 60G of the Cedar Rapids Facility will continue to be for two (2) pre-scheduled, 8-hour shifts each day, with the Acquirer of the Military GPS Divestiture Assets having first choice among the shifts for three business days per week.

L. Defendants must warrant to the Acquirer of the Military GPS Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Divestiture Assets. Following the sale of the Military GPS Divestiture Assets, Defendants must not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Military GPS Divestiture Assets.

M. Unless the United States otherwise consents in writing, the divestiture pursuant to Section V or by a Divestiture Trustee appointed pursuant to Section VII of this Final Judgment must include the entire Military GPS Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Military GPS Divestiture Assets can and will be used by the Acquirer of the Military GPS Divestiture Assets as part of a viable, ongoing business in the design, development, production, and sale of Military GPS Systems, and will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section V or Section VII of this Final Judgment:

(1) Must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the design, development, production, and sale of Military GPS Systems; and

(2) must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer of the Military GPS Divestiture Assets' costs, to lower the Acquirer of the Military GPS Divestiture Assets' efficiency, or otherwise to interfere in the ability of the Acquirer of the Military GPS Divestiture Assets to compete effectively.

N. If any term of an agreement between Defendants and the Acquirer of the Military GPS Divestiture Assets to effectuate the divestiture required by this Final Judgment varies from a term of this Final Judgment then, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

VI. Divestiture of the Optical Systems Business

A. Defendants are ordered and directed, within the later of ninety (90) calendar days after the Court's entry of the Asset Preservation and Hold Separate Stipulation and Order in this matter, or fifteen (15) calendar days after the Transaction Regulatory Approvals and the Optical Systems Divestiture Assets Regulatory Approvals have been received, to divest the Optical Systems Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total and will notify the Court of any extensions. Defendants agree to use their best efforts to divest the Optical Systems Divestiture Assets as expeditiously as possible.

B. Defendants promptly must make known, by usual and customary means, the availability of the Optical Systems Divestiture Assets. Defendants must inform any person making an inquiry regarding a possible purchase of the Optical Systems Divestiture Assets that the Optical Systems Divestiture Assets are being divested in accordance with this Final Judgment and must provide that person with a copy of this Final Judgment. Defendants must offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Optical Systems Divestiture Assets customarily provided in a due-diligence process; provided, however, that Defendants need not provide information or documents subject to the attorney-client privilege or work-product doctrine. Defendants must make this information available to the United States at the same time that the information is made available to any other person.

C. Defendants must cooperate with and assist the Acquirer of the Optical Systems Divestiture Assets in identifying and hiring all Optical Systems Personnel, including:

1. Within ten (10) business days following receipt of a request by the Acquirer of the Optical Systems Divestiture Assets or the United States, Defendants must identify all Optical Systems Personnel to the Acquirer of the Optical Systems Divestiture Assets and the United States, including by providing organization charts covering all Optical Systems Personnel.

2. Within ten (10) business days following receipt of a request by the Acquirer of the Optical Systems Divestiture Assets or the United States, Defendants must provide to the Acquirer of the Optical Systems Divestiture Assets the information set forth in Paragraph VI(C)(1), and to the Acquirer of the Optical Systems Divestiture Assets and the United States the following additional information related to Optical Systems Personnel: Name; job title; current salary and benefits including most recent bonus paid, aggregate annual compensation, current target or guaranteed bonus, if any, and any other payments due to or promises made to the employee; descriptions of reporting relationships, past experience, responsibilities, and training and educational histories; lists of all certifications; and all job performance evaluations. If Defendants are barred by any applicable laws from providing any of this information, within ten (10) business days following receipt of the request, Defendants must provide the requested information to the full extent permitted by law and also must provide a written explanation of Defendants' inability to provide the remaining information.

3. At the request of the Acquirer of the Optical Systems Divestiture Assets, Defendants must promptly make Optical Systems Personnel available for private interviews with the Acquirer of the Optical Systems Divestiture Assets during normal business hours at a mutually agreeable location.

4. Defendants must not interfere with any efforts by the Acquirer of the Optical Systems Divestiture Assets to employ any Optical Systems Personnel. Interference includes but is not limited to offering to increase the salary or improve the benefits of Optical Systems Personnel unless the offer is part of a company-wide increase in salary or benefits that was announced prior to June 9, 2019 or has been approved by the United States, in its sole discretion. Defendants' obligations under this paragraph will expire six (6) months after the divestiture of the Optical Systems Divestiture Assets pursuant to this Final Judgment.

5. For Optical Systems Personnel who elect employment with the Acquirer of the Optical Systems Divestiture Assets within six (6) months of the date on which the Optical Systems Divestiture Assets are divested to the Acquirer of the Optical Systems Divestiture Assets, Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that those Optical Systems Personnel otherwise would have been provided had the Optical Systems Personnel continued employment with Defendants, including but not limited to any retention bonuses or payments. Defendants may maintain reasonable restrictions on disclosure by Optical Systems Personnel of Defendants' proprietary non-public information that is unrelated to Optical Systems Divestiture Assets and not otherwise required to be disclosed by this Final Judgment.

6. For a period of twelve (12) months from the date on which the Optical Systems Divestiture Assets are divested to the Acquirer of the Optical Systems Divestiture Assets, Defendants may not solicit to rehire Optical Systems Personnel who were hired by the Acquirer of the Optical Systems Divestiture Assets within six (6) months of the date on which the Optical Systems Divestiture Assets are divested to the Acquirer of the Optical Systems Divestiture Assets unless (a) an individual is terminated or laid off by the Acquirer of the Optical Systems Divestiture Assets or (b) the Acquirer of the Optical Systems Divestiture Assets agrees in writing that Defendants may solicit to rehire that individual. Nothing in this paragraph prohibits Defendants from advertising employment openings using general solicitations or advertisements.

D. Defendants must permit prospective Acquirers of the Optical Systems Divestiture Assets to have reasonable access to make inspections of the physical facilities and access to all environmental, zoning, and other permit documents and information, and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants must warrant to the Acquirer of the Optical Systems Divestiture Assets that each asset to be divested will be fully operational and without material defect on the date of sale.

F. Defendants must not take any action that will impede in any way the permitting, operation, or divestiture of the Optical Systems Divestiture Assets.

G. Defendants must make best efforts to assign, subcontract, or otherwise transfer all contracts related to the Optical Systems Divestiture Assets, including all supply and sales contracts, to the Acquirer of the Optical Systems Divestiture Assets. Defendants must not interfere with any negotiations between the Acquirer of the Optical Systems Divestiture Assets and a contracting party.

H. At the option of the Acquirer of the Optical Systems Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the date on which the Optical Systems Divestiture Assets are divested to Acquirer of the Optical Systems Divestiture Assets, Defendants must enter into a supply contract to meet the needs of the Acquirer of the Optical Systems Divestiture Assets for image processing software to support projects of the Optical Systems Business for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for image processing software. The United States, in its sole discretion, may approve one or more extensions of this supply contract, for a total of up to an additional twelve (12) months. If the Acquirer of the Optical Systems Divestiture Assets seeks an extension of the term of this supply contract, Defendants must notify the United States in writing at least three (3) months prior to the date the supply contract expires. The Acquirer of the Optical Systems Divestiture Assets may terminate the supply contract without cost or penalty at any time upon commercially reasonable notice.

I. At the option of the Acquirer of the Optical Systems Divestiture Assets, and subject to approval by the United States in its sole discretion, on or before the date on which the Optical Systems Divestiture Assets are divested to the Acquirer of the Optical Systems Divestiture Assets, Defendants must enter into a contract to provide transition services for back office, human resource, and information technology services and support for the Optical Systems Business for a period of up to twelve (12) months on terms and conditions reasonably related to market conditions for the provision of the transition services. The United States, in its sole discretion, may approve one or more extensions of this contract for transition services, for a total of up to an additional six (6) months. If the Acquirer of the Optical Systems Divestiture Assets seeks an extension of the term of this contract for transition services, Defendants must notify the United States in writing at least three (3) months prior to the date the contract expires. The Acquirer of the Optical Systems Divestiture Assets may terminate a contract for transition services without cost or penalty at any time upon commercially reasonable notice. The employee(s) of Defendants tasked with providing these transition services must not share any competitively sensitive information of the Acquirer of the Optical Systems Divestiture Assets with any other employee of Defendants.

J. Defendants must warrant to the Acquirer of the Optical Systems Divestiture Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of the Optical Systems Divestiture Assets. Following the sale of the Optical Systems Divestiture Assets, Defendants must not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Optical Systems Divestiture Assets.

K. Unless the United States otherwise consents in writing, the divestiture pursuant to Section VI or by a Divestiture Trustee appointed pursuant to Section VII of this Final Judgment must include the entire Optical Systems Divestiture Assets and must be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Optical Systems Divestiture Assets can and will be used by the Acquirer of the Optical Systems Divestiture Assets as part of a viable, ongoing business in the design, development, production, and sale of Optical Systems, and will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section VI or Section VII of this Final Judgment:

(1) Must be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the business of the design, development, production, and sale of Optical Systems; and

(2) must be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer of the Optical Systems Divestiture Assets' costs, to lower the Acquirer of the Optical Systems Divestiture Assets' efficiency, or otherwise to interfere in the ability of the Acquirer of the Optical Systems Divestiture Assets to compete effectively.

L. If any term of an agreement between Defendants and the Acquirer of the Optical Systems Divestiture Assets to effectuate the divestiture required by this Final Judgment varies from a term

of this Final Judgment then, to the extent that Defendants cannot fully comply with both, this Final Judgment determines Defendants' obligations.

VII. Appointment of Divestiture Trustee

A. If Defendants have not divested all of the Divestiture Assets within the periods specified in Paragraphs IV(A), V(A) and VI(A), Defendants must immediately notify the United States of that fact in writing. Upon application of the United States, the Court will appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture(s) of any of the Divestiture Assets that have not been sold during the time periods specified in Paragraphs IV(A), V(A) and VI(A).

B. After the appointment of a Divestiture Trustee by the Court, only the Divestiture Trustee will have the right to sell those Divestiture Assets that the Divestiture Trustee has been appointed to sell. The Divestiture Trustee will have the power and authority to accomplish the divestiture(s) to an Acquirer(s) acceptable to the United States, in its sole discretion, at a price and on terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, VI, VII, and VIII of this Final Judgment, and will have other powers as the Court deems appropriate. Subject to Paragraph VII(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who will be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants will serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants may not object to a sale by the Divestiture Trustee on any ground other than malfeasance by the Divestiture Trustee. Objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VIII.

D. The Divestiture Trustee will serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee will account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for any of its services yet unpaid and those of agents and consultants retained by the Divestiture Trustee, all remaining money will be paid to Defendants and the trust will then be terminated. The compensation of the Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee must be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement that provides the Divestiture Trustee with incentives based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. Within three (3) business days of hiring any agent or consultant, the Divestiture Trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

E. Defendants must use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture(s). The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee must have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants must provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants may not take any action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture(s).

F. After appointment, the Divestiture Trustee will file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture(s) ordered by this Final Judgment. Reports must include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Divestiture Assets and will describe in detail each contact with any such person. The Divestiture Trustee will maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture(s) ordered by this Final Judgment within six months of appointment, the Divestiture Trustee must promptly file with the Court a report setting forth: (1) The Divestiture Trustee's efforts to accomplish the required divestiture(s); (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture(s) has not been accomplished; and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report will not be filed in the public docket of the Court. The Divestiture Trustee will at the same time furnish such report to the United States, which will have the right to make additional recommendations to the Court consistent with the purpose of the trust. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of this Final Judgment, which, if necessary, may include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute Divestiture Trustee.

VIII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, must notify the United States of a proposed divestiture required by this Final Judgment. If the Divestiture Trustee is responsible for effecting the divestiture, the Divestiture Trustee also must notify Defendants. The notice must set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of this notice, the United States may request

from Defendants, the proposed Acquirer(s), other third parties, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer and other prospective Acquirer(s). Defendants and the Divestiture Trustee must furnish the additional information requested within fifteen (15) calendar days of the receipt of the request, unless the United States provides written agreement to a different period.

C. Within forty-five (45) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), other third parties, and the Divestiture Trustee, whichever is later, the United States must provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not the United States, in its sole discretion, objects to the proposed Acquirer(s) or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph VII(C) of this Final Judgment. Absent written notice that the United States does not object or upon objection by the United States, a divestiture may not be consummated. Upon objection by Defendants pursuant to Paragraph VII(C), a divestiture by the Divestiture Trustee may not be consummated unless approved by the Court.

D. No information or documents obtained pursuant to Section VIII may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand-jury proceedings), for the purpose of evaluating a proposed Acquirer or securing compliance with this Final Judgment, or as otherwise required by law.

E. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Persons submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

F. If at the time a person furnishes information or documents to the United States pursuant to Section VIII, that person represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give that person ten calendar days' notice before divulging the material in any legal proceeding (other than a grand-jury proceeding).

IX. Financing

Defendants may not finance all or any part of Acquirer's purchase of all or part of the Divestiture Assets made pursuant to this Final Judgment.

X. Asset Preservation and Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants must take all steps necessary to comply with the Asset Preservation and Hold Separate Stipulation and Order entered by the Court. Defendants will take no action that would jeopardize the divestiture ordered by the Court.

XI. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture required by this Final Judgment has been completed, Defendants must deliver to the United States an affidavit, signed by each Defendant's Chief Financial Officer and General Counsel, describing the fact and manner of Defendants' compliance with this Final Judgment. Each affidavit must include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, an interest in the Divestiture Assets, and must describe in detail each contact with such persons during that period. Each affidavit also must include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers. Each affidavit also must include a description of any limitations placed by Defendants on information provided to prospective Acquirers. If the information set forth in the affidavit is true and complete, objection by the United States to information provided by Defendants to prospective Acquirers must be made within fourteen (14) calendar days of receipt of the affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants must deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section X of this Final Judgment. Defendants must deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to Section XI within fifteen (15) calendar days after the change is implemented.

C. Defendants must keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after the divestiture has been completed.

XII. Appointment of Monitoring Trustee

A. Upon application of the United States, the Court will appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee will have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation and Hold Separate Stipulation and Order entered by the Court, and will have other powers as the Court deems appropriate. The Monitoring Trustee will be required to investigate and report on Defendants' compliance with this Final Judgment and the Asset Preservation and Hold Separate Stipulation and Order, and Defendants' progress toward effectuating the purposes of this Final Judgment, including but not limited to: Defendants' sale of the Divestiture Assets and Defendants' compliance with the terms of the transition services agreements, supply contracts, laboratory access arrangements, and short-term leases provided for in this Final Judgment.

C. Subject to Paragraph XII(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Defendants any agents and consultants, including, but not limited to, investment bankers, attorneys, and accountants, who will be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment. Any such agents or consultants will serve on such terms

and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

D. Defendants may not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of the Court on any ground other than malfeasance by the Monitoring Trustee. Objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to Defendants' objection.

E. The Monitoring Trustee will serve at the cost and expense of Defendants pursuant to a written agreement with Defendants, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any agents or consultants retained by the Monitoring Trustee must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the Monitoring Trustee and Defendants are unable to reach agreement on the Monitoring Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of the appointment of the Monitoring Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. Within three (3) business days of hiring any agents or consultants, the Monitoring Trustee must provide written notice of the hiring and rate of compensation to Defendants and the United States.

F. The Monitoring Trustee will have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants must use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Asset Preservation and Hold Separate Stipulation and Order. The Monitoring Trustee and any agents or consultants retained by the Monitoring Trustee must have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secrets; other confidential research, development, or commercial information; or any applicable privileges. Defendants may not take any action to interfere with or to impede the Monitoring Trustee's accomplishment of the Monitoring Trustee's responsibilities.

H. After appointment, the Monitoring Trustee will file reports monthly, or more frequently as needed, with the United States setting forth Defendants' efforts to comply with Defendants' obligations under this Final Judgment and under the Asset Preservation and Hold Separate Stipulation and Order.

I. The Monitoring Trustee will serve until the divestiture of all the Divestiture Assets is finalized pursuant to this Final Judgment, or until the term of any transition services agreements, supply contracts, laboratory access arrangements, and short-term leases required by this Final Judgment have expired, whichever is later.

J. If the United States determines that the Monitoring Trustee is not acting diligently or in a reasonably cost-effective manner, the United States may recommend that the Court appoint a substitute Monitoring Trustee.

XIII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of related orders such as an Asset Preservation and Hold Separate Stipulation and Order, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, must, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division and reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy or, at the option of the United States, to require Defendants to provide electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants must submit written reports or respond to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained pursuant to Section XIII may be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. In the event of a request by a third party for disclosure of information under the Freedom of Information Act, 5 U.S.C. 552, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendants submitting information to the Antitrust Division should designate the confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire ten years after submission, ''unless the submitter requests and provides justification for a longer designation period.'' *See* 28 CFR 16.7(b).

E. If at the time that Defendants furnish information or documents to the United States pursuant to Section XIII, Defendants represent and identify in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' the United States must give Defendants ten (10) calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XIV. Limitations on Reacquisition

Defendants may not reacquire any part of or any interest in the Divestiture Assets during the term of this Final Judgment.

XV. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XVI. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants

agree that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs, including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of this Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure the Defendant complies with the terms of this Final Judgment, and (4) fees or expenses as called for by Section XII.

XVII. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and the continuation of this Final Judgment no longer is necessary or in the public interest.

XVIII. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this Final Judgment, the Competitive Impact Statement, comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. *United Technologies Corporation*, and *Raytheon Company,* Defendants.

Case No. 1:20–cv–00824 (DLF)

Judge: Hon. Dabney L. Friedrich

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 9, 2019, United Technologies Corporation (''UTC'') and Raytheon Company (''Raytheon'') agreed to merge in a transaction that would create the nation's second-largest aerospace and defense contractor. UTC and Raytheon are leading manufacturers of certain systems and components used by the Department of Defense (''DoD'') and U.S. intelligence community. The companies are the primary suppliers of radios for use in military aircraft (''military airborne radios''), and are two of the leading suppliers of military global positioning system (''GPS'') receivers and anti-jam products (collectively, ''military GPS systems''). The companies also have capabilities in critical inputs for electro-optical/infrared (''EO/IR'') reconnaissance satellites, including large space-based optical systems and EO/IR reconnaissance satellite payloads.

The United States filed a civil antitrust Complaint on March 26, 2020, seeking to enjoin the proposed merger. The Complaint alleges that the likely effect of the merger would be to substantially lessen competition for the design, development, production, and sale of military airborne radios, military GPS systems for aviation/maritime applications, military GPS systems for ground-based applications, large space-based optical systems, and EO/IR reconnaissance satellite payloads in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed an Asset Preservation and Hold Separate Stipulation and Order (''Stipulation and Order'') and proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the Defendants are required to divest UTC's military GPS and optical systems businesses as well as Raytheon's military airborne radios business. Under the terms of the Stipulation and Order, the Defendants must take certain steps to ensure that the military airborne radios, military GPS, and optical systems businesses are operated in such a way as to ensure that the businesses continue to be ongoing, economically viable, and competitive business concerns during the pendency of the required divestitures, and that the optical systems business is held separate from Defendants' other operations during this period.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

UTC is a Delaware corporation with its headquarters in Farmington, Connecticut. UTC produces a wide range of products for the aerospace and defense industries, including military airborne radios, military GPS systems, and large space-based optical systems.

UTC had sales of approximately $77 billion in 2019.

Raytheon is a Delaware corporation with its headquarters in Waltham, Massachusetts. Raytheon is one of the world's largest defense manufacturers, with significant capabilities in radars and missiles. It also produces military airborne radios, military GPS systems, and payloads for EO/IR reconnaissance satellites. Raytheon had sales of approximately $29 billion in 2019.

On June 9, 2019, UTC and Raytheon reached an agreement and plan of merger to combine their operations.

B. Military Airborne Radios

1. Background

Military airborne radios allow for secure voice, data, and video communication between aircraft and from aircraft to the ground. This communication occurs either through direct communications links or through a satellite uplink system. Military airborne radios have two main components: Radios (transmitter and receiver) and waveforms (communication protocols and related hardware/software). Specialized elements in both the radios and waveforms protect military airborne radio transmissions from being intercepted and decrypted.

There are multiple military airborne radios on every airplane and helicopter used by DoD today, as well as thousands of spares in military depots throughout the world. DoD regularly purchases new military airborne radios as new aircraft are developed and to replace those currently in the field as military airborne radio suppliers develop improved radios with additional features.

UTC's AN/ARC–210 military airborne radio is specified on almost all Air Force and Navy aircraft. Raytheon's AN/ARC–231 military airborne radio is specified on almost all Army helicopters. Military airborne radios from UTC and Raytheon are each the closest substitute for the other, and represent the only competitive alternative for a DoD customer in the event that either UTC or Raytheon increases prices for its military airborne radios or otherwise exercises market power.

2. Relevant Markets

a. Product Market

The quality and usefulness of a military airborne radio is defined by several characteristics, the most important of which are reliability, security, and the ability to access numerous communications networks. For instance, DoD requires highly ruggedized radios that can withstand the extreme environments encountered by military aircraft, including the rapid temperature changes and G-forces experienced on fighter jets. To ensure constant contact and to enable the flow of information throughout the battlefield, DoD radios must also communicate with multiple platforms—including aircraft, ships, ground forces, and smart weapons—using various waveforms, and must also keep those communications secure and encrypted to prevent signals from being intercepted by adversaries.

As alleged in the Complaint, there are no substitutes for military airborne radios. Radios developed for other military purposes, including ground and ship-based radios, cannot withstand the high G-forces and extreme temperature fluctuations experienced by military aircraft, particularly fighter jets. Furthermore, military airborne radios are smaller and more power-efficient than those designed for ground and ship-based uses. Airborne radios developed for commercial purposes—including commercial aviation—are also not substitutes for military airborne radios. Commercial airborne radios lack the high level of encryption and jamming resistance required for military airborne radios. In addition, while commercial airborne radios can access numerous civil and governmental communications networks, they do not incorporate the waveforms and software algorithms necessary to access the numerous specialized networks used by purchasers of military airborne radios.

The Complaint alleges that substitution away from military airborne radios in response to a small but significant and non-transitory increase in price will not be sufficient to render such a price increase unprofitable. Accordingly, the Complaint alleges that the design, development, production, and sale of military airborne radios is a relevant product market and line of commerce within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

b. Geographic Market

As alleged in the Complaint, for national security reasons, DoD, which is the only purchaser of these products in the United States, strongly prefers domestic suppliers of military airborne radios. DoD is unlikely to turn to any foreign suppliers in the face of a small but significant and non-transitory price increase by domestic suppliers of military airborne radios. The Complaint therefore alleges that the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

3. Anticompetitive Effects of the Proposed Transaction

According to the Complaint, UTC and Raytheon today are the leading suppliers of military airborne radios to DoD. The merger would therefore give the merged firm a dominant share of the market for the design, development, production, and sale of military airborne radios, leaving DoD few competitive alternatives for this critical component of military communications.

UTC and Raytheon compete in the market for the design, development, production, and sale of military airborne radios on the basis of quality, price, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, and shorter delivery times for military airborne radios. Competition between UTC and Raytheon has also fostered important industry innovation. The combination of UTC and Raytheon would eliminate this competition and its future benefits to DoD customers. Post-acquisition, the merged firm likely would have the incentive and ability to increase prices, offer less favorable contractual terms, and diminish investments in research and development efforts that lead to innovative and high-quality products. The Complaint alleges that the proposed acquisition, therefore, likely would substantially lessen competition in the design, development, production, and sale of military airborne radios in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Difficulty of Entry

According to the Complaint, sufficient timely entry or expansion of additional competitors into the market for the design, development, production, and sale of military airborne radios is unlikely to prevent the harm to competition that is likely to result if the proposed acquisition is consummated. Because UTC's AN/ARC–210 and Raytheon AN/ARC–231 are established designs that have been produced in high volumes for many years, they are well-understood by DoD customers and have significant economies of scale. Any new products manufactured by an alternative supplier would require extensive testing and qualification before they would be acceptable to DoD, and even at the end of that process the new supplier still would not have the reputation of UTC and Raytheon with DoD. Moreover, no potential alternative supplier has the large-scale military airborne radio production facilities of UTC or Raytheon, or the expertise of those firms

in developing the complex software algorithms necessary for military airborne radios. Accordingly, entry or expansion would be costly and time-consuming.

The Complaint therefore alleges that entry or expansion of additional competitors into the market for the design, development, production, and sale of military airborne radios would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from UTC's merger with Raytheon.

C. Military GPS Systems

1. Background

Military GPS systems allow ground vehicles, ships, and planes to receive and process information regarding their position, navigation, and timing. Military GPS systems guide missiles and projectiles to their intended targets, locate friendly fighters in theaters of war, and enable remote operators to fly unmanned aerial vehicles thousands of miles away. Military GPS systems contain technology that protects them from two forms of enemy interference: ''spoofing,'' a signal disruption causing a GPS system to calculate a false position, and ''jamming,'' which occurs when a GPS system's satellite signals are overpowered. To ensure that spoofing and jamming do not interfere with U.S. military missions, military GPS systems contain encryption modules and anti-jamming technology.

In 2011, the U.S. government announced that ''M-Code,'' a modernized encryption system, would be incorporated into military GPS systems. In September 2012, DoD awarded technology development contracts (and accompanying funds) to UTC, Raytheon, and a third firm to develop M-Code compliant GPS systems that the military could implement quickly. DoD requested two discrete types of GPS systems—one for ground applications and another for aviation/maritime applications. UTC and Raytheon have been working to develop products for both applications—ground and aviation/maritime—while to date the third firm is under contract only for ground applications. While other defense contractors may eventually develop acceptable military GPS systems for these applications, those contractors are years behind, will not be eligible for funding from the U.S. government, and will not enjoy the incumbents' advantage held by the three leading suppliers.

2. Relevant Markets

a. Product Markets

Military GPS systems for aviation/maritime applications and military GPS systems for ground applications serve different functions and cannot be substituted for one another. For example, there are different power, performance, and form factor requirements for aviation/maritime GPS systems and ground GPS systems. Customers therefore cannot substitute an aviation/maritime GPS system for a ground GPS system (or vice versa) without sacrificing important functionality.

Military GPS systems for both applications are highly customized to suit the needs of military end users. For each military GPS system, DoD specifies the form factor (*i.e.,* the physical size and shape), performance metrics, and encryption standards that must be met. Due to the mission-critical nature of military GPS systems, DoD is far more exacting than commercial customers, and as a result, commercial GPS systems cannot be substituted for military GPS systems for either application. Nor can any alternative technology provide the functionality that a GPS system provides, such as instantaneous position, navigation, and timing information.

The Complaint therefore alleges that customers would not switch to a commercial GPS system or to an alternative technology, nor would they switch between military GPS systems for different applications, in the face of a small but significant and non-transitory increase in the price of a military GPS system for aviation/maritime applications or a military GPS system for ground applications. Accordingly, the Complaint alleges that the design, development, production, and sale of (i) military GPS systems for aviation/maritime applications and (ii) military GPS systems for ground applications are lines of commerce and relevant product markets within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

c. Geographic Market

As alleged in the Complaint, for national security reasons, DoD, which is the sole purchaser of these products in the United States, prefers domestic suppliers of military GPS systems. DoD is unlikely to turn to any foreign suppliers in the face of a small but significant and non-transitory price increase by domestic suppliers of military GPS systems. The Complaint therefore alleges that the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

3. Anticompetitive Effects of the Proposed Transaction

According to the Complaint, UTC and Raytheon are the only suppliers of military GPS systems for aviation/maritime applications in the United States. The merger therefore would give the combined firm a monopoly in the market for this product and leave DoD without any competitive alternatives. The merger also would create a duopoly in the supply of military GPS systems for ground applications, as UTC and Raytheon are two of only three suppliers of those products.

UTC and Raytheon compete to design, develop, produce, and sell military GPS systems for aviation/maritime applications and ground applications on the basis of quality, price, technological capabilities, and contractual terms such as delivery times. This competition has resulted in higher quality, lower prices, innovation, and shorter delivery times for military GPS systems for both applications. The combination of UTC and Raytheon would eliminate this competition and its future benefits to DoD customers. Post-acquisition, the merged firm likely would compete less along the dimensions of innovation, quality, price, or contractual terms. The Complaint therefore alleges that the proposed acquisition likely would substantially lessen competition in the design, development, production, and sale of military GPS systems for aviation/maritime applications and for ground applications in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Difficulty of Entry

According to the Complaint, sufficient, timely entry of additional competitors into the markets for the design, development, production, and sale of military GPS systems for aviation/maritime applications and for ground applications is unlikely to prevent the harm to competition likely to result if the proposed acquisition is consummated. A new entrant would need significant capital to develop prototypes and establish a manufacturing operation. Even with a prototype, an entrant would need a network of government and prime contractor contacts to assist with testing and troubleshooting. Finally, an entrant would need to clear the qualification process to become a supplier to DoD. Together, these steps would take years to complete. Accordingly, entry would be costly and time-consuming.

The Complaint also alleges that timely and sufficient expansion of capabilities by a producer of military GPS systems for ground-based applications is unlikely to prevent the harm to competition in military GPS systems for aviation/maritime applications that is likely to result if the proposed acquisition is consummated. A producer of ground-based military GPS systems would need to ruggedize its product to withstand the high G-forces and temperature extremes experienced by military aircraft. It would also need to match its system to the size, weight, and power restrictions imposed on all aircraft based electronic systems. These modifications would require substantial investments in skilled personnel and modification of production, and the product would require extensive development and subsequent testing by customers. Accordingly, expansion into this different application would be costly and time-consuming.

The Complaint alleges that, as result of these barriers, entry into the markets for the design, development, production, and sale of military GPS systems for aviation/maritime applications and military GPS systems for ground applications would not be timely, likely, or sufficient to defeat the anticompetitive effects likely to result from UTC's merger with Raytheon

D. EO/IR Reconnaissance Satellites

1. Background

Space-based reconnaissance systems provide essential information to end-users in DoD and the intelligence community, including communications intelligence, early warning of missile launches, and near real-time imagery to United States armed forces to support the war on terrorism and other operations. They also provide data essential for managing disaster relief, monitoring global warming, and assessing crop production. Space-based reconnaissance systems generally are deployed on satellites, where they constitute the ''payload,'' a term for the system that performs the primary mission of the satellite. Payload suppliers are subcontractors to satellite prime contractors, who combine payloads, structural components, power supply systems, ground communications systems, and other components into a complete satellite for delivery to the DoD or intelligence community end-user customer.

One important type of reconnaissance satellite payload is an electro-optical/infrared (''EO/IR'') payload, which is a camera-based system that collects visible and infrared light. The components of an EO/IR reconnaissance satellite payload are advanced versions of the components found in consumer digital cameras: An optical system—a lens or mirror—focuses light onto an electronic detector, known as a focal plane array (''FPA''), which converts light to digital images for transmission via radio signals. Optical systems and FPAs are critical inputs in EO/IR reconnaissance satellite payloads.

Raytheon has industry-leading capabilities in the provision of FPAs for EO/IR reconnaissance satellite payloads, having been the beneficiary of decades of large investments by government end-user customers. Specifically, Raytheon is the leading provider of FPAs sensitive to visible light and one of the two leading providers of FPAs sensitive to infrared light. Raytheon is also one of multiple firms that supply EO/IR reconnaissance satellite payloads to the satellite prime contractors who assemble the satellite for the DoD or intelligence community customer. UTC is one of only two firms capable of producing large space-based optical systems such as those used in EO/IR reconnaissance satellite payloads. While other suppliers have the capability to produce smaller optical systems for use in space, none can produce optical systems in sizes comparable to those produced by UTC and the other industry leader.

The FPAs and large space-based optical system used in a particular EO/IR reconnaissance satellite payload usually are selected by the payload supplier. In some cases, however, the DoD or intelligence community customer will specify the FPA or large space-based optical system supplier.

2. Relevant Markets

a. Product Markets

i. Large Space-Based Optical Systems

According to the Complaint, large space-based optical systems have specific requirements that distinguish them from other optical systems. Smaller space-based optical systems have insufficient light-gathering and resolving power. Optical systems designed for use on the ground do not possess the high strength, rigidity, low weight, temperature stability, and radiation-hardening that large space-based optical systems require to be safely and cost-effectively launched into orbit and used in space.

The Complaint therefore alleges that customers would not switch to smaller optical systems or optical systems designed for use on the ground in the face of a small but significant and non-transitory increase in the price of large space-based optical systems. Accordingly, the design, development, production, and sale of large space-based optical systems is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

ii. EO/IR Reconnaissance Satellite Payloads

According to the Complaint, EO/IR reconnaissance satellite payloads have specific capabilities that distinguish them from other reconnaissance satellite payloads. Other types of payloads such as radar and electronic intelligence payloads do not provide the same type of information as imagery. The Complaint alleges that aerial reconnaissance imagery cannot substitute for the imagery produced by EO/IR reconnaissance satellite payloads. Many parts of the globe that are of critical interest to DoD and the intelligence community are effectively closed to reconnaissance aircraft operated by the United States. Even for areas open to overflight, satellite surveys are quicker and more efficient than aerial reconnaissance.

The Complaint alleges that customers will not switch to other types of payloads or to aerial reconnaissance imagery in the event of a small but significant and non-transitory price increase for EO/IR reconnaissance satellite payloads. The Complaint therefore alleges that the design, development, production, and sale of EO/IR reconnaissance satellite payloads therefore is a line of commerce and product market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

b. Geographic Market

As alleged in the Complaint, much of the information regarding EO/IR reconnaissance satellites is highly sensitive, and data concerning the capabilities required in such satellites is released only to a select group of U.S.-based manufacturers that possess the necessary security clearances and are subject to close government oversight. For this reason, DoD and intelligence community customers, who are the only customers for these products in the United States, are unlikely to purchase large space-based optical systems or EO/IR reconnaissance satellite payloads from sources located outside the United States in the event of small but significant and non-transitory price increases by domestic producers of those products.

The Complaint therefore alleges that the United States is a relevant geographic market within the meaning

of Section 7 of the Clayton Act, 15 U.S.C. 18.

3. Anticompetitive Effects of the Proposed Transaction

a. Large Space-Based Optical Systems

As alleged in the Complaint, by combining UTC's capabilities in large space-based optical systems with Raytheon's dominant position in FPAs, the merger would give the combined company the incentive and ability to reduce competition from UTC's only large space-based optical systems competitor. Because Raytheon does not build large space-based optical systems today, it has no incentive to demand that a particular optical system supplier be selected by the payload builder. Following the merger, this incentive would change. The combined company likely would refuse to supply payload builders with FPAs, or supply them only at higher cost, if the payload builders do not also agree to purchase UTC's optical system. With visible-light FPAs, and in situations where the DoD or intelligence community end-user directed payload providers to use Raytheon's infrared FPAs, the payload provider would have no alternative but to accept UTC's large space-based optical system, even if it was of lower quality or higher priced than large space-based optical systems available from the other source. As a result, the merged company would be able to charge higher prices for its optical system, or provide a system of lower quality, than would have been possible before the merger.

The Complaint alleges that UTC competes to design, develop, produce, and sell large space-based optical systems on the basis of quality, price, and innovation, as well as contractual terms such as delivery times. This competition leads to more innovation, higher quality, lower prices, and shorter delivery times. The combination of UTC and Raytheon would give the merged firm the incentive and ability to weaken this competition and its future benefits to DoD and intelligence community end-users, likely resulting in less innovative, more expensive products with lower quality and longer delivery times. The Complaint alleges that the proposed acquisition, therefore, likely would substantially lessen competition in the design, development, production, and sale of large space-based optical systems in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

b. EO/IR Reconnaissance Satellite Payloads

As alleged in the Complaint, by combining Raytheon's position as a producer of EO/IR reconnaissance satellite payloads with UTC's position as one of only two companies with the capability to build large space-based optical systems, the merger would also give the combined company the incentive and ability to harm its payload rivals. Because UTC does not produce payloads today, it has a strong incentive to make its optical systems available to all payload builders. Following the merger, this incentive would change, and, particularly in situations where the DoD or intelligence community end-user directed payload providers to use UTC's large space-based optical systems, the combined company likely would raise prices for UTC's optical systems to rival payload builders, or simply refuse to provide UTC's optical systems at any price. As a result, the merged company would be able to charge higher prices for its payload, or provide a payload of lower quality, than would have been possible before the merger.

According to the Complaint, Raytheon competes with other EO/IR reconnaissance satellite payload suppliers on the basis of quality, price, and innovation, as well as contractual terms such as delivery times. This competition leads to innovation, higher quality, lower prices, and shorter delivery times. The combination of UTC and Raytheon would give the merged firm the incentive and ability to weaken this competition and its future benefits to DoD and intelligence community end-users, likely resulting in less innovative, more expensive products with lower quality and longer delivery times. The Complaint therefore alleges that the proposed acquisition likely would substantially lessen competition in the design, development, production, and sale of EO/IR reconnaissance satellite payloads in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Difficulty of Entry

According to the Complaint, sufficient, timely entry of additional competitors into the markets for the design, development, production, and sale of visible-light or infrared FPAs for EO/IR reconnaissance satellite payloads is unlikely. Production facilities for these FPAs require a substantial investment in both capital equipment and human resources, and a new entrant would largely need to re-create the investment made in Raytheon by the United States government over the course of several decades. A new entrant would need to set up a foundry to produce electronic components, establish production lines capable of manufacturing read-out integrated circuits and other electronic components, and build assembly lines and testing facilities. Engineering and research personnel would need to be assigned to develop, test, and troubleshoot the detailed manufacturing processes, involving hundreds of steps, that are necessary to produce these FPAs. Any new products would require extensive testing and qualification before they could be used in payloads. These steps would require years to complete.

The Complaint also alleges that sufficient, timely entry of additional competitors into the market for the design, development, production, and sale of large space-based optical systems is also unlikely. A new entrant would require significant investment in the facilities and skilled personnel required to grind and polish the complex curved surfaces required for large-space based optical systems, and then test these optics in an environment that replicates conditions in space. In addition, because spaceflight is an exceptionally demanding and high-risk endeavor, payload builders, satellite prime contractors, and end-user customers have a strong preference to purchase from established suppliers. Years of dedicated and costly effort would be required for a new entrant to demonstrate expertise comparable to UTC.

The Complaint alleges that, as result of these barriers, entry into the markets for the design, development, production, and sale of visible-light and infrared FPAs for EO/IR reconnaissance satellite payloads and large space-based optical systems would not be timely, likely, or sufficient to defeat the anticompetitive effects in the markets for the design, development, production, and sale of large space-based optical systems and EO/IR reconnaissance satellite payloads likely to result from UTC's merger with Raytheon.

III. Explanation of the Proposed Final Judgment

The divestitures required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by establishing one or more viable competitors in the design, development, production, and sale of military airborne radios, military GPS systems for aviation/maritime applications, military GPS systems for

ground-based applications, and optical systems in the United States.

A. Military Airborne Radios Divestiture

Paragraph IV(A) of the proposed Final Judgment requires the Defendants, within the later of 45 calendar days after the entry of the Stipulation and Order by the Court or 15 calendar days after all regulatory approvals needed to complete the transaction and divestiture have been received, to divest the Military Airborne Radios Divestiture Assets to BAE Systems, Inc., or an alternative acquirer acceptable to the United States, in its sole discretion. The regulatory approvals are defined in Paragraphs II(X) and II(Y) of the proposed Final Judgment, and include approvals or clearances pursuant to filings with the Committee on Foreign Investment in the United States (''CFIUS'') or under antitrust or competition laws required for the merger between UTC and Raytheon and approvals or clearances pursuant to filings with CFIUS or under antitrust, competition, or other U.S. or international laws or regulations required for the acquisition of the Military Airborne Radios Divestiture Assets. The Military Radios Divestiture Assets are defined as Raytheon's Military Airborne Radios Business,[1] and include two facilities (a manufacturing facility in Fort Wayne, Indiana and an office in Largo, Florida); all tangible and intangible assets related to or used in connection with the Military Airborne Radios Business (except for the Raytheon brand name); and, at the acquirer's option, a worldwide, non-exclusive, royalty-free, irrevocable, perpetual, and fully-paid up license to any intellectual property related to cryptographic modules that is held by Raytheon at the time of the filing of the Complaint or that is developed by Raytheon during the term of a supply contract for military airborne radios, which is described below. Cryptographic modules are hardware and software for encryption and decryption of radio signals, as defined in Paragraph II(J) of the proposed Final Judgment. As their use is not limited to military airborne radios, they are being retained by Raytheon subject to the license and supply contracts set forth in Paragraphs II(L)(4) and IV(I), respectively, of the proposed Final Judgment.

[1] Paragraph II(K) of the proposed Final Judgment defines the ''Military Airborne Radios Business'' as ''the business of the design, development, production, and sale of Military Airborne Radios by Raytheon's Tactical Communication Systems division.''

Paragraph IV(N) of the proposed Final Judgment requires that the Military Airborne Radios Divestiture Assets be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as part of a viable, ongoing business that can compete effectively in the design, development, production, and sale of military airborne radios. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with prospective purchasers.

The proposed Final Judgment contains several provisions to facilitate the transition of the Military Airborne Radios Business to the acquirer. First, Paragraphs IV(H) and IV(I) of the proposed Final Judgment require the Defendants, at the acquirer's option, to enter into supply contracts for military airborne radios and cryptographic modules, respectively, sufficient to meet the needs of the Military Airborne Radios Business for a period of up to twelve months. Upon the acquirer's request, the United States, in its sole discretion, may approve one or more extensions of either or both supply contracts for up to an additional twelve months. As described in Paragraph IV(A), at the option of the acquirer and subject to approval by the United States in its sole discretion, the Defendants temporarily may retain assets required to fulfill their obligations under the military airborne radios supply contract. These assets must be transferred to the acquirer 30 days after the termination or expiration of the supply contract.

Second, Paragraph IV(J) of the proposed Final Judgment requires the Defendants, at the acquirer's option, to enter into a transition services agreement for back office, human resource, and information technology services and support for the Military Airborne Radios Business for a period of up to twelve months. The paragraph further provides that the United States, in its sole discretion, may approve one or more extensions of this transition services agreement for a total of up to an additional twelve months. Paragraphs IV(H), IV(I), and IV(J) each provide that employees of the Defendants tasked with supporting any of these agreements must not share any competitively sensitive information of the acquirer with any other employee of the Defendants.

Finally, Paragraphs IV(K) and IV(L) require the Defendants to provide the acquirer with complete and sole access to certain laboratories at Raytheon's facilities in Fort Wayne, Indiana. These laboratories will be used to support classified and non-classified military airborne radio development projects while the acquirer transitions these projects to its own laboratories. The acquirer will have access to the laboratories identified in Paragraph IV(K) for a period not to exceed three months, but the United States, in its sole discretion, may approve one or more extensions of this period for a total of up to an additional three months. The acquirer will have access to the laboratories identified in Paragraph IV(L) on a scheduled shift basis for a period not to exceed six months, but the United States, in its sole discretion, may approve one or more extensions of this period for a total of up to an additional six months.

The proposed Final Judgment also contains provisions intended to facilitate the acquirer's efforts to hire employees engaged in the Military Airborne Radios Business. Paragraph IV(C) of the proposed Final Judgment requires the Defendants to provide the acquirer and the United States with organization charts and information relating to these employees and to make them available for interviews, and it provides that the Defendants must not interfere with any negotiations by the acquirer to hire them. In addition, for employees who elect employment with the acquirer, the Defendants must waive all non-compete and non-disclosure agreements, vest all unvested pension and other equity rights, and provide all benefits that the employees would generally be provided if transferred to a buyer of an ongoing business. This paragraph further provides that the Defendants may not solicit to rehire any employee engaged in the Military Airborne Radios Business who was hired by the acquirer, unless that individual is terminated or laid off by the acquirer or the acquirer agrees in writing that the Defendants may solicit or hire that individual. The non-solicitation period runs for 12 months from the date of the divestiture, except that with respect to employees whose services are required for the Defendants to carry out their obligations under the military airborne radios supply contract, the non-solicitation period runs for 12 months from the expiration of that supply contract.

B. Military GPS Systems Divestiture

Paragraph V(A) of the proposed Final Judgment requires the Defendants, within the later of 45 calendar days after the entry of the Stipulation and Order by the Court or 15 calendar days after all regulatory approvals needed to complete the transaction and divestiture have been received, to divest the Military GPS Divestiture Assets to BAE

Systems, Inc., or an alternative acquirer acceptable to the United States, in its sole discretion. The regulatory approvals are defined in Paragraphs II(X) and II(Z) of the proposed Final Judgment, and include approvals or clearances pursuant to filings with CFIUS or under antitrust or competition laws required for the merger between UTC and Raytheon and approvals or clearances pursuant to filings with CFIUS or under antitrust, competition, or other U.S. or international laws or regulations required for the acquisition of the Military GPS Divestiture Assets. The Military GPS Divestiture Assets are defined as UTC's Military GPS Systems Business, and include all tangible and intangible assets related to or used in connection with the Military GPS Business (except for UTC's brand names).[2] Because the assets will be transferred to facilities owned by the acquirer, UTC's facilities are excluded from the divestiture. Paragraph V(J) of the proposed Final Judgment, however, requires the Defendants, at the option of the acquirer, to enter into a lease for UTC's facility in Cedar Rapids, Iowa for a period of up to twelve months. The United States, in its sole discretion, may approve one or more extensions of this lease, for a total of up to an additional six months. This lease option provides the acquirer with the opportunity to lease UTC's facility while it prepares a facility of its own. Paragraph V(M) of the proposed Final Judgment requires that the Military GPS Divestiture Assets be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as part of a viable, ongoing business that can compete effectively in the design, development, production, and sale of military GPS systems for aviation/maritime applications and military GPS systems for ground-based applications. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with prospective purchasers.

As with the Military Airborne Radios Business, the proposed Final Judgment contains several provisions to facilitate the transition of the Military GPS Business to the acquirer. Paragraphs V(H) and V(I) of the proposed Final Judgment require the Defendants, at the acquirer's option, to enter into contracts to supply military GPS systems and to provide transition services, under terms and conditions similar to those applicable to the contracts described above for the Military Airborne Radios Business. As described in Paragraph V(A), the Defendants temporarily may retain assets required to fulfill their obligations under the supply contract under terms and conditions similar to those applicable to the supply contract for the Military Airborne Radios Business. Paragraph V(K) of the proposed Final Judgment requires the Defendants to provide the acquirer with complete and sole access to certain laboratories at UTC's facilities in Cedar Rapids, Iowa and Coralville, Iowa during the term of the military GPS systems supply contract. These laboratories will be used to support classified and non-classified military GPS system development projects while the acquirer transitions these projects to its own laboratories. For the first six months, this access will be provided on a scheduled shift basis, and after that period the acquirer will obtain unlimited access to certain of these laboratories and will continue to access the other laboratories on a scheduled shift basis.

Paragraph V(C) of the proposed Final Judgment also contains provisions intended to facilitate the acquirer's efforts to hire employees engaged in the Military GPS Business. These provisions are similar to those applicable to employees of the Military Airborne Radios Business, as described above.

C. Optical Systems Divestiture

Paragraph VI(A) of the proposed Final Judgment requires the Defendants, within the later of 90 calendar days after the entry of the Stipulation and Order by the Court or 15 calendar days after all regulatory approvals needed to complete the transaction and divestiture have been received, to divest the Optical Systems Divestiture Assets to an acquirer acceptable to the United States, in its sole discretion. The regulatory approvals are defined in Paragraphs II(X) and II(AA) of the proposed Final Judgment, and include approvals or clearances pursuant to filings with CFIUS or under antitrust or competition laws required for the merger between UTC and Raytheon and approvals or clearances pursuant to filings with CFIUS or under antitrust, competition, or other U.S. or international laws or regulations required for the acquisition of the Optical Systems Divestiture Assets. The Optical Systems Divestiture Assets are defined as UTC's Optical Systems Business, and includes UTC's facility in Danbury, Connecticut, and all tangible and intangible assets related to or used in connection with the Optical Systems Business (except for UTC's brand names).[3] Paragraph VI(K) of the proposed Final Judgment requires that the Optical Systems Divestiture Assets be divested in such a way as to satisfy the United States in its sole discretion that they can and will be operated by the purchaser as part of a viable, ongoing business that can compete effectively in the design, development, production, and sale of Optical Systems. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with prospective purchasers.

As with the Military Airborne Radios Business and the Military GPS Business, the proposed Final Judgment contains provisions to facilitate the immediate use of the Optical Systems Business by the acquirer. Paragraphs VI(H) and VI(I) of the proposed Final Judgment require the Defendants, at the acquirer's option, to enter into contracts to supply image processing software and to provide transition services, under terms and conditions similar to those applicable to the contracts described above for the Military Airborne Radios Business and the Military GPS Business. Paragraph VI(C) of the proposed Final Judgment also contains provisions intended to facilitate the acquirer's efforts to hire employees engaged in the Optical Systems Business, which are similar to those described above for employees of the Military Airborne Radios Business and the Military GPS Business, except that the non-solicitation provision expires 12 months from the date of the divestiture.

D. Divestiture Trustee

If the Defendants do not accomplish all of the divestitures within the periods prescribed in Sections IV, V, and VI of the proposed Final Judgment, Section VII of the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect any remaining divestitures. If a divestiture trustee is appointed, the proposed Final Judgment provides that the Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which any remaining divestitures are accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide periodic reports

[2] Paragraph II(P) of the proposed Final Judgment defines the ''Military GPS Business'' as ''UTC's business in the design, development, production, and sale of Military GPS Systems.''

[3] Paragraph II(U) defines the ''Optical Systems Business'' as ''UTC's business in the design, development, production, and sale of Optical Systems.'' Paragraph II(T) defines ''Optical Systems'' as ''electro-optical/infrared systems for national security space missions and defense laser warning survivability subsystems.''

to the United States setting forth his or her efforts to accomplish the remaining divestitures. At the end of six months, if any divestiture remains to be accomplished, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

E. Monitoring Trustee

Section XII of the proposed Final Judgment provides that the United States may apply to the Court for appointment of a monitoring trustee with the power and authority to investigate and report on the Defendants' compliance with the terms of the proposed Final Judgment and Stipulation and Order, including the sale of the divestiture assets and the implementation of the transition services agreements, supply contracts, laboratory access arrangements, and short-term leases provided for in the proposed Final Judgment. The monitoring trustee will not have any responsibility or obligation for the operation of the Defendants' businesses. The monitoring trustee will serve at the expense of the Defendants, on such terms and conditions as the United States approves, and Defendants must assist the monitoring trustee in fulfilling its obligations. The monitoring trustee will file monthly reports with the United States and shall serve until all of the divestitures required by the proposed Final Judgment have been accomplished, or until the term of any transition services agreements, supply contracts, laboratory access arrangements, and short-term leases required by the proposed Final Judgment have expired, whichever is later.

F. Other Provisions

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XVI(A) provides that the United States retains and reserves all rights to enforce the provisions of the Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, the Defendants have agreed that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XVI(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition the United States alleged would otherwise be harmed by the transaction. The Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt by the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XVI(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that the Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XVI(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that the Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XVI(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XVII of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and the Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be

posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Katrina Rouse, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street NW, Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against the Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against the merger of UTC and Raytheon. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint in each of the relevant markets. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by

bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 14, 2020.

Respectfully submitted,

FOR PLAINTIFF, UNITED STATES OF AMERICA

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** Lead Attorney to be Noticed.*

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 602

Unrelated Business Taxable Income Separately Computed for Each Trade or Business; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–106864–18]

RIN 1545–BO79

Unrelated Business Taxable Income Separately Computed for Each Trade or Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on how an exempt organization subject to the unrelated business income tax described in section 511 of the Internal Revenue Code (Code) determines if it has more than one unrelated trade or business, and, if so, how the exempt organization calculates unrelated business taxable income. The proposed regulations also clarify that the definition of ''unrelated trade or business'' applies to individual retirement accounts. Additionally, the proposed regulations provide that inclusions of subpart F income and global intangible low-taxed income are treated in the same manner as dividends for purposes of section 512. The proposed regulations affect exempt organizations.

DATES: Written or electronic comments and requests for a public hearing must be submitted by June 23, 2020.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–106864–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–106864–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed rules, Jonathan A. Carter at (202) 317–5800; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317–5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Under section 501(a) of the Code, organizations described in sections 401(a) and 501(c) generally are exempt from federal income taxation. However, section 511(a)(1) imposes a tax (computed as provided in section 11) on the unrelated business taxable income (UBTI) of organizations described in section 511(a)(2), which includes organizations described in sections 401(a) and 501(c) (other than a trust described in section 511(b) or an instrumentality of the United States described in section 501(c)(1)), as well as state colleges and universities. Additionally, section 511(b)(1) imposes a tax (computed as provided in section 1(e)) on the UBTI of trusts described in section 511(b)(2), which describes trusts that are exempt from federal income taxation under section 501(a) and which, if it were not for such exemption, would be subject to subchapter J of chapter 1 of the Code (relating to estates, trusts, beneficiaries, and decedents). Organizations described in section 511(a)(2) and trusts described in section 511(b)(2) are collectively called ''exempt organizations'' or ''organizations'' throughout this preamble, unless otherwise stated.[1]

Definitions of UBTI

Section 512 provides two different definitions of UBTI—one in section 512(a)(1), which applies to most exempt organizations, and one in section 512(a)(3), which applies only to social clubs described in section 501(c)(7), voluntary employees' beneficiary associations (VEBAs) described in section 501(c)(9), and supplemental unemployment compensation benefits trusts (SUBs) described in section 501(c)(17).

Section 512(a)(1) defines UBTI as the gross income derived by any exempt organization from an unrelated trade or business regularly carried on by it, less the deductions allowed by chapter 1 of the Code (chapter 1) that are directly connected with the carrying on of such trade or business, both computed with the modifications described in section 512(b). Section 513(a) generally defines ''unrelated trade or business'' as any trade or business the conduct of which is not substantially related (aside from the need of such exempt organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such exempt organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of a state college or university, to the exercise or performance of any purpose or function described in section 501(c)(3)). However, in the case of a trust that is exempt from tax under section 501(a) and described in section 401(a) (qualified retirement plans) or section 501(c)(17) (SUBs), section 513(b) defines ''unrelated trade or business,'' as any trade or business regularly carried on by such trust or by a partnership of which it is a member. Section 1.513–1(b) generally provides that, for purposes of section 513, the term ''trade or business'' has the same meaning as in section 162.

By contrast, section 512(a)(3)(A) defines UBTI as the gross income (excluding exempt function income), less the deductions allowed by chapter 1 that are directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications described in section 512(b)(6) (net operating loss (NOL) deduction), (b)(10) (charitable contribution deduction by exempt organizations), (b)(11) (charitable contribution deduction by certain trusts), and (b)(12) (specific deduction). Accordingly, UBTI under section 512(a)(3) is not limited to the gross income derived by an exempt organization from any unrelated trade or business regularly conducted by it. Thus, any gross income that is not exempt function income (nonexempt function income) is UBTI under section 512(a)(3).

Unrelated Trades or Businesses Conducted Indirectly Through Another Entity

An exempt organization may conduct an unrelated trade or business directly or indirectly through another entity, such as a partnership (including any entity treated as a partnership for federal tax purposes). Section 512(c) provides that, if a trade or business regularly carried on by a partnership of which an exempt organization is a partner is an unrelated trade or business with respect to such exempt organization, the exempt organization includes in UBTI—subject to the exceptions, additions, and limitations of section 512(b)—its distributive share of partnership gross income (whether or not distributed) and partnership deductions directly connected with

[1] Section 408(e) states that an individual retirement account (IRA) is subject to the taxes imposed by section 511. Accordingly, any reference to an exempt organization in this preamble includes an IRA, without regard to whether it is a traditional IRA, Roth IRA, simplified employee pension (SEP–IRA), or savings incentive match plan for employees (SIMPLE IRA). See section 9 of this preamble for more information.

such gross income. *See* § 1.512(c)–1 (describing how UBTI is calculated in a situation in which an exempt organization's distributive share of partnership income consists of both UBTI and income that is excluded from the calculation of UBTI). In determining whether a partnership conducts a trade or business that is an unrelated trade or business with respect to an exempt organization partner, the exempt organization would use the applicable definition of ''unrelated trade or business'' in section 513(a) or (b). Section 512(c) applies regardless of whether an exempt organization is a general or limited partner. *See* Rev. Rul. 79–222, 1979–2 C.B. 236.

Calculation of UBTI

An exempt organization may engage in more than one unrelated trade or business. Prior to the enactment of section 512(a)(6), an exempt organization deriving gross income from the regular conduct of two or more unrelated trades or businesses calculated UBTI by determining its aggregate gross income from all such unrelated trades or businesses and reducing that amount by the aggregate deductions allowed with respect to all such unrelated trades or businesses. *See* § 1.512(a)–1(a). However, section 512(a)(6), which was added to the Code by section 13702 of Public Law 115–97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), enacted December 22, 2017, changed this calculation for exempt organizations with more than one unrelated trade or business so that, in the case of any exempt organization with more than one unrelated trade or business:

(A) UBTI, including for purposes of determining any NOL deduction, shall be computed separately with respect to each trade or business and without regard to section 512(b)(12) (allowing a specific deduction of $1,000),

(B) The UBTI of such exempt organization shall be the sum of the UBTI so computed with respect to each trade or business, less a specific deduction under section 512(b)(12), and

(C) For purposes of section 512(a)(6)(B), UBTI with respect to any such trade or business shall not be less than zero.

Thus, under section 512(a)(6), an exempt organization is no longer permitted to aggregate income and deductions from all unrelated trades or businesses when calculating UBTI. Section 512(a)(6) applies to taxable years beginning after December 31, 2017, but not to NOLs arising before January 1, 2018, that are carried over to taxable years beginning on or after such date. *See* section 13702(b) of the TCJA.

In August 2018, the Treasury Department and the IRS issued Notice 2018–67 (2018–36 IRB 409 (Sept. 4, 2018)), which discussed and solicited comments regarding various issues arising under section 512(a)(6) and set forth interim guidance and transition rules relating to that section. The Treasury Department and the IRS received 24 comments in response to Notice 2018–67 and considered these comments in drafting these proposed regulations. Some of these comments discussed the interaction between section 512(a)(6) and (7), which was also enacted by the TCJA and provided that an exempt organization's UBTI is increased by any amount for which a deduction is not allowable under chapter 1 by reason of section 274 and which is paid or incurred by such exempt organization for certain disallowed fringes. These comments are not discussed because section 512(a)(7) was repealed on December 20, 2019. *See* Further Consolidated Appropriations Act, 2020, Division Q, Public Law 116–94, 133 Stat. 2534 (2019) (retroactively effective to date of enactment of the TCJA). The remaining comments are discussed in the Explanation of Provisions and Comment Summary. The comments are available for public inspection upon request.

Explanation of Provisions and Summary of Comments

Section 512(a)(6) requires an exempt organization with more than one unrelated trade or business to first calculate UBTI separately with respect to each such trade or business, without regard to the specific deduction generally allowed under section 512(b)(12). The Conference Report explains that ''[t]he organization's [UBTI] for the taxable year is the sum of the amounts (not less than zero) computed for each separate trade or business, less the specific deduction allowed under section 512(b)(12).'' H.R. Rep. No. 115–466 (2017), at 548. Section 512(a)(6) continues to allow an NOL deduction, but ''only with respect to a trade or business from which the loss arose.'' *Id.* Thus, the legislative history states that ''a deduction from one trade or business for a taxable year may not be used to offset income from a different unrelated trade or business for the same taxable year.'' *Id.* at 548. Because section 512(a)(6) disallows the aggregation of income and deductions from all unrelated trades or businesses, these proposed regulations revise § 1.512(a)–1(a) to state that, in the case of an organization with more than one unrelated trade or business, UBTI is calculated separately with respect to each such trade or business as provided in new proposed § 1.512(a)–6.

Congress did not provide explicit criteria for determining whether an exempt organization has ''more than one unrelated trade or business'' or how to identify ''separate'' unrelated trades or businesses for purposes of calculating UBTI in accordance with section 512(a)(6).[2] Accordingly, these proposed regulations establish the method for determining whether an exempt organization has more than one unrelated trade or business for purposes of section 512(a)(6) and identifying separate unrelated trades or businesses for purposes of calculating UBTI under this section. These proposed regulations also clarify that, for purposes of the unrelated business income tax generally and the application of section 512(a)(6) specifically, an individual retirement plan (IRA) described in section 408(e) uses the definition of ''unrelated trade or business'' in section 513(b) applicable to trusts. Additionally, these proposed regulations clarify that inclusions of subpart F income under section 951(a)(1)(A) and global intangible low-taxed income (GILTI) under section 951A(a) are treated in the same manner as dividends for purposes of section 512(b)(1).

1. Separate Unrelated Trade or Business

There is no general statutory or regulatory definition of what activities constitute a ''trade or business'' for purposes of the Code. Whether an activity constitutes a trade or business may vary depending on which Code section is involved. *See generally Commissioner* v. *Groetzinger,* 480 U.S. 23, 27 (1987). Section 1.513–1(b) of the current Treasury regulations (promulgated in 1967) states that, ''for purposes of section 513, the term 'trade or business' has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services.''

Notice 2018–67 permitted a reasonable, good-faith interpretation of sections 511 through 514, considering all the facts and circumstances, when determining whether an exempt organization has more than one unrelated trade or business for purposes

[2] The Joint Committee on Taxation's General Explanation of Public Law 115–97 states that ''it is intended that the Secretary issue guidance concerning when an activity will be treated as a separate unrelated trade or business for purposes of [section 512(a)(6)].'' Staff of the Joint Committee on Taxation, General Explanation of Public Law 115–97 (December 2018), at 293.

of section 512(a)(6). At the same time, Notice 2018–67 stated that the Treasury Department and the IRS were considering the use of the North American Industry Classification System (NAICS) codes as a method for determining whether an exempt organization has more than one unrelated trade or business for purposes of section 512(a)(6) and for purposes of calculating UBTI under section 512(a)(6)(A). NAICS is an industry classification system for purposes of collecting, analyzing, and publishing statistical data related to the United States business economy that results from a cooperative effort between Canada, Mexico, and the United States. *See* Executive Office of the President, Office of Management and Budget, North American Industry Classification System (2017) (2017 NAICS Manual), *available at https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf.* The structure of NAICS is hierarchical, using a six-digit coding system. *Id.* at 16, 18, & 20. NAICS divides the economy into 20 sectors. *Id.* at 3. The first two digits of the code designate the sector, each of which represents a general category of economic activity, including retail trade (44–45); real estate and rental and leasing (53); health care and social assistance (62); and accommodation and food services (72). *Id.* at 16 & 20. The third digit designates the subsector; the fourth digit designates the industry group; and the fifth digit designates the NAICS industry. Any establishment is usually classified down to the NAICS five-digit industry level classification, using the classification of the industry that best matches its primary activity. When applicable, the sixth digit is used to designate the national industry, to reflect differences between the countries. A zero as the sixth digit generally indicates that the NAICS industry and the U.S. industry are the same. *Id.* at 18. Accordingly, each digit of the NAICS 6-digit codes describes an industry with increasing specificity.

In Notice 2018–67, the Treasury Department and the IRS provided that a reasonable, good-faith interpretation included using the most specific level—six-digit codes (NAICS 6-digit codes). The Treasury Department and the IRS also requested comments regarding rules to identify separate trades or businesses that achieve the intent of Congress in enacting section 512(a)(6) and that are administrable for exempt organizations and the IRS. As discussed further in section 1.a of this preamble, methods commenters suggested included devising a facts and circumstances test along with a clearly defined safe harbor, adopting principles described in various Code sections (including sections 183 and 469), using the groupings described in Form 14018, ''Compliance Questionnaire Colleges and Universities,'' and using less than six digits of the NAICS codes.

After considering the comments, the Treasury Department and the IRS continue to view an identification method based on NAICS codes as administrable for exempt organizations and the IRS. Moreover, in response to comments regarding the burden related to the specificity of NAICS 6-digit codes, the proposed regulations provide that an exempt organization generally will identify its separate unrelated trades or businesses using the first two digits of the NAICS codes (NAICS 2-digit codes).

a. The North American Industry Classification System (NAICS)

Most commenters that discussed NAICS supported using the NAICS codes to identify separate unrelated trades or businesses for purposes of section 512(a)(6). Nonetheless, several commenters generally opposed this proposed method. These commenters argued that the NAICS codes were not created to define ''trade or business'' for UBTI purposes and therefore fail to sufficiently describe the full range of possible unrelated trades or businesses engaged in by exempt organizations. While the Treasury Department and the IRS recognize that the NAICS codes were not specifically designed for use under section 512(a)(6), the Treasury Department and the IRS continue to believe that using the NAICS codes is appropriate because NAICS ''is a comprehensive [classification] system covering all economic activities.'' 2017 NAICS Manual, at 14. Additionally, the broad scope of activities covered by the NAICS 2-digit codes should cover all the unrelated trade or business activities conducted by exempt organizations.

The NAICS codes were developed, in coordination with Canada and Mexico, by the Office of Management and Budget (OMB) and are managed by the United States Census Bureau. The OMB reviews and updates the NAICS codes as appropriate every five years and, at times, may remove codes. *Id.* at 78. In responding to the NAICS 6-digit codes discussed in Notice 2018–67, some commenters expressed concern that the Treasury Department and the IRS do not control NAICS and that this could adversely impact organizations using the codes for tax purposes. The Treasury Department and the IRS view the proposal to use NAICS 2-digit codes as addressing this concern because the codes are revised through notice and comment rulemaking, and OMB has never revised the codes at the 2-digit level.

A few commenters noted that a recent report by the Treasury Inspector General for Tax Administration (TIGTA) determined that the NAICS codes are ''unreliable for use to identify businesses that may be subject to excise tax reporting and payment.'' Treasury Inspector General for Tax Administration, The Affordable Care Act: An Improved Strategy is Needed to Ensure Accurate Reporting and Payment of the Medical Device Excise Tax 5 (Jul. 17, 2014). The Treasury Department and the IRS consider the situation addressed by the TIGTA report to be distinguishable from the use of the NAICS 2-digit codes to identify separate unrelated trades or businesses for purposes of section 512(a)(6). The TIGTA report addressed the IRS's efforts to determine the population of taxpayers subject to the new medical device excise tax based on the NAICS 6-digit code a taxpayer had reported on Schedule K, ''Other Information,'' of Form 1120, ''U.S. Corporation Income Tax Return'' to identify the activity from which it derives the largest percentage of total receipts. TIGTA found that not every medical device manufacturer used the same NAICS 6-digit code to report the activity, such that reliance on one NAICS 6-digit code would not identify all businesses that may be subject to the tax. TIGTA also noted that the NAICS 6-digit code did not always signify a business that is engaged in taxable sales of medical devices. Here, an exempt organization will be reporting each of its separate unrelated trades or businesses using the more general NAICS 2-digit codes on Form 990–T, ''Exempt Organization Business Income Tax Return,'' for the purpose of ensuring compliance with section 512(a)(6). As previously discussed, the NAICS 2-digit code describes a broader sector of the economy, making it more likely that taxpayers engaged in similar activities that could be described in more than one NAICS 6-digit code will nonetheless report those activities as part of the same overall sector.

i. NAICS 2-Digit Codes

As discussed in section 1 of this preamble, Notice 2018–67 permitted reliance on NAICS 6-digit codes as a method of identifying separate trades or businesses and requested comments regarding whether use of less than six digits of the NAICS codes, either alone or in combination with one or more other methods, would appropriately

identify separate trades or businesses for purposes of achieving the objectives of section 512(a)(6). Nearly all the commenters making recommendations on the NAICS codes rejected the use of NAICS 6-digit codes. These commenters noted that using NAICS 6-digit codes would result in significant administrative burden because an exempt organization would have to determine which of over 1,000 NAICS 6-digit codes most accurately describes its trades or businesses. Commenters noted that many NAICS 6-digit codes may apply to more than one trade or business activity or that no NAICS 6-digit code may exist to accurately describe a trade or business activity. Additionally, these commenters argued that the use of NAICS 6-digit codes could potentially require an exempt organization to split what has traditionally been considered one unrelated trade or business activity into multiple trades or businesses.

Half of the commenters making recommendations on the NAICS codes suggested adoption of NAICS 2-digit codes, which would identify trades or businesses in 20 sectors. These commenters generally explained that use of NAICS 2-digit codes would result in broader, less subjective identification of trades or businesses that would naturally permit the aggregation of similar activities. Furthermore, one of these commenters stated that the use of fewer digits of the NAICS codes would minimize implementation costs and reduce the administrative burden on the IRS as well as exempt organizations. This commenter opined that the NAICS 2-digit codes are less likely to change over time than the NAICS codes with more digits because the specificity of the NAICS codes increases as digits are added. NAICS 3-digit codes, which one commenter recommended adopting, identify 99 subsectors. By contrast, NAICS 4-digit codes, which two commenters recommended adopting, identify 311 industry groups.

The Treasury Department and the IRS recognize that limitations exist in using NAICS as a method of identifying an exempt organization's separate unrelated trades or businesses. However, the Treasury Department and the IRS conclude that adopting the NAICS 2-digit codes will minimize those limitations and that NAICS 2-digit codes are less likely to change over time than NAICS codes with more digits. At the same time, adoption of NAICS 2-digit codes will not allow the offsetting of losses between the 20 sectors of unrelated trades or businesses. Additionally, under existing precedent, an organization must determine whether an activity is an ''unrelated trade or business'' within the meaning of section 513 before it determines what NAICS 2-digit code describes that ''separate'' unrelated trade or business. An organization cannot use losses from an activity that consistently generates losses to offset income from a profitable trade or business unless the organization can show that the loss-producing activity is conducted with the requisite profit motive. *See Portland Golf Club* v. *Commissioner,* 497 U.S. 154, 164 (1990) (confirming that, ''[a]lthough [section 162] does not expressly require that a 'trade or business' must be carried on with an intent to profit, this Court has ruled that a taxpayer's activities fall within the scope of [section] 162 only if an intent to profit has been shown'' and citing *Groetzinger,* 480 U.S. at 35); *Losantiville Country Club* v. *Commissioner,* 906 F.3d 468, 473–75 (6th Cir. 2018) (demonstrating profit motive without reference to profitability by applying section 183 factors).

Furthermore, the Treasury Department and the IRS conclude that use of NAICS 2-digit codes results in broader identification of trades or businesses that will minimize implementation costs and will mitigate the administrative burden on exempt organizations and the IRS that would be imposed by more detailed NAICS codes. The use of NAICS 2-digit codes should also reduce any inequity that might result from a code system that was not specifically designed to describe the business activities of exempt organizations.

For these reasons, the proposed regulations generally provide that an exempt organization will identify each of its separate unrelated trades or businesses using the first two digits of the NAICS code that most accurately describes a trade or business. The Treasury Department and the IRS request comments on whether another method, or additional methods, of identifying an exempt organization's separate unrelated trades or businesses better achieves the intent of Congress in enacting section 512(a)(6) while still being administrable for exempt organizations and the IRS.

A few commenters requested confirmation that the Treasury Department and the IRS will permit an exempt organization to rely on the NAICS code that describes all the activities of the organization. For example, NAICS describes educational services, which includes colleges, universities, and professional schools, under one NAICS 2-digit code (61).

An unrelated trade or business generally is any trade or business the conduct of which is not substantially related to the exercise or performance by such exempt organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501. *See* section 513(a). A NAICS code that describes all of an exempt organization's activities, even those activities that are substantially related to the exercise or performance of the exempt organization's exempt function, fails to identify the exempt organization's unrelated trades or businesses and undermines the Congressional intent in enacting section 512(a)(6). Accordingly, the proposed regulations clarify that the NAICS code chosen must identify the unrelated trade or business in which the exempt organization engages (directly or indirectly) and not the activities the conduct of which are substantially related to the exercise or performance by such exempt organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an exempt organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)). Thus, returning to the previous example, a college or university cannot choose NAICS code 61 for all its unrelated trade or business activities.

Similarly, one commenter requested that the Treasury Department and the IRS confirm that a qualified retirement plan can use the NAICS code describing employee benefit funds, which is included under the NAICS 2-digit code for finance and insurance (52), to describe all the plan's unrelated trades or businesses. As discussed in the Background section, qualified retirement funds are subject to the general definition of UBTI in section 512(a)(1) but the term ''unrelated trade or business'' is defined in a special rule for trusts under section 513(b) as ''any trade or business regularly carried on by such [plan] or by a partnership of which it is a member.'' Accordingly, it must use the NAICS 2-digit code that most accurately describes the underlying trade or business regularly carried on by the plan or by a partnership of which it is a member. However, it appears that qualified retirement plans generally derive most, if not all, of their UBTI from investment activities, the identification of which is discussed in section 2 of this preamble, and which includes UBTI from any qualifying partnership interests (see section 2.d of

this preamble) or qualifying S corporation interests (see section 4.a of this preamble). Accordingly, unless a qualified retirement plan engages directly in one or more unrelated trades or businesses or has non-qualifying partnership interests or non-qualifying S corporation interests, a qualified retirement plan will not be subject to section 512(a)(6) because it will only have one unrelated trade or business for purposes of section 512(a)(6)—its investment activities.

A social club described in section 501(c)(7) would not be able to use the NAICS 2-digit code for arts, entertainment, and recreation (71), which includes golf courses and country clubs, to identify all its unrelated trades or businesses. As explained in the Background section, social clubs are subject to the definition of UBTI in section 512(a)(3), which defines UBTI, in part, as ''gross income (excluding exempt function income)'' and does not refer directly to ''any unrelated trade or business.'' However, as further explained in section 5 of this preamble, these proposed regulations apply regardless of whether an organization is subject to the definition of UBTI in section 512(a)(1) or section 512(a)(3). Accordingly, a social club must use the NAICS code that most accurately describes its unrelated trade or business activities. The social club may use the NAICS 2-digit code for arts, entertainment, and recreation (71) only to the extent such code describes its unrelated trades or businesses, such as rounds of golf played by nonmembers, the greens fees for which would result in UBTI.

At least one commenter recommended that the proposed regulations permit an exempt organization to aggregate trades or businesses that may be described by multiple NAICS codes as a single trade or business when those activities are closely related, similar in nature, and essentially conducted as a single trade or business. Although the Treasury Department and the IRS recognize that the use of more digits of the NAICS codes could result in the division of business activities traditionally conducted as one unit into more than one trade or business, the use of NAICS codes at the 2-digit level, as noted by other commenters, results in the aggregation of trades or businesses in the same economic sector. Accordingly, the Treasury Department and the IRS address this comment by adopting the use of NAICS 2-digit codes.

ii. Codes Reported Only Once

The Treasury Department and the IRS recognize that an exempt organization can have a trade or business that it operates in different, geographic areas. For example, a hospital organization may operate several hospital facilities in a geographic area (or multiple geographic areas), all of which include pharmacies that sell goods to the general public. *See* Rev. Rul. 68–375, 1968–2 C.B. 245. Pharmacies are described under the NAICS 2-digit code for retail trade (44). Although each pharmacy potentially could be considered a ''separate'' trade or business under section 512(a)(6), particularly if separate books and records exist for each pharmacy, the Treasury Department and the IRS recognize that devising rules to distinguish between each pharmacy trade or business would introduce additional complexity and increase the administrative burden on the hospital organization. Accordingly, the proposed regulations provide that an exempt organization will report each NAICS 2-digit code only once. Thus, even though the hospital organization in the previous example operates more than one pharmacy, the hospital organization would report all the pharmacies using the NAICS 2-digit code for retail trade (44), along with any other retail trades or businesses described by this NAICS 2-digit code, on Form 990–T as one unrelated trade or business.

iii. Erroneous Codes

The proposed regulations provide that, once an exempt organization has identified a separate unrelated trade or business using a particular NAICS 2-digit code, the organization may not change the NAICS 2-digit code describing that trade or business unless the organization can show that the NAICS 2-digit code chosen was due to an unintentional error and that another NAICS 2-digit code more accurately describes the trade or business. This limitation will apply to codes reported on the first Form 990–T filed after final regulations under section 512(a)(6) are published in the **Federal Register**. The Treasury Department and the IRS anticipate that the instructions to the Form 990–T will be revised to describe how an exempt organization provides notification of such an error. Additionally, the Treasury Department and the IRS request comments regarding whether there are other circumstances in which an exempt organization should be permitted to change NAICS 2-digit codes.

b. New Identification Methods

At least two commenters suggested that the proposed regulations permit the Treasury Department and the IRS the flexibility to add new methods of identifying separate unrelated trades or businesses through guidance published in the Internal Revenue Bulletin. The Treasury Department and the IRS recognize that other code systems may exist (and have not yet been identified) or may be devised in the future that better reflect the unrelated trade or business activities engaged in by exempt organizations. However, the Treasury Department and the IRS also expect that the proposed regulations provide a method of identifying separate unrelated trades or businesses that is administrable for exempt organizations and the IRS and therefore do not anticipate the need to routinely modify that method. As more experience is gained over time with the administration of section 512(a)(6), the Treasury Department and the IRS may consider additional identification methods, including the use of code systems or indices other than NAICS, and will publish guidance as needed.

c. De Minimis Exceptions

One commenter recommended that the Treasury Department and the IRS adopt a de minimis exception for exempt organizations reporting less than $100,000 of gross UBTI. Relying on statistical data published by the IRS, the commenter states that such organizations were responsible for only five percent of the total unrelated business income tax paid in 2013. This commenter argued that small exempt organizations likely lack the internal staff and the resources to implement the changes required by the enactment of section 512(a)(6) and to engage outside professionals to assist with ongoing compliance with that section.

As a result of the commenter's proposed threshold, section 512(a)(6) would not apply to more than 80 percent of the exempt organizations filing Form 990-Ts (based on the statistical data cited by the commenter). *See* Table 4. Unrelated Business Income Tax Returns: Returns with Positive Unrelated Business Taxable Income: Number of Returns, Gross Unrelated Business Income (UBI), Total Deductions, Unrelated Business Taxable Income, and Total Tax, by Type of Entity and Size of Gross UBI Tax Year 2013, *available at https://www.irs.gov/statistics/soi-tax-stats-exempt-organizations-unrelated-business-income-ubi-tax-statistics#2.* Accordingly, a supposed ''de minimis''

rule with a $100,000 gross UBTI threshold would effectively render section 512(a)(6) a nullity for most exempt organizations.

More importantly, as noted by the commenter, section 512(a)(6) does not provide a de minimis rule and does not provide discretionary authority for the Treasury Department and the IRS to establish one. Accordingly, even at a lower threshold, a de minimis rule would be contrary to the stated Congressional intent of not permitting exempt organizations to use losses from one unrelated trade or business to offset the gains from another unrelated trade or business. However, the Treasury Department and the IRS note that the use of NAICS 2-digit codes, along with the treatment of an exempt organization's investment activities as one unrelated trade or business (as described in section 2.a of this preamble), is expected to address many of the concerns prompting the request for a de minimis rule because smaller entities are not as likely to have more than one unrelated trade or business. The Treasury Department and the IRS therefore do not adopt this comment.

d. Allocation of Directly Connected Deductions

i. In General

Section 512(a)(1) permits an exempt organization with an unrelated trade or business to reduce the income from that trade or business by the deductions allowed by chapter 1 that are directly connected with the carrying on of such trade or business. To be ''directly connected'' with a trade or business, an item of deduction must have a proximate and primary relationship to the carrying on of the unrelated trade or business generating the gross income. *See* § 1.512(a)–1(a). Expenses, depreciation, and similar items attributable solely to the conduct of an unrelated trade or business are proximately and primarily related to that trade or business and qualify to reduce income from such trade or business under section 512(a)(1) to the extent such items meet the requirements of sections 162 (trade or business expenses), 167 (depreciation), and other relevant provisions. To the extent that an exempt organization may have items of deduction that are shared between an exempt activity and an unrelated trade or business, § 1.512(a)–1(c) provides special rules for allocating such expenses. For example, if facilities are used both to carry on exempt activities and to conduct unrelated trade or business activities, then expenses, depreciation, and similar items attributable to such facilities must be allocated between the two uses on a reasonable basis. *See* § 1.512(a)–1(c).[3]

The allocation issues under section 512(a)(1) are also relevant under section 512(a)(6) because an exempt organization with more than one unrelated trade or business must not only allocate indirect expenses among exempt and taxable activities as described in § 1.512(a)–1(c) but also among separate unrelated trades or businesses. Accordingly, Notice 2018–67 stated the Treasury Department and the IRS are considering modifying the underlying reasonable allocation method in § 1.512(a)–1(c) and providing specific standards for allocating expenses relating to dual use facilities and the rules under section 512(a)(6). Notice 2018–67 requested comments regarding possible rules or defined standards for the allocation of indirect expenses between separate unrelated trades or businesses for purposes of calculating UBTI under section 512(a)(6)(A), and regarding what allocation methods should be considered ''reasonable.''

The three commenters addressing allocation methods generally recommended retaining the current ''any reasonable method'' approach. Nonetheless, one of these commenters recommended that the Treasury Department and the IRS adopt existing cost allocation rules set forth by the OMB, referred to as the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200), and by the Financial Accounting Standards Board in the Accounting Standard Update 2016–14, both of which require allocations to be made ''on a rational, reasonable, and objective basis across functional expense categories.'' Another commenter recommended adopting accounting methods specific to social club activities, such as a golf.

The Treasury Department and the IRS are concerned that permitting allocation methods based solely on reasonableness is difficult for the IRS to administer and may not provide certainty for taxpayers. Whether an allocation method is ''reasonable'' depends on all the facts and circumstances. *See Rensselaer Polytechnic Institute* v. *Commissioner,* 79 T.C. 967 (1982), *aff'd* 732 F.2d 1058 (2d Cir. 1984) (finding an allocation method based on actual use to be ''reasonable'' within the meaning of § 1.512(a)–1(c)). The Treasury Department and the IRS continue to consider the allocation issue and intend to publish a separate notice of proposed rulemaking providing further guidance on this issue. Until publication of a separate notice of proposed rulemaking, these proposed regulations incorporate the existing allocation standard in § 1.512(a)–1(c), which provides that an exempt organization must allocate deductions on a reasonable basis between separate unrelated trades or businesses. The proposed regulations also provide that the use of the unadjusted gross-to-gross method is not a reasonable allocation method under the general allocation rule and as incorporated for section 512(a)(6) purposes (see section 1.d.iii of this preamble).

ii. State and Local Taxes and Tax Preparation Fees

At least one commenter requested guidance on the deduction of certain general expenses. This commenter recommended that tax return preparation fees be permitted as a deduction after calculation of total UBTI under section 512(a)(6)(B). The commenter argued that such expenses should not be allocated between separate unrelated trades or businesses because such expenses pertain to all the exempt organization's activities—related and unrelated.

As previously discussed, deductions are permitted under section 512(a)(1) and (3) only if two conditions are met: (1) The deduction is allowed under chapter 1; and (2) in the case of section 512(a)(1), the deduction is directly connected with the carrying on of such separate unrelated trade or business, or, in the case of section 512(a)(3), the deduction is directly connected with the production of the gross income (excluding exempt function income). Accordingly, an exempt organization may deduct only tax return preparation fees that are directly connected with a separate unrelated trade or business, in the case of an organization subject to section 512(a)(1), or that are directly connected with the production of the gross income (excluding exempt function income), in the case of an organization subject to section 512(a)(3). If such fees are directly connected with more than one separate unrelated trade or business or are also attributable to the exempt organization's related activities (or exempt function income in the case of an organization subject to section

[3] The same method used for allocating expenses in determining taxable income must also be used when determining whether an activity is conducted with the intent to profit, and thus (as discussed further in section 5.b.iv of this preamble) whether such activity is a trade or business. *Portland Golf Club* v. *Commissioner,* 497 U.S. 154, 171 (1990) (stating that ''in demonstrating the requisite profit motive, Portland Golf must employ the same method of allocating fixed expenses as it uses in calculating its actual loss'').

512(a)(3)), the exempt organization must allocate such expenses as discussed in section 4.d.i of this preamble. *See* § 1.512(a)–1(c). Nothing in section 512(a)(6)(B) permits either the deduction of expenses that are not otherwise deductible in calculating UBTI or the deduction of expenses after calculation of total UBTI. Thus, the Treasury Department and the IRS do not adopt this comment.

One commenter also suggested that state income taxes not directly connected with any separate unrelated trade or business resulting from the increase in UBTI under section 512(a)(7) be permitted as a deduction after calculation of total UBTI under section 512(a)(6)(B). With the repeal of section 512(a)(7), the Treasury Department and the IRS expect that exempt organizations are no longer subject to state income taxes that are not directly connected with the carrying on of a separate unrelated trade or business. If this is not the case, the Treasury Department and the IRS request examples of such state income taxes.

iii. The Unadjusted Gross-to-Gross Method Is Unreasonable

The IRS has previously indicated that it will not litigate the reasonableness of the allocation method in *Rensselaer* pending revision of the Treasury regulations. 732 F.2d 1058, *action on dec.,* 1987–014 (Jun. 18, 1987). However, regarding facilities or personnel that are used both to carry on exempt activities and to conduct unrelated trade or business activities or more than one separate unrelated trade or business, the Treasury Department and the IRS have concluded that allocation of expenses, depreciation, and similar items using an unadjusted gross-to-gross method is not reasonable. In general, a gross-to-gross method of allocation uses a ratio of gross income from an unrelated trade or business activity over the total gross income from both unrelated and related activities generating the same indirect expenditures. The percentage resulting from this ratio is used to determine the percentage of the shared costs attributable to the unrelated trade or business activity (or activities).

In some circumstances, the provision of a good or service can be both related and unrelated depending on to whom the good or service is offered. For example, with respect to social clubs, the provision of goods and services to members is an exempt function whereas the provision of the same goods and services to nonmembers is a nonexempt function. Another example is a school that operates a ski facility for use in its physical education program and for recreational use by its students and the general public. Rev. Rul. 78–98, 1978–1 C.B. 167. If the social club charges nonmembers a higher price than it charges members for the same good or service or if the school charges the general public more for slope and ski lift fees than it charges its students, the gross-to-gross ratio will increase, resulting in more indirect expenses being allocated to the unrelated activity. However, no difference likely exists in the cost of providing the good or service to members versus nonmembers or in the cost of providing the ski slopes and lifts to students versus the public. Accordingly, the failure to adjust the price of the good or service offered to nonmembers or the general public for purposes of determining the allocation of indirect expenses (that is, using an unadjusted gross-to-gross method) overstates the percentage of the indirect expenses that should be allocated to the unrelated activities. *See Portland Golf,* 497 U.S. at 157 fn. 4 (indicating that a system where the taxpayer ''charges nonmembers higher prices for food and drink than members are charged, even though nonmembers' meals presumably cost no more to prepare and serve'' seems likely to ''[overstate] the percentage of fixed costs properly attributable to nonmember sales'').

When an organization charges different prices for the same good or service depending on whether the offering of the good or service is a related or unrelated activity, then such organization should adjust the per ''unit'' price of the good or service of the related activity to that of the unrelated activity (or activities) for the ratio created by the gross-to-gross method to appropriately account for the percentage of indirect expenses attributable to the unrelated activity. Failing to make this adjustment does not appropriately account for the portion of indirect expenses attributable to an unrelated activity and is therefore an unreasonable method for allocating expenditures under § 1.512(a)–1(c). Accordingly, the proposed regulations provide that the unadjusted gross-to-gross method is not reasonable, whether under the general allocation rule or as incorporated for section 512(a)(6) purposes.

The Treasury Department and the IRS request comments regarding whether any other allocation methods should be considered unreasonable and the methods or rules that could be adopted instead of a reasonableness standard for allocations both between related and unrelated activities and between two or more separate unrelated trades or businesses.

2. Activities in the Nature of Investments

Several commenters expressed concern regarding the use of the NAICS codes to identify investment activities as one or more separate unrelated trades or businesses. One commenter noted that a partnership is not required to report the NAICS codes for all the trades or businesses in which it engages on the Schedule K–1 (Form 1065), ''Partner's Share of Income, Deductions, Credits, etc.,'' provided to its partners. Another commenter expressed concern that the NAICS codes lacked specificity for purposes of sufficiently identifying an exempt organization's investment activities. Therefore, two commenters suggested that an exempt organization's investment activities be identified separately from other activities identified using the NAICS codes.

Consistent with Notice 2018–67, the proposed regulations generally permit the aggregation of the investment activities specifically listed in the proposed regulations for purposes of section 512(a)(6) to mitigate the burden on exempt organizations, particularly those with interests in multi-tier partnerships. However, under the proposed regulations, investment activities are not identified using NAICS 2-digit codes. Specifically, the proposed regulations provide that NAICS 2-digit codes are used to identify separate unrelated trades or businesses except to the extent provided in other paragraphs of the proposed regulations. Under the proposed regulations, an exempt organization's investment activities, as well as the separate unrelated trades or businesses discussed in sections 3 and 4 of this preamble, are identified as described in the proposed regulations and reported as described in the forms and instructions (see section 8 of this preamble).

a. Investment Activities Are Treated as a Separate Unrelated Trade or Business for Purposes of Section 512(a)(6)

As a general matter, a number of commenters suggested that the Treasury Department and the IRS should not treat an exempt organization's investment activities as an unrelated trade or business, and therefore the income and losses from these activities should not be considered for purposes of applying section 512(a)(6). The Treasury Department and the IRS have concluded that the structure and purposes of sections 511 through 514 indicate that an exempt organization's investment activities should be treated as a separate unrelated trade or business for purposes of section 512(a)(6). Section 512(a)(1)

provides that UBTI means the gross income derived by an exempt organization from any unrelated trade or business regularly carried on by it. Further, section 512(a)(1) provides that an exempt organization excludes from the calculation of UBTI the amounts described in section 512(b)(1), (2), (3), and (5)—that is, dividends, interest, annuities, etc.; royalties; rents; and capital gains. If an exempt organization's investment activities were not an unrelated trade or business, exclusion of certain amounts under section 512(b), such as capital gains (and losses) under section 512(b)(5), would appear to be unnecessary. Furthermore, other income that an exempt organization may consider ''investment income''—such as unrelated debt-financed income—is treated as ''derived from an unrelated trade or business'' under other paragraphs of section 512(b)—including section 512(b)(4). The application of section 512(a)(6) to income included in UBTI under section 512(b)(4), (13), or (17) is discussed in more detail in section 3 of this preamble.

Some commenters cited *Higgins* v. *Commissioner,* 312 U.S. 212 (1941), to support the position that an exempt organization's investment of its own assets is not a trade or business. However, *Higgins* is not relevant under sections 511 through 514 because it applies to individuals, not corporations or trusts. For the taxable years involved in *Higgins,* a deduction was allowed for all ordinary and necessary expenses of carrying on a trade or business, but a deduction was not allowed for personal, living, or family expenses. Congress responded to *Higgins* by enacting what is now section 212(1) to allow individuals to deduct all ordinary and necessary expenses incurred in the production or collection of income. *Estate of Rockefeller* v. *Commissioner,* 762 F.2d 264, 266 n.3 (2d Cir. 1985). Section 212 applies only to individuals. Corporations or trusts may deduct only ''ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business'' under section 162. Thus, no deduction for expenses directly connected with investment activities would be permitted to a corporation or trust unless its investment activities are a part of a trade or business within the meaning of section 162.

However, the Treasury Department and the IRS recognize that exempt organizations have UBTI under sections 511 through 514 from activities engaged in with an intent to make an investment rather than with the intent to actively participate in any of the unrelated trade or business activities generating the UBTI. Accordingly, Notice 2018–67 stated that, as a matter of administrative convenience, the proposed regulations would treat an exempt organization's investment activities as one trade or business for purposes of section 512(a)(6)(A) in order to permit the exempt organization to aggregate gross income and directly connected deductions from possibly multiple separate unrelated trades or businesses. After publication of Notice 2018–67, the Joint Committee on Taxation (JCT) confirmed that ''it is intended that the Secretary consider whether it would be appropriate in certain cases to permit an organization that maintains an investment portfolio to treat multiple investment activities as one unrelated trade or business.'' Staff of the Joint Committee on Taxation, General Explanation of Public Law 115–97 (December 2018), at 293 (General Explanation). Consistent with Notice 2018–67 and the General Explanation, the proposed regulations provide that an exempt organization's various investment activities, as exclusively listed therein, are treated as a separate unrelated trade or business for purposes of section 512(a)(6)(A) and the proposed regulations.

b. Exclusive List of ''Investment Activities''

Notice 2018–67 did not define the term ''investment activities'' but rather requested comments regarding the scope of the activities, both investment partnership interests or other investment activities, that should be included in the category of ''investment activities'' for purposes of section 512(a)(6). Some commenters suggested that the term ''investment activities'' include all passive income. Some of these commenters specifically suggested using the definition of ''material participation'' in section 469 as a method to identify ''investment activities.'' However, most commenters addressing this issue suggested that the term ''investment activities'' should include activities that give rise to amounts included as: An item of gross income derived from an unrelated trade or business under section 512(b)(4) (debt-financed property), (13) (certain amounts received from controlled entities), and (17) (certain amounts derived from foreign corporations); gross income (or loss) from a partnership that is not directly or indirectly controlled by the exempt organization; and, with respect to controlled partnerships, an item of gross income derived from an unrelated trade or business under section 512(b)(4), (13), and (17).

In drafting these proposed regulations, the Treasury Department and the IRS considered whether to provide a general definition of the term ''investment activities.'' However, even though other areas of the Code make a distinction between ''active'' and ''passive'' activities, those distinctions are not applicable for purposes of sections 511 through 514. Section 512(c) applies regardless of whether the exempt organization is an active or passive participant in the unrelated trade or business of the partnership or whether it is a general or limited partner. Rev. Rul. 79–222; *Service Bolt & Nut Co.* v. *Commissioner,* 724 F.2d 519, 523–24 (6th Cir., 1983), *affg,* 78 T.C. 812 (1982); *see also Leila G. Newhall Unitrust* v. *Commissioner,* 105 F.3d 482 (9th Cir. 1997), *affg,* 104 T.C. 236 (1995) (following *Service Bolt & Nut,* 724 F.2d 519). Thus, the Treasury Department and the IRS do not believe that use of the criteria for finding ''material participation'' under section 469 is appropriate in applying section 512(a)(6).

Rather, the proposed regulations provide an exclusive list of an exempt organization's investment activities that can be treated as one separate unrelated trade or business for purposes of section 512(a)(6). Under the proposed regulations, for most exempt organizations, such investment activities are limited to: (i) Qualifying partnership interests (see section 2.d of this preamble); (ii) debt-financed properties (see section 3.a of this preamble); and (iii) qualifying S corporation interests (see section 4.a of this preamble). As discussed in section 5.b.i of this preamble, the qualifying partnership rules do not apply to social clubs described in section 501(c)(7). However, for exempt organizations subject to section 512(a)(3) (including social clubs), the proposed regulations clarify that UBTI from the investment activities of such organizations includes certain additional amounts (see section 5.a of this preamble).

The Treasury Department and the IRS will continue to consider whether the term ''investment activities'' can be defined more generally in a manner that is administrable and consistent with the legislative intent of section 512(a)(6). The Treasury Department and the IRS request comments regarding the specific factors that should be considered when determining whether an activity is an investment activity for purposes of section 512(a)(6).

c. Partnership Interests

With respect to partnership interests, the Treasury Department and the IRS stated in Notice 2018–67 that the category of ''investment activities'' for purposes of section 512(a)(6) should include only partnership interests in which the exempt organization does not significantly participate in any partnership trade or business. Some commenters suggested including in this category partnerships over which the exempt organization has no control, which is discussed in more detail in section 2.d of this preamble.

Other commenters suggested that this category include all limited partnerships or limited liability companies (LLCs) in which the exempt organization is a non-managing member (regardless of the exempt organization's percentage interest or other participation in the partnership). The Treasury Department and the IRS decline to adopt this comment because of the variation in state law for determining non-managing member equivalent interests and the administrative burden that reliance on state law places on the IRS. Nonetheless, as discussed in section 2.d.iii.B of this preamble, the Treasury Department and the IRS recognize that there may be rights or actions permitted by state law that are normal and routine and that do not indicate any measurable influence or control over a partnership. Accordingly, the Treasury Department and the IRS request comments on whether certain permitted rights or actions should be disregarded in determining whether a partnership interest is a qualifying partnership interest. In addition, the proposed regulations clarify that any partnership in which an exempt organization is a general partner for any federal tax purpose is not a qualifying partnership interest within the meaning of the proposed regulations, regardless of the exempt organization's percentage interest.

d. Qualifying Partnership Interests

Pending publication of proposed regulations, the interim rule described in Notice 2018–67 permitted an exempt organization to aggregate its UBTI from certain partnership interests with multiple trades or businesses, including trades or businesses conducted by lower-tier partnerships (qualifying partnership interest). *See* section 6.01(2) of Notice 2018–67. Additionally, the interim rule permitted the aggregation of any qualifying partnership interest (QPI) with all other QPIs, resulting in the treatment of the aggregate group of QPIs as a single trade or business for purposes of section 512(a)(6)(A). *Id.*

Although some commenters suggested retaining the interim rule as described in Notice 2018–67, the majority of commenters appeared to support retention of the interim rule but made suggestions regarding possible revisions that potentially could reduce any administrative burden associated with the rule. Consistent with these comments, the proposed regulations retain the interim rule with the modifications described in the following sections of this preamble.

i. Designation of a QPI

Like Notice 2018–67, the proposed regulations permit, but do not require, an organization to aggregate its UBTI from QPIs. *See* section 6.01(2) of Notice 2018–67. However, the proposed regulations add that, once an organization designates a partnership interest as a QPI (in accordance with forms and instructions), it cannot thereafter identify the trades or businesses conducted by the partnership that are unrelated trades or businesses with respect to the organization using NAICS 2-digit codes unless and until the partnership interest is no longer a QPI. For example, if an organization has a partnership interest that is a QPI and the organization designates that partnership interest as a QPI on its Form 990–T, the organization cannot, in the next taxable year, identify the trades or businesses of the partnership that are unrelated trades or businesses with respect to the organization using NAICS 2-digit codes. However, if in a future taxable year, the organization's partnership interest is no longer a QPI, then the organization would be required to identify the trades or business of the partnership that are unrelated trades or businesses with respect to the organization using NAICS 2-digit codes.

A partnership interest is a QPI if it meets the requirements of either the de minimis test (discussed in section 2.d.ii of this preamble) or the control test (discussed in section 2.d.iii of this preamble).

ii. The De Minimis Test

Both Notice 2018–67 and the proposed regulations provide that a partnership interest is a QPI that meets the requirements of the de minimis test if the exempt organization holds directly no more than 2 percent of the profits interest and no more than 2 percent of the capital interest. *See* section 6.02(1) of Notice 2018–67. As noted by several commenters, the 2 percent threshold for the de minimis test is consistent with the de minimis test under section 4943, which provides that a private foundation does not have excess business holdings in any corporation in which it (together with certain related private foundations described in section 4946(a)(1)(H)) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock. The Treasury Department and the IRS chose not to cross-reference the section 4943 de minimis test because that section applies only to private foundations. Nonetheless, because Congress adopted a 2 percent de minimis test under section 4943, the Treasury Department and the IRS consider a 2 percent threshold to be appropriate for purposes of the de minimis test in the proposed regulations.

However, the proposed regulations make two changes to the de minimis test provided in Notice 2018–67 to improve administrability and to provide more appropriate relief. First, as discussed in section 2.d.iv of this preamble, an exempt organization is no longer required to combine certain related interests when determining whether a partnership interest meets the requirements of the de minimis test. Second, in response to comments that the interim rule should apply to lower-tier partnerships, the proposed regulations provide that, if an exempt organization does not control a partnership in which the exempt organization holds a direct interest (directly-held partnership interest) but that directly-held partnership interest is not a QPI because the exempt organization holds more than 20 percent of the capital interest, any partnership in which the exempt organization holds an indirect interest through the directly-held partnership interest (indirectly-held partnership interest) may be a QPI if the indirectly-held partnership interest meets the requirements of the de minimis test (look-through rule). Accordingly, the proposed regulations permit (but do not require) an exempt organization to aggregate the UBTI from some indirectly-held QPIs with its directly-held QPIs. However, the look-through rule does not apply to indirectly-held QPIs that do not meet the requirements of the de minimis test but may meet the requirements of the control test.

For example, if an exempt organization directly holds 50 percent of the capital interests of a partnership that it does not control and the directly-held partnership holds 4 percent of the capital and profits interests of lower-tier partnership A and 10 percent of the

capital and profits interests of lower-tier partnership B, the exempt organization can aggregate its interest in lower-tier partnership A with its other QPIs because the exempt organization indirectly holds 2 percent of the capital and profits interests of lower-tier partnership A (4 percent × 50 percent = 2 percent). However, the exempt organization may not aggregate its interest in lower-tier partnership B with its QPIs because the exempt organization indirectly holds 5 percent (10 percent × 50 percent) of the capital and profits interest of lower-tier partnership B, which does not meet the requirements of the de minimis test.

If a directly-held partnership interest is not a QPI, the general principles of section 512(c) apply and the exempt organization is required to identify the trades or businesses conducted by the directly-held partnership, and any indirectly-held partnerships, that are unrelated trades or businesses with respect to the exempt organization. The Treasury Department and the IRS expect that permitting an exempt organization to aggregate any indirectly-held partnership interests that meet the requirements of the de minimis test with all other QPIs will reduce the administrative burden on exempt organizations because there will be no need to identify each trade or business conducted by such indirectly-held partnership. However, the Treasury Department and the IRS request comments regarding the administrability of permitting the aggregation of indirectly-held partnership interests that meet the requirements of the de minimis test.

iii. The Control Test

Notice 2018–67 stated that a partnership interest is a QPI that meets the requirements of the control test if the exempt organization (i) directly holds no more than 20 percent of the capital interest; and (ii) does not have control or influence over the partnership. *See* section 6.03(1) of Notice 2018–67.

A. Percentage Interest

Numerous commenters made recommendations regarding the first prong of the control test, most of which recommend increasing the percentage threshold to 50 percent to conform with the definition of control in section 512(b)(13). Multiple commenters suggested that the percentage control requirement be eliminated entirely.

The proposed regulations retain the 20 percent threshold used in Notice 2018–67. The Treasury Department and the IRS intend the percentage threshold to be a proxy to identify partnership interests in which the exempt organization does not significantly participate in any partnership trade or business and therefore may appropriately be considered an investment activity for purposes of section 512(a)(6). The 20 percent threshold is consistent with at least one other administrative exception created for certain investment activities. *See* section 731(c)(3)(C)(i) & § 1.731–2(e). Accordingly, the proposed regulations treat a 20 percent interest in a partnership over which the exempt organization partner has no control (see section 2.d.iii.B of this preamble) as a part of the exempt organization's investment activities. However, as with the de minimis test, an exempt organization is no longer required to combine certain related interests when determining whether a partnership interest meets the 20 percent threshold under the control test (see section 2.d.iv of this preamble).

The Treasury Department and the IRS recognize that an exempt organization may have more than 20 percent of the capital interests of a partnership but the exempt organization may consider that partnership interest to be part of its investment activities raising funds for its exempt activities. However, as discussed in section 2.b of this preamble, the proposed regulations do not provide a general definition of the term ''investment activities'' such that a non-QPI could be aggregated with the exempt organization's other investment activities for purposes of section 512(a)(6). While the addition of the look-through rule to the de minimis test in these proposed regulations may result in the aggregation of some of the lower-tier partnership interests of a directly-held non-QPI, an exempt organization's investment intent is not sufficient to treat the overall non-QPI as part of its investment activities.

At least two commenters suggested that the capital interests in a partnership do not indicate control over a partnership. The Treasury Department and the IRS understand that a partner's percentage interest in the capital interests of a partnership does not necessarily correlate with the partner's ability to control the partnership. However, the Treasury Department and the IRS have concluded that a combination of an exempt organization's percentage capital interest in a partnership and the exempt organization's ability to control the partnership are an appropriate administrative proxy for determining whether a partnership interest is an investment activity. The use of a percentage interest, in addition to the definition of ''control'' discussed in section 2.d.iii.B of this preamble, provides a bright line for the evaluation of partnership interests that may be investment activities. Furthermore, because an exempt organization's percentage profits interest may change throughout the year, the proposed regulations continue to consider only an exempt organization's capital interest in a partnership for purposes of the control test.

B. Definition of ''Control''

Notice 2018–67 provided that all facts and circumstances are relevant for determining whether an exempt organization has control or influence over a partnership. *See* section 6.03(3) of Notice 2018–67. Notice 2018–67 then provided three specific circumstances in which an exempt organization has control or influence. *Id.* Commenters generally appeared to support the inclusion of a facts and circumstances test. Nonetheless, numerous commenters suggested revisions to what it means for an exempt organization to have influence or control over a partnership.

First, Notice 2018–67 provided that an exempt organization has control or influence if the exempt organization may require the partnership to perform, or may prevent the partnership from performing, any act that significantly affects the operations of the partnership. Several commenters recommended that the proposed regulations clarify that the right to vote for the appointment or removal of a general partner or managing member, the ability to appoint representatives to investor committees or advisory committees, and the right to approve the selection or removal of a general partner or managing member do not evidence influence or control. These commenters explained that these rights help ensure that the general partner cannot alter a partnership without the consent of the limited partners. Similarly, other commenters requested that the proposed regulations clarify that an exempt organization will not be deemed to have influence or control over a partnership if it exercises its rights or takes actions that it is permitted to take under state law while maintaining its limited liability status in a partnership.

Second, Notice 2018–67 provided that an exempt organization has control or influence over a partnership if any of the exempt organization's officers, directors, trustees, or employees have rights to participate in the management of the partnership or conduct the partnership's business at any time, or if

the exempt organization has the power to appoint or remove any of the partnership's officers, directors, trustees, or employees. One commenter stated that the presence of these rights or powers does not necessarily illustrate control. Another commenter suggested that this rule is overly restrictive and will cause many partnership interests in which an exempt organization has no influence or control to fail to meet the requirements of the control test. This commenter stated that many exempt organizations have governing board members that also work in the investment management industry and may participate in conducting the business of a partnership in which the exempt organization invests. The commenter explained that these individuals' expertise in financial management is essential for the prudent management of an exempt organization's investments. The commenter argued that a general rule based on facts and circumstances is sufficient to address situations in which an exempt organization exercises ''excessive'' influence or control over a partnership such that it should not be considered a QPI.

The proposed regulations retain the control rule described in Notice 2018–67 with minor modifications to address the comments described above. In particular, the proposed regulations remove the term ''influence'' so that the second prong of the control test provides that, if the exempt organization has 20 percent or less of the capital interests, a partnership interest is a QPI that meets the requirements of the control test if the exempt organization does not control the partnership. Consistent with Notice 2018–67, the proposed regulations provide that all the facts and circumstances are relevant for determining whether an exempt organization controls a partnership. The proposed regulations clarify that the partnership agreement is among the facts and circumstances that may be considered when making a determination of control.

The proposed regulations also list certain specific circumstances that evidence control, focusing on four discrete rights or powers. Two circumstances focus on the exempt organization's ability to perform certain actions on its own. Specifically, the proposed regulations provide that an exempt organization controls a partnership if the exempt organization, by itself, may require the partnership to perform, or may prevent the partnership from performing, any act that significantly affects the operations of the partnership or has the power to appoint or remove any of the partnership's officers or employees or a majority of directors. The remaining two circumstances focus on whether any of the exempt organization's officers, directors, trustees, or employees have rights to participate in the management of the partnership at any time or to conduct the partnership's business at any time. No exception is provided for certain professionals that may serve on the boards of both the exempt organization and partnerships in which the exempt organization is a partner.

The Treasury Department and the IRS recognize that, although these rights or powers indicate control in some situations, other facts and circumstances may tip the scale the other way. Accordingly, the Treasury Department and the IRS request comments regarding whether all these rights or powers should be weighted the same or whether there are certain circumstances in which such right or power would never indicate control.

iv. Combining Related Interests

Both the de minimis test and the control test in Notice 2018–67 required an exempt organization to own less than a certain percentage of the profits and capital interests in a partnership. *See* sections 6.02(1) (de minimis test) and 6.03(1) (control test) of Notice 2018–67. In determining the exempt organization's ownership percentage, both the de minimis test and the control test required the exempt organization to combine certain related interests (aggregation rule). *Id.* The aggregation rule in section 6.02(2)(b)(i) of Notice 2018–67 provided that, when determining an exempt organization's percentage partnership interest, the interest of a disqualified person (as defined in section 4958(f)), a supporting organization (as defined in section 509(a)(3)), or a controlled entity (as defined in section 512(b)(13)) in the same partnership would be taken into account. *See* section 6.02(2)(b)(ii) through (iv) of Notice 2018–67.

Most commenters suggested that the aggregation rule is overly burdensome and requested that it be removed. Commenters noted that many public charity boards have numerous members and argued that verifying the board members' ownership percentages, after taking into account other related interests, for every partnership interest that generates UBTI would be unreasonable, if not impossible. Additionally, these commenters stated that the exempt organization cannot usually obtain information about other partners from the partnerships in which it holds interests because of confidentiality agreements.

If the aggregation rule is retained, commenters recommended several revisions. First, two commenters suggested eliminating the aggregation rule for the de minimis test. Next, a commenter suggested only requiring aggregation of interests owned by controlled entities and persons with direct control over the exempt organization's investment decisions. Additionally, another commenter would limit aggregation with interests owned by controlled entities to those interests owned by Type I and II supporting organizations described in section 509(a)(3)(B)(i) and (ii) and exclude interests owned by Type III supporting organizations described in section 509(a)(3)(B)(iii). Finally, another commenter suggested requiring aggregation with interests owned by controlled entities but not interests owned by persons or organizations that are not controlled by the exempt organization.

The proposed regulations retain a modified aggregation rule to address situations in which an exempt organization may control a partnership through the aggregation of interests. The aggregation rule in the proposed regulations differs from the aggregation rule in Notice 2018–67 in two ways. First, the aggregation rule in the proposed regulations applies only for purposes of the control test and not for purposes of the de minimis test. Second, the proposed regulations do not require an exempt organization to take into account the interests of disqualified persons when determining the exempt organization's percentage interest in a partnership for purposes of the control test.

The proposed regulations adopt other aspects of the aggregation rule from Notice 2018–67 without change. In particular, the proposed regulations include the definitions of ''supporting organization'' and ''controlled entity'' used in Notice 2018–67, which cross-referenced sections 509(a)(3) and 512(b)(13)(D), respectively. Additionally, the proposed regulations provide that, when determining an exempt organization's percentage interest in a partnership for purposes of the control test, the interests of a supporting organization or a controlled entity in the same partnership will be taken into account. However, the Treasury Department and the IRS will continue to consider whether the aggregation of the interests of supporting organizations is appropriate in the circumstance in which the exempt organization is a supported

organization that has little to no control over its supporting organizations.

v. Reliance on Schedule K–1 (Form 1065)

Notice 2018–67 provided that, in determining the exempt organization's percentage interest in a partnership, the exempt organization may rely on the Schedule K–1 (Form 1065) (or its successor) it receives from the partnership. Commenters requested various revisions to the Schedule K–1 (Form 1065) to assist in the reporting process. The Treasury Department and the IRS will consider revisions to the Schedule K–1 (Form 1065). Otherwise, the proposed regulations continue to permit reliance on Schedule K–1 (Form 1065) if the form lists the exempt organization's percentage profits interest or its percentage capital interest, or both, at the beginning and end of the year. However, the proposed regulations clarify that the exempt organization may not rely on the form to the extent that any information about the exempt organization's percentage interest is not specifically provided. For example, if the Schedule K–1 (Form 1065) an exempt organization receives from a partnership lists the exempt organization's percentage capital interest at the beginning and end of the year but lists its profits interest as ''variable,'' the exempt organization may rely on the form only with respect to its percentage capital interest.

vi. Additional Recommended Changes

Commenters suggested additional modifications to the de minimis and control tests, including phase-in and grace periods to address changes in an exempt organization's percentage interest that are beyond the exempt organization's control. Two commenters requested that an exempt organization be permitted up to 90 days to reduce its interest in a partnership in order to satisfy the requirements of the de minimis test if the increase in interest was because of another partner's withdrawal or percentage reduction. Another commenter suggested that, if a partnership interest met the requirements of either the de minimis test or the control test in a taxable year, the partnership interest should continue to meet those requirements in the following taxable years if the exempt organization's percentage interest changed through no action of the exempt organization partner.

The proposed regulations do not adopt any of these recommended changes because the de minimis and control tests are rules of administrative convenience. Allowing greater interests due to other actions would require other safeguards and limitations that would complicate the rule and place additional administrative burdens on exempt organizations and the IRS. Nevertheless, the Treasury Department and the IRS recognize that an exempt organization may not be aware of changes in its partnership interest until it receives a Schedule K–1 (Form 1065) from the partnership at the end of the partnership's taxable year. In such a circumstance, it may be appropriate to permit a higher percentage interest in taxable years in which the increase in an exempt organization's percentage interest during a taxable year is the result of the actions of other partners. Accordingly, the Treasury Department and the IRS request comments regarding whether permitting a higher percentage interest in taxable years in which the increase occurs as the result of the actions of other partners would address these commenters' concerns.

e. Transition Rule

Pending publication of proposed regulations, the transition rule in Notice 2018–67 permitted an exempt organization to treat each partnership interest acquired prior to August 21, 2018, that failed to meet the requirements of either the de minimis test or the control test as one trade or business for purposes of section 512(a)(6), regardless of whether there was more than one trade or business directly or indirectly conducted by the partnership or lower-tier partnerships. *See* section 6.04 of Notice 2018–67.

Many commenters asserted that the transition rule should apply to any partnership interest held by an exempt organization regardless of the date acquired. However, in the case of a partnership that conducts more than one trade or business that is a separate unrelated trade or business with respect to the exempt organization, applying the transition rule to all partnership interests and treating each non-QPI as one trade or business would undermine the purpose of section 512(a)(6) by allowing the gains from one unrelated trade or business to offset the losses from another unrelated trade or business. Accordingly, the Treasury Department and the IRS do not accept this comment.

Other commenters suggested that the proposed regulations should clarify that, if an exempt organization acquired a partnership interest before August 21, 2018, changes in the exempt organization's percentage interest would not affect the availability of the transition rule. Accordingly, the proposed regulations clarify that a partnership interest acquired prior to August 21, 2018, will continue to meet the requirement of the transition rule even if the exempt organization's percentage interest changes on or after August 21, 2018.

The proposed regulations also include two additions to the transition rule. First, the proposed regulations permit an exempt organization to rely on the transition rule only until the first day of the organization's first taxable year beginning after the date these proposed regulations are published as final regulations (transition period). Second, the proposed regulations provide that an exempt organization may apply either the transition rule or the look-through rule, but not both, to a partnership interest that meets the requirements for both rules. During the transition period, the exempt organization must determine how a partnership interest to which it chose to apply the transition rule will be treated under the final regulations. The Treasury Department and the IRS request comments regarding whether any additional transitional relief is necessary.

3. Inclusions of Income Derived From an Unrelated Trade or Business Under Section 512(b)(4), (13), and (17)

Section 512(b)(4), (13), and (17) require the inclusion of certain income as items of gross income derived from an unrelated trade or business if such income is unrelated debt-financed income, a specified payment from controlled entities, or certain insurance income derived from a controlled foreign corporation, respectively. In Notice 2018–67, the Treasury Department and the IRS explained that, in the absence of section 512(b)(1), (2), (3), and (5), the income described in these sections would be included in the calculation of UBTI to the extent that such amounts are ''gross income derived by any organization from any unrelated trade or business . . . regularly carried on by it'' under section 512(a)(1). Accordingly, the Treasury Department and the IRS stated that no distinction existed between ''gross income derived by any organization from any unrelated trade or business . . . regularly carried on by it'' within the meaning of section 512(a)(1) and amounts included ''as an item of gross income derived from an unrelated trade or business'' under section 512(b)(4), (13), and (17).

However, the Treasury Department and the IRS recognized that some interpretations of section 512(a)(6) might impose a significant burden on exempt organizations required to include certain income in UBTI under section 512(b)(4), (13), or (17), and,

consequently, that aggregating income included in UBTI under these sections may be appropriate in certain circumstances. In Notice 2018–67, the Treasury Department and the IRS requested comments regarding the treatment under section 512(a)(6) of income that is not from a partnership, but that is included in UBTI under section 512(b)(4), (13), and (17).

A few commenters disagreed with the statement that there is ''no distinction between 'gross income derived by any organization from any unrelated trade or business . . . regularly carried on by it' under section 512(a)(1) and amounts included in UBTI 'as an item of gross income derived from an unrelated trade or business' under section 512(b)(4), (13), and (17).'' These commenters argued that amounts included as items of gross income from an unrelated trade or business under section 512(b)(4), (13), and (17) should not be subject to section 512(a)(6) because such amounts are treated as income from investment activities and not as gross income from a trade or business.

As discussed in section 2.a of this preamble, investment activities are treated as a separate unrelated trade or business for purposes of section 512(a)(6). Furthermore, section 512(b)(4), (13), and (17) each provide that income described in the provision is income derived from an unrelated trade or business. Accordingly, amounts included in UBTI under section 512(b)(4), (13), and (17) contribute to the determination of whether an organization has more than one unrelated trade or business and thus is subject to section 512(a)(6). After considering the comments received and the legislative history of each section, the Treasury Department and the IRS propose the following treatment of amounts included in UBTI under section 512(b)(4), (13), and (17) for purposes of section 512(a)(6).

a. Unrelated Debt-Financed Income

In the case of debt-financed property (as defined in section 514), section 512(b)(4) requires an exempt organization to include, as an item of gross income from an unrelated trade or business, any unrelated debt-financed income, determined under section 514, with respect to such debt-financed property, even if an amount received with respect to the debt-financed property would ordinarily be excluded from the calculation of UBTI under section 512(b)(1), (2), (3), or (5). Section 514(b)(1) defines the term ''debt-financed property'' as any property that is held to produce income and with respect to which there is acquisition indebtedness. Section 1.514(b)–1(a) clarifies that property held to produce income includes rental real estate, tangible personal property, and corporate stock. Section 1.514(a)–1(a) provides that the calculation of debt-financed taxable income is made on a property-by-property basis. Thus, as stated in Notice 2018–67, one interpretation of sections 512(b)(4) and 514 and the regulations thereunder could require each debt-financed property to be treated as a separate unrelated trade or business under section 512(a)(6).

However, the amounts excluded from the calculation of UBTI under section 512(b)(1), (2), (3), and (5) that are included in UBTI if subject to acquisition indebtedness include dividends, interest, annuities, royalties, rents, and capital gains. As acknowledged in section 2.a of this preamble, dividends, interest, annuities, royalties, rents, and capital gains generally are income from investment activities. Additionally, section 514 generally does not apply to any property to the extent that the income from such property is taken into account in computing the gross income of any unrelated trade or business (except in the case of capital gains from such property that would be excluded under section 512(b)(5)). *See* section 514(b)(1)(B). Accordingly, the Treasury Department and the IRS agree with commenters that debt-financed properties (as defined in section 514) generally are held for investment purposes. Therefore, to reduce the reporting burden on exempt organizations, the proposed regulations include all the UBTI under section 512(b)(4) from an exempt organization's debt-financed property or properties (and not just its unrelated debt-financed income arising in connection with a QPI as provided in Notice 2018–67) in the list of ''investment activities'' treated as a separate unrelated trade or business for purposes of section 512(a)(6).

The Treasury Department and the IRS note that rental of certain property is a trade or business that must be identified using NAICS 2-digit codes. For example, section 512(b)(3)(B) provides that rents from real and personal property are included in UBTI if more than 50 percent of the total rent received or accrued under a lease is attributable to personal property. Also, § 1.512(b)–1(c)(5) indicates that payments for the use or occupancy of rooms or other space where services are also rendered to the occupant do not constitute rent from real property. Sections 512(b)(4) and 514 do not apply where such real or personal property is purchased with debt financing because the rents from these properties will have already been included in UBTI. *See* section 514(b)(1)(B) (providing that, except in the case of income excluded under section 512(b)(5), the term ''debt-financed property'' does not include any property to the extent that the income from such property is taken into account in computing the gross income of any unrelated trade or business); § 1.514(b)–1(b)(2)(i). Accordingly, because rent from such real and personal property is included in UBTI, the exempt organization must identify such unrelated trade or business using the NAICS 2-digit code for real estate rental and leasing (53).

b. Specified Payments Received From Controlled Entities

Notwithstanding section 512(b)(1), (2), and (3), section 512(b)(13)(A) requires an exempt organization, referred to as a ''controlling organization,'' that receives or accrues (directly or indirectly) a specified payment from another entity which it controls, referred to as a ''controlled entity,'' to include such payment as an item of gross income derived from an unrelated trade or business to the extent such payment reduces the net unrelated income of the controlled entity (or increases any net unrelated loss of the controlled entity). *See* § 1.512(b)–1(l)(1). Section 512(b)(13)(C) defines the term ''specified payment'' as any interest, annuity, royalty, or rent. Accordingly, section 512(b)(13) treats certain amounts that would ordinarily be excluded from the calculation of UBTI under section 512(b)(1), (2), and (3) as income derived from an unrelated trade or business.

Commenters argued that amounts included in UBTI under section 512(b)(13) should be included with an exempt organization's other investment activities. Presumably, this argument rests on the premise that the types of payments described in section 512(b)(13)(C)—that is, any interest, annuity, royalty, or rent—might be characterized generally as ''investment income.'' However, treating specified payments included in UBTI as income from an exempt organization's investment activities would be inconsistent with the purpose of section 512(b)(13)(A), which is to prevent a controlled entity from gaining a competitive advantage (in contravention of the purposes of section 512) through making deductible payments to a controlling organization that is exempt from tax. *See* S. Rep. No. 91–552, at 73 (1969) (explaining that certain ''rental'' arrangements between exempt organizations and taxable subsidiaries

''enable[ ] the taxable [subsidiary] to escape nearly all of its income taxes''). Consistent with that purpose, section 512(b)(13)(A) treats a specified payment as income from an unrelated trade or business only ''to the extent such payment reduces the net unrelated income of the controlled entity (or increases any net unrelated loss of the controlled entity).'' Section 512(b)(13) thus views such payments as stemming from the trade or business activity of the controlled entity rather than from the ''investment activity'' of the controlling organization.

Further, the required degree of control of the controlling organization over the controlled entity indicates that the controlled entities are not a part of the controlling organization's otherwise appropriately characterized investment activities. In general, section 512(b)(13)(D) defines the term ''control'' as ownership of more than 50 percent of the stock in a corporation, of the profits interests or capital interests in a partnership, or, in any other case, of the beneficial interests in an entity. The section 318 constructive ownership rules apply when determining the ownership of stock in a corporation, and similar principles apply in determining the ownership of interests in other types of entities. As generally discussed in section 2.d.iii.B of this preamble, control over an organization suggests that such interest is not part of the exempt organization's investment activities. Accordingly, even though the controlled entity's trades or businesses might not be attributed to the controlling organization (such as in the case of a controlled corporation), the control itself indicates that the controlled entity is held as part of a trade or business other than the controlling organization's investment activities.

The plain language of section 512(b)(13) could require each specified payment to be treated as a separate unrelated trade or business under section 512(a)(6) because section 512(b)(13) requires an exempt organization to include such payment as an item of gross income derived from ''an'' unrelated trade or business. However, this treatment may impose a considerable administrative burden on controlling organizations that receive numerous specified payments from controlled entities, such as may be the case with a university or hospital system. Therefore, these proposed regulations permit an exempt organization to aggregate all the specified payments received from a controlled entity and to treat the payments as received from a single separate unrelated trade or business for purposes of section 512(a)(6).

In particular, the proposed regulations provide that, if an exempt organization controls another entity (within the meaning of section 512(b)(13)(D)), the specified payments from that controlled entity will be treated as gross income from a separate unrelated trade or business for purposes of section 512(a)(6). If a controlling organization receives specified payments from two different controlled entities, the payments from each controlled entity are treated as separate unrelated trades or businesses. For example, a controlling organization that receives rental payments from two controlled entities will have two separate unrelated trades or businesses, one for each controlled entity. The specified payments from a controlled entity will be treated as gross income from one unrelated trade or business regardless of whether the controlled entity engages in more than one unrelated trade or business or whether the controlling organization receives more than one type of specified payment from that controlled entity.

c. Certain Amounts Derived From Foreign Corporations

Section 512(b)(17) requires any amount included in gross income under section 951(a)(1)(A) to be included as an item of gross income derived from an unrelated trade or business to the extent the amount so included is attributable to insurance income (as defined in section 953) which, if derived directly by the exempt organization, would be treated as an unrelated trade or business. Section 953(a)(1) defines ''insurance income'' as any income that (A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and (B) would (subject to certain modifications not relevant here) be taxed under subchapter L of chapter 1 if such income were the income of a domestic insurance company. Thus, section 512(b)(17) ''applies a look-through rule in characterizing certain subpart F insurance income for unrelated business income tax purposes.'' H.R. Rep. No. 104–586 (1996), at 137.

Commenters have argued that insurance income included in UBTI under section 512(b)(17) belongs in the category of investment activities. However, like section 512(b)(13), the required degree of control of the exempt organization over the controlled foreign corporation indicates that the exempt organization's interest in a controlled foreign corporation probably is not a part of the exempt organization's otherwise appropriately characterized investment activities. In particular, section 951(a)(1)(A) applies only if a foreign corporation is a controlled foreign corporation, which section 957 defines as any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote or the total value of the stock of such corporation is owned, directly, indirectly, or constructively by United States shareholders. Section 951(b) defines ''United States shareholder,'' with respect to any foreign corporation, as a United States person (within the meaning of section 7701(a)(30), which includes domestic corporations and certain trusts) who owns, directly, indirectly, or constructively, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation.

Furthermore, insurance income included in UBTI under section 512(b)(17) should not be treated as gross income from an exempt organization's investment activities because the provision of insurance generally is an unrelated trade or business. Section 501(m) provides that, in the case of an exempt organization described in section 501(c)(3) or (4) that does not provide commercial-type insurance as a substantial part of its activities, the activity of providing commercial-type insurance is treated as an unrelated trade or business (as defined in section 513). However, rather than treating insurance income from each controlled foreign corporation as income from a separate unrelated trade or business, these proposed regulations treat the provision of insurance by all controlled foreign corporations as one trade or business, regardless of whether such insurance income is received from more than one controlled foreign corporation. This approach is consistent with how NAICS would categorize the provision of insurance (52—Finance and Insurance).

However, the proposed regulations do not permit the aggregation of an exempt organization's insurance income included in UBTI under section 512(b)(17) with any insubstantial commercial-type insurance activities conducted directly by the exempt organization because the controlled foreign corporation, not the exempt organization, is engaged in the activity giving rise to the insurance income included in UBTI under section 512(b)(17). The insurance activity is not attributed to the exempt organization

and thus is distinguishable from any commercial-type insurance activity engaged in directly by the exempt organization.

4. S Corporation Interest Treated as an Interest in an Unrelated Trade or Business

An S corporation is a ''small corporation'' that may elect to be treated under a simplified tax regime that acts as a hybrid between the rules for corporations and the rules for pass-through entities. In general, the items of income and loss of an S corporation are taxed directly to the shareholders of that corporation. *See* section 1366(a). The types of exempt organizations that are permitted to be shareholders of an S corporation are described in section 1361(c)(2)(A)(vi) and (6). Exempt organizations permitted to be S corporation shareholders include qualified retirement plans, exempt organizations described in section 501(c)(3), and certain IRAs (including, subject to the limitation described more specifically in 1361(c)(2)(A)(vi), an IRA designated as a Roth IRA under section 408A).

For purposes of the unrelated business income tax, section 512(e) provides special rules applicable to S corporations. Section 512(e)(1)(A) provides that, if an exempt organization permitted to be an S corporation shareholder holds stock in an S corporation, such interest will be treated as an interest in an unrelated trade or business. Thus, notwithstanding any other provision in sections 511 through 514, section 512(e)(1)(B) requires an exempt organization permitted to hold S corporation stock to take the following amounts into account in computing the UBTI of such exempt organization: (i) All items of income, loss, or deduction taken into account under section 1366(a) (regarding the determination of an S corporation shareholder's tax liability); and (ii) any gain or loss on the disposition of the stock in the S corporation.

Notice 2018–67 did not address, or request comments on, the treatment of amounts taken into account in computing UBTI under section 512(e). Nonetheless, one commenter recommended that UBTI from an S corporation should be treated as income from a single trade or business regardless of the manner in which such income is earned by the S corporation. The commenter stated that having to separate all the income producing activities of an S corporation would be extremely burdensome. Accordingly, the commenter recommended that all income from an S corporation should be aggregated with the income from QPIs to ensure similar treatment of all pass-through entities. In the alternative, the commenter suggested combining all income from S corporations in which the exempt organization shareholder owns less than 50 percent of the shares with the income from QPIs.

The proposed regulations generally provide that each S corporation interest will be treated as an interest in a separate unrelated trade or business, which is consistent with the language of section 512(e)(1)(A). Accordingly, if an exempt organization has two S corporation interests (that are not qualifying S corporation interests described in section 4.a of this preamble), the exempt organization will report two trades or businesses, one for each S corporation interest. The treatment of each S corporation interest as one trade or business for purposes of section 512(a)(6) is similar to the treatment of specified payments from a controlled entity under section 512(b)(13). Furthermore, the Treasury Department and the IRS view this treatment as best serving the purposes of section 512(a)(6).

Section 512(e) provides two different rules: One for items of income, loss, or deduction taken into account under section 1366(a) and one for any gain or loss on the disposition of S corporation stock. Although these amounts could be treated as separate unrelated trades or businesses for purposes of section 512(a)(6) due to the disparate methods of inclusion in the language of section 512(e), such treatment would artificially divide each S corporation interest into two trades or businesses. The separate enumeration of the gain or loss on the disposition of S corporation stock serves to override section 512(b)(5), which would otherwise exclude such gain or loss from the calculation of UBTI, and not to indicate the existence of a separate unrelated trade or business. Accordingly, the proposed regulations provide that the UBTI from an S corporation interest is the amount described in section 512(e)(1)(B), which includes both the items of income, loss, or deduction taken into account under section 1366(a) and the gain and loss on the disposition of S corporation stock.

a. Qualifying S Corporation Interests

Notwithstanding the general rule that each S corporation interest is treated as a separate unrelated trade or business, the Treasury Department and the IRS recognize that an exempt organization may hold S corporation stock for different purposes, including investment purposes. Additionally, the look-through treatment of an S corporation is similar to the look-through treatment of a partnership. As discussed in section 2.d of this preamble, these proposed regulations permit the aggregation of QPIs to mitigate the burden on exempt organizations with interests in multi-tier partnerships. Similarly, the proposed regulations permit an exempt organization to aggregate its UBTI from an S corporation interest with its UBTI from other investment activities if the exempt organization's stock ownership (by percentage of stock ownership) in the S corporation meets the requirements provided in the de minimis test or the control test for ''qualifying partnership interests.'' As such, if an exempt organization owns (by percentage of stock ownership) 2 percent or less of the stock in an S Corporation, or, if it owns 20 percent or less of the stock in such S corporation and meets the facts and circumstances requirements under the second prong of the control test, then such S corporation interest will be a ''qualifying S corporation interest'' and can be aggregated with other investment activities. When determining an exempt organization's percentage ownership of stock in an S corporation, the exempt organization must apply the same rules for combining related interests that are used to determine whether a partnership interest is a QPI. An exempt organization may rely on the Schedule K–1 (Form 1120–S) that the exempt organization receives from the S corporation when determining its percentage ownership of the stock in such S corporation.

b. Employee Stock Ownership Plans

Section 512(e)(3) provides that section 512(e) does not apply to employer securities (within the meaning of section 409(l)) held by an employee stock ownership plan (ESOP) described in section 4975(e)(7). ESOPs holding S corporation stock (''S corporation ESOPs'') are subject to the limits imposed by section 409(p) on the concentration of S corporation ownership. Ownership includes shares allocated to the accounts of ESOP participants. Failing to meet the requirements of section 409(p) will result in the imposition of an excise tax on the S corporation and other adverse consequences to the ESOP and certain individuals. Although section 512(e) generally does not apply to S corporation ESOPs, the application of section 409(p) to an S corporation ESOP might give rise to UBTI. The primary means of avoiding a section 409(p) failure is for the S corporation ESOP to transfer some of its S corporation shares

to a non-ESOP portion of the plan or to another qualified retirement plan of the employer. *See* § 1.409(p)–1(b)(2)(v)(A)–(B). Such a transfer may result in a significant number of S corporation shares being held by the non-ESOP portion of an S corporation ESOP or by another section 401(a) plan (''transferee plan''). The transferred shares, no longer held in an ESOP, are not described in section 512(e)(3). Accordingly, the transferee plan treats the S corporation interest resulting from the transfer of the S corporation shares as an interest in an unrelated trade or business under the general rule of section 512(e)(1) and takes the amounts described in section 512(e)(1)(B) into account in computing UBTI. The Treasury Department and IRS anticipate that a transferee plan is not likely to have more than one S corporation interest. However, whether such S corporation interest may be aggregated with the investment activities of the transferee plan will depend on whether the S corporation interest is a qualifying S corporation interest. The Treasury Department and the IRS request comments on this issue.

5. Social Clubs, Voluntary Employees' Beneficiary Associations, and Supplemental Unemployment Benefits Trusts

As noted in the Background section, section 512(a)(3) provides a special definition of UBTI for social clubs, VEBAs, and SUBs. Section 512(a)(3)(A) defines UBTI, in part, as ''gross income (excluding exempt function income).'' ''Gross income'' under section 61(a) includes ''gains derived from dealings in property,'' ''interest,'' ''rents,'' ''royalties,'' ''dividends,'' and ''annuities.'' *See* section 61(a)(3) through (8). Consistent with section 61(a), the gross income subject to the unrelated business income tax under section 512(a)(3) generally includes interest, annuities, dividends, royalties, rents, and capital gains because the modifications in section 512(b)(1), (2), (3), and (5) that exclude such amounts from UBTI for organizations subject to section 512(a)(1) are not available under section 512(a)(3). Accordingly, social clubs, VEBAs, and SUBs generally must include interest, dividends, royalties, rents, and capital gains in UBTI unless such amounts may be set aside for a purpose described in section 512(a)(3)(B)(i) or (ii) and therefore would be exempt function income excluded from UBTI under section 512(a)(3)(A).

Section 512(a)(3)(B) defines ''exempt function income'' as (1) ''the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing such members or their dependents or guests goods, facilities, or services in furtherance of the purposes constituting the basis for the exemption of the organization;'' and (2) ''all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to [section 512(a)(1)]) which is set aside'' for one of the purposes described in section 512(a)(3)(B)(i) or (ii). Such amounts set aside include reasonable costs of administration directly connected with a purpose described in section 512(a)(3)(B)(i) or (ii).

Section 512(a)(3)(B)(i) includes in exempt function income amounts set aside for a purpose specified in section 170(c)(4), that is, exclusively for religious, charitable, scientific, literary, or educational purposes. In the case of a VEBA or SUB, section 512(a)(3)(B)(ii) includes in exempt function income amounts set aside to provide for the payment of life, sick, accident, or other benefits. Section 512(a)(3)(E) limits the amounts that may be set aside under section 512(a)(3)(B)(ii). In general, section 512(a)(3)(E)(i) provides that a set aside for any purpose described in section 512(a)(3)(B)(ii) may be taken into account as exempt function income only to the extent that such set aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A (without regard to section 419A(f)(6)) for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

In determining what income may be set aside under 512(a)(3)(B)(i) or (ii), the income available is ''all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to [section 512(a)(1)]).'' This parenthetical language, by referencing ''the gross income from any unrelated trade or business computed as if the organization was subject to [section 512(a)(1)],'' pulls in the modifications of section 512(b) applicable to that computation. Accordingly, amounts excluded from UBTI under section 512(a) via the modifications in section 512(b) (such as interest, dividends royalties, rents, and capital gains) are available to be set aside for the purposes of section 512(a)(3)(B)(i) and (ii) and may constitute exempt function income, subject to the other applicable limitations.

For example, if a social club has interest and dividends, and does not set aside any amount of such interest or dividends for a purpose specified in section 170(c)(4), then the full amount of the interest and dividends would constitute UBTI under section 512(a)(3). However, if the social club sets aside any amount of the interest or dividends for a purpose specified in section 170(c)(4), the amount of the interest and dividends set aside would be excluded from the calculation of UBTI under section 512(a)(3)(B)(i) as exempt function income (provided that such amount set aside actually is used for a purpose specified in section 170(c)(4)). Similarly, a VEBA with interest and dividends may set aside amounts to provide for the payment of life, sick, accident, or other benefits, subject to the limitations of section 512(a)(3)(E).[4] Such amount set aside will be excluded from UBTI as exempt function income (provided that such amount actually is used to provide for the payment of benefits).

Notice 2018–67 anticipated that the rules issued regarding how an exempt organization identifies separate trades or businesses for purposes of section 512(a)(6)(A) generally would apply under both section 512(a)(1) and (3). Nonetheless, because social clubs, VEBAs, and SUBs are taxed differently than other exempt organizations under section 511, Notice 2018–67 requested comments regarding any additional considerations that should be given to how section 512(a)(6) applies within the context of section 512(a)(3), and, in particular, how the income from investment activities of these organizations should be treated for purposes of section 512(a)(6).

Commenters generally agreed that social clubs should be subject to the same rules as exempt organizations subject to section 512(a)(1) when determining whether the social club is subject to section 512(a)(6). A social club therefore would identify its unrelated trades or businesses using NAICS codes and treat the income derived from investment activities as a separate unrelated trade or business. Only one commenter addressed how section 512(a)(6) should apply to VEBAs. This commenter suggested that VEBAs would not be subject to section 512(a)(6) because the unrelated trade or business activities of the VEBA could be identified under one NAICS 6-digit code—the code for health and welfare funds (525120). However, as explained in section 1.a.i of this preamble, an exempt organization cannot use a

[4] *See* Treas. Reg. § 1.512(a)–5(c).

NAICS 2-digit code describing the activities the conduct of which is substantially related to the exercise or performance by such exempt organization of the purpose or function constituting the basis for its exemption under section 501. No commenter addressed how section 512(a)(6) should apply to a SUB.

Consistent with the statement made in Notice 2018–67, the Treasury Department and the IRS have determined that a social club, VEBA, or SUB will determine whether it has more than one unrelated trade or business in the same manner as an exempt organization subject to section 512(a)(1) except as discussed in sections 5.a and b of this preamble.

a. Investment Activities

As discussed in section 2 of this preamble, the proposed regulations treat certain ''investment activities'' (that is, QPIs, qualifying S corporation interests, and debt-financed property or properties) as a separate unrelated trade or business for purposes of section 512(a)(6) and the proposed regulations. Thus, a social club, VEBA, or SUB generally will treat the investment activities specifically listed in the proposed regulations as a separate unrelated trade or business for purposes of section 512(a)(6). Nonetheless, because UBTI is defined differently for social clubs, VEBAs, and SUBs, the proposed regulations clarify that, in addition to other investment activities treated as a separate unrelated trade or business for purposes of section 512(a)(6), gross income from the investment activities of a social club, VEBA, or SUB also includes specific amounts discussed in sections 5.a.i. and ii of this preamble. The Treasury Department and the IRS request comments regarding any unintended consequences, in areas other than the unrelated business income tax, resulting from the treatment of investment activity as an unrelated trade or business for purposes of section 512(a)(6) for VEBAs and SUBs.

i. Amounts Described in Section 512(b)(1), (2), (3), and (5)

Because the modifications in section 512(b)(1), (2), (3), and (5) are not available under section 512(a)(3), social clubs, VEBAs, and SUBs generally must include interest, dividends, royalties, rents, and capital gains in UBTI under section 512(a)(3)(A) unless such amounts are set aside for a purpose described in section 512(a)(3)(B)(i) or (ii).[5] As stated in section 2.a of this preamble, interest, dividends, royalties, rents, and capital gains generally are considered income from investment activities. Accordingly, the proposed regulations provide that, for purposes of section 512(a)(6), UBTI from the investment activities of a social club, VEBA, or SUB includes any amount that would be excluded from the calculation of UBTI under section 512(b)(1), (2), (3), or (5) if the social club, VEBA, or SUB were subject to section 512(a)(1).

ii. Amounts Set Aside but Used for Another Purpose and Amounts in Excess of Account Limits

Section 512(a)(3)(B) provides that, if an amount which is attributable to income set aside for a purpose described in section 512(a)(3)(B)(i) or (ii) is used for a purpose other than one described therein, such amount shall be included in UBTI under section 512(a)(3)(A). Furthermore, with respect to a VEBA or SUB, the amount set aside may not be in excess of the set aside limit under section 512(a)(3)(E) and any amount in excess of this limit is nonexempt function income included in UBTI under section 512(a)(3)(A).

As discussed in section 5.a.i of this preamble, the amounts that may be set aside under section 512(a)(3)(B)(i) or (ii) are part of the social club, VEBA, or SUB's investment activities. Therefore, the proposed regulations also provide that UBTI from the investment activities of a social club, VEBA, or SUB includes any amount that is attributable to income set aside (and not in excess of the set aside limit described in section 512(a)(3)(E)), but not used, for a purpose described in section 512(a)(3)(B)(i) or (ii) and any amount in excess of the set aside limit described in section 512(a)(3)(E).

b. Social Club Activities

i. Limitation on Investment Activities

Notice 2018–67 provided that the interim and transition rules for certain partnership interests did not apply to social clubs described in section 501(c)(7), pending receipt of comments and additional consideration of the issues specific to social clubs. Section 501(c)(7) requires that ''substantially all of the activities'' of an organization described therein be ''for pleasure, recreation, and other nonprofitable purposes.'' Accordingly, a social club has specific limits on the amount of nonexempt function income that may be earned without endangering its tax-exempt status. While the Code does not provide more detail, intended limits are described in legislative history. *See* S. Rep. No. 94–1318 (1976), at 4–5. Additionally, Congress did not intend social clubs to receive, within these limits, non-traditional, unrelated business income. *Id.* Accordingly, consistent with Notice 2018–67, the proposed regulations provide that the QPI rule and the transition rule do not apply to social clubs because social clubs should not be invested in partnerships that would generally be conducting non-traditional, unrelated trades or businesses that generate more than a de minimis amount of UBTI. In this regard, a partnership interest meeting the requirements of the de minimis rule in these proposed regulations is not the same as a partnership interest generating only de minimis amounts of UBTI from non-traditional, unrelated trades or businesses. Thus, the Treasury Department and the IRS do not consider the administrative convenience rationale supporting the QPI rule as relevant for social clubs.

ii. Nonmember Activities

Two commenters requested that a social club be permitted to treat all nonmember activities as one unrelated trade or business for purposes of section 512(a)(6). One of these commenters argued that a social club could not easily separate its nonmember activities into separate unrelated trades or businesses because social clubs do not generally maintain separate books and records for the various locations in which sales to nonmembers may occur, such as in dining facilities or retail stores. The other commenter added that separating a social club's nonmember activities into more than one unrelated trade or business would result in substantial administrative burden. The commenters describe the variety of activities in which social clubs engage, including food and beverage sales in club dining facilities and on club grounds (such as at pools or on golf courses and tennis courts); retail sales; greens fees; and space rental fees, whether or not they include substantial services.

As generally discussed in section 5 of this preamble, under the proposed regulations, a social club with nonmember income is subject to the same rules for identifying its unrelated trades or businesses as an organization subject to the rules of section 512(a)(1). Further, as discussed in section 1.a.i of this preamble, a social club cannot use

[5] As explained in the introduction to section 5 of this preamble, treating the investment activities of a social club, VEBA, or SUB as an unrelated trade or business for purposes of section 512(a)(6) does not affect the amounts that may be set aside under section 512(a)(3)(B)(i) or (ii).

the NAICS 2-digit code generally describing social clubs (71) to describe all its non-member income because the NAICS code used must describe its separate unrelated trade or business and not the purpose for which it is exempt. While this code may describe some of a social club's non-member income, such as greens fees, other NAICS codes are more appropriate to describe other non-member income, such as merchandise sales (45) and food and beverage services (72). Accordingly, a social club must identify its separate unrelated trades or businesses in accordance with the rule described in section 1 of this preamble like an exempt organization subject to section 512(a)(1).

iii. Nonrecurring Events

The Treasury Department and the IRS recognize that UBTI within the meaning of section 512(a)(3) includes gross income without regard to a specific determination regarding the associated activities' qualification as an unrelated trade or business (within the meaning of section 513) because UBTI under section 512(a)(3) includes ''all gross income (excluding exempt function income).'' For example, one commenter requested guidance on how to treat income from social club events that are not anticipated to reoccur. The commenter provides as an example the hosting of a professional golf tournament when similar tournaments are not held in the same location on an annual basis. The commenter suggested that events such that occur once, or seldom, in the life of a social club, should be classified as a single trade or business under section 512(a)(6).

As explained in section 1.a of this preamble, these proposed regulations generally require an exempt organization to identify its separate unrelated trades or businesses using the NAICS 2-digit code that most accurately describes each trade or business. Whether an infrequent or possibly nonrecurring event constitutes a separate unrelated trade or business or whether such event is part of another trade or business (including, in some cases, part of the social club's investment activities) depends on the facts and circumstances of each social club and the event at issue, including the scope of activities as part of the event. While such determination is not necessary for including such income in UBTI under section 512(a)(3), identification of separate unrelated trades or businesses is necessary for applying section 512(a)(6). The Treasury Department and the IRS request comments regarding the particular facts and circumstances that should be considered by a social club when determining whether a non-recurring event should be treated as a separate unrelated trade or business, part of a larger trade or business, or as part of a social club's investment activities for purposes of section 512(a)(6).

iv. Activities Without a Profit Motive

One commenter requested that the Treasury Department and the IRS clarify that nonmember activities conducted without intent to profit are not unrelated trades or businesses. The Treasury Department and the IRS do not address this comment in the proposed regulations because it is adequately addressed by existing precedent. *See, e.g., Portland Golf Club,* 497 U.S. at 164 (1990); Rev. Rul. 81–69, 1981–1 C.B. 351.

6. Total UBTI and the Charitable Contribution Deduction

Consistent with section 512(a)(6)(B), the proposed regulations provide that the total UBTI of an exempt organization with more than one unrelated trade or business is the sum of the UBTI computed with respect to each separate unrelated trade or business (as identified under the proposed regulations), less the specific deduction under section 512(b)(12). The proposed regulations also state that, for purposes of calculating an exempt organization's total UBTI, the UBTI with respect to any separate unrelated trade or business identified under the proposed regulations shall not be less than zero. *See* section 512(a)(6)(C).

Additionally, section 512(b)(10) and (11) permits exempt organizations to take the deduction under section 170 for charitable contributions whether or not the deduction is directly connected with the carrying on of an unrelated trade or business. The deduction is computed under section 170 except as otherwise provided in section 512(b)(10) and (11) and the Treasury regulations thereunder. For an exempt organization described in section 511(a), the deduction allowed by section 170 is limited to 10 percent of the exempt organization's UBTI computed without the benefit of section 512(b)(10). For a trust described in section 511(b), the deduction allowed by section 170 is limited as prescribed by section 170(b)(1)(A) and (B) determined with reference to UBTI computed without the benefit of section 512(b)(11).

At least one commenter recommended that the charitable contribution deductions permitted under section 512(b)(10) and (11) be taken against total UBTI calculated under section 512(a)(6)(B) rather than being allocated among unrelated trades or businesses. Additionally, the JCT stated that ''[i]t is not intended that an exempt organization that has more than one unrelated trade or business be required to allocate its deductible charitable contributions among its various unrelated trades or businesses.'' General Explanation, at 293 n.1377. The Treasury Department and the IRS agree. Thus, these proposed regulations clarify in new § 1.512(b)–1(g)(4) that the term ''unrelated business taxable income'' as used in section 512(b)(10) and (11) refers to UBTI after application of section 512(a)(6).

Under section 170(d)(1)(A), exempt organizations generally are permitted to carry over charitable contributions that exceed the organization's contribution base in a taxable year. Section 170(d)(1)(B) provides a special rule when an exempt organization has both NOL carryovers and excess contributions. In the case of an exempt organization with more than one unrelated trade or business, the function of this special rule is complicated by the requirement in section 512(a)(6)(A) to calculate NOLs separately with respect to each trade or business (see section 7 of this preamble). The Treasury Department and the IRS recognize that an ordering rule may be necessary to clarify how the special rule in section 170(d)(1)(B) operates when an exempt organization has NOL carry overs in more than one unrelated trade or business. Accordingly, the Treasury Department and the IRS request comments on this issue.

7. NOLs and UBTI

a. NOL Deduction Calculated Separately With Respect to Each Trade or Business

Section 512(b)(6), which was not changed by the TCJA, generally allows an exempt organization subject to the unrelated business income tax under section 511, including an exempt organization with more than one unrelated trade or business, to take the NOL deduction provided in section 172. Section 512(b)(6)(A) states that the NOL for any taxable year, the amount of the NOL carryback or carryover to any taxable year, and the NOL deduction for any taxable year shall be determined under section 172 without taking into account any amount of income or deduction that is excluded under section 512(b) in computing UBTI. For example, a loss attributable to an unrelated trade or business is not to be reduced by reason of the receipt of dividend income. *See* § 1.512(b)–1(e)(1). An NOL carryover is allowed only from

a taxable year for which the taxpayer is subject to the provisions of section 511, or a corresponding provision of prior law. *See* section 512(b)(6)(B); § 1.512(b)–1(e)(3).

Notice 2018–67 explained that section 512(a)(6) changes how an exempt organization with more than one unrelated trade or business calculates and takes NOLs into account with respect to a trade or business. Specifically, section 512(a)(6)(A) requires such an exempt organization to calculate UBTI, ''including for purposes of determining any NOL deduction,'' separately with respect to each trade or business for taxable years beginning after December 31, 2017. The legislative intent behind this change is to allow an NOL deduction ''only with respect to a trade or business from which the loss arose.'' H.R. Rep. No. 115–466, at 547. Accordingly, consistent with the language of section 512(a)(6)(A) and legislative intent, the proposed regulations provide that an exempt organization with more than one unrelated trade or business determines the NOL deduction allowed by sections 172(a) and 512(b)(6) separately with respect to each of its unrelated trades or businesses. The proposed regulations clarify that, if an exempt organization has more than one unrelated trade or business, § 1.512(b)–1(e), which explains the application of section 172 within the context of the unrelated business income tax, applies separately with respect to each such unrelated trade or business. Additionally, the proposed regulations add a new paragraph to § 1.512(b)–1(e) that refers an exempt organization with more than one unrelated trade or business to new proposed § 1.512(a)–6(h) regarding the computation of the NOL deduction.

b. Coordination of NOLs

To preserve NOLs from tax years prior to the effective date of the TCJA, Congress created a special transition rule for NOLs arising in a taxable year beginning before January 1, 2018 (''pre-2018 NOLs''). Section 13702(b)(2) of the TCJA provides that section 512(a)(6)(A) does not apply to pre-2018 NOLs; rather, pre-2018 NOLs are taken against the total UBTI calculated under section 512(a)(6)(B). However, when an exempt organization has pre-2018 NOLs, which are subject to a carry-forward limitation, and NOLs arising in a taxable year beginning after December 31, 2017 (''post-2017 NOLs''), which are not, a question arises regarding the order in which such losses should be taken.

In Notice 2018–67, the Treasury Department and the IRS noted that section 512(a)(6) may have changed the order in which an organization would ordinarily take losses. For example, if section 512(a)(6) is read as a more specific ordering rule for purposes of calculating and taking the NOL deduction than the one found in section 172, post-2017 NOLs would be calculated and taken before pre-2018 NOLs because the UBTI with respect to each separate unrelated trade or business is calculated under section 512(a)(6)(A) before calculating total UBTI under section 512(a)(6)(B). Accordingly, Notice 2018–67 requested comments regarding how the NOL deduction should be taken under section 512(a)(6) by exempt organizations with more than one unrelated trade or business and, in particular, by such organizations with both pre-2018 and post-2017 NOLs. Notice 2018–67 also requested comments on the ordering of pre-2018 and post-2017 NOLs and the potential treatment of pre-2018 NOLs that may expire in a given tax year if not taken before post-2017 NOLs.

In response to Notice 2018–67, several commenters addressed possible ordering rules for organizations subject to section 512(a)(6). These commenters noted that the language should not alter the ordering rules under section 172 such that pre-2018 NOLs should be allowed prior to post-2017 NOLs, especially because pre-2018 NOLs remain subject to a carry-forward limitation.

The language of section 512(a)(6) and section 13702(b) of the TCJA do not alter the ordering rules under section 172. Accordingly, the proposed regulations provide that an exempt organization with both pre-2018 and post-2017 NOLs will deduct its pre-2018 NOLs from its total UBTI under section 512(a)(6)(B) before deducting any post-2017 NOLs with regard to a separate unrelated trade or business from the UBTI from such unrelated trade or business. The proposed regulations clarify that pre-2018 NOLs are deducted from total UBTI in the manner that results in maximum utilization of the pre-2018 NOLs in a taxable year.

c. Legislative Changes to Section 172

At the same time Congress added section 512(a)(6), it also made extensive changes to section 172. These changes included limiting the NOL deduction to 80 percent of taxable income, prohibiting the carryback of NOLs (except for certain farming losses and in the case of certain insurance companies), and allowing the indefinite carryover of NOLs. *Id.* However, shortly before publication of these proposed regulations, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116–136, 134 Stat. 281 (2020) (CARES Act). Section 2303 of the CARES Act temporarily repeals the 80 percent income limitation and permits the carryback of NOLs arising in taxable years beginning after December 31, 2017, and before January 1, 2021, to each of the five taxable years preceding the taxable year of such loss. The Treasury Department and the IRS will further consider how the changes to section 172 made by the CARES Act affect the calculation of UBTI under section 512(a)(6) and may issue additional guidance on the issue.

8. Form 990–T

One commenter suggested updating the Form 990–T to provide space for an exempt organization to disclose and describe the method chosen for identifying the separate unrelated trades or businesses being reported on Form 990–T. This commenter recommended either the addition of a ''miscellaneous schedule'' similar to Schedule O, ''Supplemental Information to Form 990 or 990–EZ,'' of the Form 990, ''Return of Organization Exempt from Income Tax,'' or the inclusion of space on the schedules to the Form 990–T to make such disclosure. This commenter also recommended that the IRS update the instructions to the Form 990–T either to include a more complete list of applicable NAICS codes or to state clearly where additional codes may be found. The Treasury Department and the IRS recognize that changes to the Form 990–T and related schedules may be necessary. In particular, the Treasury Department and the IRS recognize that additional instructions are required regarding how separate unrelated trades or businesses identified under the special rules (rather than NAICS)—such as for investment activities (see section 2 of this preamble), inclusions of income derived from certain controlled entities (see section 3 of this preamble), and non-qualifying S corporation interests (see section 4 of this preamble)—are identified on Form 990–T and related schedules. Accordingly, the IRS intends to update the Form 990–T and related schedules, and the instructions thereto, as appropriate.

9. Individual Retirement Accounts

As previously discussed in the Background section of this preamble, section 513(b) provides a special definition of ''unrelated trade or business'' for a qualified retirement plan or for a trust that is exempt from tax under section 501(c)(17) (SUB). Section 513(b) defines ''unrelated trade or business,'' as any trade or business

regularly carried on by such trust or by a partnership of which it is a member.

Notice 2018–67 stated in a footnote that, because IRAs described in section 408 are, under section 408(e), subject to the tax imposed by section 511, and IRAs are most similar to qualified retirement plans, it is reasonable to apply the definition of ''unrelated trade or business'' described in section 513(b) to IRAs. The footnote stated that the Treasury Department and the IRS intended to provide that the section 513(b) definition of unrelated trade or business should be used for IRAs subject to the unrelated business income tax in section 511 pursuant to section 408(e). Consistent with this statement, the proposed regulations add a new paragraph to § 1.513–1 clarifying that the section 513(b) definition of ''unrelated trade or business'' applies to IRAs. Accordingly, § 1.513–1(f) provides that an IRA will apply the definition of ''unrelated trade or business'' in section 513(b) when determining whether it has more than one unrelated trade or business within the meaning of section 512(a)(6). The proposed regulations make corresponding changes to § 1.513(b)–1(a) to account for the new paragraph added at § 1.513(b)–1(f).

10. Inclusions of Subpart F Income and Global Intangible Low-Taxed Income

An inclusion of subpart F income under section 951(a)(1)(A) is treated in the same manner as a dividend for purposes of section 512(b)(1). Accordingly, an inclusion of subpart F income generally is excluded from the calculation of UBTI under section 512(b)(1). Notice 2018–67 explained that Congress approved the IRS's long-standing position when Congress enacted section 512(b)(17). Furthermore, Notice 2018–67 provided that an inclusion of GILTI under section 951A(a) should be treated in the same manner as an inclusion of subpart F income under section 951(a)(1)(A) for purposes of section 512(b)(1) and therefore would be treated as a dividend that generally is excluded from UBTI. Two commenters explicitly agreed with these conclusions and one commenter requested that the Treasury Department and the IRS revise the Treasury Regulations consistent with these conclusions. Accordingly, the proposed regulations revise § 1.512(b)–1(a) to clarify that an inclusion of subpart F income under section 951(a)(1)(A) is treated in the same manner as a dividend for purposes of section 512(b)(1) and that an inclusion of GILTI under section 951A(a) is treated in the same manner as an inclusion of subpart F income under section 951(a)(1)(A) for purposes of section 512(b)(1).

11. Public Support

A question has arisen regarding whether the enactment of section 512(a)(6) impacts the calculation of public support under sections 509(a)(1) and 170(b)(1)(A)(vi) and under section 509(a)(2). Exempt organizations described in section 501(c)(3) that are classified as publicly supported charities under these sections must calculate public support annually on Form 990, Schedule A, ''Public Charity Status and Public Support.'' In general, public support is expressed as a percentage of support from certain public sources over total support. *See* § 1.170A–9(f) (definition of section 170(b)(1)(A)(vi) organization); § 1.509(a)–3 (publicly supported organizations).

Section 512(a)(6) potentially impacts two aspects of the public support test. First, section 512(a)(6) potentially impacts the calculation of total support under section 509(d), a number which is used for purposes of both section 509(a)(1) and (2). Specifically, section 509(d)(3) includes, in the calculation of total support, the organization's net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business. Although section 509(d)(3) does not specifically cross-reference section 512, the term ''unrelated business activities'' can be read broadly to include, but not be limited to, UBTI within the meaning of section 512. If this is the case, then an organization with more than one unrelated trade or business could be required to apply section 512(a)(6) in determining its total support, which may increase its amount of total support because the losses from one unrelated trade or business cannot offset the gains from another unrelated trade or business.

Second, section 512(a)(6) potentially impacts the not-more-than-one-third support test under section 509(a)(2)(B), which requires calculation of the excess (if any) of the amount of UBTI (as defined in section 512) over the amount of the tax imposed by section 511. Unlike section 509(d)(3), which does not cross-reference section 512, the not-more-than-one-third support test specifically cross-references section 512. Accordingly, an organization with more than one unrelated trade or business could be required to apply section 512(a)(6) when determining whether it receives more than one-third of its support from non-public sources. If this is the case, application of section 512(a)(6) in this context may result in an increase in support received from non-public sources, again, because of the inability to use losses from one unrelated trade or business to offset income from another unrelated trade or business.

If section 512(a)(6) applies in either context, organizations with more than one unrelated trade or business may have difficulty qualifying as publicly supported because of the potential increase in the calculated support from non-public sources as well as the potential increase in the calculated amount of total support. The Treasury Department and the IRS are not aware of any intent of Congress to change the public support test when enacting section 512(a)(6). Accordingly, the proposed regulations include revisions to §§ 1.170A–9(f) and 1.509(a)–3 to permit an organization with more than one unrelated trade or business to aggregate its net income and net losses from all of its unrelated business activities, including its unrelated trades or businesses within the meaning of section 512, for purposes of determining whether the organization is publicly supported. The Treasury Department and the IRS recognize that requiring different calculations for purposes of calculating public support and UBTI may impose a significant administrative burden on organizations with more than one unrelated trade or business. Accordingly, the Treasury Department and the IRS request comments regarding the application of section 512(a)(6) to the public support test.

12. Technical Correction of Inadvertently Omitted Regulatory Language

These proposed regulations make a technical correction to § 1.512(a)–1(b). In 1967, the Treasury Department and the IRS published § 1.512(a)–1 in the **Federal Register** (TD 6939, 32 FR 17660). Section 1.512(a)–1(b) explained that ''[e]xpenses, depreciation and similar items attributable solely to the conduct of an unrelated business are proximately and primarily related to that business and therefore qualify for deduction to the extent that they meet the requirements of section 162, section 167, or other relevant provisions of the Internal Revenue Code.'' An example followed this statement providing that, ''[t]hus, for example, salaries of personnel employed full-time in carrying on an unrelated business are directly connected with the conduct of the unrelated business and are deductible in computing unrelated business taxable income if they otherwise qualify for deduction under the requirements of section 162.''

In 1975, the Treasury Department and the IRS revised § 1.512(a)–1(b) in regulations published in the **Federal Register** (TD 7392, 40 FR 58639). The final regulations omitted from the example the following language: ''[t]hus, for example, salaries of personnel employed full-time in carrying on an unrelated business are directly.'' However, the final regulations as published in the Cumulative Bulletin (1976–1 CB 162) contained this language. Accordingly, the Treasury Department and the IRS have concluded that this language was inadvertently omitted from the final regulations in 1975 and are making a technical correction to the regulations. Therefore, the proposed regulations include the omitted language in § 1.512(a)–1(b).

Proposed Applicability Dates

These regulations are proposed to apply to taxable years beginning on or after the date these regulations are published in the **Federal Register** as final regulations. For taxable years beginning before the date these regulations are published in the **Federal Register** as final regulations, an exempt organization may rely on a reasonable, good-faith interpretation of sections 511 through 514, considering all the facts and circumstances, when identifying separate unrelated trades or businesses for purposes of section 512(a)(6)(A). In addition, for these same taxable years, an exempt organization may rely on these proposed regulations in their entirety. Alternatively, for these same taxable years, an exempt organization may rely on the methods of aggregating or identifying separate trades or businesses provided in the Notice 2018–67.

Statement of Availability of IRS Documents

For copies of recently issued Revenue Procedures, Revenue Rulings, Notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at *http://www.irs.gov* or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 12866, 13563, and 13771 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The proposed regulations have been designated as significant under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the proposed rulemaking as significant under section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB. For purposes of Executive Order 13771, the proposed regulations are regulatory.

A. Background

Certain corporations, trusts, and other entities are exempt from Federal income taxation because of the specific functions they perform (''exempt organizations''). Examples include religious and charitable organizations. However, exempt organizations that engage in business activities that are not substantially related to their exempt purposes may have taxable income under section 511(a)(1) of the Internal Revenue Code (Code). For example, the income that a tax-exempt organization generates from the sale of advertising in its quarterly magazine is unrelated business taxable income (UBTI).

Prior to the Tax Cuts and Jobs Act (TCJA), UBTI was calculated by aggregating the net incomes from all the unrelated business activities conducted by an exempt organization. As a result, losses from one activity could be used to offset profits from another activity. New section 512(a)(6), enacted in the TCJA, provides that organizations with more than one unrelated trade or business calculate the taxable amounts separately for each trade or business so that losses only offset income from the same unrelated trade or business. The statutory language, however, does not specify standards for determining what activities would be considered the same or a different trade or business.

Previously, on September 4, 2018, the Treasury Department and the IRS published Notice 2018–67, 2018–36 I.R.B. 409 (the Notice), which discussed and solicited comments regarding various issues arising under section 512(a)(6) and set forth interim guidance and transition rules relating to that section. The Treasury Department and the IRS received 24 comments in response to the Notice. The proposed regulations consider and respond to these comments.

The proposed regulations address the need for guidance by providing rules for determining when an exempt organization has more than one unrelated trade or business and how such an exempt organization computes UBTI under new section 512(a)(6). Specifically discussed below, the proposed regulations establish guidelines for (1) identifying separate unrelated trades or businesses; and (2) in certain cases, permitting an exempt organization to treat investment activities as one unrelated trade or business for purposes of computing UBTI.

B. Baseline

The Treasury Department has assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

C. Affected Entities

Prior tax law did not require reporting unrelated business income by separate activity so taxpayer counts are not available. However, the IRS estimates that less than 2 percent of exempt organizations would be affected. Potentially affected organizations are only those with more than one unrelated trade or business, a group likely to include colleges and universities, certain cultural organizations such as museums, and some tax-exempt hospitals.

Presently it is not possible to obtain accurate counts of the number of exempt organizations potentially affected by the proposed regulations, because prior law did not require disaggregation of the separate sources of UBTI and therefore the IRS does not have access to this level of detail on UBTI. Approximately 1.4 million exempt organizations filed some type of information or tax return with the IRS for fiscal year 2018.[6] Only 188,000 exempt organizations filed Form 990–T, which is used to report UBTI. While not all Form 990–T filers also file an information return with the IRS, as an

[6] *See* Internal Revenue Service Research, Applied Analytics, and Statistics, Statistics of Income Division Fiscal Year Return Projections for the United States Publication 6292 (Rev. 9–2019), Projected Returns 2019–2026. Exempt organizations generally must file an annual information return with IRS. *See generally* section 6033. However, churches and small organizations are exempt from this filing requirement. *See* section 6033(a)(3). Organizations that have more than $1,000 in gross UBTI must also file Form 990–T to calculate their UBTI and tax. *See* section 512(b)(12) (providing a $1,000 specific deduction).

upper bound estimate 14 percent of exempt organizations could be affected by the regulations. Within Form 990–T filers, only a smaller subset, primarily the largest organizations in certain categories, are expected to have more than one unrelated trade or business. Among the types of organizations expected to have more than one unrelated trade or business are colleges and universities, certain cultural organizations such as museums, and some tax-exempt hospitals.

Additional information on organizations that may be affected is provided by a 2018 Center on Nonprofits and Philanthropy (CNP) survey of 723 primarily large exempt organizations.[7] Three-hundred and thirty of these organizations reported that they had filed a Form 990–T. Of these, 70 percent had revenues over $10 million and most were educational or arts and cultural organizations. Only 46 organizations (14 percent of the surveyed organizations filing Form 990–T) reported having more than one source of UBTI and almost half of these had only two sources. Thus, the Treasury Department and the IRS project that if the CNP survey results applied to the population of Form 990–T filers, then less than 2 percent of exempt organizations would be affected by the proposed regulations and that these would tend to be large educational or arts and cultural organizations.

D. Economic Analysis of NPRM

The proposed regulations provide greater certainty to exempt organizations regarding how to compute UBTI and tax in response to the changes made by TCJA and adopt standards that balance the statutory intent of those changes and excessive burden that might result from some interpretations of such standards. They also improve economic efficiency by helping to ensure that similar exempt organizations are taxed similarly. In the absence of this guidance taxpayers might make different assumptions regarding how to calculate UBTI and tax.

This section describes the two provisions of the NPRM for which economic analysis is helpful and provides a qualitative economic analysis of each one.

i. Identifying Separate Trades or Businesses

As discussed above, section 512(a)(6) requires exempt organizations with more than one unrelated trade or business to calculate UBTI separately for each trade or business so that losses are only used to offset income from the same unrelated trade or business. The Notice stated that the Treasury Department and the IRS were considering the use of NAICS codes to identify separate unrelated trades or businesses and, in the meantime, would consider the use of NAICS 6-digit codes to be reasonable for identifying separate unrelated trades or businesses. NAICS is an industry classification system for purposes of collecting, analyzing, and publishing statistical data related to the United States business economy. Each digit of the NAICS 6-digit codes describes an industry with increasing specificity.

In the Notice, the Treasury Department and the IRS requested comments regarding methods to identify separate unrelated trades or businesses in general and the use of NAICS codes in particular. As discussed further below, several commenters pointed out potential difficulties in using NAICS 6-digit codes and suggested using NAICS 2- or 3-digit codes; that is, a higher level of aggregation of business activity. The proposed regulations allow the use of NAICS 2-digit codes, thereby addressing the concerns raised in comments received and reducing compliance burdens for exempt organizations with multiple similar types of business activity.

Several commenters stated that the NAICS codes represented a workable system for identifying a separate unrelated trade or business. Not all commenters agreed as to what level of these codes should be used to group the various activities. Most of the commenters making recommendations on the NAICS codes rejected the use of NAICS 6-digit codes. These commenters noted that using NAICS 6-digit codes would result in significant compliance burden because an exempt organization would have to determine which of over 1,000 NAICS 6-digit codes most accurately describes its trades or businesses. Commenters noted that many NAICS 6-digit codes may apply to more than one trade or business activity or that no NAICS 6-digit code may exist to accurately describe a trade or business activity. Additionally, these commenters argued that the use of NAICS 6-digit codes could potentially require an exempt organization to split what has traditionally been considered one unrelated trade or business into multiple unrelated trades or businesses. Some commenters noted they would have to incur the costs of changing their accounting systems so as to collect the information needed for separate NAICS 6-digit codes. These commenters suggested a range of code levels representing various levels of specificity from 2-digits up to 4-digits.

Reflecting comments on the Notice from potentially affected organizations, the Treasury Department and the IRS chose NAICS 2-digit codes for identifying unrelated trades or businesses. Allowing the use of NAICS 2-digit codes to identify separate unrelated trades or businesses reduces the compliance costs of affected organizations relative to the use of NAICS 6-digit codes. For example, different types of food services would be in the same NAICS 2-digit code as opposed to separate NAICS 6-digit codes. Similarly, different types of recreational activities, such as fitness centers and golf courses, would be in the same NAICS 2-digit code as opposed to separate NAICS 6-digit codes. A single facility might have elements fitting several of these categories, which could change over time when NAICS codes are revised.

The guidance provided in the proposed regulations also ensures that the tax liability is calculated similarly across taxpayers, avoiding situations where one taxpayer receives differential treatment compared to another taxpayer for fundamentally similar economic activity based on their differing reasonable, good-faith interpretation of the statute. In the absence of these proposed regulations, an exempt organization might be uncertain about whether an activity is one or more than one business activity. As a result, in the absence of the proposed regulations, similar institutions might take different positions and pay different amounts of tax, introducing economic inefficiency and inequity.

Since exempt organizations could use a reasonable and good-faith effort to interpret whether some trade and business activities would have to be reported separately, behavioral responses were likely muted. These regulations do provide greater certainty and flexibility such that compliance costs may be slightly lower for affected organizations.

The Treasury Department and the IRS solicit comments on the use of the NAICS 2-digit codes and comments that provide data, other evidence, or models that would enhance the rigor by which the final regulations might be developed.

ii. Aggregation of Investment Activities

The proposed regulation's treatment of investment activities will also provide clarity and reduce burdens for

[7] *See* Elizabeth Boris and Joseph Cordes, ''How the TCJA's New UBIT Provisions Will Affect Nonprofits,'' Urban Institute Research Report, January 2019.

exempt organizations. By providing more explicit rules for the treatment of investment activities, the proposed regulations reduce the uncertainty about what would be acceptable under the ''reasonable, good-faith interpretation'' provided in the Notice. Although investment income, such as interest and dividend income, is not generally taxed as UBTI, exempt organizations may engage in certain activities that the organization considers ''investments'' but that generate UBTI, such as debt-financed investments or investments through partnerships. Consistent with the guidance included in the Notice, the proposed regulations allow certain of this ''investment'' income to be aggregated and treated as a single trade or business. The proposed regulations further expand on the notice by providing a more developed rule for partnership income and explicitly list the other types of UBTI that can be aggregated as ''investment'' income in response to comments requesting additional clarification. As a result, the proposed regulations reduce the compliance burdens of exempt organizations of obtaining information from partnerships and simplify the calculation of UBTI when the income is generated from ''investment'' activities relative to the no-action baseline.

Given these proposed regulations follow and slightly expand the guidance in the Notice, investment responses are likely to be minimal. While some exempt organizations may have perceived a need to reorganize certain investments, such as in partnerships that qualify for aggregate treatment and thereby seek offset any losses, few would have been expected to do this reorganization prior to regulations being published.

iii. Summary

The proposed regulations provide rules for determining when an exempt organization has more than one unrelated trade or business and how such an exempt organization computes UBTI. In addition, the proposed regulations provide guidelines for when an exempt organization treats its investment activities as one unrelated trade or business for purposes of computing UBTI. In the absence of guidance, affected taxpayers may face more uncertainty when calculating their tax liability, a situation generally that could lead to greater conflicts with tax administrators. The Treasury Department and the IRS project that the proposed regulations will reduce taxpayer compliance burden relative to the no-action baseline. In addition, the Treasury Department and the IRS project that these regulations will affect a small number of exempt organizations. Based on this analysis, the Treasury Department and the IRS anticipate any economic effects of the proposed regulations will be modest.

II. Paperwork Reduction Act

The collection of information in these proposed regulations is in § 1.512(b)–6(a). This information is required to determine whether an exempt organization has more than one unrelated trade or business and therefore must report those unrelated trades or businesses on Form 990–T and related schedules. In 2018, the IRS released and invited comments on drafts of an earlier version of the Form 990–T and related schedules to give members of the public opportunity to comment on changes made to the Form 990–T, and the addition of a new schedule to report additional unrelated trades or businesses, as required by the enactment of section 512(a)(6). The IRS received no comments on the Form 990–T and related schedules during that comment period. Consequently, the IRS made Form 990–T available on January 8, 2019, and the new schedule for reporting additional unrelated trades or businesses available on January 25, 2019, for use by the public. The IRS intends that the burden of collections of information will be reflected in the burden associated with the Form 990 series under OMB approval number 1545–0047.

The paperwork burden estimate for tax-exempt organizations is reported under OMB control number 1545–0047, which represents a total estimated burden time, including all other related forms and schedules for corporations, of 52 billion hours and total estimated monetized costs of $4.17 billion ($2017). The burden estimates provided in the OMB control number are aggregate amounts that relate to the entire package of forms associated with the OMB control number and will in the future include, but not isolate, the estimated burden of these proposed regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by adoption of these proposed regulations. The Treasury Department and IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burden. No burden estimates specific to the proposed regulations are currently available. The Treasury Department has not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. Those estimates would capture both changes made by the Act and those that arise out of discretionary authority exercised in the proposed regulations. The current status of the Paperwork Reduction Act submissions related to these proposed regulations is provided in the following table.

Form	OMB control No.	Status
990 and related forms	1545–0047	Sixty-day notice published on 9/24/2019. Thirty-day notice published on 12/31/2019. Approved by OIRA on 2/12/2020.
	Link: *https://www.irs.gov/forms-pubs/about-form-990.*	

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. Proposed revisions (if any) to the Form 990–T and related schedules that reflect the information collections contained in these proposed regulations will be made available for public comment at *http://apps.irs.gov/app/picklist/list/draftTaxForms.html.* The revised Form 990–T and related schedules will not be finalized until after these forms have been approved by OMB under the PRA. Comments on these forms can be submitted at *https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may

become material in the administration of any internal revenue laws. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. As discussed elsewhere in this preamble, these proposed regulations apply to all exempt organizations with UBTI, but only to the extent required to determine if an exempt organization has more than one unrelated trade or business. If an exempt organization only has one unrelated trade or business, these regulations do not apply and the exempt organization determines UBTI under section 512(a)(1) or section 512(a)(3), as appropriate. If an exempt organization has more than one unrelated trade or business, these proposed regulations provide instructions for computing UBTI separately with respect to each such unrelated trade or business.

These proposed regulations are not likely to affect a substantial number of small entities. According to the IRS Data Book, 1,835,534 exempt organizations existed in 2018. Internal Revenue Service, Publication 55B, Internal Revenue Service Data Book 2018, 57 (May 2019). However, only 188,334 Form 990–Ts were filed in 2018. Internal Revenue Service, Publication 6292, Fiscal Year Return Projects for the United States: 2019–2026, Fall 2019 4 (September 2019). The IRS expects that less than 10 percent of the exempt organizations population will be affected by these proposed regulations because the exempt organizations filing Form 990–T include entities not included in the definition of ''small entities,'' such as large hospital systems and universities. Therefore, this proposed regulation is not likely to affect a substantial number of small entities.

Even if the regulations affected a substantial number of small entities, the economic impact of this proposed rule is not likely to be significant. An organization affected by this rule, with more than one unrelated trade or business, completes Part I and Part II on page 1 of Form 990–T and completes and attaches a separate schedule for each additional unrelated trade or business. Affected taxpayers have been reporting UBTI on form 990–T for the previous two tax years. As discussed elsewhere in this preamble, these regulations would provide certainty and guidance for these organizations. In the absence of this guidance, affected taxpayers may face more uncertainty when calculating their tax liability, a situation generally that could lead to greater conflicts with tax administrators. Although affected taxpayers will have to spend time reading and understanding these regulations, the Treasury Department and the IRS project that the proposed regulations provide certainty and guidance that will reduce taxpayer compliance burden for large and small entity taxpayers.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impact this rule may have on small entities.

Pursuant to section 7805(f), this proposed rule has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in the preamble under the **ADDRESSES** section. All comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing on these proposed regulations will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this notice of proposed rulemaking is Stephanie N. Robbins, Office of the Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.170A–9 is proposed to be amended by:

■ 1. Adding new paragraph (f)(7)(v).

■ 2. Adding new paragraph (k)(3).

The additions read as follows:

§ 1.170A–9 Definition of section 170(b)(1)(A) organization.

* * * * *

(f) * * *

(7) * * *

(v) *Unrelated business activities.* The term *net income from unrelated business activities* in section 509(d)(3) includes (but is not limited to) an organization's unrelated business taxable income (UBTI) within the meaning of section 512. However, when calculating UBTI for purposes of determining support (within the meaning of paragraph (f)(7)(i) of this section), section 512(a)(6) does not apply. Accordingly, in the case of an organization that derives gross income from the regular conduct of two or more unrelated business activities, support includes the aggregate of gross income from all such unrelated business activities less the aggregate of the deductions allowed with respect to all such unrelated business activities.

* * * * *

(k) * * *

(3) *Applicability date.* Paragraph (f)(7)(v) of this section applies to taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**].

■ **Par. 3.** Section 1.509(a)–3 is proposed to be amended by:

■ 1. Revising the first sentence of paragraph (a)(3)(i).

■ 2. Redesignating paragraph (a)(4) as paragraph (a)(5).

■ 3. Adding new paragraph (a)(4).

■ 4. Revising paragraph (o).

The revisions and additions read as follows:

§ 1.509(a)–3 Broadly, publicly supported organizations.

(a) * * *

(3) * * *

(i) * * * An organization will meet the not-more-than-one-third support test under section 509(a)(2)(B) if it normally (within the meaning of paragraph (c) or (d) of this section) receives not more than one-third of its support in each taxable year from the sum of its gross investment income (as defined in section 509(e)) and the excess (if any) of the amount of its unrelated business taxable income (as defined in section 512, without regard to section 512(a)(6)) derived from trades or businesses that were acquired by the organization after June 30, 1975, over the amount of tax imposed on such income by section 511.

* * * * *

(4) *Unrelated business activities.* The denominator of the one-third support fraction and the denominator of the not-more-than-one-third support fraction both include net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business. The term *net income from unrelated business activities* includes (but is not limited to) an organization's unrelated business taxable income (UBTI) within the meaning of section 512. However, when calculating UBTI for purposes of determining the denominator of both support fractions, section 512(a)(6) does not apply. Accordingly, in the case of an organization that derives gross income from the regular conduct of two or more unrelated business activities, support includes the aggregate of gross income from all such unrelated business activities less the aggregate of the deductions allowed with respect to all such unrelated business activities.

* * * * *

(o) *Applicability date.* This section generally applies to taxable years beginning after December 31, 1969, except paragraphs (a)(3)(i) and (a)(4) of this section apply to taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**]. For taxable years beginning before [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**], see these paragraphs as in effect and contained in 26 CFR part 1 revised as of April 1, 2019.

■ **Par. 4.** Section 1.512(a)–1 is proposed to be amended by:

■ 1. Revising the first and fourth sentence of paragraph (a).

■ 2. Revising the first and second sentence of paragraph (b).

■ 3. Adding two sentences to the end of paragraph (c).

■ 4. Revising paragraph (h).

The revisions and additions read as follows:

§ 1.512(a)–1 Definition.

(a) * * * Except as otherwise provided in § 1.512(a)–3, § 1.512(a)–4, or paragraph (f) of this section, section 512(a)(1) defines *unrelated business taxable income* as the gross income derived from any unrelated trade or business regularly carried on, less those deductions allowed by chapter 1 of the Internal Revenue Code (Code) which are directly connected with the carrying on of such trade or business, subject to certain modifications referred to in § 1.512(b)–1. * * * In the case of an organization with more than one unrelated trade or business, unrelated business taxable income is calculated separately with respect to each such trade or business. *See* § 1.512(a)–6.

* * *

(b) * * * Expenses, depreciation, and similar items attributable solely to the conduct of unrelated business activities are proximately and primarily related to that business activity, and therefore qualify for deduction to the extent that they meet the requirements of section 162, section 167, or other relevant provisions of the Code. Thus, for example, salaries of personnel employed full-time in carrying on unrelated business activities are directly connected with the conduct of that activity and are deductible in computing unrelated business taxable income if they otherwise qualify for deduction under the requirements of section 162.

(c) * * * However, allocation of expenses, depreciation, and similar items using an unadjusted gross-to-gross method is not reasonable. For example, if a social club charges nonmembers a higher price than it charges members for the same good or service, it must adjust the price of the good or service provided to members for purposes of determining the allocation of indirect expenses to avoid overstating the deductions allocable to the unrelated business activity of providing goods and services to nonmembers.

* * * * *

(h) *Applicability date.* This section generally applies to taxable years beginning after December 12, 1967, except as provided in paragraph (g)(2) of this section, and except that paragraphs (a) through (c) of this section apply to taxable years beginning on or [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**]. For taxable years beginning before [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**], see these paragraphs as in effect and contained in 26 CFR part 1 revised as of April 1, 2019.

■ **Par. 5.** Section 1.512(a)–6 is proposed to be added to read as follows:

§ 1.512 (a)–6 Special rule for organizations with more than one unrelated trade or business.

(a) *More than one unrelated trade or business*—(1) *In general.* An organization with more than one unrelated trade or business must compute unrelated business taxable income (UBTI), including for purposes of determining any net operating loss (NOL) deduction, separately with respect to each such trade or business, without regard to the specific deduction in section 512(b)(12). An organization with more than one unrelated trade or business computes its total UBTI under paragraph (g) of this section.

(2) *Separate trades or businesses.* For purposes of section 512(a)(6)(A) and paragraph (a)(1) of this section, an organization identifies its separate unrelated trades or businesses using the methods described in paragraphs (b) through (e) of this section.

(b) *North American Industry Classification System*—(1) *In general.* Except as provided in paragraphs (c) through (e) of this section, an organization will identify each of its separate unrelated trades or businesses using the first two digits of the North American Industry Classification System code (NAICS 2-digit code) that most accurately describes the trade or business. The NAICS 2-digit code chosen must identify the unrelated trade or business in which the organization engages (directly or indirectly) and not the activities the conduct of which are substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)). For example, a college or university described in section 501(c)(3) cannot use the NAICS 2-digit code for educational services to identify all its separate unrelated trades or businesses, and a qualified retirement plan described in section 401(a) cannot use the NAICS 2-digit code for finance and insurance to identify all of its unrelated trades or businesses.

(2) *Codes only reported once.* An organization will report each NAICS 2-digit code only once. For example, a hospital organization that operates several hospital facilities in a geographic area (or multiple geographic areas), all of which include pharmacies that sell goods to the general public, would include all the pharmacies under the NAICS 2-digit code for retail trade, regardless of whether the hospital organization keeps separate books and records for each pharmacy.

(3) *Erroneous codes.* Once an organization has identified a separate unrelated trade or business using a particular NAICS 2-digit code, the organization may not change the NAICS 2-digit code describing that unrelated trade or business unless the organization can show that the NAICS 2-digit code chosen was due to an unintentional error and that another NAICS 2-digit code more accurately describes the trade or business.

(c) *Activities in the nature of investments*—(1) *In general.* An organization's activities in the nature of investments (investment activities) are treated collectively as a separate unrelated trade or business for purposes of section 512(a)(6)(A) and paragraph (a) of this section. Except as provided in paragraphs (c)(6) and (c)(8) of this section, an organization's investment activities are limited to its—

(i) Qualifying partnership interests (described in paragraph (c)(2) of this section);

(ii) Qualifying S corporation interests (described in paragraph (e)(2)(i) of this section); and

(iii) Debt-financed property or properties (within the meaning of section 514).

(2) *Qualifying partnership interests*—(i) *Directly-held partnership interests.* An interest in a partnership is a qualifying partnership interest (QPI) if the exempt organization holds a direct interest in a partnership (directly-held partnership interest) that meets the requirements of either the de minimis test (described in paragraph (c)(3) of this section) or the control test (described in paragraph (c)(4) of this section).

(ii) *Indirectly-held partnership interests.* If an organization does not control (within the meaning of paragraph (c)(4)(iii) of this section) a partnership in which the organization holds a direct interest but that directly-held partnership interest is not a QPI because the organization holds more than 20 percent of the capital interest, any partnership in which the organization holds an indirect interest through the directly-held partnership interest (indirectly-held partnership interest) may be a QPI if the indirectly-held partnership interest meets the requirements of the de minimis test (described in paragraph (c)(3) of this section) (look-through rule). For example, if an organization directly holds 50 percent of the capital interests of a partnership that it does not control and the directly-held partnership holds 4 percent of the capital and profits interests of lower-tier partnership A, and 10 percent of the capital and profits interests of lower-tier partnership B, the organization may aggregate its interest in lower-tier partnership A with its other QPIs because the organization indirectly holds 2 percent of the capital and profits interests of lower-tier partnership A (4 percent × 50 percent). However, the organization may not aggregate its interest in lower-tier partnership B with its QPIs because the organization indirectly holds 5 percent of the capital and profits interests of lower-tier partnership B (10 percent × 50 percent), which does not meet the requirements of the de minimis test.

(iii) *Designation.* An organization that has a partnership interest meeting the requirements of paragraph (c)(2)(i) or (ii) of this section in a taxable year may designate that partnership interest as a QPI by including its share of partnership gross income (and directly connected deductions) with the gross income (and directly connected deductions) from its other investment activities (see paragraph (c)(1) of this section) in accordance with forms and instructions. Any partnership interest that is designated as a QPI remains a QPI unless and until it no longer meets the requirements of paragraph (c)(2)(i) or (ii) of this section. For example, if an organization designates a directly-held partnership interest that meets the requirements of the de minimis rule as a QPI in one taxable year, the organization cannot, in the next taxable year, use NAICS 2-digit codes to describe the partnership trades or businesses that are unrelated trades or businesses with respect to the organization unless the directly-held partnership interest fails to meet the requirements of both the de minimis test and the control test.

(3) *De minimis test.* A partnership interest is a QPI that meets the requirements of the de minimis test if the organization holds directly (within the meaning of paragraph (c)(2)(i) of this section) or indirectly (within the meaning of paragraph (c)(2)(ii) of this section) no more than 2 percent of the profits interest and no more than 2 percent of the capital interest.

(4) *Control test*—(i) *In general.* A partnership interest is a QPI that meets the requirements of the control test if the organization holds no more than 20 percent of the capital interest and does not control the partnership within the meaning of paragraph (c)(4)(iii) of this section.

(ii) *Combining related interests.* When determining an organization's percentage interest in a partnership for purposes of paragraph (c)(4)(i) of this section, the interests of a supporting organization (as defined in section 509(a)(3) and § 1.509(a)–4) or a controlled entity (as defined in section 512(b)(13)(D) and § 1.512(a)–1(l)) in the same partnership will be taken into account. For example, if an organization owns 10 percent of the capital interests in a partnership, and its supporting organization owns an additional 15 percent capital interest in that partnership, the organization would not meet the requirements of the control test because its aggregate percentage interest exceeds 20 percent (10 percent + 15 percent = 25 percent).

(iii) *Control.* All facts and circumstances, including the partnership agreement, are relevant for determining whether an organization controls a partnership. In any case, however, an organization controls a partnership if—

(A) The organization, by itself, may require the partnership to perform, or may prevent the partnership from performing, any act that significantly affects the operations of the partnership;

(B) Any of the organization's officers, directors, trustees, or employees have rights to participate in the management of the partnership at any time;

(C) Any of the organization's officers, directors, trustees, or employees have rights to conduct the partnership's business at any time; or

(D) The organization, by itself, has the power to appoint or remove any of the partnership's officers or employees or a majority of directors.

(5) *Reliance on Schedule K–1 (Form 1065)*—(i) *In general.* When determining the organization's percentage interest (described in paragraph (c)(5)(ii) of this section) in a partnership for purposes of the de minimis test (described in paragraph (c)(3) of this section) and the control test (described in paragraph (c)(4) of this section), an organization may rely on the Schedule K–1 (Form 1065) (or its successor) it receives from the partnership if the form lists the organization's percentage profits interest or its percentage capital interest, or both, at the beginning and end of the year. However, the organization may not rely on the form to the extent that any information about the organization's percentage interest is not specifically provided. For example, if the Schedule K–1 (Form 1065) an organization receives from a partnership lists the organization's profits interest as ''variable'' but lists its percentage capital interest at the beginning and end of the year, the organization may rely on the form only with respect to its percentage capital interest.

(ii) *Determining percentage interest.* For purposes of paragraph (c)(5)(i) of this section, an organization determines its percentage interest by taking the average of the organization's percentage interest at the beginning and the end of the partnership's taxable year, or, in the case of a partnership interest held for less than a year, the percentage interest held at the beginning and end of the period of ownership within the partnership's taxable year. For example, if an organization acquires an interest in a partnership that files on a calendar year basis in May and the partnership

reports on Schedule K–1 (Form 1065) that the partner held a 3 percent profits interest at the date of acquisition but held a 1 percent profits interest at the end of the calendar year, the organization will be considered to have held 2 percent of the profits interest in that partnership for that year ((3 percent + 1 percent)/2).

(6) *UBTI from the investment activities of organizations subject to section 512(a)(3).* For purposes of paragraph (c)(1) of this section, UBTI from the investment activities of an organization subject to section 512(a)(3) includes any amount that—

(i) would be excluded from the calculation of UBTI under section 512(b)(1), (2), (3), or (5) if the organization were subject to section 512(a)(1);

(ii) is attributable to income set aside (and not in excess of the set aside limit described in section 512(a)(3)(E)), but not used, for a purpose described in section 512(a)(3)(B)(i) or (ii); or

(iii) is in excess of the set aside limit described in section 512(a)(3)(E).

(7) *Transition rule for certain partnership interests*—(i) *In general.* If a directly-held partnership interest acquired prior to August 21, 2018, is not a QPI, an organization may treat such partnership interest as a separate unrelated trade or business for purposes of section 512(a)(6) regardless of the number of unrelated trades or businesses directly or indirectly conducted by the partnership. For example, if an organization has a 35 percent capital interest in a partnership acquired prior to August 21, 2018, it can treat the partnership as a single trade or business even if the partnership's investments generated UBTI from lower-tier partnerships that were engaged in multiple trades or businesses. A partnership interest acquired prior to August 21, 2018, will continue to meet the requirement of this rule even if the organization's percentage interest in such partnership changes before the end of the transition period (see paragraph (c)(7)(iii) of this section).

(ii) *Exclusivity.* An organization may apply either the transition rule in paragraph (c)(7)(i) of this section or the look-through rule in paragraph (c)(2)(ii) of this section, but not both, to a partnership interest described in paragraph (c)(7)(i) of this section that also qualifies for application of the look-through rule described in paragraph (c)(2)(ii).

(iii) *Transition period.* An organization may rely on this transition rule until the first day of the organization's first taxable year beginning after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**].

(8) *Limitations*—(i) *Social clubs.* Paragraphs (c)(2) (regarding QPIs) and (c)(7) (transition rule for certain partnership interests) of this section do not apply to social clubs described in section 501(c)(7).

(ii) *General partnership interests.* Any partnership in which an organization is a general partner is not a QPI within the meaning of paragraph (c)(2) of this section, regardless of the organization's percentage interest.

(iii) *Application of other sections.* This paragraph (c) will not otherwise impact application of section 512(c) and the fragmentation principle under section 513(c).

(d) *Income from certain controlled entities*—(1) *Specified payments from controlled entities.* If an organization (controlling organization) controls another entity (within the meaning of section 512(b)(13)(D)) (controlled entity), all specified payments (as defined in section 512(b)(13)(C)) received by a controlling organization from that controlled entity will be treated as gross income from a separate unrelated trade or business for purposes of paragraph (a) of this section. If a controlling organization receives specified payments from two different controlled entities, the payments from each controlled entity are treated as a separate unrelated trade or business. For example, a controlling organization that receives rental payments from two controlled entities will have two separate unrelated trades or businesses, one for each controlled entity. The specified payments from a controlled entity will be treated as gross income from one trade or business regardless of whether the controlled entity engages in more than one unrelated trade or business or whether the controlling organization receives more than one type of specified payment from that controlled entity.

(2) *Certain amounts derived from controlled foreign corporations.* All amounts included in UBTI under section 512(b)(17) will be treated as income derived from a separate unrelated trade or business for purposes of paragraph (a) of this section.

(e) *S corporation interests*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, if an organization owns stock in an S corporation (S corporation interest), such S corporation interest will be treated as an interest in a separate unrelated trade or business for purposes of paragraph (a) of this section. Thus, if an organization owns two S corporation interests, neither of which is described in paragraph (e)(2) of this section, the exempt organization will report two separate unrelated trades or businesses, one for each S corporation interest. The UBTI from an S corporation interest is the amount described in section 512(e)(1)(B).

(2) *Exception*—(i) *Qualifying S corporation interest.* Notwithstanding paragraph (e)(1) of this section, an organization may aggregate its UBTI from an S corporation interest with its UBTI from other investment activities (described in paragraph (c)(1) of this section) if the organization's ownership interest (by percentage of stock ownership) in the S corporation meets the criteria for a QPI as described in paragraph (c)(2)(i) of this section (qualifying S corporation interest).

(ii) *Reliance on Schedule K–1 (Form 1120–S).* When determining how much S corporation stock an organization owns for purposes of paragraph (e)(2)(i) of this section, the organization may rely on the Schedule K–1 (Form 1120–S) (or its successor) it receives from the S corporation if the form lists the organization's percentage of stock ownership for the year.

(f) *Allocation of deductions.* An organization must allocate deductions between separate unrelated trades or businesses using the method described in § 1.512(a)–1(c).

(g) *Total UBTI*—(1) *In general.* The total UBTI of an organization with more than one unrelated trade or business is the sum of the UBTI computed with respect to each separate unrelated trade or business (as identified under paragraph (a)(2) of this section and subject to the limitation described in paragraph (g)(2) of this section), less a specific deduction under section 512(b)(12).

(2) *UBTI not less than zero.* For purposes of paragraph (g)(1) of this section, the UBTI with respect to any separate unrelated trade or business identified under paragraph (a)(2) of this section cannot be less than zero.

(h) *Net operating losses*—(1) *In general.* For taxable years beginning after December 31, 2017, an exempt organization with more than one unrelated trade or business determines the NOL deduction allowed by sections 172(a) and 512(b)(6) separately with respect to each of its unrelated trades or businesses. Accordingly, if an exempt organization has more than one unrelated trade or business, § 1.512(b)–1(e) applies separately with respect to each such unrelated trade or business.

(2) *Coordination of pre-2018 and post-2017 NOLs.* An organization with losses arising in a taxable year beginning before January 1, 2018 (pre-2018 NOLs),

and with losses arising in a taxable year beginning after December 31, 2017 (post-2017 NOLs), deducts its pre-2018 NOLs from total UBTI before deducting any post-2017 NOLs with regard to a separate unrelated trade or business against the UBTI from such trade or business. Pre-2018 NOLs are taken against the total UBTI as determined under paragraph (g) of this section in the manner that results in maximum utilization of the pre-2018 NOLs in a taxable year.

(i) *Applicability dates.* This section is applicable to taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**].

■ **Par. 6.** Section 1.512(b)–1 is proposed to be amended by:

■ 1. Revising paragraph (a)(1).

■ 2. Adding a new sentence to the end of paragraph (a)(3).

■ 3. Adding a new paragraph (e)(5).

■ 4. Adding new paragraphs (g)(4) and (5).

The revisions and additions read as follows:

§ 1.512 (b)–1 Modifications

(a) * * *

(1) * * * Dividends (including an inclusion of subpart F income under section 951(a)(1)(A) or an inclusion of global intangible low-taxed income (GILTI) under section 951A(a), both of which are treated in the same manner as a dividend for purposes of section 512(b)(1)), interest, payments with respect to securities loans (as defined in section 512(a)(5)), annuities, income from notional principal contracts (as defined in § 1.837–7 or regulations issued under section 446), other substantially similar income from ordinary and routine investments to the extent determined by the Commissioner, and all deductions directly connected with any of the foregoing items of income must be excluded in computing unrelated business taxable income.

* * * * *

(3) * * * The exclusion under paragraph (a)(1) of this section of an inclusion of subpart F income under section 951(a)(1)(A) or an inclusion of GILTI under section 951A(a) from income (both inclusions being treated in the same manner as dividends) is applicable to taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**]. However, an organization may choose to apply this exclusion to taxable years beginning before [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**].

* * * * *

(e) * * *

(5) See § 1.512(a)–6(h) regarding the computation of the net operating loss deduction when an organization has more than one unrelated trade or business.

* * * * *

(g) * * *

(4) The term *unrelated business taxable income* as used in section 512(b)(10) and (11) refers to unrelated business taxable income after application of section 512(a)(6).

(5) Paragraph (g)(4) of this section is applicable to taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**].

* * * * *

■ **Par. 7.** Section 1.513–1 is proposed to be amended by:

■ 1. Revising the third and fourth sentence in paragraph (a).

■ 2. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h).

■ 3. Adding new paragraph (f).

■ 4. Adding a new sentence to the end of new paragraph (h).

The revisions and additions read as follows:

§ 1.513–1 Definition of unrelated trade or business.

(a) * * * For certain exceptions from this definition, see paragraph (e) of this section. For a special definition of *unrelated trade or business* applicable to certain trusts, see paragraph (f) of this section. * * *

* * * * *

(f) *Special definition of ''unrelated trade or business'' for trusts.* In the case of a trust computing its unrelated business taxable income under section 512 for purposes of section 681, or a trust described in section 401(a) or section 501(c)(17), which is exempt from tax under section 501(a), section 513(b) provides that the term *unrelated trade or business* means any trade or business regularly carried on by such trust or by a partnership of which it is a member. This definition also applies to an individual retirement account described in section 408 that, under section 408(e), is subject to the tax imposed by section 511.

* * * * *

(h) * * * Paragraph (f) of this section applies to taxable years beginning on or after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **FEDERAL REGISTER**].

* * * * *

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020–06604 Filed 4–23–20; 8:45 am]

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FEDERAL REGISTER

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Part IV

The President

Memorandum of April 20, 2020—Providing Continued Federal Support for Governors' Use of the National Guard To Respond to COVID–19 and To Facilitate Economic Recovery

Federal Register
Vol. 85, No. 80
Friday, April 24, 2020

Presidential Documents

Title 3—

The President

Memorandum of April 20, 2020

Providing Continued Federal Support for Governors' Use of the National Guard To Respond to COVID–19 and To Facilitate Economic Recovery

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''), and section 502 of title 32, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to take measures to assist State and territorial Governors under the Stafford Act in their responses to all threats and hazards to the American people in their respective States and territories. On March 13, 2020, I declared a national emergency recognizing the threat that COVID–19, the disease caused by the novel (new) coronavirus known as SARS–CoV–2 (''the virus''), and the virus poses to the Nation's healthcare systems. I also determined that same day that the COVID–19 outbreak constituted an emergency, of nationwide scope, pursuant to section 501(b) of the Stafford Act (42 U.S.C. 5191(b)). Considering the profound and unique public health risks posed by the ongoing outbreak of COVID–19, the need for close cooperation and mutual assistance between the Federal Government and the States and territories is greater than at any time in recent history. This need remains as the United States continues to battle the public health threat posed by the virus, while transitioning to a period of increased economic activity and recovery in those areas of the Nation where the threat posed by the virus has been sufficiently mitigated. To provide maximum support to the States and territories as they make decisions about the responses required to address local conditions in their respective jurisdictions with respect to combatting the threat posed by the virus and, where appropriate, facilitating their economic recovery, I am taking the actions set forth in sections 2, 3, and 4 of this memorandum:

Sec. 2. *One Hundred Percent Federal Cost Share.* To maximize assistance to the Governors of the States of Alabama, Alaska, and Delaware to facilitate Federal support with respect to the use of National Guard units under State control, I am directing the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security to fund 100 percent of the emergency assistance activities associated with preventing, mitigating, and responding to the threat to public health and safety posed by the virus that these States undertake using their National Guard forces, as authorized by sections 403 (42 U.S.C. 5170b) and 503 (42 U.S.C. 5193) of the Stafford Act.

Sec. 3. *Support of Operations or Missions to Prevent and Respond to the Spread of COVID–19.* I am directing the Secretary of Defense, to the maximum extent feasible and consistent with mission requirements (including geographic proximity), to request pursuant to 32 U.S.C. 502(f) that the Governors of the States of Alabama, Alaska, and Delaware order National Guard forces to perform duty to fulfill mission assignments, on a fully reimbursable basis, that FEMA issues to the Department of Defense for the purpose of

supporting their respective State and local emergency assistance efforts under the Stafford Act.

Sec. 4. *Termination and Extension.* The 100 percent Federal cost share for the States' and territories' use of National Guard forces authorized pursuant to this memorandum, and my prior memoranda dated March 22, 28, and 30, 2020, and April 2, 7, and 13, 2020, each titled ''Providing Federal Support for Governors' Use of the National Guard to Respond to COVID–19,'' shall extend to, and shall be available for orders of any length authorizing duty through, May 31, 2020.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

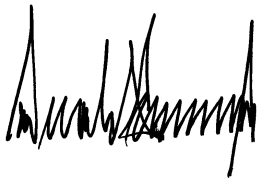
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, April 20, 2020

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