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Contents

Federal Register

Vol. 85, No. 117

Wednesday, June 17, 2020

Agriculture Department
See Commodity Credit Corporation
See Farm Service Agency
See Federal Crop Insurance Corporation
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service
RULES
Debt Management, 36670–36714

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36590–36591

Civil Rights Commission
NOTICES
Meetings:
Indiana Advisory Committee, 36528–36529
Missouri Advisory Committee, 36528
Ohio Advisory Committee, 36527–36528

Coast Guard
RULES
Civil Monetary Penalty Adjustments for Inflation, 36469–36483
Safety Zones:
San Diego Bay, San Diego, CA, 36492–36494

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Qualitative Feedback on Agency Service Delivery; Correction, 36529

Commodity Credit Corporation
RULES
Debt Management, 36670–36714

Drug Enforcement Administration
NOTICES
Bulk Manufacturer of Controlled Substances Application:
Cambrex Charles City, 36617
Importer of Controlled Substances Application:
Woodfield Distribution, LLC, 36617

Education Department
RULES
Eligibility of Students at Institutions of Higher Education for Funds under the Coronavirus Aid, Relief, and Economic Security Act, 36494–36504
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Report of Dispute Resolution Under Part C of the Individuals with Disabilities Education Act, 36569

Election Assistance Commission
NOTICES
Standardized Format to be used for Both Interim and Final Progress Reporting, 36569–36570

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
PROPOSED RULES
Energy Conservation Program:
Energy Conservation Standards for Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces, 36517–36518
Energy Conservation Standards for Room Air Conditioners, 36512–36517
NOTICES
Orders:
JM and RAL Energy INC., Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC, et al., 36570–36571

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36571–36572

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Texas; Approval of Substitution for Dallas-Fort Worth Area Transportation Control Measures, 36504–36506
NOTICES
Cancellation Order:
Certain Pesticide Registrations and Amendments to Terminate Uses, 36583–36586
Manufacturer Request for Risk Evaluation under the Toxic Substances Control Act:
Octamethylcyclotetra-siloxane (D4), 36586–36588
Meetings:
Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel; Request for Nominations of Ad Hoc Expert Reviewers, 36580–36583

Farm Service Agency
RULES
Debt Management, 36670–36714

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 36519–36522

Federal Communications Commission
PROPOSED RULES
Office of Economics and Analytics and Wireline Competition Bureau Seek Comment on Adjustment Factor Values for the 5G Fund, 36522–36526
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36588–36590

Federal Crop Insurance Corporation
RULES
Debt Management, 36670–36714

Federal Emergency Management Agency
RULES
Suspension of Community Eligibility, 36507–36509
NOTICES
Flood Hazard Determinations; Proposals, 36607–36608

Federal Energy Regulatory Commission
NOTICES
Application:
Lower Saranac Hydro, LLC, 36574–36575
Combined Filings, 36574, 36578–36579
Complaint:
Constellation Mystic Power, LLC v. ISO New England, Inc., 36575–36576
Filing:
AES North American Development, LLC, 36576–36577
Matthew Gorsich, 36572
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Bitter Ridge Wind Farm, LLC, 36572–36573
Cedar Springs Wind, LLC, 36577
Day County Wind I, LLC, 36577–36578
Gray County Wind, LLC, 36573–36574
Northern Colorado Wind Energy Center II, 36575
Northern Colorado Wind Energy Center, LLC, 36578
Orbit Bloom Energy, LLC, 36576
Ponderosa Wind, LLC, 36579
Petition for Declaratory Order:
Stagecoach Pipeline and Storage Co., LLC, 36573
Records Governing Off-the-Record Communications, 36579–36580

Federal Highway Administration
NOTICES
Surface Transportation Project Delivery Program; Florida DOT Audit 3 Report, 36657–36661
Surface Transportation Project Delivery Program; Ohio Department of Transportation Audit Report, 36661–36664

Federal Maritime Commission
NOTICES
Agreements Filed, 36590

Federal Reserve System
NOTICES
Change in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 36590

Food and Drug Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certificates of Confidentiality, 36602–36603
Data To Support Drug Product Communications as Used by the Food and Drug Administration, 36591–36593
Potential Tobacco Product Violations Reporting Form, 36597–36598
Guidance:
Patient-Focused Drug Development: Collecting Comprehensive and Representative Input, 36600–36601
Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components;, 36593–36594
Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products, 36595–36597
Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria, 36598–36600
Requests for Nominations:
Voting Members on a Public Advisory Committee; Pharmacy Compounding Advisory Committee, 36594–36595
Withdrawal of Approval of Abbreviated New Drug Applications; Correction:
Mylan Institutional LLC et al., 36598

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 36617

Foreign-Trade Zones Board
NOTICES
Subzone Application:
Boston, Massachusetts; Ipswich Shellfish Company, Inc.; Ipswich, Massachusetts, 36529–36530

Forest Service
NOTICES
Forest Order Closing Areas:
Beattie Gulch Trailhead and McConnell Fishing Access North and West of Gardiner, MT to the Discharge of Firearms, 36527

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
NOTICES
Charter Renewal:
President's Council on Sports, Fitness and Nutrition, 36603

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration
See U.S. Customs and Border Protection
RULES
Civil Monetary Penalty Adjustments for Inflation, 36469–36483

Housing and Urban Development Department
NOTICES
Vacant Loan Sales, 36608

Indian Affairs Bureau
NOTICES
Indian Gaming:
Tribal-State Class III Gaming Compact Taking Effect in the State of Oklahoma, 36609
Native American Business Development Institute Grant; Solicitation of Proposals, 36609–36613
Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota, 36608–36609

Industry and Security Bureau
RULES
Implementation of the February 2020 Australia Group Intersessional Decisions:
Addition of Certain Rigid-Walled, Single-Use Cultivation Chambers and Precursor Chemicals to the Commerce Control List, 36483–36492

Interior Department
See Indian Affairs Bureau

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Hardwood Plywood Products from the People's Republic of China, 36530–36535

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Motorized Vehicles and Components Thereof, 36613–36614
Certain Powered Cover Plates, 36614–36615
Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update, 36615–36616

Justice Department
See Drug Enforcement Administration
See Foreign Claims Settlement Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36617–36618

Labor Department
See Mine Safety and Health Administration
See Veterans Employment and Training Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building, 36618–36619

Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Escape and Evacuation Plans, 36619–36620

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 36604–36607
National Cancer Institute, 36603–36606
National Institute on Alcohol Abuse and Alcoholism, 36604–36605

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pollock in the Herring Savings Area in the Bering Sea and Aleutian Islands Management Area, 36509–36511
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alaska Region Scale and Catch Weighing Requirements, 36566–36567
Endangered Species:
File No. 21516, 36563–36565
Meetings:
Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review, 36535
General Advisory Committee to the U.S. Section to the Inter American Tropical Tuna Commission and Scientific Advisory Subcommittee to the General Advisory Committee, 36562–36563
Management Track Assessment for Atlantic Herring, Butterfish, Atlantic Surf Clam and Longfin Inshore Squid, 36536–36537
Schedules for Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops, 36565–36566
Permit Application:
Foreign Fishing, 36535–36536
Takes of Marine Mammals Incidental to Specified Activities:
Marine Site Characterization Surveys off of Coastal Virginia, 36537–36562

Patent and Trademark Office
NOTICES
Requests for Nominations:
Patent and Trademark Public Advisory Committees, 36568–36569

Postal Regulatory Commission
NOTICES
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, 36622–36623
New Postal Products, 36621–36622

Presidential Documents
PROCLAMATIONS
Special Observances:
Flag Day and National Flag Week (Proc. 10050), 36467–36468

Rural Business-Cooperative Service
RULES
Debt Management, 36670–36714

Rural Housing Service
RULES
Debt Management, 36670–36714

Rural Utilities Service
RULES
Debt Management, 36670–36714

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36627
Agency Information Collection Activities; Proposals, Submissions, and Approvals:, 36657
Joint Industry Plan:
Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail by BOX Options Exchange LLC, Cboe BYX Exchange, et al., 36623–36626

Meetings; Sunshine Act, 36626–36627
Order Granting Conditional Exemptive Relief, 36631–36633
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Exchange LLC, 36647–36649
Cboe BZX Exchange, Inc., 36627–36630
Nasdaq GEMX, LLC, 36653–36657
Nasdaq MRX, LLC, 36633–36637
New York Stock Exchange LLC, 36637–36644
NYSE American LLC, 36644–36647, 36649–36653

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration

Transportation Security Administration
RULES
Civil Monetary Penalty Adjustments for Inflation, 36469–36483

U.S. Customs and Border Protection
RULES
Civil Monetary Penalty Adjustments for Inflation, 36469–36483

Veterans Affairs Department
NOTICES
Privacy Act; Systems of Records, 36664–36667

Veterans Employment and Training Service
NOTICES
Meetings:
Advisory Committee on Veterans' Employment, Training and Employer Outreach, 36620–36621

Separate Parts In This Issue

Part II

Agriculture Department, Commodity Credit Corporation, 36670–36714
Agriculture Department, Farm Service Agency, 36670–36714
Agriculture Department, Federal Crop Insurance Corporation, 36670–36714
Agriculture Department, Rural Business-Cooperative Service, 36670–36714
Agriculture Department, Rural Housing Service, 36670–36714
Agriculture Department, Rural Utilities Service, 36670–36714
Agriculture Department, 36670–36714

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

10050 36467

6 CFR

27 36469

7 CFR

3 36670
400 36670
761 36670
765 36670
766 36670
772 36670
792 36670
1403 36670
1951 36670
1956 36670

8 CFR

270 36469
274a 36469
280 36469

10 CFR

Proposed Rules:

430 36512
431 36517

14 CFR

Proposed Rules:

39 36519

15 CFR

748 36483
774 36483

19 CFR

4 36469

33 CFR

27 36469
165 36492

34 CFR

668 36494

40 CFR

52 36504

44 CFR

64 36507

47 CFR

Proposed Rules:

1 36522
54 36522

49 CFR

1503 36469

50 CFR

679 36509

Federal Register
Vol. 85, No. 117
Wednesday, June 17, 2020

Presidential Documents

Title 3—

The President

Proclamation 10050 of June 12, 2020

Flag Day and National Flag Week, 2020

By the President of the United States of America

A Proclamation

On Flag Day and throughout National Flag Week, we pay tribute to the American flag, the most recognizable symbol of the principles for which our Republic stands. For more than 200 years, the Stars and Stripes has represented liberty, justice, and the rule of law. Recently, as our Nation has come together to respond to the coronavirus pandemic, our flag has been a reminder of the courage, tenacity, and loyalty that define the indomitable American spirit.

Our great flag causes us to reflect humbly on the immeasurable price that has been paid to keep it ''so gallantly streaming.'' Throughout our Nation's history, proud patriots have nobly answered the call of duty when our country needed them most. The Star Spangled Banner serves as an everlasting remembrance of the sacrifices heroes of every generation have made in conflicts from the Revolutionary War to the wars in Iraq and Afghanistan. Our flag ensures that we never forget the incredible sacrifices our men and women in uniform have made to defend our liberty and way of life.

This year, Old Glory has waved over millions of brave Americans fighting the invisible enemy, often at risk to their personal health and wellbeing. Throughout the coronavirus pandemic, healthcare professionals have treated and cared for those sickened by the virus, and countless American patriots have provided critical goods and services to their fellow citizens in these uncertain times. These dedicated individuals have risen to the challenge, meeting the virus on the frontlines with the same conviction and unwavering determination that has empowered our Nation to overcome previous trials. Just as we prevailed in those struggles, we will emerge victorious against this new enemy and again raise our flag in triumph.

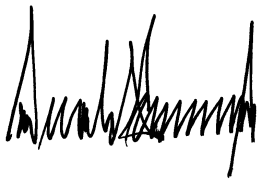
The American flag represents the unity of our country and its people. No matter what may divide us, Old Glory should be revered and cherished, as a symbol of all that makes America the greatest country in the world. As we honor our beautiful flag on this day and throughout this week, let us vow never to forget the tremendous sacrifices made by patriots from generation to generation to ensure that the red, white, and blue continues to fly high and free. Today, and every day, I am proud to join my fellow Americans in standing tall and saluting our great American flag.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested that the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President issue annually a proclamation designating the week in which June 14 occurs as ''National Flag Week'' and calling on all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim June 14, 2020, as Flag Day, and the week starting June 14, 2020, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during

this week, and I urge all Americans to observe Flag Day and National Flag Week by displaying the flag. I encourage the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



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Rules and Regulations

Federal Register

Vol. 85, No. 117

Wednesday, June 17, 2020

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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

8 CFR Parts 270, 274a, and 280

U.S. Customs and Border Protection

19 CFR Part 4

Coast Guard

33 CFR Part 27

Transportation Security Administration

49 CFR Part 1503

RIN 1601–AA95

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Homeland Security (DHS) is making the 2020 annual inflation adjustment to its civil monetary penalties. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) was signed into law on November 2, 2015. Pursuant to the 2015 Act, all agencies must adjust civil monetary penalties annually and publish the adjustment in the **Federal Register**. Accordingly, this final rule adjusts DHS's civil monetary penalties for 2020 pursuant to the 2015 Act and OMB guidance. The new penalties will be effective for penalties assessed after June 17, 2020 whose associated violations occurred after November 2, 2015.

DATES: This rule is effective on June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Hillary Hunnings, 202–282–9043, *hillary.hunnings@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory and Regulatory Background
II. Overview of Final Rule
III. Adjustments by Component
  A. Cybersecurity and Infrastructure Security Agency
  B. U.S. Customs and Border Protection
  C. U.S. Immigration and Customs Enforcement
  D. U.S. Coast Guard
  E. Transportation Security Administration
IV. Administrative Procedure Act
V. Regulatory Analyses
  A. Executive Orders 12866 and 13563
  B. Regulatory Flexibility Act
  C. Unfunded Mandates Reform Act
  D. Paperwork Reduction Act
VI. Signing Authority

I. Statutory and Regulatory Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74 section 701 (Nov. 2, 2015)) (2015 Act).[1] The 2015 Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through issuance of an Interim Final Rule (IFR) and (2) make subsequent annual adjustments for inflation. Through the ''catch-up'' adjustment, agencies were required to adjust the maximum amounts of civil monetary penalties to more accurately reflect inflation rates.

For the subsequent annual adjustments, the 2015 Act requires agencies to increase the penalty amounts by a cost-of-living adjustment. The 2015 Act directs OMB to provide guidance to agencies each year to assist agencies in making the annual adjustments. The 2015 Act requires agencies to make the annual adjustments no later than January 15 of each year and to publish the adjustments in the **Federal Register**.

Pursuant to the 2015 Act, DHS undertook a review of the civil penalties that DHS and its components administer.[2] On July 1, 2016, DHS published an IFR adjusting the maximum civil monetary penalties with an initial ''catch-up'' adjustment, as required by the 2015 Act.[3] DHS calculated the adjusted penalties based upon nondiscretionary provisions in the 2015 Act and upon guidance that OMB issued to agencies on February 24, 2016.[4] The adjusted penalties were effective for civil penalties assessed after August 1, 2016 (the effective date of the IFR), whose associated violations occurred after November 2, 2015 (the date of enactment of the 2015 Act). On January 27, 2017, DHS published a final rule making the annual adjustment for 2017.[5] DHS made the 2018 annual inflation adjustment on April 2, 2018.[6] DHS made the 2019 annual inflation adjustment on April 5, 2019.[7]

II. Overview of the Final Rule

This final rule makes the 2020 annual inflation adjustments to civil monetary penalties pursuant to the 2015 Act and pursuant to guidance OMB issued to agencies on December 16, 2019.[8] The penalty amounts in this final rule will be effective for penalties assessed after June 17, 2020 where the associated violation occurred after November 2, 2015. Consistent with OMB guidance, the 2015 Act does not change previously assessed penalties that the agency is actively collecting or has collected.

The adjusted penalty amounts will apply to penalties assessed after the effective date of this final rule. We discuss civil penalties by DHS component in Section III below. For each component identified in Section III, below, we briefly describe the

[1] The 2015 Act was part of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015).

[2] The 2015 Act applies to all agency civil penalties except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*). See sec. 4(a)(1) of the 2015 Act. In the case of DHS, several civil penalties that are assessed by U.S. Customs and Border Protection (CBP) and the U.S. Coast Guard fall under the Tariff Act of 1930, and thus DHS did not adjust those civil penalties in this rulemaking.

[3] *See* 81 FR 42987.

[4] OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Table A, 24 February 2016. *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2016/m-16-06.pdf* (last accessed Dec. 5, 2017).

[5] *See* 82 FR 8571.

[6] *See* 83 FR 13826.

[7] *See* 84 FR 13499.

[8] OMB Memorandum M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Dec. 16, 2019. Available at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf.*

relevant civil penalty (or penalties), and we provide a table showing the increase in the penalties for 2020. In the table for each component, we show (1) the penalty name, (2) the penalty statutory and/or regulatory citation, (3) the penalty amount as adjusted in the 2019 final rule, (4) the cost-of-living adjustment multiplier for 2020 that OMB provided in its December 16, 2019, guidance, and (5) the new 2020 adjusted penalty. The 2015 Act instructs agencies to round penalties to the nearest $1. For a more complete discussion of the method used for calculating the initial ''catch-up'' inflation adjustments and a component-by-component breakdown to the nature of the civil penalties and relevant legal authorities, please see the IFR preamble at 81 FR 42987–43000.

III. Adjustments by Component

In the following sections, we briefly describe the civil penalties that DHS and its components, the Cybersecurity and Infrastructure Security Agency (CISA), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the U.S. Coast Guard (USCG), and the Transportation Security Administration (TSA), assess. Other components not mentioned do not impose any civil monetary penalties. We include tables at the end of each section, which list the individual adjustments for each penalty.

A. Cybersecurity and Infrastructure Security Agency

The Cybersecurity and Infrastructure Security Agency (CISA) administers only one civil penalty that the 2015 Act affects. That penalty assesses fines for violations of the Chemical Facility Anti-Terrorism Standards (CFATS). CFATS is a program that regulates the security of chemical facilities that, in the discretion of the Secretary, present high levels of security risk. DHS established the CFATS program in 2007 pursuant to section 550 of the Department of Homeland Security Appropriations Act of 2007 (Pub. L. 109–295).[9] The CFATS regulation is located in part 27 of title 6 of the Code of Federal Regulations (CFR). Below is a table showing the 2020 adjustment for the CFATS penalty that CISA administers.

TABLE 1—CFATS CIVIL PENALTY ADJUSTMENT

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Penalty for non-compliance with CFATS regulations ..	6 U.S.C. 624(b)(1); 6 CFR 27.300(b)(3).	$34,871 per day	1.01764	$35,486 per day.

* OMB Memorandum M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Dec. 16, 2019. Available at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf.*

B. U.S. Customs and Border Protection

U.S. Customs and Border Protection (CBP) assesses civil monetary penalties under various titles of the United States Code and the CFR. These include penalties for certain violations of title 8 of the CFR regarding the Immigration and Nationality Act of 1952 (Pub. L. 82–414, as amended) (INA). The INA contains provisions that impose penalties on persons, including carriers and aliens, who violate specified provisions of the INA. The relevant penalty provisions are located in numerous sections of the INA, however CBP has enumerated these penalties in regulation in one location—8 CFR 280.53. For a complete list of the INA sections for which penalties are assessed, in addition to a brief description of each violation, see the 2016 IFR preamble at 81 FR 42989–42990. For a complete list and brief description of the non-INA civil monetary penalties assessed by CBP subject to adjustment and a discussion of the history of DHS's and CBP's adjustments to the non-INA penalties, see the 2019 annual inflation adjustment final rule preamble at 84 FR 13500.

Below is a table showing the 2020 adjustment for the penalties that CBP administers.

TABLE 2—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States.	8 U.S.C. 1221(g); 8 CFR 280.53(b)(1) (INA section 231(g)).	$1,394	1.01764	$1,419.
Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens.	8 U.S.C. 1224; 8 CFR 280.53(b)(2); (INA section 234).	$3,788	1.01764	$3,855.
Penalties for failure to depart voluntarily	8 U.S.C. 1229c(d); 8 CFR 280.53(b)(3) (INA section 240B(d)).	$1,597–$7,987	1.01764	$1,625–$8,128.

[9] Section 550 has since been superseded by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Pub. L. 113–254). The new legislation codified the statutory authority for the CFATS program within Title XXI of the Homeland Security Act of 2002, as amended. *See* 6 U.S.C. 621 *et seq.* Public Law 113–254 authorized the CFATS program from January 18, 2015 to January 17, 2019. The Chemical Facility Anti-Terrorism Standards Program Extension Act (Pub. L. 116–2) extends the CFATS program authorization to April 17, 2020.

TABLE 2—U.S. CUSTOMS AND BORDER PROTECTION CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Penalties for violations of removal orders relating to aliens transported on vessels or aircraft under section 241(d) of the INA, or for costs associated with removal under section 241(e) of the INA.	8 U.S.C. 1253(c)(1)(A); 8 CFR 280.53(b)(4); (INA section 243(c)(1)(A)).	$3,195	1.01764	$3,251.
Penalties for failure to remove alien stowaways under section 241(d)(2) of the INA.	8 U.S.C. 1253(c)(1)(B); 8 CFR 280.53(b)(5) (INA section 243(c)(1)(B)).	$7,987	1.01764	$8,128.
Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the INA.	8 U.S.C. 1281(d); 8 CFR 280.53(b)(6); (INA section 251(d)).	$378 for each alien	1.01764	$385 for each alien.
Penalties for use of alien crewmen for longshore work in violation of section 251(d) of the INA.	8 U.S.C. 1281(d); 8 CFR 280.53(b)(6); (INA section 251(d)).	$9,472	1.01764	$9,639.
Penalties for failure to control, detain, or remove alien crewmen.	8 U.S.C. 1284(a); 8 CFR 280.53(b)(7) (INA section 254(a)).	$947–$5,683	1.01764	$964–$5,783.
Penalties for employment on passenger vessels of aliens afflicted with certain disabilities.	8 U.S.C. 1285; 8 CFR 280.53(b)(8) (INA section 255).	$1,895	1.01764	$1,928.
Penalties for discharge of alien crewmen	8 U.S.C. 1286; 8 CFR 280.53(b)(9) (INA section 256).	$2,841–$5,683	1.01764	$2,891–$5,783.
Penalties for bringing into the United States alien crewmen with intent to evade immigration laws.	8 U.S.C. 1287; 8 CFR 280.53(b)(10); (INA section 257).	$18,943	1.01764	$19,277.
Penalties for failure to prevent the unauthorized landing of aliens.	8 U.S.C. 1321(a); 8 CFR 280.53(b)(11) (INA section 271(a)).	$5,683	1.01764	$5,783.
Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground.	8 U.S.C. 1322(a); 8 CFR 280.53(b)(12) (INA section 272(a)).	$5,683	1.01764	$5,783.
Penalties for bringing to the United States aliens without required documentation.	8 U.S.C. 1323(b); 8 CFR 280.53(b)(13) (INA section 273(b)).	$5,683	1.01764	$5,783.
Penalties for failure to depart	8 U.S.C. 1324d; 8 CFR 280.53(b)(14) (INA section 274D).	$799	1.01764	$813.
Penalties for improper entry	8 U.S.C. 1325(b); 8 CFR 280.53(b)(15) (INA section 275(b)).	$80–$400	1.01764	$81–$407.
Penalty for dealing in or using empty stamped imported liquor containers.	19 U.S.C. 469	$531	1.01764	** 540.
Penalty for employing a vessel in a trade without a required Certificate of Documentation **.	19 U.S.C. 1706a; 19 CFR 4.80(i).	$1,329	1.01764	$1,352.
Penalty for transporting passengers coastwise for hire by certain vessels (known as Bowaters vessels) that do not meet specified conditions.	46 U.S.C. 12118(f)(3)	$531	1.01764	** 540.
Penalty for transporting passengers between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55103(b); 19 CFR 4.80(b)(2).	$798	1.01764	$812.
Penalty for towing a vessel between coastwise points in the United States by a non-coastwise qualified vessel.	46 U.S.C. 55111(c); 19 CFR 4.92.	$930–$2,924 plus $159; per ton.	1.01764	$946–$2,976, plus $162 per ton.

* OMB Memorandum M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Dec. 16, 2019. Available at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf.*

** No applicable conforming edit to regulatory text.

C. U.S. Immigration and Customs Enforcement

U.S. Immigration and Customs Enforcement (ICE) assesses civil monetary penalties for certain employment-related violations arising from the INA. ICE's civil penalties are located in title 8 of the CFR.

There are three different sections in the INA that impose civil monetary penalties for violations of the laws that relate to employment actions: Sections 274A, 274B, and 274C. ICE has primary enforcement responsibilities for two of these civil penalty provisions (sections 274A and 274C), and the Department of Justice (DOJ) has enforcement responsibilities for one of these civil penalty provisions (section 274B). The INA, in sections 274A and 274C, provides for imposition of civil penalties for various specified unlawful acts pertaining to the employment eligibility verification process (Form I–

9, Employment Eligibility Verification), the employment of unauthorized aliens, and document fraud.

Because both DHS and DOJ implement the three employment-related penalty sections in the INA, both Departments' implementing regulations reflect the civil penalty amounts. For a complete description of the civil money penalties assessed and a discussion of DHS's and DOJ's efforts to update the penalties in years past, see the IFR preamble at 81 FR 42991. Below is a table showing the 2020 adjustment for the penalties that ICE administers.[10]

TABLE 3—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Civil penalties for failure to depart voluntarily, INA section 240B(d).	8 U.S.C. 1229c(d); 8 CFR 280.53(b)(3).	$1,597–$7,987	1.01764	$1,625–$8,128
Civil penalties for violation of INA sections 274C(a)(1)–(a)(4), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(A) ...	473–3,788	1.01764	481–3,855
Civil penalties for violation of INA sections 274C(a)(5)–(a)(6), penalty for first offense.	8 CFR 270.3(b)(1)(ii)(B) ...	400–3,195	1.01764	407–3,251
Civil penalties for violation of INA sections 274C(a)(1)–(a)(4), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(C) ...	3,788–9,472	1.01764	3,855–9,639
Civil penalties for violation of INA sections 274C(a)(5)–(a)(6), penalty for subsequent offenses.	8 CFR 270.3(b)(1)(ii)(D) ...	3,195–7,987	1.01764	3,251–8,128
Violation/prohibition of indemnity bonds	8 CFR 274a.8(b)	2,292	1.01764	2,332
Civil penalties for knowingly hiring, recruiting, referral, or retention of unauthorized aliens—Penalty for first offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(A)	573–4,586	1.01764	583–4,667
Penalty for second offense (per unauthorized alien) ...	8 CFR 274a.10(b)(1)(ii)(B)	4,586–11,463	1.01764	4,667–11,665
Penalty for third or subsequent offense (per unauthorized alien).	8 CFR 274a.10(b)(1)(ii)(C)	6,878–22,927	1.01764	6,999–23,331
Civil penalties for I–9 paperwork violations	8 CFR 274a.10(b)(2)	230–2,292	1.01764	234–2,332
Civil penalties for failure to depart, INA section 274D	8 U.S.C. 1324d; 8 CFR 280.53(b)(14).	799	1.01764	813

* OMB Memorandum M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Dec. 16, 2019. Available at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf.*

D. U.S. Coast Guard

The Coast Guard is authorized to assess close to 150 penalties involving maritime safety and security and environmental stewardship that are critical to the continued success of Coast Guard missions. Various statutes in titles 14, 16, 19, 33, 42, 46, and 49 of the United States Code authorize these penalties. Titles 33 and 46 authorize the vast majority of these penalties as these statutes deal with navigation, navigable waters, and shipping. Beyond titles 33 and 46, the Coast Guard is also authorized to collect civil monetary penalties related to the organization and management of the Coast Guard, obstruction of revenue, and hazardous substances and materials. For a complete discussion of the civil monetary penalties assessed by the Coast Guard, see the 2016 IFR preamble at 81 FR 42992.

The Coast Guard has identified the penalties it administers, adjusted those penalties for inflation, and is listing those new penalties in a table located in the CFR—specifically, Table 1 in 33 CFR 27.3. Table 1 in 33 CFR 27.3 identifies the statutes that provide the Coast Guard with civil monetary penalty authority and sets out the inflation-adjusted maximum penalty that the Coast Guard may impose pursuant to each statutory provision. Table 1 in 33 CFR 27.3 provides the current maximum penalty for violations that occurred after November 2, 2015.[11]

The applicable civil penalty amounts for violations occurring on or before November 2, 2015, are set forth in previously published regulations amending 33 CFR part 27. To find the applicable penalty amount for a violation that occurred on or before November 2, 2015, look to the prior versions of the CFR that pertain to the date on which the violation occurred.

With this update, the Coast Guard is removing the penalty for ''Aquatic Nuisance Species in the Waters of the United States,'' 16 U.S.C. 4711(g)(1), because section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act (codified at 16 U.S.C. 4711) was repealed by section 903(a)(2)(A)(i) of Public Law 115–282, effective December 4, 2018. Table 4 below shows the 2020 adjustment for the penalties that the Coast Guard administers.

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Saving Life and Property	14 U.S.C. 521(c)	$10,651	1.01764	$10,839

[10] Table 3 also includes two civil penalties that are also listed as penalties administered by CBP. These are penalties for failure to depart voluntarily, INA section 240B(d), and failure to depart after a final order of removal, INA section 274D. Both CBP and ICE may administer these penalties, but as ICE is the DHS component primarily responsible for assessing and collecting them, they are also listed among the penalties ICE administers.

[11] The Frank LoBiondo Coast Guard Authorization Act of 2018 re-designated certain existing sections of the United States Code, including 14 U.S.C. 88 (now 14 U.S.C. 521) and 33 U.S.C. 1232 and 1236 (now 46 U.S.C. 70036 and 70041). The table reflects those changes to the statutory citations.

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Saving Life and Property; Intentional Interference with Broadcast.	14 U.S.C. 521(e)	1,093	1.01764	1,112
Confidentiality of Medical Quality Assurance Records (first offense).	14 U.S.C. 645(i); 33 CFR 27.3.	5,350	1.01764	5,444
Confidentiality of Medical Quality Assurance Records (subsequent offenses).	14 U.S.C. 645(i); 33 CFR 27.3.	35,668	1.01764	36,297
Obstruction of Revenue Officers by Masters of Vessels.	19 U.S.C. 70; 33 CFR 27.3.	7,975	1.01764	8,116
Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty.	19 U.S.C. 70; 33 CFR 27.3.	1,861	1.01764	1,894
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge.	19 U.S.C. 1581(d)	** 5,000	N/A	** 5,000
Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty.	19 U.S.C. 1581(d)	1,000**	N/A	1,000**
Anchorage Ground/Harbor Regulations General	33 U.S.C. 471; 33 CFR 27.3.	11,563	1.01764	11,767
Anchorage Ground/Harbor Regulations St. Mary's river.	33 U.S.C. 474; 33 CFR 27.3.	798	1.01764	812
Bridges/Failure to Comply with Regulations	33 U.S.C. 495(b); 33 CFR 27.3.	29,192	1.01764	29,707
Bridges/Drawbridges	33 U.S.C. 499(c); 33 CFR 27.3.	29,192	1.01764	29,707
Bridges/Failure to Alter Bridge Obstructing Navigation	33 U.S.C. 502(c); 33 CFR 27.3.	29,192	1.01764	29,707
Bridges/Maintenance and Operation	33 U.S.C. 533(b); 33 CFR 27.3.	29,192	1.01764	29,707
Bridge to Bridge Communication; Master, Person in Charge or Pilot.	33 U.S.C. 1208(a); 33 CFR 27.3.	2,126	1.01764	2,164
Bridge to Bridge Communication; Vessel	33 U.S.C. 1208(b); 33 CFR 27.3.	2,126	1.01764	2,164
Oil/Hazardous Substances: Discharges (Class I per violation).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3.	18,943	1.01764	19,277
Oil/Hazardous Substances: Discharges (Class I total under paragraph).	33 U.S.C. 1321(b)(6)(B)(i); 33 CFR 27.3.	47,357	1.01764	48,192
Oil/Hazardous Substances: Discharges (Class II per day of violation).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3.	18,943	1.01764	19,277
Oil/Hazardous Substances: Discharges (Class II total under paragraph).	33 U.S.C. 1321(b)(6)(B)(ii); 33 CFR 27.3.	236,783	1.01764	240,960
Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3.	47,357	1.01764	48,192
Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(A); 33 CFR 27.3.	1,895	1.01764	1,928
Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	33 U.S.C. 1321(b)(7)(B); 33 CFR 27.3.	47,357	1.01764	48,192
Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	33 U.S.C. 1321(b)(7)(C); 33 CFR 27.3.	47,357	1.01764	48,192
Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3.	5,683	1.01764	5,783
Oil/Hazardous Substances: Discharges, Gross Negligence-Minimum Penalty (Judicial Assessment).	33 U.S.C. 1321(b)(7)(D); 33 CFR 27.3.	189,427	1.01764	192,768
Marine Sanitation Devices; Operating	33 U.S.C. 1322(j); 33 CFR 27.3.	7,975	1.01764	8,116
Marine Sanitation Devices; Sale or Manufacture	33 U.S.C. 1322(j); 33 CFR 27.3.	21,265	1.01764	21,640
International Navigation Rules; Operator	33 U.S.C. 1608(a); 33 CFR 27.3.	14,910	1.01764	15,173
International Navigation Rules; Vessel	33 U.S.C. 1608(b); 33 CFR 27.3.	14,910	1.01764	15,173
Pollution from Ships; General	33 U.S.C. 1908(b)(1); 33 CFR 27.3.	74,552	1.01764	75,867
Pollution from Ships; False Statement	33 U.S.C. 1908(b)(2); 33 CFR 27.3.	14,910	1.01764	15,173
Inland Navigation Rules; Operator	33 U.S.C. 2072(a); 33 CFR 27.3.	14,910	1.01764	15,173

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Inland Navigation Rules; Vessel	33 U.S.C. 2072(b); 33 CFR 27.3.	14,910	1.01764	15,173
Shore Protection; General	33 U.S.C. 2609(a); 33 CFR 27.3.	52,596	1.01764	53,524
Shore Protection; Operating Without Permit	33 U.S.C. 2609(b); 33 CFR 27.3.	21,039	1.01764	21,410
Oil Pollution Liability and Compensation	33 U.S.C. 2716a(a); 33 CFR 27.3.	47,357	1.01764	48,192
Clean Hulls	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3.	43,359	1.01764	44,124
Clean Hulls—related to false statements	33 U.S.C. 3852(a)(1)(A); 33 CFR 27.3.	57,813	1.01764	58,833
Clean Hulls—Recreational Vessel	33 U.S.C. 3852(c); 33 CFR 27.3.	5,781	1.01764	5,883
Hazardous Substances, Releases, Liability, Compensation (Class I).	42 U.S.C. 9609(a); 33 CFR 27.3.	57,317	1.01764	58,328
Hazardous Substances, Releases, Liability, Compensation (Class II).	42 U.S.C. 9609(b); 33 CFR 27.3.	57,317	1.01764	58,328
Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense).	42 U.S.C. 9609(b); 33 CFR 27.3.	171,952	1.01764	174,985
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment).	42 U.S.C. 9609(c); 33 CFR 27.3.	57,317	1.01764	58,328
Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	42 U.S.C. 9609(c); 33 CFR 27.3.	171,952	1.01764	174,985
Safe Containers for International Cargo	46 USC 80509; 33 CFR 27.3.	6,265	1.01764	6,376
Suspension of Passenger Service	46 USC 70305; 33 CFR 27.3.	62,656	1.01764	63,761
Vessel Inspection or Examination Fees	46 U.S.C. 2110(e); 33 CFR 27.3.	9,472	1.01764	9,639
Alcohol and Dangerous Drug Testing	46 U.S.C. 2115; 33 CFR 27.3.	7,710	1.01764	7,846
Negligent Operations: Recreational Vessels	46 U.S.C. 2302(a); 33 CFR 27.3.	6,974	1.01764	7,097
Negligent Operations: Other Vessels	46 U.S.C. 2302(a); 33 CFR 27.3.	34,871	1.01764	35,486
Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug.	46 U.S.C. 2302(c)(1); 33 CFR 27.3.	7,710	1.01764	7,846
Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent.	46 U.S.C. 2306(a)(4); 33 CFR 27.3.	12,007	1.01764	12,219
Vessel Reporting Requirements: Master	46 U.S.C. 2306(b)(2); 33 CFR 27.3.	2,402	1.01764	2,444
Immersion Suits	46 U.S.C. 3102(c)(1); 33 CFR 27.3.	12,007	1.01764	12,219
Inspection Permit	46 U.S.C. 3302(i)(5); 33 CFR 27.3.	2,505	1.01764	2,549
Vessel Inspection; General	46 U.S.C. 3318(a); 33 CFR 27.3.	12,007	1.01764	12,219
Vessel Inspection; Nautical School Vessel	46 U.S.C. 3318(g); 33 CFR 27.3.	12,007	1.01764	12,219
Vessel Inspection; Failure to Give Notice IAW 3304(b)	46 U.S.C. 3318(h); 33 CFR 27.3.	2,402	1.01764	2,444
Vessel Inspection; Failure to Give Notice IAW 3309(c)	46 U.S.C. 3318(i); 33 CFR 27.3.	2,402	1.01764	2,444
Vessel Inspection; Vessel ≥1600 Gross Tons	46 U.S.C. 3318(j)(1); 33 CFR 27.3.	24,017	1.01764	24,441
Vessel Inspection; Vessel <1600 Gross Tons	46 U.S.C. 3318(j)(1); 33 CFR 27.3.	4,803	1.01764	4,888
Vessel Inspection; Failure to Comply with 3311(b)	46 U.S.C. 3318(k); 33 CFR 27.3.	24,017	1.01764	24,441
Vessel Inspection; Violation of 3318(b)–3318(f)	46 U.S.C. 3318(l); 33 CFR 27.3.	12,007	1.01764	12,219
List/count of Passengers	46 U.S.C. 3502(e); 33 CFR 27.3.	250	1.01764	254
Notification to Passengers	46 U.S.C. 3504(c); 33 CFR 27.3.	25,037	1.01764	25,479
Notification to Passengers; Sale of Tickets	46 U.S.C. 3504(c); 33 CFR 27.3.	1,251	1.01764	1,273

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Copies of Laws on Passenger Vessels; Master	46 U.S.C. 3506; 33 CFR 27.3.	501	1.01764	510
Liquid Bulk/Dangerous Cargo	46 U.S.C. 3718(a)(1); 33 CFR 27.3.	62,595	1.01764	63,699
Uninspected Vessels	46 U.S.C. 4106; 33 CFR 27.3.	10,519	1.01764	10,705
Recreational Vessels (maximum for related series of violations).	46 U.S.C. 4311(b)(1); 33 CFR 27.3.	331,174	1.01764	337,016
Recreational Vessels; Violation of 4307(a)	46 U.S.C. 4311(b)(1); 33 CFR 27.3.	6,623	1.01764	6,740
Recreational vessels	46 U.S.C. 4311(c); 33 CFR 27.3.	2,505	1.01764	2,549
Uninspected Commercial Fishing Industry Vessels	46 U.S.C. 4507; 33 CFR 27.3.	10,519	1.01764	10,705
Abandonment of Barges	46 U.S.C. 4703; 33 CFR 27.3.	1,783	1.01764	1,814
Load Lines	46 U.S.C. 5116(a); 33 CFR 27.3.	11,463	1.01764	11,665
Load Lines; Violation of 5112(a)	46 U.S.C. 5116(b); 33 CFR 27.3.	22,927	1.01764	23,331
Load Lines; Violation of 5112(b)	46 U.S.C. 5116(c); 33 CFR 27.3.	11,463	1.01764	11,665
Reporting Marine Casualties	46 U.S.C. 6103(a); 33 CFR 27.3.	39,936	1.01764	40,640
Reporting Marine Casualties; Violation of 6104	46 U.S.C. 6103(b); 33 CFR 27.3.	10,519	1.01764	10,705
Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement.	46 U.S.C. 8101(e); 33 CFR 27.3.	1,895	1.01764	1,928
Manning of Inspected Vessels	46 U.S.C. 8101(f); 33 CFR 27.3.	18,943	1.01764	19,277
Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by USCG.	46 U.S.C. 8101(g); 33 CFR 27.3.	18,943	1.01764	19,277
Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	46 U.S.C. 8101(h); 33 CFR 27.3.	2,505	1.01764	2,549
Watchmen on Passenger Vessels	46 U.S.C. 8102(a)	2,505	1.01764	2,549
Citizenship Requirements	46 U.S.C. 8103(f)	1,251	1.01764	1,273
Watches on Vessels; Violation of 8104(a) or (b)	46 U.S.C. 8104(i)	18,943	1.01764	19,277
Watches on Vessels; Violation of 8104(c), (d), (e), or (h).	46 U.S.C. 8104(j)	18,943	1.01764	19,277
Staff Department on Vessels	46 U.S.C. 8302(e)	250	1.01764	254
Officer's Competency Certificates	46 U.S.C. 8304(d)	250	1.01764	254
Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 8502(e)	18,943	1.01764	19,277
Coastwise Pilotage; Individual	46 U.S.C. 8502(f)	18,943	1.01764	19,277
Federal Pilots	46 U.S.C. 8503	60,039	1.01764	61,098
Merchant Mariners Documents	46 U.S.C. 8701(d)	1,251	1.01764	1,273
Crew Requirements	46 U.S.C. 8702(e)	18,943	1.01764	19,277
Small Vessel Manning	46 U.S.C. 8906	39,936	1.01764	40,640
Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	46 U.S.C. 9308(a)	18,943	1.01764	19,277
Pilotage: Great Lakes; Individual	46 U.S.C. 9308(b)	18,943	1.01764	19,277
Pilotage: Great Lakes; Violation of 9303	46 U.S.C. 9308(c)	18,943	1.01764	19,277
Failure to Report Sexual Offense	46 U.S.C. 10104(b)	10,067	1.01764	10,245
Pay Advances to Seamen	46 U.S.C. 10314(a)(2)	1,251	1.01764	1,273
Pay Advances to Seamen; Remuneration for Employment.	46 U.S.C. 10314(b)	1,251	1.01764	1,273
Allotment to Seamen	46 U.S.C. 10315(c)	1,251	1.01764	1,273
Seamen Protection; General	46 U.S.C. 10321	8,678	1.01764	8,831
Coastwise Voyages: Advances	46 U.S.C. 10505(a)(2)	8,678	1.01764	8,831
Coastwise Voyages: Advances; Remuneration for Employment.	46 U.S.C. 10505(b)	8,678	1.01764	8,831
Coastwise Voyages: Seamen Protection; General	46 U.S.C. 10508(b)	8,678	1.01764	8,831
Effects of Deceased Seamen	46 U.S.C. 10711	501	1.01764	510
Complaints of Unfitness	46 U.S.C. 10902(a)(2)	1,251	1.01764	1,273
Proceedings on Examination of Vessel	46 U.S.C. 10903(d)	250	1.01764	254
Permission to Make Complaint	46 U.S.C. 10907(b)	1,251	1.01764	1,273
Accommodations for Seamen	46 U.S.C. 11101(f)	1,251	1.01764	1,273
Medicine Chests on Vessels	46 U.S.C. 11102(b)	1,251	1.01764	1,273
Destitute Seamen	46 U.S.C. 11104(b)	250	1.01764	254

TABLE 4—U.S. COAST GUARD CIVIL PENALTIES ADJUSTMENTS—Continued

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Wages on Discharge	46 U.S.C. 11105(c)	1,251	1.01764	1,273
Log Books; Master Failing to Maintain	46 U.S.C. 11303(a)	501	1.01764	510
Log Books; Master Failing to Make Entry	46 U.S.C. 11303(b)	501	1.01764	510
Log Books; Late Entry	46 U.S.C. 11303(c)	375	1.01764	382
Carrying of Sheath Knives	46 U.S.C. 11506	125	1.01764	127
Vessel Documentation	46 U.S.C. 12151(a)(1)	16,398	1.01764	16,687
Documentation of Vessels—Related to Activities involving mobile offshore drilling units.	46 U.S.C. 12151(a)(2)	27,331	1.01764	27,813
Vessel Documentation; Fishery Endorsement	46 U.S.C. 12151(c)	125,314	1.01764	127,525
Numbering of Undocumented Vessels—Willful violation.	46 U.S.C. 12309(a)	12,519	1.01764	12,740
Numbering of Undocumented Vessels	46 U.S.C. 12309(b)	2,505	1.01764	2,549
Vessel Identification System	46 U.S.C. 12507(b)	21,039	1.01764	21,410
Measurement of Vessels	46 U.S.C. 14701	45,855	1.01764	46,664
Measurement; False Statements	46 U.S.C. 14702	45,855	1.01764	46,664
Commercial Instruments and Maritime Liens	46 U.S.C. 31309	21,039	1.01764	21,410
Commercial Instruments and Maritime Liens; Mortgagor.	46 U.S.C. 31330(a)(2)	21,039	1.01764	21,410
Commercial Instruments and Maritime Liens; Violation of 31329.	46 U.S.C. 31330(b)(2)	52,596	1.01764	53,524
Ports and Waterway Safety Regulations	46 U.S.C. 70036(a); 33 CFR 27.3.	94,219	1.01764	95,881
Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge.	46 U.S.C. 70041(d)(1)(B); 33 CFR 27.3.	9,472	1.01764	9,639
Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel.	46 U.S.C. 70041(d)(1)(C); 33 CFR 27.3.	9,472	1.01764	9,639
Vessel Navigation: Regattas or Marine Parades; Other Persons.	46 U.S.C. 70041(d)(1)(D); 33 CFR 27.3.	4,735	1.01764	4,819
Port Security	46 U.S.C. 70119(a)	34,871	1.01764	35,486
Port Security—Continuing Violations	46 U.S.C. 70119(b)	62,656	1.01764	63,761
Maritime Drug Law Enforcement	46 U.S.C. 70506(c)	5,781	1.01764	5,883
Hazardous Materials: Related to Vessels	49 U.S.C. 5123(a)(1)	81,993	1.01764	83,439
Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or substantial Damage to Property.	49 U.S.C. 5123(a)(2)	191,316	1.01764	194,691
Hazardous Materials: Related to Vessels; Training	49 U.S.C. 5123(a)(3)	493	1.01764	502

* OMB Memorandum M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Dec. 16, 2019. Available at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf.*

** Enacted under the Tariff Act; exempt from inflation adjustments.

E. Transportation Security Administration

The Transportation Security Administration (TSA) is updating its civil penalties regulation in accordance with the 2015 Act. Pursuant to its statutory authority in 49 U.S.C. 46301(a)(1), (4), (5), (6), 49 U.S.C. 46301(d)(2), (8), and 49 U.S.C. 114(u), TSA may impose penalties for violations of statutes that TSA administers, including penalties for violations of implementing regulations or orders. Note that pursuant to division K, title I, sec. 1904(b)(1)(I), of Public Law 115–254, 132 Stat. 3186, 3545 (Oct. 5, 2018), the TSA Modernization Act—part of the FAA Reauthorization Act of 2018—the former 49 U.S.C. 114(v), which relates to penalties, was redesignated as 49 U.S.C. 114(u).

TSA assesses these penalties for a wide variety of aviation and surface security requirements, including violations of TSA's requirements applicable to Transportation Worker Identification Credentials (TWIC),[12] as well as violations of requirements described in chapter 449 of title 49 of the United States Code. These penalties can apply to a wide variety of situations, as described in the statutory and regulatory provisions, as well as in guidance that TSA publishes. Below is a table showing the 2020 adjustment for the penalties that TSA administers.

[12] *See, e.g.,* 46 U.S.C. 70105, 49 U.S.C. 46302 and 46303, and 49 U.S.C. chapter 449.

TABLE 5—TRANSPORTATION SECURITY ADMINISTRATION CIVIL PENALTIES ADJUSTMENTS

Penalty name	Citation	Penalty amount as adjusted in the 2019 FR	Multiplier *	New penalty as adjusted by this final rule
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	49 U.S.C. 46301(a)(1), (4), (5), (6); 49 U.S.C. 46301(d)(2), (8); 9 CFR 1503.401(c)(3).	$34,174 (up to a total of $546,774 per civil penalty action).	1.01764	$34,777 (up to a total of $556,419 per civil penalty action).
Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	49 U.S.C. 46301(a)(1), (4), (5); 49 U.S.C. 46301(d)(8); 49 CFR 1503.401(c)(1) and (2).	$13,669 (up to a total of $68,347 total for small business, $546,774 for others).	1.01764	$13,910 (up to a total of $69,553 total for small business, $556,419 for others).
Violation of any other provision of title 49 U.S.C. or of 46 U.S.C. ch. 701, a regulation prescribed, or order issued thereunder.	49 U.S.C. 114(u); 49 CFR 1503.401(b).	$11,698 (up to a total of $58,490 total for small businesses, $467,920 for others).	1.01764	$11,904 (up to a total of $59,522 total for small businesses, $76,174 for others).

* OMB Memorandum M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Dec. 16, 2019. Available at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf.*

IV. Administrative Procedure Act

DHS is promulgating this final rule to ensure that the amount of civil penalties that DHS assesses or enforces reflects the statutorily mandated ranges as adjusted for inflation. The 2015 Act provides a clear formula for adjustment of the civil penalties, leaving DHS and its components with little room for discretion. DHS and its components have been charged only with performing ministerial computations to determine the amounts of adjustments for inflation to civil monetary penalties. In these annual adjustments DHS is merely updating the penalty amounts by applying the cost-of-living adjustment multiplier that OMB has provided to agencies. Furthermore, the 2015 Act specifically instructed that agencies make the required annual adjustments notwithstanding section 553 of title 5 of the United States Code. Thus, as specified in the 2015 Act, the prior public notice-and-comment procedures and delayed effective date requirements of the Administrative Procedure Act (APA) do not apply to this rule. Further, as described above, this rule makes minor amendments to the regulations to reflect changes required by clear statutory authority, and DHS finds that prior notice and comment procedures and a delayed effective date for these amendments are unnecessary.

V. Regulatory Analyses

A. Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (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. OMB has not designated this final rule a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this rule. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

This final rule makes nondiscretionary adjustments to existing civil monetary penalties in accordance with the 2015 Act and OMB guidance.[13] DHS therefore did not consider alternatives and does not have the flexibility to alter the adjustments of the civil monetary penalty amounts as provided in this rule. To the extent this final rule increases civil monetary penalties, it would result in an increase in transfers from persons or entities assessed a civil monetary penalty to the government.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601–612. The Regulatory Flexibility Act does not apply to this final rule because a notice of proposed rulemaking was not required for the reasons stated above.

C. Unfunded Mandates Reform Act

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

D. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule, because this

[13] OMB Memorandum M–20–05, Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Dec. 14, 2018. Available at *https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf.*

final rule does not trigger any new or revised recordkeeping or reporting.

VI. Signing Authorities

The amendments to 19 CFR part 4 in this document are issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to Section 403(l) of the Homeland Security Act of 2002. Accordingly, this final rule to amend such regulations may be signed by the Secretary of Homeland Security (or his or her delegate).

List of Subjects

6 CFR Part 27

Reporting and recordkeeping requirements, Security measures.

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

19 CFR Part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

33 CFR Part 27

Administrative practice and procedure, Penalties.

49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, DHS is amending 6 CFR part 27, 8 CFR parts 270, 274a, and 280, 19 CFR part 4, 33 CFR part 27, and 49 CFR part 1503 as follows:

Title 6—Domestic Security

PART 27—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 6 U.S.C. 624; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599; Pub. L. 113–254, 128 Stat. 2898, as amended by Pub. L. 116–2, 133 Stat. 5.

■ 2. In § 27.300, revise paragraph (b)(3) to read as follows:

§ 27.300 Orders.

* * * * *

(b) * * *

(3) Where the Assistant Secretary determines that a facility is in violation of an Order issued pursuant to paragraph (a) of this section and issues an Order Assessing Civil Penalty pursuant to paragraph (b)(1) of this section, a chemical facility is liable to the United States for a civil penalty of not more than $25,000 for each day during which the violation continues, if the violation of the Order occurred on or before November 2, 2015, or $35,486 for each day during which the violation of the Order continues, if the violation occurred after November 2, 2015.

* * * * *

Title 8—Aliens and Nationality

PART 270—PENALTIES FOR DOCUMENT FRAUD

■ 3. The authority citation for part 270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321 and Pub. L. 114–74, 129 Stat. 599.

■ 4. In § 270.3, revise paragraphs (b)(1)(ii)(A) through (D) to read as follows:

§ 270.3 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *First offense under section 274C(a)(1) through (a)(4).* Not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before March 27, 2008; not less than $375 and not exceeding $3,200 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act on or after March 27, 2008 and on or before November 2, 2015; and not less than $481 and not exceeding $3,855 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act after November 2, 2015.

(B) *First offense under section 274C(a)(5) or (a)(6).* Not less than $250 and not exceeding $2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act before March 27, 2008; not less than $275 and not exceeding $2,200 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act on or after March 27, 2008 and on or before November 2, 2015; and not less than $407 and not exceeding $3,251 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act after November 2, 2015.

(C) *Subsequent offenses under section 274C(a)(1) through (a)(4).* Not less than $2,200 and not more than $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before March 27, 2008; not less than $3,200 and not exceeding $6,500 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $3,855 and not more than $9,639 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act after November 2, 2015.

(D) *Subsequent offenses under section 274C(a)(5) or (a)(6).* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act before March 27, 2008; not less than $2,200 and not exceeding $5,500 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $3,351 and not more than $8,128 for each fraudulent document or each proscribed activity described in section 274C(a)(5) or (a)(6) of the Act after November 2, 2015.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 6. In § 274a.8, revise paragraph (b) to read as follows:

§ 274a.8 Prohibition of indemnity bonds.

* * * * *

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of $1,000 for each violation before

September 29, 1999, of $1,100 for each violation occurring on or after September 29, 1999 but on or before November 2, 2015, and of $2,332 for each violation occurring after November 2, 2015, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

■ 7. In § 274a.10, revise paragraphs (b)(1)(ii)(A) through (C) and the first sentence of paragraph (b)(2) to read as follows:

§ 274a.10 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) First offense—not less than $275 and not more than $2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008; not less than $375 and not exceeding $3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008 and on or before November 2, 2015; and not less than $583 and not more than $4,667 for each unauthorized alien with respect to whom the offense occurred occurring after November 2, 2015;

(B) Second offense—not less than $2,200 and not more than $5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008; not less than $3,200 and not more than $6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008 and on or before November 2, 2015; and not less than $4,667 and not more than $11,665 for each unauthorized alien with respect to whom the second offense occurred after November 2, 2015; or

(C) More than two offenses—not less than $3,300 and not more than $11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008; not less than $4,300 and not exceeding $16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008 and on or before November 2, 2015; and not less than $6,999 and not more than $23,331 for each unauthorized alien with respect to whom the third or subsequent offense occurred after November 2, 2015; and

* * * * *

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before September 29, 1999; not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999 and on or before November 2, 2015; and not less than $234 and not more than $2,332 for each individual with respect to whom such violation occurred after November 2, 2015. * * *

* * * * *

PART 280—IMPOSITION AND COLLECTION OF FINES

■ 8. The authority citation for part 280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 9. In § 280.53, revise paragraphs (b)(1) through (15) to read as follows:

§ 280.53 Civil monetary penalties inflation adjustment.

* * * * *

(b) * * *

(1) Section 231(g) of the Act, Penalties for non-compliance with arrival and departure manifest requirements for passengers, crewmembers, or occupants transported on commercial vessels or aircraft arriving to or departing from the United States: From $1,394 to $1,419.

(2) Section 234 of the Act, Penalties for non-compliance with landing requirements at designated ports of entry for aircraft transporting aliens: From $3,788 to $3,855.

(3) Section 240B(d) of the Act, Penalties for failure to depart voluntarily: From $1,597 minimum/$7,987 maximum to $1,625 minimum/$8,128 maximum.

(4) Section 243(c)(1)(A) of the Act, Penalties for violations of removal orders relating to aliens transported on vessels or aircraft, under section 241(d) of the Act, or for costs associated with removal under section 241(e) of the Act: From $3,195 to $3,251.

(5) Penalties for failure to remove alien stowaways under section 241(d)(2): From $7,987 to $8,128.

(6) Section 251(d) of the Act, Penalties for failure to report an illegal landing or desertion of alien crewmen, and for each alien not reported on arrival or departure manifest or lists required in accordance with section 251 of the Act: From $378 to $385; and penalties for use of alien crewmen for longshore work in violation of section 251(d) of the Act: From $9,472 to $9,639.

(7) Section 254(a) of the Act, Penalties for failure to control, detain, or remove alien crewmen: From $947 minimum/$5,683 maximum to $964 minimum/$5,783 maximum.

(8) Section 255 of the Act, Penalties for employment on passenger vessels of aliens afflicted with certain disabilities: From $1,895 to $1,928.

(9) Section 256 of the Act, Penalties for discharge of alien crewmen: From $2,841 minimum/$5,683 maximum to $2,891 minimum/$5,783 maximum.

(10) Section 257 of the Act, Penalties for bringing into the United States alien crewmen with intent to evade immigration laws: From $18,943 maximum to $19,277 maximum.

(11) Section 271(a) of the Act, Penalties for failure to prevent the unauthorized landing of aliens: From $5,683 to $5,783.

(12) Section 272(a) of the Act, Penalties for bringing to the United States aliens subject to denial of admission on a health-related ground: From $5,683 to $5,783.

(13) Section 273(b) of the Act, Penalties for bringing to the United States aliens without required documentation: From $5,683 to $5,783.

(14) Section 274D of the Act, Penalties for failure to depart: From $799 maximum to $813 maximum, for each day the alien is in violation.

(15) Section 275(b) of the Act, Penalties for improper entry: From $80 minimum/$400 maximum to $81 minimum/$407 maximum, for each entry or attempted entry.

Title 19—Customs Duties

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 10. The authority citation for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Sections 4.80, 4.80a, and 4.80b also issued under 19 U.S.C. 1706a; 28 U.S.C. 2461 note; 46 U.S.C. 12112, 12117, 12118, 50501–55106, 55107, 55108, 55110, 55114, 55115, 55116, 55117, 55119, 56101, 55121, 56101, 57109; Public Law 108–7, Division B, Title II, § 211;

* * * * *

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 55111;

* * * * *

■ 11. In § 4.80, remove the heading from paragraph (b) and revise paragraphs (b)(2) and (i) to read as follows:

§ 4.80 Vessels entitled to engage in coastwise trade.

* * * * *

(b) * * *

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $300 for each passenger so transported and landed on or before November 2, 2015, and $812 for each passenger so transported and landed after November 2, 2015 (46 U.S.C. 55103, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

* * * * *

(i) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation on or before November 2, 2015, and $1352 for each port at which it arrives without the proper Certificate of Documentation after November 2, 2015 (19 U.S.C. 1706a, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

■ 12. In § 4.92, revise the third sentence to read as follows:

§ 4.92 Towing.

* * * The penalties for violation of this section occurring after November 2, 2015, are a fine of from $946 to $2,976 against the owner or master of the towing vessel and a further penalty against the towing vessel of $162 per ton of the towed vessel (46 U.S.C. 55111, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

Title 33—Navigation and Navigable Waters

PART 27—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 13. The authority citation for part 27 continues to read as follows:

Authority: Secs. 1–6, Pub. L. 101–410, 104 Stat. 890, as amended by Sec. 31001(s)(1), Pub. L. 104–134, 110 Stat. 1321 (28 U.S.C. 2461 note); Department of Homeland Security Delegation No. 0170.1, sec. 2 (106).

■ 14. In § 27.3, revise the third sentence of the introductory text and table 1 to read as follows:

§ 27.3 Penalty adjustment table.

* * * The adjusted civil penalty amounts listed in Table 1 to this section are applicable for penalty assessments issued after June 17, 2020, with respect to violations occurring after November 2, 2015. * * *

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. code citation	Civil monetary penalty description	2020 Adjusted maximum penalty amount ($)
14 U.S.C. 521(c)	Saving Life and Property	$10,839
14 U.S.C. 521(e)	Saving Life and Property; Intentional Interference with Broadcast	1,112
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (first offense)	5,444
14 U.S.C. 645(i)	Confidentiality of Medical Quality Assurance Records (subsequent offenses)	36,297
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels	8,116
19 U.S.C. 70	Obstruction of Revenue Officers by Masters of Vessels—Minimum Penalty	1,894
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge [1]	5,000
19 U.S.C. 1581(d)	Failure to Stop Vessel When Directed; Master, Owner, Operator or Person in Charge—Minimum Penalty [1].	1,000
33 U.S.C. 471	Anchorage Ground/Harbor Regulations General	11,767
33 U.S.C. 474	Anchorage Ground/Harbor Regulations St. Mary's River	812
33 U.S.C. 495(b)	Bridges/Failure to Comply with Regulations	29,707
33 U.S.C. 499(c)	Bridges/Drawbridges	29,707
33 U.S.C. 502(c)	Bridges/Failure to Alter Bridge Obstructing Navigation	29,707
33 U.S.C. 533(b)	Bridges/Maintenance and Operation	29,707
33 U.S.C. 1208(a)	Bridge to Bridge Communication; Master, Person in Charge or Pilot	2,164
33 U.S.C. 1208(b)	Bridge to Bridge Communication; Vessel	2,164
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I per violation)	19,277
33 U.S.C. 1321(b)(6)(B)(i)	Oil/Hazardous Substances: Discharges (Class I total under paragraph)	48,192
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II per day of violation)	19,277
33 U.S.C. 1321(b)(6)(B)(ii)	Oil/Hazardous Substances: Discharges (Class II total under paragraph)	240,960
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per day of violation) Judicial Assessment	48,192
33 U.S.C. 1321(b)(7)(A)	Oil/Hazardous Substances: Discharges (per barrel of oil or unit discharged) Judicial Assessment.	1,928
33 U.S.C. 1321(b)(7)(B)	Oil/Hazardous Substances: Failure to Carry Out Removal/Comply With Order (Judicial Assessment).	48,192
33 U.S.C. 1321(b)(7)(C)	Oil/Hazardous Substances: Failure to Comply with Regulation Issued Under 1321(j) (Judicial Assessment).	48,192
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence (per barrel of oil or unit discharged) Judicial Assessment.	5,783
33 U.S.C. 1321(b)(7)(D)	Oil/Hazardous Substances: Discharges, Gross Negligence—Minimum Penalty (Judicial Assessment).	192,768
33 U.S.C. 1322(j)	Marine Sanitation Devices; Operating	8,116
33 U.S.C. 1322(j)	Marine Sanitation Devices; Sale or Manufacture	21,640
33 U.S.C. 1608(a)	International Navigation Rules; Operator	15,173
33 U.S.C. 1608(b)	International Navigation Rules; Vessel	15,173
33 U.S.C. 1908(b)(1)	Pollution from Ships; General	75,867
33 U.S.C. 1908(b)(2)	Pollution from Ships; False Statement	15,173
33 U.S.C. 2072(a)	Inland Navigation Rules; Operator	15,173

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Civil monetary penalty description	2020 Adjusted maximum penalty amount ($)
33 U.S.C. 2072(b)	Inland Navigation Rules; Vessel	15,173
33 U.S.C. 2609(a)	Shore Protection; General	53,524
33 U.S.C. 2609(b)	Shore Protection; Operating Without Permit	21,410
33 U.S.C. 2716a(a)	Oil Pollution Liability and Compensation	48,192
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; Civil Enforcement	44,124
33 U.S.C. 3852(a)(1)(A)	Clean Hulls; related to false statements	58,833
33 U.S.C. 3852(c)	Clean Hulls; Recreational Vessels	5,883
42 U.S.C. 9609(a)	Hazardous Substances, Releases, Liability, Compensation (Class I)	58,328
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II)	58,328
42 U.S.C. 9609(b)	Hazardous Substances, Releases, Liability, Compensation (Class II subsequent offense).	174,985
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment)	58,328
42 U.S.C. 9609(c)	Hazardous Substances, Releases, Liability, Compensation (Judicial Assessment subsequent offense).	174,985
46 U.S.C. 80509(a)	Safe Containers for International Cargo	6,376
46 U.S.C. 70305(c)	Suspension of Passenger Service	63,761
46 U.S.C. 2110(e)	Vessel Inspection or Examination Fees	9,639
46 U.S.C. 2115	Alcohol and Dangerous Drug Testing	7,846
46 U.S.C. 2302(a)	Negligent Operations: Recreational Vessels	7,097
46 U.S.C. 2302(a)	Negligent Operations: Other Vessels	35,486
46 U.S.C. 2302(c)(1)	Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug	7,846
46 U.S.C. 2306(a)(4)	Vessel Reporting Requirements: Owner, Charterer, Managing Operator, or Agent	12,219
46 U.S.C. 2306(b)(2)	Vessel Reporting Requirements: Master	2,444
46 U.S.C. 3102(c)(1)	Immersion Suits	12,219
46 U.S.C. 3302(i)(5)	Inspection Permit	2,549
46 U.S.C. 3318(a)	Vessel Inspection; General	12,219
46 U.S.C. 3318(g)	Vessel Inspection; Nautical School Vessel	12,219
46 U.S.C. 3318(h)	Vessel Inspection; Failure to Give Notice IAW 3304(b)	2,444
46 U.S.C. 3318(i)	Vessel Inspection; Failure to Give Notice IAW 3309(c)	2,444
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel ≥1600 Gross Tons	24,441
46 U.S.C. 3318(j)(1)	Vessel Inspection; Vessel <1600 Gross Tons	4,888
46 U.S.C. 3318(k)	Vessel Inspection; Failure to Comply with 3311(b)	24,441
46 U.S.C. 3318(l)	Vessel Inspection; Violation of 3318(b)–3318(f)	12,219
46 U.S.C. 3502(e)	List/count of Passengers	254
46 U.S.C. 3504(c)	Notification to Passengers	25,479
46 U.S.C. 3504(c)	Notification to Passengers; Sale of Tickets	1,273
46 U.S.C. 3506	Copies of Laws on Passenger Vessels; Master	510
46 U.S.C. 3718(a)(1)	Liquid Bulk/Dangerous Cargo	63,699
46 U.S.C. 4106	Uninspected Vessels	10,705
46 U.S.C. 4311(b)(1)	Recreational Vessels (maximum for related series of violations)	337,016
46 U.S.C. 4311(b)(1)	Recreational Vessels; Violation of 4307(a)	6,740
46 U.S.C. 4311(c)	Recreational Vessels	2,549
46 U.S.C. 4507	Uninspected Commercial Fishing Industry Vessels	10,705
46 U.S.C. 4703	Abandonment of Barges	1,814
46 U.S.C. 5116(a)	Load Lines	11,665
46 U.S.C. 5116(b)	Load Lines; Violation of 5112(a)	23,331
46 U.S.C. 5116(c)	Load Lines; Violation of 5112(b)	11,665
46 U.S.C. 6103(a)	Reporting Marine Casualties	40,640
46 U.S.C. 6103(b)	Reporting Marine Casualties; Violation of 6104	10,705
46 U.S.C. 8101(e)	Manning of Inspected Vessels; Failure to Report Deficiency in Vessel Complement	1,928
46 U.S.C. 8101(f)	Manning of Inspected Vessels	19,277
46 U.S.C. 8101(g)	Manning of Inspected Vessels; Employing or Serving in Capacity not Licensed by USCG.	19,277
46 U.S.C. 8101(h)	Manning of Inspected Vessels; Freight Vessel <100 GT, Small Passenger Vessel, or Sailing School Vessel.	2,549
46 U.S.C. 8102(a)	Watchmen on Passenger Vessels	2,549
46 U.S.C. 8103(f)	Citizenship Requirements	1,273
46 U.S.C. 8104(i)	Watches on Vessels; Violation of 8104(a) or (b)	19,277
46 U.S.C. 8104(j)	Watches on Vessels; Violation of 8104(c), (d), (e), or (h)	19,277
46 U.S.C. 8302(e)	Staff Department on Vessels	254
46 U.S.C. 8304(d)	Officer's Competency Certificates	254
46 U.S.C. 8502(e)	Coastwise Pilotage; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	19,277
46 U.S.C. 8502(f)	Coastwise Pilotage; Individual	19,277
46 U.S.C. 8503	Federal Pilots	61,098
46 U.S.C. 8701(d)	Merchant Mariners Documents	1,273
46 U.S.C. 8702(e)	Crew Requirements	19,277
46 U.S.C. 8906	Small Vessel Manning	40,640
46 U.S.C. 9308(a)	Pilotage: Great Lakes; Owner, Charterer, Managing Operator, Agent, Master or Individual in Charge.	19,277

TABLE 1 TO § 27.3—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Civil monetary penalty description	2020 Adjusted maximum penalty amount ($)
46 U.S.C. 9308(b)	Pilotage: Great Lakes; Individual	19,277
46 U.S.C. 9308(c)	Pilotage: Great Lakes; Violation of 9303	19,277
46 U.S.C. 10104(b)	Failure to Report Sexual Offense	10,245
46 U.S.C. 10314(a)(2)	Pay Advances to Seamen	1,273
46 U.S.C. 10314(b)	Pay Advances to Seamen; Remuneration for Employment	1,273
46 U.S.C. 10315(c)	Allotment to Seamen	1,273
46 U.S.C. 10321	Seamen Protection; General	8,831
46 U.S.C. 10505(a)(2)	Coastwise Voyages: Advances	8,831
46 U.S.C. 10505(b)	Coastwise Voyages: Advances; Remuneration for Employment	8,831
46 U.S.C. 10508(b)	Coastwise Voyages: Seamen Protection; General	8,831
46 U.S.C. 10711	Effects of Deceased Seamen	510
46 U.S.C. 10902(a)(2)	Complaints of Unfitness	1,273
46 U.S.C. 10903(d)	Proceedings on Examination of Vessel	254
46 U.S.C. 10907(b)	Permission to Make Complaint	1,273
46 U.S.C. 11101(f)	Accommodations for Seamen	1,273
46 U.S.C. 11102(b)	Medicine Chests on Vessels	1,273
46 U.S.C. 11104(b)	Destitute Seamen	254
46 U.S.C. 11105(c)	Wages on Discharge	1,273
46 U.S.C. 11303(a)	Log Books; Master Failing to Maintain	510
46 U.S.C. 11303(b)	Log Books; Master Failing to Make Entry	510
46 U.S.C. 11303(c)	Log Books; Late Entry	382
46 U.S.C. 11506	Carrying of Sheath Knives	127
46 U.S.C. 12151(a)(1)	Vessel Documentation	16,687
46 U.S.C. 12151(a)(2)	Documentation of Vessels—Related to activities involving mobile offshore drilling units	27,813
46 U.S.C. 12151(c)	Vessel Documentation; Fishery Endorsement	127,525
46 U.S.C. 12309(a)	Numbering of Undocumented Vessels—Willful violation	12,740
46 U.S.C. 12309(b)	Numbering of Undocumented Vessels	2,549
46 U.S.C. 12507(b)	Vessel Identification System	21,410
46 U.S.C. 14701	Measurement of Vessels	46,664
46 U.S.C. 14702	Measurement; False Statements	46,664
46 U.S.C. 31309	Commercial Instruments and Maritime Liens	21,410
46 U.S.C. 31330(a)(2)	Commercial Instruments and Maritime Liens; Mortgagor	21,410
46 U.S.C. 31330(b)(2)	Commercial Instruments and Maritime Liens; Violation of 31329	53,524
46 U.S.C. 70036(a)	Ports and Waterways Safety Regulations	95,881
46 U.S.C. 70041(d)(1)(B)	Vessel Navigation: Regattas or Marine Parades; Unlicensed Person in Charge	9,639
46 U.S.C. 70041(d)(1)(C)	Vessel Navigation: Regattas or Marine Parades; Owner Onboard Vessel	9,639
46 U.S.C. 70041(d)(1)(D)	Vessel Navigation: Regattas or Marine Parades; Other Persons	4,819
46 U.S.C. 70119(a)	Port Security	35,486
46 U.S.C. 70119(b)	Port Security—Continuing Violations	63,761
46 U.S.C. 70506	Maritime Drug Law Enforcement; Penalties	5,883
49 U.S.C. 5123(a)(1)	Hazardous Materials: Related to Vessels—Maximum Penalty	83,439
49 U.S.C. 5123(a)(2)	Hazardous Materials: Related to Vessels—Penalty from Fatalities, Serious Injuries/Illness or Substantial Damage to Property.	194,691
49 U.S.C. 5123(a)(3)	Hazardous Materials: Related to Vessels—Training	502

[1] Enacted under the Tariff Act of 1930, exempt from inflation adjustments.

Title 49—Transportation

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 15. The authority citation for part 1503 continues to read as follows:

Authority: 6 U.S.C. 1142; 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Pub. L. 104–134, as amended by Pub. L. 114–74.

■ 16. In § 1503.401, revise paragraphs (b)(1) and (2) and (c)(1), (2), and (3) to read as follows:

§ 1503.401 Maximum penalty amounts.

* * * * *

(b) * * *

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632). For violations that occurred after November 2, 2015 $11,904 per violation, up to a total of $59,522 per civil penalty action, in the case of an individual or small business concern; and

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person. For violations that occurred after November 2, 2015, $11,904 per violation, up to a total of $476,174 per civil penalty action, in the case of any other person.

(c) * * *

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632). For violations that occurred after November 2, 2015, $13,910 per violation, up to a total of $69,553 per civil penalty action, in the case of an individual (except an airman serving as an airman), or a small business concern.

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any

other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation. For violations that occurred after November 2, 2015, $13,910 per violation, up to a total of $556,419 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation.

(3) For violations that occurred on or before November 2, 2015, $25,000 per violation, up to a total of $400,000 per civil penalty action, in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman). For violations that occurred after November 2, 2015, $34,777 per violation, up to a total of $556,419 per civil penalty action, in the case of a person (except an individual serving as an airman) operating an aircraft for the transportation of passengers or property for compensation.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel.

[FR Doc. 2020–11124 Filed 6–16–20; 8:45 am]

BILLING CODE 9110–9–P, 9111–14–P, 9111–28–P, 9110–04–P, 9110–05–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 748 and 774

[Docket No. 200521–0143]

RIN 0694–AH60

Implementation of the February 2020 Australia Group Intersessional Decisions: Addition of Certain Rigid-Walled, Single-Use Cultivation Chambers and Precursor Chemicals to the Commerce Control List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement the decisions made at the February 2020 Australia Group (AG) Intersessional Implementation Meeting, and those later adopted pursuant to the AG's silence procedure. Specifically, this rule amends Export Control Classification Numbers (ECCNs) 1C350, 1C351 and 2B352 on the Commerce Control List (CCL) to reflect these AG changes. ECCN 1C350 is amended by adding twenty-four precursor chemicals, as well as mixtures in which at least one of these chemicals constitutes 30 percent or more of the weight of the mixture, to ECCN 1C350.d. ECCN 1C351 is amended to add Middle East respiratory syndrome-related coronavirus (MERS-related coronavirus). ECCN 2B352 is amended by adding a *Technical Note* to indicate that cultivation chamber holding devices controlled in 2B352.b.2.b include single-use cultivation chambers with rigid walls. The items addressed by this final rule were not previously listed on the CCL or controlled multilaterally. BIS, consistent with the interagency process described in the Export Control Reform Act of 2018 (ECRA), identified the precursor chemicals and single-use cultivation chambers addressed by this final rule as emerging technologies that are essential to U.S. national security and for which effective controls can be implemented. The inclusion of such items in this final rule is consistent with the requirements of ECRA and the decision of the AG to add such items to its common control lists, thereby making exports of such items subject to multilateral control (following the implementation of these changes by individual AG participating countries, including the United States).

DATES: This rule is effective June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Wesley Johnson, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–0091, Email: *Wesley.Johnson@bis.doc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the decisions made at the Australia Group (AG) Intersessional Implementation Meeting held in Bratislava, Slovak Republic, on February 5 through 6, 2020, and those subsequently made pursuant to the AG silence procedure which ended on February 28, 2020 (the AG silence procedure provides for the adoption of a measure, subsequent to its provisional acceptance at an AG plenary or intersessional meeting, provided that no participating country submits an objection on or before a specified date). The AG is a multilateral forum consisting of 42 participating countries and the European Union that maintain export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

Amendments to the CCL Based on the February 2020 AG Intersessional Recommendations

ECCN 1C350 (Chemical Weapons Precursors)

This final rule amends Export Control Classification Number (ECCN) 1C350 on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) to reflect changes to the AG ''Chemical Weapons Precursors'' common control list based on the February 2020 Intersessional Implementation Meeting recommendations that were approved by the AG pursuant to a silence procedure which ended on February 28, 2020. Specifically, this rule amends ECCN 1C350 by adding the following twenty-four precursor chemicals under ECCN 1C350.d:

(C.A.S. #589–57–1) Diethyl chlorophosphite;

(C.A.S. #762–77–6) Ethyl chlorofluorophosphate;

(C.A.S. #1498–51–7) Ethyl dichlorophosphate;

(C.A.S. #460–52–6) Ethyl difluorophosphate;

(C.A.S. #754–01–8) Methyl chlorofluorophosphate;

(C.A.S. #677–24–7) Methyl dichlorophosphate;

(C.A.S. #22382–13–4) Methyl difluorophosphate;

(C.A.S. #14277–06–6) N,N-Diethylacetamidine;

(C.A.S. #53510–30–8) N,N-Diethylbutanamidine;

(C.A.S. #90324–67–7) N,N-Diethylformamidine;

(C.A.S. #1342789–47–2) N,N-Diethylisobutanamidine;

(C.A.S. #84764–73–8) N,N-Diethylpropanamidine;

(C.A.S. #1315467–17–4) N,N-Diisopropylbutanamidine;

(C.A.S. #857522–08–8) N,N-Diisopropylformamidine;

(C.A.S. #2909–14–0) N,N-Dimethylacetamidine;

(C.A.S. #1340437–35–5) N,N-Dimethylbutanamidine;

(C.A.S. #44205–42–7) N,N-Dimethylformamidine;

(C.A.S. #321881–25–8) N,N-Dimethylisobutanamidine;

(C.A.S. #56776–14–8) N,N-Dimethylpropanamidine;

(C.A.S. #1339586–99–0) N,N-Dipropylacetamidine;

(C.A.S. #1342422–35–8) N,N-Dipropylbutanamidine;

(C.A.S. #48044–20–8) N,N-Dipropylformamidine;

(C.A.S. #1342700–45–1) N,N-Dipropylisobutanamidine; and

(C.A.S. #1341496–89–6) N,N-Dipropylpropanamidine.

Note that mixtures in which at least one of the chemicals listed in ECCN 1C350.d (which now includes the twenty-four precursor chemicals listed above) constitutes 30 percent or more of the weight of the mixture are also controlled under this ECCN.

In addition, although this rule does not amend ECCN 1D390 (''software'' for chemical production process control), ECCN 1E001 (''technology'' for the ''development'' or ''production'' of, *inter alia,* precursor chemicals controlled by ECCN 1C350), ECCN 1E350 (''technology'' for chemical production facilities) or ECCN 1E351 (''technology'' for the disposal of, *inter alia,* precursor chemicals), these ECCNs cross-reference items controlled by ECCN 1C350 and, consequently, ''software'' or ''technology'' that is related to any of the twenty-four precursor chemicals added by this rule to ECCN 1C350.d is now subject to control under ECCN 1D390, 1E001, 1E350 or 1E351 if such ''software'' or ''technology'' falls within the parameters of the controls described therein.

Prior to the addition of these twenty-four precursor chemicals to the AG chemical weapons precursors common control list, BIS, consistent with the interagency process described in the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852) under Section 1758 (codified at 50 U.S.C. 4817), identified these items as emerging technologies that are essential to U.S. national security and for which effective controls can be implemented. This interagency process resulted in a finding that the absence of export controls on these precursor chemicals could be exploited for chemical weapons purposes. The inclusion of these precursor chemicals in this final rule is consistent with the requirements of ECRA and the decision of the AG to add these items to their common control lists, thereby making exports of such items subject to multilateral control.

This rule alphabetically reorders the precursor chemicals listed in ECCN 1C350.d to reflect the addition of the twenty-four precursor chemicals identified above. To assist in identifying the precursor chemicals that are now controlled under ECCN 1C350.d, the following table lists each chemical now found in ECCN 1C350.d, as well as the previous ECCN 1C350.d listing (if any) for these chemicals.

AG-controlled precursor chemicals	Previous CCL designation	Current CCL designation
(C.A.S. #1341–49–7) Ammonium hydrogen fluoride	ECCN 1C350.d.1	ECCN 1C350.d.1.
(C.A.S. #107–07–3) 2-Chloroethanol	ECCN 1C350.d.2	ECCN 1C350.d.2.
(C.A.S. #109–89–7) Diethylamine	ECCN 1C350.d.3	ECCN 1C350.d.3.
(C.A.S. #100–37–8) N,N-Diethylaminoethanol	ECCN 1C350.d.4	ECCN 1C350.d.4.
(C.A.S. #589–57–1) Diethyl chlorophosphite	Not listed	ECCN 1C350.d.5.
(C.A.S. #298–06–6) O,O-Diethyl phosphorodithioate	ECCN 1C350.d.5	ECCN 1C350.d.6.
(C.A.S. #2465–65–8) O,O-Diethyl phosphorothioate	ECCN 1C350.d.6	ECCN 1C350.d.7.
(C.A.S. #108–18–9) Di-isopropylamine	ECCN 1C350.d.7	ECCN 1C350.d.8.
(C.A.S. #124–40–3) Dimethylamine	ECCN 1C350.d.8	ECCN 1C350.d.9.
(C.A.S. #506–59–2) Dimethylamine hydrochloride	ECCN 1C350.d.9	ECCN 1C350.d.10.
(C.A.S. #762–77–6) Ethyl chlorofluorophosphate	Not listed	ECCN 1C350.d.11.
(C.A.S. #1498–51–7) Ethyl dichlorophosphate	Not listed	ECCN 1C350.d.12.
(C.A.S. #460–52–6) Ethyl difluorophosphate	Not listed	ECCN 1C350.d.13.
(C.A.S. #7664–39–3) Hydrogen fluoride	ECCN 1C350.d.10	ECCN 1C350.d.14.
(C.A.S. #3554–74–3) 3-Hydroxyl-1-methylpiperidine	ECCN 1C350.d.11	ECCN 1C350.d.15.
(C.A.S. #76–89–1) Methyl benzilate	ECCN 1C350.d.12	ECCN 1C350.d.16.
(C.A.S. #754–01–8) Methyl chlorofluorophosphate	Not listed	ECCN 1C350.d.17.
(C.A.S. #677–24–7) Methyl dichlorophosphate	Not listed	ECCN 1C350.d.18.
(C.A.S. #22382–13–4) Methyl difluorophosphate	Not listed	ECCN 1C350.d.19.
(C.A.S. #14277–06–6) N,N Diethylacetamidine	Not listed	ECCN 1C350.d.20.
(C.A.S. #53510–30–8) N,N-Diethylbutanamidine	Not listed	ECCN 1C350.d.21.
(C.A.S. #90324–67–7) N,N-Diethylformamidine	Not listed	ECCN 1C350.d.22.
(C.A.S. #1342789–47–2) N,N Diethylisobutanamidine	Not listed	ECCN 1C350.d.23.
(C.A.S. #84764–73–8) N,N-Diethylpropanamidine	Not listed	ECCN 1C350.d.24.
(C.A.S. #1315467–17–4) N,N-Diisopropylbutanamidine	Not listed	ECCN 1C350.d.25.
(C.A.S. #857522–08–8) N,N-Diisopropylformamidine	Not listed	ECCN 1C350.d.26.
(C.A.S. #2909–14–0) N,N-Dimethylacetamidine	Not listed	ECCN 1C350.d.27.
(C.A.S. #1340437–35–5) N,N-Dimethylbutanamidine	Not listed	ECCN 1C350.d.28.
(C.A.S. #44205–42–7) N,N-Dimethylformamidine	Not listed	ECCN 1C350.d.29.
(C.A.S. #321881–25–8) N,N-Dimethylisobutanamidine	Not listed	ECCN 1C350.d.30.
(C.A.S. #56776–14–8) N,N-Dimethylpropanamidine	Not listed	ECCN 1C350.d.31.
(C.A.S. #1339586–99–0) N,N-Dipropylacetamidine	Not listed	ECCN 1C350.d.32.
C.A.S. #1342422–35–8) N,N-Dipropylbutanamidine	Not listed	ECCN 1C350.d.33.
(C.A.S. #48044–20–8) N,N-Dipropylformamidine	Not listed	ECCN 1C350.d.34.
(C.A.S. #1342700–45–1) N,N-Dipropylisobutanamidine	Not listed	ECCN 1C350.d.35.
(C.A.S. #1341496–89–6) N,N-Dipropylpropanamidine	Not listed	ECCN 1C350.d.36.
(C.A.S. #1314–80–3) Phosphorus pentasulfide	ECCN 1C350.d.13	ECCN 1C350.d.37.
(C.A.S. #75–97–8) Pinacolone	ECCN 1C350.d.14	ECCN 1C350.d.38.
(C.A.S. #7789–29–9) Potassium bifluoride	ECCN 1C350.d.15	ECCN 1C350.d.39.
(C.A.S. #151–50–8) Potassium cyanide	ECCN 1C350.d.16	ECCN 1C350.d.40.
(C.A.S. #7789–23–3) Potassium fluoride	ECCN 1C350.d.17	ECCN 1C350.d.41.
(C.A.S. #3731–38–2) 3-Quinuclidone	ECCN 1C350.d.18	ECCN 1C350.d.42.
(C.A.S. #1333–83–1) Sodium bifluoride	ECCN 1C350.d.19	ECCN 1C350.d.43.
(C.A.S. #143–33–9) Sodium cyanide	ECCN 1C350.d.20	ECCN 1C350.d.44.
(C.A.S. #7681–49–4) Sodium fluoride	ECCN 1C350.d.21	ECCN 1C350.d.45.
(C.A.S. #16893–85–9) Sodium hexafluorosilicate	ECCN 1C350.d.22	ECCN 1C350.d.46.

AG-controlled precursor chemicals	Previous CCL designation	Current CCL designation
(C.A.S. #1313–82–2) Sodium sulfide	ECCN 1C350.d.23	ECCN 1C350.d.47.
(C.A.S. #637–39–8) Triethanolamine hydrochloride	ECCN 1C350.d.24	ECCN 1C350.d.48.
(C.A.S. #116–17–6) Tri-isopropyl phosphite	ECCN 1C350.d.25	ECCN 1C350.d.49.

Note that all items controlled under ECCN 1C350.d, including the newly added precursor chemicals described above, are controlled for chemical/biological (CB) reasons and anti-terrorism (AT) reasons (see CB Column 2 of the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR and the AT license requirements described in part 742 of the EAR that apply to Iran, North Korea, Sudan and Syria). A license also is required to certain destinations in accordance with the embargoes and other special controls described in part 746 of the EAR.

ECCN 1C351 (Human and Animal Pathogen and Toxins)

This final rule amends ECCN 1C351 on the CCL to reflect changes to the AG ''Control List of Human and Animal Pathogens and Toxins'' based on the February 2020 Intersessional Implementation Meeting recommendations that were adopted by AG. Specifically, this rule adds the Middle East respiratory syndrome-related coronavirus (MERS-related coronavirus) to ECCN 1C351.a.30 due to its homology with severe acute respiratory syndrome-related coronavirus (SARS-related coronavirus) and its potential use in biological weapons activities. The viruses in ECCN 1C351.a that were previously numbered, in alphabetical order, as .a.30 through .a.57 have been renumbered as .a.31 through .a.58, respectively, and relevant cross-references adjusted as necessary.

In addition, although this rule does not amend ECCN 1E001 (''technology'' for the ''development'' or ''production'' of, *inter alia,* pathogens or ''toxins'' controlled by ECCN 1C351) or ECCN 1E351 (''technology'' for the disposal of, *inter alia,* microbiological materials), these ECCNs cross-reference items controlled by ECCN 1C351 and, consequently, ''technology'' that is related to the MERS-related coronavirus added by this rule to ECCN 1C351.a.30 is now subject to control under ECCN 1E001 or 1E351 if such ''technology'' falls within the parameters of the controls described therein.

Note that all items controlled under ECCN 1C351.d, including the newly added MERS-related coronavirus, require a license for CB reasons and AT reasons to the destinations indicated under CB Column 1 and AT Column 1, respectively, on the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR (also see the AT license requirements described in part 742 of the EAR that apply to Iran, North Korea, Sudan and Syria). In addition, a license is required to certain destinations in accordance with the embargoes and other special controls described in part 746 of the EAR. Also note that, in addition to the license requirements described above, items controlled under ECCN 1C351.d.11 or .d.12 require a license to certain destinations for chemical weapons (CW) reasons, as described in the License Requirements section of ECCN 1C351 and in Section 742.18 of the EAR.

ECCN 2B352 (Equipment Capable of Use in Handling Biological Materials)

This final rule amends ECCN 2B352 on the CCL to reflect changes to the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software'' based on the February 2020 Intersessional Implementation Meeting recommendations that were adopted by the AG. Specifically, this rule adds a *Technical Note* to ECCN 2B352.b to indicate that cultivation chamber holding devices controlled in 2B352.b.2.b include single-use cultivation chambers with rigid walls. Consequently, such single-use cultivation chambers require a license for CB reasons and AT reasons to the destinations indicated under CB Column 2 and AT Column 1, respectively, on the Commerce Country Chart in Supplement No. 1 to part 738 of the EAR (also see the AT license requirements described in part 742 that apply to Iran, North Korea, Sudan and Syria). A license also is required to certain destinations in accordance with the embargoes and other special controls described in part 746 of the EAR.

In addition, although this rule does not amend ECCNs 2E001, 2E002 and 2E301 (which control, respectively, ''technology'' for the ''development,'' ''production'' or ''use'' of, *inter alia,* ECCN 2B352 equipment), these ECCNs cross-reference items controlled by ECCN 2B352 and, consequently, ''technology'' that is related to rigid-walled, single-use cultivation chambers added by this rule to ECCN 2B352.b.2.b is now subject to control under ECCN 2E001, 2E002 or 2E301 if such ''technology'' falls within the parameters of the controls described therein.

Prior to the addition of these cultivation chambers to the AG biological equipment common control list, BIS, consistent with the interagency process described in Section 1758 of ECRA, identified these items as emerging technologies that are essential to U.S. national security and for which effective controls can be implemented. This interagency process resulted in a finding that disposable cultivation chambers that do not require the use of a holding device have recently gained significant market share in the single-use biological equipment market (both within and outside the United States) and, furthermore, that they are capable of functioning as cultivation chamber holding devices controlled under ECCN 2B352.b.2.b. Consequently, the absence of export controls on these single-use cultivation chambers could be exploited for chemical and biological weapons (CBW) purposes. Among the items of concern, in this regard, are impeller-mixed liquid culture chambers, as well as novel packed-bed and hollow-fiber models. The inclusion of these cultivation chambers in this final rule is consistent with the requirements of ECRA and the decision of the AG to add these items to their common control lists, thereby making exports of such items subject to multilateral control.

Conforming Changes to Supplement No. 7 to Part 748

This final rule also amends Supplement No. 7 to part 748 to update the ECCN reference to hydrogen fluoride (C.A.S. #7664–39–3) in the eligible item descriptions for the following validated end-users: (1) ''Samsung China Semiconductor Co. Ltd.'' and (2) ''Shanghai Huahong Grace Semiconductor Manufacturing Corporation.'' As described above, hydrogen fluoride was previously classified under ECCN 1C350.d.10, but is now classified under ECCN 1C350.d.14 with the publication of this rule. These conforming amendments do not change the scope of eligible items for either of the two validated end-users indicated above—they merely update the ECCN references in Supplement No.

7 to part 748 to correctly identify which ECCN 1C350.d items are eligible for each of these validated end-users. Because this rule does not add or remove any validated end-users or revise the scope of eligible items, the citation for this rule is not indicated in the ''**Federal Register** Citation'' column of Supplement No. 7.

Saving Clause

Shipments of items removed from eligibility for export, reexport or transfer (in-country) under a license exception or without a license (*i.e.,* under the designator ''NLR'') as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on June 17, 2020, pursuant to actual orders for export, reexport or transfer (in-country) to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported, reexported or transferred (in-country) before August 17, 2020. Any such items not actually exported, reexported or transferred (in-country) before midnight, on August 17, 2020, require a license in accordance with this regulation.

''Deemed'' exports of ''technology'' and ''source code'' removed from eligibility for export under a license exception or without a license (under the designator ''NLR'') as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before August 17, 2020. Beginning at midnight on August 17, 2020, such ''technology'' and ''source code'' may no longer be released, without a license, to a foreign national subject to the ''deemed'' export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. Sections 4801–4852. ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (previously, 50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)) or the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including: Potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits and of reducing costs, harmonizing rules, and promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The cost-benefit analysis required pursuant to Executive Orders 13563 and 12866 indicates that this rule is intended to improve national security as its primary direct benefit. Specifically, implementation, in a timely manner, of the Australia Group (AG) agreements described herein will enhance the national security of the United States by reducing the risk that global international trade involving dual-use chemical and biological items would contribute to the proliferation of chemical and biological weapons of mass destruction. The principal objective of AG participating countries is to use licensing measures to ensure that exports of certain chemicals, biological agents, and dual-use chemical and biological manufacturing facilities and equipment, do not contribute to the proliferation of chemical and biological weapons of mass destruction, which has been identified as a threat to domestic and international peace and security. The AG achieves this objective by harmonizing participating countries' national export licensing measures. These controls are essential given that the international chemical and biotechnology industries are a target for proliferators as a source of materials for chemical and biological weapons programs.

In calculating the costs that will be imposed by this rule, BIS estimates that no more than 25 additional license applications will have to be submitted to BIS, annually, as a result of the implementation of the amendments described in this rule (see Rulemaking Requirements #2, below). Application of the cost-benefit analysis required under Executive Orders 13563 and 12866 to this rule, as described above, indicates that this rule is intended to improve the national security of the United States as its primary direct benefit. Accordingly, consistent with the stated purpose of the proposed amendments to ECCNs 1C350, 1C351 and 2B352, this rule meets the requirements set forth in the April 5, 2017, OMB guidance implementing Executive Order 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued ''with respect to a national security function of the United States,'' and it is, therefore, exempt from the requirements of E.O. 13771.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains the following collections of information subject to the requirements of the PRA. These collections have been approved by OMB under control numbers 0694–0088 (Simplified Network Application Processing System) and 0694–0096 (Five Year Records Retention Period). The approved information collection under OMB control number 0694–0088 includes license applications, among other things, and carries a burden estimate of 29.6 minutes per manual or electronic submission for a total burden estimate of 31,833 hours. The approved information collection under OMB control number 0694–0096 includes recordkeeping requirements and carries a burden estimate of less than 1 minute per response for a total burden estimate of 248 hours.

Although this rule contains important changes to the EAR for items controlled for chemical/biological (CB) reasons, BIS believes the overall increase in costs and burdens due to the implementation of these changes will be minimal. Specifically, BIS expects the burden hours associated with these collections will increase, slightly, by 12 hours and 45 minutes (*i.e.,* 25 applications × 30.6 minutes per response) for a total

estimated cost increase of $382.50 (*i.e.,* 12 hours and 45 minutes × $30 per hour). The $30 per hour cost estimate for OMB control numbers 0694–0088 and 0694–0096 is consistent with the salary data for export compliance specialists currently available through *glassdoor.com* (*glassdoor.com* estimates that an export compliance specialist makes $55,280 annually, which computes to roughly $26.58 per hour). This increase is not expected to exceed the existing estimates currently associated with OMB control numbers 0694–0088 and 0694–0096. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget, by email to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW, Room 2705, Washington, DC 20230 or by email to *RPD2@bis.doc.gov.*

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to Section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. Sec. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation and delay in effective date.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by the APA or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 748 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. 4801–4582; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 14, 2019, 84 FR 41881 (August 15, 2019).

■ 2. Supplement 7 to part 748 is amended by revising the validated end-user entries for ''Samsung China Semiconductor Co. Ltd.'' and ''Shanghai Huahong Grace Semiconductor Manufacturing Corporation,'' listed under the country ''China (People's Republic of)'' to read as follows:

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
China (People's Republic of)	* *	*	*	* *
	Samsung China Semiconductor Co. Ltd	1C350.c.4, 1C350.d.14, 2B006.a, 2B006.b.1.d, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.3, 3A233, 3B001.a.1, 3B001.b, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 3D002, and 3E001 (limited to ''technology'' for items classified under 3C002 and 3C004 and ''technology'' for use consistent with the International Technology Roadmap for Semiconductors process for items classified under ECCNs 3B001 and 3B002).	Samsung China Semiconductor Co., Ltd., No. 1999, North Xiaohe Road, Xi'an, China 710119.	78 FR 41291, 7/10/13. 78 FR 69535, 11/20/13. 79 FR 30713, 5/29/14. 80 FR 11863, 3/5/15.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination	**Federal Register** citation
	Shanghai Huahong Grace Semiconductor Manufacturing Corporation.	1C350.c.4, 1C350.d.14, 2B230, 2B350.d.2, 2B350.g.3, 2B350.i.4, 3B001.a.1, 3B001.b, 3B001.e, 3B001.f, 3B001.h, 3C002, 3C004, 5B002, and 5E002 (controlled by ECCNs 5A002, 5A004, or 5A992 that have been successfully reviewed under the encryption review process specified in Sections 740.17(b)(2) or 740.17(b)(3) of the EAR).	Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 2, 668 Guoshoujing Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China. Shanghai Huahong Grace Semiconductor Manufacturing Corporation—HFab 1, 1188 Chuanqiao Road, Pudong, Shanghai 201206 China. Shanghai Huahong Grace Semiconductor Manufacturing Corporation—GFab1, 1399 Zuchongzhi Road, Zhangjiang Hi-Tech Park, Shanghai 201203 China.	78 FR 32981, 6/3/13.
*	*	*	*	*	*	*

PART 774—[AMENDED]

■ 3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 4. Supplement 1 to part 774 is amended in category 1 by revising ECCN 1C350 and ECCN 1C351 and in category 2 by revising ECCN 2B352 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins''

* * * * *

1C350 Chemicals that may be used as precursors for toxic chemical agents (see List of Items Controlled).

License Requirements

Reason for Control: CB, CW, AT

Control(s)	Country chart (see supp. No. 1 to part 738)
CB applies to entire entry.	CB Column 2.

CW applies to 1C350.b, and .c. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required, for CW reasons, to export or reexport Schedule 2 chemicals and mixtures identified in 1C350.b to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR). A license is required, for CW reasons, to export Schedule 3 chemicals and mixtures identified in 1C350.c to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country has been obtained by the exporter prior to export. A license is required, for CW reasons, to reexport Schedule 3 chemicals and mixtures identified in 1C350.c from a State not Party to the CWC to any other State not Party to the CWC. (See § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons. See § 745.2 of the EAR for End-Use Certificate requirements that apply to exports of Schedule 3 chemicals to countries not listed in Supplement No. 2 to part 745 of the EAR.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C350. A license is required, for AT reasons, to export or reexport items controlled by 1C350 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on sanctions that apply to Iran, North Korea, and Syria.)

License Requirement Notes: 1. Sample Shipments: Subject to the following requirements and restrictions, a license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of a single chemical to any one consignee during a calendar year. A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons.

a. Chemicals Not Eligible:

A. [Reserved]

B. CWC Schedule 2 chemicals (States not Party to the CWC). No CWC Schedule 2 chemical or mixture identified in 1C350.b is eligible for sample shipment to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR) without a license.

b. Countries Not Eligible: Countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR are not eligible to receive sample shipments of any chemicals controlled by this ECCN without a license.

c. Sample shipments that require an End-Use Certificate for CW reasons: No CWC Schedule 3 chemical or mixture identified in 1C350.c is eligible for sample shipment to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR) without a license, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export (see § 745.2 of the EAR for End-Use Certificate requirements).

d. Sample shipments that require a license for reasons set forth elsewhere in the EAR: Sample shipments, as described in this Note 1, may require a license for reasons set forth elsewhere in the EAR. See, in particular, the end-use/end-user restrictions in part 744 of the EAR, and the restrictions that apply to embargoed countries in part 746 of the EAR.

e. Annual report requirement. The exporter is required to submit an annual written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled ''Report of Sample Shipments of Chemical Precursors'' at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date of export for all sample shipments that were made during the previous calendar year. The report must be submitted no later than February 28 of the year following the calendar year in which the sample shipments were made, to: U.S. Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Ave. NW, Room 2099B, Washington, DC 20230, Attn: ''Report of Sample Shipments of Chemical Precursors.''

2. Mixtures:

a. Mixtures that contain precursor chemicals identified in ECCN 1C350, in concentrations that are below the levels indicated in 1C350.b through .d, are controlled by ECCN 1C395 or 1C995 and are subject to the licensing requirements specified in those ECCNs.

b. A license is not required under this ECCN for a mixture, when the controlled chemical in the mixture is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are designated EAR99. However, a license may be required for reasons set forth elsewhere in the EAR.

Note to mixtures: Calculation of concentrations of AG-controlled chemicals:

a. Exclusion. No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. Percent Weight Calculation. When calculating the percentage, by weight, of ingredients in a chemical mixture, include all ingredients of the mixture, including those that act as solvents.

3. Compounds. Compounds created with any chemicals identified in this ECCN 1C350 may be shipped NLR (No License Required), without obtaining an End-Use Certificate, unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

4. Testing Kits: Certain medical, analytical, diagnostic, and food testing kits containing small quantities of chemicals identified in this ECCN 1C350, are excluded from the scope of this ECCN and are controlled under ECCN 1C395 or 1C995. (Note that replacement reagents for such kits are controlled by this ECCN 1C350 if the reagents contain one or more of the precursor chemicals identified in 1C350 in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.)

Technical Notes: 1. For purposes of this entry, a ''mixture'' is defined as a solid, liquid or gaseous product made up of two or more ingredients that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (see 1C350.d.14 in the List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

3. Precursor chemicals in ECCN 1C350 are listed by name, Chemical Abstract Service (CAS) number and CWC Schedule (where applicable). Precursor chemicals of the same structural formula (e.g., hydrates) are controlled by ECCN 1C350, regardless of name or CAS number. CAS numbers are shown to assist in identifying whether a particular precursor chemical or mixture is controlled under ECCN 1C350, irrespective of nomenclature. However, CAS numbers cannot be used as unique identifiers in all situations because some forms of the listed precursor chemical have different CAS numbers, and mixtures containing a precursor chemical listed in ECCN 1C350 may also have different CAS numbers.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See USML Category XIV(c) for related chemicals ''subject to the ITAR'' (see 22 CFR parts 120 through 130).
Related Definitions: See § 770.2(k) of the EAR for synonyms for the chemicals listed in this entry.
Items:

a. [Reserved]

b. Australia Group-controlled precursor chemicals also identified as Schedule 2 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:

b.1. (C.A.S. #7784–34–1) Arsenic trichloride;
b.2. (C.A.S. #76–93–7) Benzilic acid;
b.3. (C.A.S. #78–38–6) Diethyl ethylphosphonate;
b.4. (C.A.S. #683–08–9) Diethyl methylphosphonate;
b.5. (C.A.S. #15715–41–0) Diethyl methylphosphonite;
b.6. (C.A.S. #2404–03–7) Diethyl-N,N-dimethylphosphoroamidate;
b.7. (C.A.S. #41480–75–5) N,N-Diisopropylaminoethanethiol hydrochloride;
b.8. (C.A.S. #5842–07–9) N,N-Diisopropyl-beta-aminoethane thiol;
b.9. (C.A.S. #96–80–0) N,N-Diisopropyl-beta-aminoethanol;
b.10. (C.A.S. #96–79–7), N,N-Diisopropyl-beta-aminoethyl chloride;
b.11. (C.A.S. #4261–68–1) N,N-Diisopropyl-beta-aminoethyl chloride hydrochloride;
b.12. (C.A.S. #6163–75–3) Dimethyl ethylphosphonate;
b.13. (C.A.S. #756–79–6) Dimethyl methylphosphonate;
b.14. (C.A.S. #677–43–0) N,N-Dimethylamino-phosphoryl dichloride;
b.15. (C.A.S. #1498–40–4) Ethyl phosphonous dichloride [Ethyl phosphinyl dichloride];
b.16. (C.A.S. #430–78–4) Ethyl phosphonus difluoride [Ethyl phosphinyl difluoride];
b.17. (C.A.S. #1066–50–8) Ethyl phosphonyl dichloride;
b.18. (C.A.S. #993–13–5) Methylphosphonic acid;
b.19. (C.A.S. #676–98–2) Methylphosphonothioic dichloride;
b.20. (C.A.S. #464–07–3) Pinacolyl alcohol;
b.21. (C.A.S. #1619–34–7) 3-Quinuclidinol;
b.22. (C.A.S. #111–48–8) Thiodiglycol.

c. Australia Group-controlled precursor chemicals also identified as Schedule 3 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:

c.1. (C.A.S. #762–04–9) Diethyl phosphite;
c.2. (C.A.S. #868–85–9) Dimethyl phosphite (dimethyl hydrogen phosphite);
c.3. (C.A.S. #139–87–7) Ethyldiethanolamine;
c.4. (C.A.S. #10025–87–3) Phosphorus oxychloride;
c.5. (C.A.S. #10026–13–8) Phosphorus pentachloride;
c.6. (C.A.S. #7719–12–2) Phosphorus trichloride;
c.7. (C.A.S. #10545–99–0) Sulfur dichloride;
c.8. (C.A.S. #10025–67–9) Sulfur monochloride;
c.9. (C.A.S. #7719–09–7) Thionyl chloride;
c.10. (C.A.S. #102–71–6) Triethanolamine;
c.11. (C.A.S. #122–52–1) Triethyl phosphite;
c.12. (C.A.S. #121–45–9) Trimethyl phosphite.

d. Other Australia Group-controlled precursor chemicals not also identified as Schedule 1, 2, or 3 chemicals under the CWC, as follows, and mixtures in which at least one of the following chemicals constitutes 30 percent or more of the weight of the mixture:

d.1. (C.A.S. #1341–49–7) Ammonium hydrogen fluoride;
d.2. (C.A.S. #107–07–3) 2-Chloroethanol;
d.3. (C.A.S. #109–89–7) Diethylamine;
d.4. (C.A.S. #100–37–8) N,N-Diethylaminoethanol;
d.5. (C.A.S. #589–57–1) Diethyl chlorophosphite;
d.6. (C.A.S. #298–06–6) O,O-Diethyl phosphorodithioate;
d.7. (C.A.S. #2465–65–8) O,O-Diethyl phosphorothioate;
d.8. (C.A.S. #108–18–9) Di-isopropylamine;
d.9. (C.A.S. #124–40–3) Dimethylamine;
d.10. (C.A.S. #506–59–2) Dimethylamine hydrochloride;
d.11. (C.A.S. #762–77–6) Ethyl chlorofluorophosphate;
d.12. (C.A.S. #1498–51–7) Ethyl dichlorophosphate;
d.13. (C.A.S. #460–52–6) Ethyl difluorophosphate;
d.14. (C.A.S. #7664–39–3) Hydrogen fluoride;
d.15. (C.A.S. #3554–74–3) 3-Hydroxyl-1-methylpiperidine;
d.16. (C.A.S. #76–89–1) Methyl benzilate;
d.17. (C.A.S. #754–01–8) Methyl chlorofluorophosphate;
d.18. (C.A.S. #677–24–7) Methyl dichlorophosphate;
d.19. (C.A.S. #22382–13–4) Methyl difluorophosphate;
d.20. (C.A.S. #14277–06–6) N,N Diethylacetamidine;

d.21. (C.A.S. #53510–30–8) N,N-Diethylbutanamidine;
d.22. (C.A.S. #90324–67–7) N,N-Diethylformamidine;
d.23. (C.A.S. #1342789–47–2) N,N Diethylisobutanamidine;
d.24. (C.A.S. #84764–73–8) N,N-Diethylpropanamidine;
d.25. (C.A.S. #1315467–17–4) N,N-Diisopropylbutanamidine;
d.26. (C.A.S. #857522–08–8) N,N-Diisopropylformamidine;
d.27. (C.A.S. #2909–14–0) N,N-Dimethylacetamidine;
d.28. (C.A.S. #1340437–35–5) N,N-Dimethylbutanamidine;
d.29. (C.A.S. #44205–42–7) N,N-Dimethylformamidine;
d.30. (C.A.S. #321881–25–8) N,N-Dimethylisobutanamidine;
d.31. (C.A.S. #56776–14–8) N,N-Dimethylpropanamidine;
d.32. (C.A.S. #1339586–99–0) N,N-Dipropylacetamidine;
d.33. (C.A.S. #1342422–35–8) N,N-Dipropylbutanamidine;
d.34. (C.A.S. #48044–20–8) N,N-Dipropylformamidine;
d.35. (C.A.S. #1342700–45–1) N,N-Dipropylisobutanamidine;
d.36. (C.A.S. #1341496–89–6) N,N-Dipropylpropanamidine;
d.37. (C.A.S. #1314–80–3) Phosphorus pentasulfide;
d.38. (C.A.S. #75–97–8) Pinacolone;
d.39. (C.A.S. #7789–29–9) Potassium bifluoride;
d.40. (C.A.S. #151–50–8) Potassium cyanide;
d.41. (C.A.S. #7789–23–3) Potassium fluoride;
d.42. (C.A.S. #3731–38–2) 3-Quinuclidone;
d.43. (C.A.S. #1333–83–1) Sodium bifluoride;
d.44. (C.A.S. #143–33–9) Sodium cyanide;
d.45. (C.A.S. #7681–49–4) Sodium fluoride;
d.46. (C.A.S. #16893–85–9) Sodium hexafluorosilicate;
d.47. (C.A.S. #1313–82–2) Sodium sulfide;
d.48. (C.A.S. #637–39–8) Triethanolamine hydrochloride;
d.49. (C.A.S. #116–17–6) Tri-isopropyl phosphite.

1C351 Human and Animal Pathogens and ''Toxins'', as Follows (See List of Items Controlled).

License Requirements

Reason for Control: CB, CW, AT.

Control(s)	Country chart (see Supp. No. 1 to part 738)
CB applies to entire entry.	CB Column 1.

CW applies to 1C351.d.11 and d.12 and a license is required for CW reasons for all destinations, including Canada, as follows: CW applies to 1C351.d.11 for ricin in the form of (1) Ricinus Communis AgglutininII (RCAII), also known as ricin D or Ricinus Communis LectinIII (RCLIII) and (2) Ricinus Communis LectinIV (RCLIV), also known as ricin E. CW applies to 1C351.d.12 for saxitoxin identified by C.A.S. #35523–89–8. See § 742.18 of the EAR for licensing information pertaining to chemicals subject to restriction pursuant to the Chemical Weapons Convention (CWC). The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons.

Control(s)	Country chart (see Supp. No. 1 to part 738)
AT applies to entire entry.	AT Column 1.

License Requirement Notes: 1. All vaccines and ''immunotoxins'' are excluded from the scope of this entry. Certain medical products and diagnostic and food testing kits that contain biological toxins controlled under paragraph (d) of this entry, with the exception of toxins controlled for CW reasons under d.11 and d.12, are excluded from the scope of this entry. Vaccines, ''immunotoxins'', certain medical products, and diagnostic and food testing kits excluded from the scope of this entry are controlled under ECCN 1C991.

2. For the purposes of this entry, only saxitoxin is controlled under paragraph d.12; other members of the paralytic shellfish poison family (*e.g.,* neosaxitoxin) are designated EAR99.

3. Clostridium perfringens strains, other than the epsilon toxin-producing strains of Clostridium perfringens described in c.12, are excluded from the scope of this entry, since they may be used as positive control cultures for food testing and quality control.

4. Unless specified elsewhere in this ECCN 1C351 (*e.g.,* in License Requirement Notes 1–3), this ECCN controls all biological agents and ''toxins,'' regardless of quantity or attenuation, that are identified in the List of Items Controlled for this ECCN, including small quantities or attenuated strains of select biological agents or ''toxins'' that are excluded from the lists of select biological agents or ''toxins'' by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, or the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, in accordance with their regulations in 9 CFR part 121 and 42 CFR part 73, respectively.

5. Biological agents and pathogens are controlled under this ECCN 1C351 when they are an isolated live culture of a pathogen agent, or a preparation of a toxin agent that has been isolated or extracted from any source or material, including living material that has been deliberately inoculated or contaminated with the agent. Isolated live cultures of a pathogen agent include live cultures in dormant form or in dried preparations, whether the agent is natural, enhanced or modified.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 1C351.d.1 through 1C351.d.10 and 1C351.d.13 through 1C351.d.19. See § 740.20(b)(2)(vi) for restrictions on the quantity of any one toxin that may be exported in a single shipment and the number of shipments that may be made to any one end user in a single calendar year. Also see the Automated Export System (AES) requirements in § 758.1(b)(4) of the EAR. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any items in 1C351.

List of Items Controlled

Related Controls: (1) Certain forms of ricin and saxitoxin in 1C351.d.11. and d.12 are CWC Schedule 1 chemicals (see § 742.18 of the EAR). The U.S. Government must provide advance notification and annual reports to the OPCW of all exports of Schedule 1 chemicals. See § 745.1 of the EAR for notification procedures. See 22 CFR part 121, Category XIV and § 121.7 for CWC Schedule 1 chemicals that are ''subject to the ITAR.'' (2) The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, maintain controls on the possession, use, and transfer within the United States of certain items controlled by this ECCN (for APHIS, see 7 CFR 331.3(b), 9 CFR 121.3(b), and 9 CFR 121.4(b); for CDC, see 42 CFR 73.3(b) and 42 CFR 73.4(b)). (3) See 22 CFR part 121, Category XIV(b), for modified biological agents and biologically derived substances that are ''subject to the ITAR.''

Related Definitions: (1) For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (*e.g.,* tumor cells) that bear antigens homologous to the antibody. (2) For the purposes of this entry ''subunit'' is defined as a portion of the ''toxin''.

Items:

a. Viruses identified on the Australia Group (AG) ''List of Human and Animal Pathogens and Toxins for Export Control,'' as follows:

a.1. African horse sickness virus;

a.2. African swine fever virus;

a.3. Andes virus;

a.4. Avian influenza (AI) viruses identified as having high pathogenicity (HP), as follows:

a.4.a. AI viruses that have an intravenous pathogenicity index (IVPI) in 6-week-old chickens greater than 1.2; *or*

a.4.b. AI viruses that cause at least 75% mortality in 4- to 8-week-old chickens infected intravenously.

Note: Avian influenza (AI) viruses of the H5 or H7 subtype that do not have either of the characteristics described in 1C351.a.4 (specifically, 1C351.a.4.a or a.4.b) should be sequenced to determine whether multiple basic amino acids are present at the cleavage site of the haemagglutinin molecule (HA0). If the amino acid motif is similar to that observed for other HPAI isolates, then the isolate being tested should be considered as HPAI and the virus is controlled under 1C351.a.4.

a.5. Bluetongue virus;
a.6. Chapare virus;
a.7. Chikungunya virus;
a.8. Choclo virus;
a.9. Classical swine fever virus (Hog cholera virus);
a.10. Crimean-Congo hemorrhagic fever virus;
a.11. Dobrava-Belgrade virus;
a.12. Eastern equine encephalitis virus;
a.13. Ebolavirus (includes all members of the Ebolavirus genus);
a.14. Foot-and-mouth disease virus;
a.15. Goatpox virus;
a.16. Guanarito virus;
a.17. Hantaan virus;
a.18. Hendra virus (Equine morbillivirus);
a.19. Japanese encephalitis virus;
a.20. Junin virus;
a.21. Kyasanur Forest disease virus;
a.22. Laguna Negra virus;
a.23. Lassa virus;
a.24. Louping ill virus;
a.25. Lujo virus;
a.26. Lumpy skin disease virus;
a.27. Lymphocytic choriomeningitis virus;
a.28. Machupo virus;
a.29. Marburgvirus (includes all members of the Marburgvirus genus);
a.30. Middle East respiratory syndrome-related coronavirus (MERS-related coronavirus);
a.31. Monkeypox virus;
a.32. Murray Valley encephalitis virus;
a.33. Newcastle disease virus;
a.34. Nipah virus;
a.35. Omsk hemorrhagic fever virus;
a.36. Oropouche virus;
a.37. Peste-des-petits ruminants virus;
a.38. Porcine Teschovirus;
a.39. Powassan virus;
a.40. Rabies virus and all other members of the Lyssavirus genus;
a.41. Reconstructed 1918 influenza virus;

Technical Note: 1C351.a.41 includes reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments.

a.42. Rift Valley fever virus;
a.43. Rinderpest virus;
a.44. Rocio virus;
a.45. Sabia virus;
a.46. Seoul virus;
a.47. Severe acute respiratory syndrome-related coronavirus (SARS-related coronavirus);
a.48. Sheeppox virus;
a.49. Sin Nombre virus;
a.50. St. Louis encephalitis virus;
a.51. Suid herpesvirus 1 (Pseudorabies virus; Aujeszky's disease);
a.52. Swine vesicular disease virus;
a.53. Tick-borne encephalitis virus (Far Eastern subtype, formerly known as Russian Spring-Summer encephalitis virus—see 1C351.b.3 for Siberian subtype);
a.54. Variola virus;
a.55. Venezuelan equine encephalitis virus;
a.56. Vesicular stomatitis virus;
a.57. Western equine encephalitis virus; *or*
a.58. Yellow fever virus.

b. Viruses identified on the APHIS/CDC ''select agents'' lists (see Related Controls paragraph #2 for this ECCN), but not identified on the Australia Group (AG) ''List of Human and Animal Pathogens and Toxins for Export Control,'' as follows:
b.1. [Reserved];
b.2. [Reserved]; *or*
b.3. Tick-borne encephalitis virus (Siberian subtype, formerly West Siberian virus—see 1C351.a.53 for Far Eastern subtype).

c. Bacteria identified on the Australia Group (AG) ''List of Human and Animal Pathogens and Toxins for Export Control,'' as follows:
c.1. Bacillus anthracis;
c.2. Brucella abortus;
c.3. Brucella melitensis;
c.4. Brucella suis;
c.5. Burkholderia mallei (Pseudomonas mallei);
c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
c.7. Chlamydia psittaci (Chlamydophila psittaci);
c.8. Clostriduim argentinense (formerly known as Clostridium botulinum Type G), botulinum neurotoxin producing strains;
c.9. Clostridium baratii, botulinum neurotoxin producing strains;
c.10. Clostridium botulinum;
c.11. Clostridium butyricum, botulinum neurotoxin producing strains;
c.12. Clostridium perfringens, epsilon toxin producing types;
c.13. Coxiella burnetii;
c.14. Francisella tularensis;
c.15. Mycoplasma capricolum subspecies capripneumoniae (''strain F38'');
c.16. Mycoplasma mycoides subspecies mycoides SC (small colony) (a.k.a. contagious bovine pleuropneumonia);
c.17. Rickettsia prowazekii;
c.18. Salmonella enterica subspecies enterica serovar Typhi (Salmonella typhi);
c.19. Shiga toxin producing Escherichia coli (STEC) of serogroups O26, O45, O103, O104, O111, O121, O145, O157, and other shiga toxin producing serogroups;

Note: Shiga toxin producing Escherichia coli (STEC) includes, inter alia, enterohaemorrhagic E. coli (EHEC), verotoxin producing E. coli (VTEC) or verocytotoxin producing E. coli (VTEC).

c.20. Shigella dysenteriae;
c.21. Vibrio cholerae; *or*
c.22. Yersinia pestis.

d. ''Toxins'' identified on the Australia Group (AG) ''List of Human and Animal Pathogens and Toxins for Export Control,'' as follows, and ''subunits'' thereof:
d.1. Abrin;
d.2. Aflatoxins;
d.3. Botulinum toxins;
d.4. Cholera toxin;
d.5. Clostridium perfringens alpha, beta 1, beta 2, epsilon and iota toxins;
d.6. Conotoxins;
d.7. Diacetoxyscirpenol;
d.8. HT–2 toxin;
d.9. Microcystins (Cyanginosins);
d.10. Modeccin;
d.11. Ricin;
d.12. Saxitoxin;
d.13. Shiga toxins (shiga-like toxins, verotoxins, and verocytotoxins);
d.14. Staphylococcus aureus enterotoxins, hemolysin alpha toxin, and toxic shock syndrome toxin (formerly known as Staphylococcus enterotoxin F);
d.15. T–2 toxin;
d.16. Tetrodotoxin;
d.17. Viscumin (Viscum album lectin 1); *or*
d.18. Volkensin.

e. ''Fungi'', as follows:
e.1. Coccidioides immitis; *or*
e.2. Coccidioides posadasii.

* * * * *

Category 2—Materials Processing

* * * * *

2B352 Equipment Capable of Use in Handling Biological Materials, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: CB, AT.

Control(s)	Country chart (see Supp. No. 1 to part 738)
CB applies to entire entry.	CB Column 2.
AT applies to entire entry.	AT Column 1.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See ECCNs 1A004 and 1A995 for protective equipment that is not covered by this entry. Also see ECCN 9A120 for controls on certain ''UAV'' systems designed or modified to dispense an aerosol and capable of carrying elements of a payload in the form of a particulate or liquid, other than fuel ''parts'' or ''components'' of such vehicles, of a volume greater than 20 liters.

Related Definitions: (1) ''Lighter than air vehicles''—balloons and airships that rely on hot air or on lighter-than-air gases, such as helium or hydrogen, for their lift. (2) ''UAVs''—Unmanned Aerial Vehicles. (3) ''VMD''—Volume Median Diameter.

Items:

a. Containment facilities and related equipment, as follows:
a.1. Complete containment facilities at P3 or P4 containment level.

Technical Note to 2B352.a.1: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (3rd edition, Geneva, 2004).

a.2. Equipment designed for fixed installation in containment facilities specified in paragraph a.1 of this ECCN, as follows:
a.2.a. Double-door pass-through decontamination autoclaves;
a.2.b. Breathing air suit decontamination showers;
a.2.c. Mechanical-seal or inflatable-seal walkthrough doors.

b. Fermenters and components as follows:
b.1. Fermenters capable of cultivation of micro-organisms or of live cells for the production of viruses or toxins, without the propagation of aerosols, having a total internal volume of 20 liters or greater.
b.2. Components designed for such fermenters, as follows:

b.2.a. Cultivation chambers designed to be sterilized or disinfected in situ;

b.2.b. Cultivation chamber holding devices; *or*

b.2.c. Process control units capable of simultaneously monitoring and controlling two or more fermentation system parameters (*e.g.,* temperature, pH, nutrients, agitation, dissolved oxygen, air flow, foam control).

Technical Notes to 2B352.b: 1. Fermenters include bioreactors (including single-use (disposable) bioreactors), chemostats and continuous-flow systems.

2. Cultivation chamber holding devices controlled by 2B352.b.2.b include single-use cultivation chambers with rigid walls.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:

c.1. One or more sealing joints within the steam containment area;

c.2. A flow rate greater than 100 liters per hour;

c.3. ''Parts'' or ''components'' of polished stainless steel or titanium; *and*

c.4. Capable of in-situ steam sterilization in a closed state.

Technical Note to 2B352.c: Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment and ''accessories'', as follows:

d.1. Cross (tangential) flow filtration equipment capable of separation of microorganisms, viruses, toxins or cell cultures having all of the following characteristics:

d.1.a. A total filtration area equal to or greater than 1 square meter (1 m^2); *and*

d.1.b. Having any of the following characteristics:

d.1.b.1. Capable of being sterilized or disinfected in-situ; *or*

d.1.b.2. Using disposable or single-use filtration ''parts'' or ''components''.

N.B.: 2B352.d.1 does not control reverse osmosis and hemodialysis equipment, as specified by the manufacturer.

d.2. Cross (tangential) flow filtration ''parts'' or ''components'' (*e.g.,* modules, elements, cassettes, cartridges, units or plates) with filtration area equal to or greater than 0.2 square meters (0.2 m^2) for each ''part'' or ''component'' and designed for use in cross (tangential) flow filtration equipment controlled by 2B352.d.1.

Technical Note: In this ECCN, ''sterilized'' denotes the elimination of all viable microbes from the equipment through the use of either physical (*e.g.,* steam) or chemical agents. ''Disinfected'' denotes the destruction of potential microbial infectivity in the equipment through the use of chemical agents with a germicidal effect. ''Disinfection'' and ''sterilization'' are distinct from ''sanitization'', the latter referring to cleaning procedures designed to lower the microbial content of equipment without necessarily achieving elimination of all microbial infectivity or viability.

e. Steam, gas or vapor sterilizable freeze-drying equipment with a condenser capacity of 10 kg of ice or greater in 24 hours (10 liters of water or greater in 24 hours) and less than 1000 kg of ice in 24 hours (less than 1,000 liters of water in 24 hours).

f. Spray-drying equipment capable of drying toxins or pathogenic microorganisms having all of the following characteristics:

f.1. A water evaporation capacity of ≥0.4 kg/h and ≤400 kg/h;

f.2. The ability to generate a typical mean product particle size of ≤10 micrometers with existing fittings or by minimal modification of the spray-dryer with atomization nozzles enabling generation of the required particle size; *and*

f.3. Capable of being sterilized or disinfected in situ.

g. Protective and containment equipment, as follows:

g.1. Protective full or half suits, or hoods dependent upon a tethered external air supply and operating under positive pressure.

Technical Note to 2B352.g.1: 2B352.g.1 does not control suits designed to be worn with self-contained breathing apparatus.

g.2. Biocontainment chambers, isolators, or biological safety cabinets having all of the following characteristics, for normal operation:

g.2.a. Fully enclosed workspace where the operator is separated from the work by a physical barrier;

g.2.b. Able to operate at negative pressure;

g.2.c. Means to safely manipulate items in the workspace; *and*

g.2.d. Supply and exhaust air to and from the workspace is high-efficiency particulate air (HEPA) filtered.

Note 1 to 2B352.g.2: 2B352.g.2 controls class III biosafety cabinets, as specified in the WHO Laboratory Biosafety Manual (3rd edition, Geneva, 2004) or constructed in accordance with national standards, regulations or guidance.

Note 2 to 2B352.g.2: 2B352.g.2 does not control isolators ''specially designed'' for barrier nursing or transportation of infected patients.

h. Aerosol inhalation equipment designed for aerosol challenge testing with microorganisms, viruses or toxins, as follows:

h.1. Whole-body exposure chambers having a capacity of 1 cubic meter or greater;

h.2. Nose-only exposure apparatus utilizing directed aerosol flow and having a capacity for the exposure of 12 or more rodents, or two or more animals other than rodents, and closed animal restraint tubes designed for use with such apparatus.

i. Spraying or fogging systems and ''parts'' and ''components'' therefor, as follows:

i.1. Complete spraying or fogging systems, ''specially designed'' or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs,'' capable of delivering, from a liquid suspension, an initial droplet ''VMD'' of less than 50 microns at a flow rate of greater than 2 liters per minute;

i.2. Spray booms or arrays of aerosol generating units, ''specially designed'' or modified for fitting to aircraft, ''lighter than air vehicles,'' or ''UAVs,'' capable of delivering, from a liquid suspension, an initial droplet ''VMD'' of less than 50 microns at a flow rate of greater than 2 liters per minute;

i.3. Aerosol generating units ''specially designed'' for fitting to the systems as specified in paragraphs i.1 and i.2 of this ECCN.

Technical Notes to 2B352.i: 1. Aerosol generating units are devices ''specially designed'' or modified for fitting to aircraft and include nozzles, rotary drum atomizers and similar devices.

2. This ECCN does not control spraying or fogging systems, ''parts'' and ''components,'' as specified in 2B352.i, that are demonstrated not to be capable of delivering biological agents in the form of infectious aerosols.

3. Droplet size for spray equipment or nozzles ''specially designed'' for use on aircraft or ''UAVs'' should be measured using either of the following methods (pending the adoption of internationally accepted standards):

a. Doppler laser method,

b. Forward laser diffraction method.

j. Nucleic acid assemblers and synthesizers that are both:

j.1 Partly or entirely automated; *and*

j.2. Designed to generate continuous nucleic acids greater than 1.5 kilobases in length with error rates less than 5% in a single run.

* * * * *

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2020–11625 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0252]

RIN 1625–AA00

Safety Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters in the vicinity of the General Dynamics NASSCO shipyard in San Diego Bay, San Diego, CA, during the launch of the M/V Matsonia. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the launching and subsequent berthing of the M/V Matsonia. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Diego.

DATES: This rule is effective from 6 p.m. through 9 p.m. on July 2, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0252 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Briana Biagas, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This urgent safety zone is required to protect the maritime public and the surrounding waterways from hazards associated with the launching of the M/V Matsonia. It is impracticable to publish an NPRM because the Coast Guard must establish this safety zone by July 2, 2020. The Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because this rule is needed to protect mariners, commercial and recreational waterway users, and the M/V Mastonia from dangers associated with the launching and berthing of the M/V Matsonia on July 2, 2020.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Diego (COTP) has determined that potential hazards associated with launching of the M/V Matsonia on July 2, 2020, will be a safety concern for anyone in the vicinity of the General Dynamics NASSCO shipyard. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the M/V Matsonia is being launched and towed to a nearby berth.

IV. Discussion of the Rule

This rule establishes a safety zone from 6 p.m. until 9 p.m. on July 2, 2020. The safety zone will cover all navigable waters of the San Diego Bay created by connecting the following points: Beginning at 32°41′23.4″ N, 117°8′39.6″ W (Point A); thence running northwesterly to 32°41′14.4″ N, 117°9′3″ W (Point B); thence running southeasterly to 32°41′3″ N, 117°8′43.8″ W (Point C); thence running east to 32°41′12″ N, 117°8′20.4″ W (Point D); thence running north to the beginning point. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the M/V Matsonia is being launched, then towed to berth. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location and limited duration of the safety zone. This safety zone impacts a small designated area of the San Diego Bay for a very limited period during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only three hours that will prohibit entry within certain navigable waters of San Diego Bay in the vicinity of the General Dynamics NASSCO shipyard. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–024 to read as follows:

§ 165.T11–024 Safety Zone; San Diego Bay, San Diego, CA.

(a) *Location.* The following area is a safety zone. All waters of San Diego Bay, from surface to bottom, encompassed by a line connecting the following points beginning at 32°41′23.4″ N, 117°8′39.6″ W (Point A); thence running northwesterly to 32°41′14.4″ N, 117°9′3″ W (Point B); thence running southeasterly to 32°41′3″ N, 117°8′43.8″ W (Point C); thence running east to 32°41′12″ N, 117°8′20.4″ W (NAD 83) (Point D); thence running north to the beginning point.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Diego (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 6 p.m. through 9 p.m. on July 2, 2020.

Dated: May 29, 2020.

T. J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2020–12089 Filed 6–16–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 668

[Docket ID ED–2020–OPE–0078]

RIN 1840–ZA04

Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule.

SUMMARY: The Department of Education (Department) issues this interim final rule so that institutions of higher education may appropriately determine which individuals attending their institution are eligible to receive emergency financial aid grants to students under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27, 2020).

DATES: These regulations are effective June 17, 2020. We must receive your comments on or before July 17, 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.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the

PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

• *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 ''Help.''

• *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the interim final rule, address them to Gaby Watts, U.S. Department of Education, 400 Maryland Ave. SW, Room 258–02, Washington, DC 20202.

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

FOR FURTHER INFORMATION CONTACT: For further information contact Gaby Watts, U.S. Department of Education, 400 Maryland Ave. SW, Room 258–02, Washington, DC 20202. Telephone: 202–453–7195. Email: *Gaby.Watts@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 (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: Although the Department has decided to issue this final rule without first publishing a proposed rule for public comment, we are interested in whether you think we should make any changes to this rule. We invite your comments. We will consider these comments in determining whether to revise the rule.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this final rule. 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 Department's programs and activities.

During and after the comment period, you may inspect all public comments about this interim final rule by accessing *Regulations.gov.* Due to the current COVID–19 pandemic, the Department's buildings are currently not open. However, upon reopening, you may also inspect the comments in person at 400 Maryland Ave. SW, Washington, DC 20202, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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 this interim final rule. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background:

On March 27, 2020, Congress enacted the CARES Act, Public Law 116–136, to help Americans cope with the economic and health crises created by the novel coronavirus disease (COVID–19) outbreak. Section 18004 of the CARES Act establishes the Higher Education Emergency Relief Fund (HEERF) and instructs the Secretary to allocate funding to eligible institutions of higher education in connection with the COVID–19 outbreak. Section 18004(c) specifically allows institutions to use their HEERF allocation under § 18004(a)(1) for ''any costs associated with significant changes to the delivery of instruction due to the coronavirus,'' while adding the restriction that funds cannot be used for ''payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.'' Section 18004(c) also states that institutions must use at least 50 percent of their allocations ''to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care, and child care),'' implicitly allowing institutions to use more than 50 percent of their funds for this purpose. Thus, the first sentence of section 18004(c) generally allows an institution to use its allocated HEERF funds under section 18004(a)(1) to cover certain coronavirus-related costs, while the second sentence requires an institution to give at least half of its allocated HEERF funds as grants to students. Finally, section 18004(e) requires institutions to submit reports to the Secretary describing how the funds were used under the section and authorizes the Secretary to specify the time and manner of such reporting.

Although the second sentence of section 18004(c) states that the emergency financial aid grants are to be given to students, the CARES Act does not define the term ''student'' or the phrases ''grants to students'' or ''emergency financial aid grants to students.'' In addition to leaving these terms undefined, Congress also included an implicit reference to title IV terms immediately after the phrase ''emergency financial aid grants to students,'' 18004(c) (''including eligible expenses under a student's cost of attendance''), and explicit references to that same title IV standard following the phrase ''grants to students'' in two of the preceding subsections, 18004(a)(2) and (a)(3) (''the student's cost of attendance (as defined under section 472 of the Higher Education Act''). In determining who constitutes a ''student'' for purposes of ''emergency financial aid grants to students'' in section 18004 of the CARES Act, the Department is mindful that ''[s]tatutory construction . . . is a holistic endeavor.'' *United Sav. Ass'n of Texas* v. *Timbers of Inwood Forest Assocs., Ltd.,* 484 U.S. 365, 371 (1988). In the appropriate circumstances, the Department's construction of the CARES Act must be informed or even controlled by other relevant law. (''We assume that Congress is aware of existing law when it passes legislation,'' *Hall* v. *United States,* 566 U.S. 506, 516 (2012) *quoting Miles* v. *Apex Marine Corp.,* 498 U.S. 19, 32 (1990).) In context the category of ''student'' recipients eligible for ''emergency financial aid grants'' is therefore at a minimum ambiguous.

This is a critical ambiguity, requiring the Department to exercise its narrow interpretative authority under *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 843–44 (1984). (' 'The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.' *quoting Morton* v. *Ruiz,* 415 U.S. 199, 231 (1974). . . . Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit.'') Here the Secretary

exercises her authority under 20 U.S.C. 1221e–3 and 20 U.S.C. 3474. Relying on statutory language and context to develop a harmonious construction faithful to the entire statutory scheme, *see Food and Drug Admin.* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132–33 (2000) (''In determining whether Congress has specifically addressed the question at issue, a reviewing court should not confine itself to examining a particular statutory provision in isolation. The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.''), we have concluded that Congress intended the category of those eligible for ''emergency financial aid grants to students'' in section 18004 of the CARES Act to be limited to those individuals eligible for title IV assistance.

The Department considered a number of factors in reaching this conclusion. For one, an interpretation of the term ''student'' in ''emergency financial aid grants to students'' that was broad enough to cover anyone engaged in learning, or anyone enrolled in any way at an institution, or anyone enrolled full-time at an institution in a program leading to a recognized postsecondary credential, would be significantly curtailed at the outset by existing law independent of title IV with regard to certain immigration statuses. 8 U.S.C. 1611(a) already prohibits certain individuals from receiving any ''Federal public benefit'' and applies ''[n]otwithstanding any other provision of law.'' This prohibition clearly applies to the HEERF funds. Section 1611(c) defines ''Federal public benefit'' to include (A) ''any grant . . . provided by an agency of the United States or by appropriated funds of the United States,'' as well as (B) ''any . . . postsecondary education . . . benefit . . . for which payments or assistance are provided to an individual . . . by an agency of the United States or by appropriated funds of the United States.'' [1] To the extent an institution uses HEERF funds, which qualify as ''appropriated funds of the United States,'' to provide ''emergency financial aid grants to students,'' the grants would qualify as a Federal public benefit under both Section 1611(c)(1)(A) and (B) because they would be ''grant[s] . . . by appropriated funds,'' as well as ''postsecondary education'' benefits to individuals. To the extent an institution otherwise uses the funds to make payments to students for purposes of, for example, ''costs associated with significant changes to the delivery of instruction due to the coronavirus,'' these payments would also qualify as ''postsecondary education'' benefits to individuals. The Department has not identified any specific language in Section 18004, or elsewhere in the CARES Act, that suggests Congress intended to include aliens who are not ''qualified'' for purposes of Section 1611 among the recipients of HEERF funds, notwithstanding the preexisting general prohibition in Section 1611.

On the other extreme, the Department concludes that a more narrow interpretation of the term ''student'' in the phrase ''emergency financial aid grants to students''—for example, to cover only the group that received Federal Pell Grants as referenced in section 18004(a)(1)(A)—would be overly restrictive and less supportable under the language of the CARES Act.

Earlier in the CARES Act, in section 3504 entitled ''Use of Supplemental Educational Opportunity Grants for Emergency Aid,'' Congress expressly authorizes institutions to use money allocated to them under the Federal Supplemental Educational Opportunity Grant (FSEOG) program, 20 U.S.C. 1070b *et seq.,* for ''emergency financial aid grants to students,'' which is the identical phrase Congress used in section 18004. Although Congress did not expressly state that these emergency financial aid grants to students must be limited to those students who are eligible for participation in programs under title IV of the HEA, the context indicates that Congress intended that restriction as a general rule. Not only was the previously planned use of the funds conditioned upon title IV eligibility (since the FSEOG program is part of title IV of the HEA) but also because the text of the CARES Act allows institutions to ''waive the amount of need calculation under section 471'' of the HEA, which is a calculation that applies to title IV aid.

Because ''identical words and phrases within the same statute should normally be given the same meaning,'' *Powerex Corp.* v. *Reliant Energy Services, Inc.,* 551 U.S. 224, 232 (2007), the implicit title IV eligibility requirement associated with ''emergency financial aid grants to students'' in section 3504 should apply to the distribution of ''emergency financial aid grants to students'' in section 18004. Congress did not previously choose to provide emergency financial aid grants through the HEA, and thus these grants, by definition, do not constitute Federal financial student aid under the HEA, including title IV of the HEA. However, even though it is true that all title IV aid is subject to title IV eligibility requirements, it does not follow that all non-title IV aid is exempt from title IV eligibility requirements. Rather, non-title IV aid can be subject to title IV eligibility requirements. For example, scholarships distributed under the Fund for the Improvement of Postsecondary Education, a non-title IV program, require that recipients meet certain title IV eligibility requirements, as noted below. 20 U.S.C. 1138(d).

In providing emergency financial aid grants through section 18004 of the CARES Act, Congress also used the framework under title IV of the HEA for the distribution of these emergency financial aid grants to students, implying that the Department and institutions adhere to the requirements under title IV, such as using the definition of ''cost of attendance'' under title IV of the HEA and the same systems for distributing Federal financial student aid to institutions under title IV of the HEA.

Indeed, Congress specifically references title IV of the HEA in various provisions in section 18004 of the CARES Act, including the following provisions:

- Section 18004(a)(1) links a component of the institutional allocation for HEERF to enrollment of Pell Grant recipients, and a student must be eligible for Federal financial student aid under section 484 of title IV of the HEA to receive Pell Grants. 20 U.S.C. 1070a(a) (stating Pell Grants are only for an ''eligible student (defined in accordance with [S]ection 484 [of the HEA])''); 20 U.S.C. 1091.
- Sections 18004(a)(2) and (3) require institutions to use funds ''for grants to students for any component of the student's cost of attendance (as defined under § 472 of [title IV of] the Higher Education Act), including food, housing, course materials, technology, healthcare, and child care.'' (Emphasis added.)
- Section 18004(a)(3) specifically references ''part B of title VII of the HEA,'' and section 741(d)(1) of part B of title VII of the HEA expressly requires students to be eligible under section 484(a) of the HEA to receive grants or scholarships. 20 U.S.C. 1138(d).
- Section 18004(b) expressly requires the Secretary to use the same systems that are used to distribute funding to each institution under title IV of the HEA in order to distribute funds to each institution under section 18004(a)(1) of the CARES Act.

[1] Because title IV also contains an eligibility requirement based on immigration status which is similar in most respects to the requirement in 8 U.S.C. 1611, there is little remaining application for the prohibition in 8 U.S.C. 1611 once title IV eligibility requirements have been applied.

• Section 18004(c) again expressly refers to ''a student's cost of attendance,'' which is a defined term in section 472 of the HEA. 20 U.S.C. 1087ll.

The most congruent definition of ''student'' for purposes of ''emergency financial aid grants to students'' in section 18004 is a person who is or would be eligible under section 484 of the HEA for title IV aid. Indeed, it would be an illogical result for Congress to require students to be eligible under section 484 of title IV of the HEA for grants under section 18004(a)(3) of the CARES Act, which expressly references part B of title VII of the HEA, but not for grants under sections 18004(a)(1) and (2) of the CARES Act, especially when Congress in section 18004(d) directs the Secretary to prioritize funds under section 18004(a)(3) for institutions that did not receive sufficient funding under section 18004(a)(1) and (2). ''Interpretations of statute which would produce absurd results are to be avoided.'' *Griffin* v. *Ocean Contractors, Inc.,* 458 U.S. 564, 576 (1982). To interpret section 18004 in a holistic manner, it appears that the best interpretation of ''student'' where section 18004 references ''emergency financial aid grants to students'' is to mean a person who is eligible under section 484 of the HEA to receive title IV aid.[2]

Final Rule:

For purposes of the phrases ''grants to students'' and ''emergency financial aid grants to students'' in sections 18004(a)(2), (a)(3), and (c) of the CARES Act, ''student'' is defined as an individual who is, or could be, eligible under section 484 of the HEA, to participate in programs under title IV of the HEA. We add this definition to 34 CFR 668.2.

An important policy goal for the Department is to make emergency financial aid grants available to students in the most efficient, effective, and expedient way possible and consistent with Congressional intent. At the same time, the Department has an obligation to taxpayers to prevent waste, fraud, and abuse. The potential for waste, fraud, and abuse is significant when institutions of higher education are given the opportunity to quickly make cash awards to students, particularly when institutions are rightfully concerned about declining enrollments and the loss of ancillary revenue as a result of COVID–19. In addition, there have been reports that the unusual circumstances caused by COVID–19 have given rise to new efforts to defraud government programs in other contexts.[3]

The Department has considered these issues in reaching its interpretation of the category of those eligible for ''emergency financial aid grants to students'' in section 18004(a)(2), (a)(3), and (c). The Department has concluded that the best approach to interpreting ''student'' in ''emergency financial aid grants to students'' is to mean a person who is eligible under section 484 of the HEA to receive title IV aid, as suggested by the references to title IV elsewhere in section 18004. This approach uses a clear, existing standard that is familiar to the Department and to institutions and will allow both the Department and institutions to implement the HEERF provisions in an efficient, effective, and expedient way. The Department has placed a high priority on getting assistance to institutions and individuals as quickly and efficiently as possible in light of the national emergency and the immediate needs resulting therefrom, and the use of an existing standard here achieves that same important goal. The title IV eligibility standard has already been specified in great detail by the Department in its practice and its communications with institutions with regard to title IV programs over the years. In contrast, using a generic, broad standard would require the Department and institutions to wade through a litany of specific questions about which groups of potential students do or do not qualify for ''grants to students.''[4]

For the majority of students, active participation in title IV programs will clearly demonstrate to the institution and the Department that they are qualified as a student to receive emergency financial aid grants. For example, with regard to the title IV eligibility requirement related to citizenship or appropriate immigration status in the United States, the majority of students' statuses can be verified by the fact of their participation in title IV.[5] And this verification also ensures that the disbursement of grants to those individuals occurs in compliance with the independent statutory restriction found in 8 U.S.C. 1611.

The Department also acknowledges the efficiency of leveraging existing processes and procedures to minimize burden on institutions implementing this IFR. For example, institutions could encourage students who currently do not receive title IV aid to submit the Free Application for Federal Student Aid (FAFSA) in order to determine title IV eligibility.

In addition, this approach to interpreting ''student'' within the phrase ''emergency financial aid grants to students'' also allows the Department to prevent potential waste, fraud, and abuse. For example, without the title IV eligibility standard, the existence of HEERF funding could incentivize individuals who are not qualified and cannot qualify under the title IV

[2] To calculate the HEERF allocation under section 18004(a)(1)(B), the Department ''approximated the factors using the best available data'' by multiplying the 2017/2018 full-time enrollment number by the fall 2018 percentage of undergraduate, graduate, and professional students not enrolled exclusively in distance education, as self-reported by institutions and compiled in the Department's Integrated Postsecondary Education Data System (IPEDS). *See* Methodology for Calculating Allocations per Section 18004(a)(1) of the CARES Act, *https://www2.ed.gov/about/offices/list/ope/heerf90percentformulaallocationexplanation.pdf.*

Thus, the approach taken in calculating the ''full-time equivalent enrollment of students'' in section 18004(a)(1)(B) differs from the approach taken in this rule in interpreting and applying ''grants to students'' elsewhere in section 18004. The Department intends to interpret the term ''student'' in the same way throughout section 18004, but did not have data available on the number of individuals enrolled at each institution who are or could be eligible for title IV aid, so the Department had to use a different measure based on available data. As between the available options, the Department believed that using a broader number for part of the baseline in establishing each institution's share under 18004(a)(1) made sense because funds used toward the first allowed purpose in 18004(c) (to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus) apply to the entire institution regardless of the definition of ''student.'' The Department also deemed it more important to move expeditiously to calculate the HEERF allocation despite the acknowledged ''limitations of th[e] data,'' rather than stopping the HEERF process in order to gather additional data solely for purposes of calculating the HEERF allocation.

[3] *See, e.g.,* Mike Baker, *Feds Suspect Vast Fraud Network Is Targeting U.S. Unemployment Systems,* New York Times, *www.nytimes.com/2020/05/16/us/coronavirus-unemployment-fraud-secret-service-washington.html* (last visited May 19, 2020).

[4] For example, there would need to be consideration and a determination made regarding whether to include or exclude individuals based on whether they are enrolled for credit, enrolled in an off-campus program, simultaneously finishing a high school degree, taking remedial courses, taking only zero-credit thesis courses, enrolled exclusively in courses not applied towards a recognized credential, enrolled only in English as a Second Language programs or Continuing Education Units, auditing classes only, participating residents or interns in a medical doctor practice program after receiving their degree, studying abroad at a foreign university, enrolled in a branch campus in a foreign country, or participating in Experimental Sites.

[5] For the rest of students, qualification can be confirmed by the method described in the May 1, 2015 Dear Colleague Letter, entitled ''Citizenship and Immigration Status Documentation'' (DCL ID: GEN–15–08), the Federal Student Aid Handbook (*https://ifap.ed.gov/sites/default/files/attachments/2019-08/1920FSAHbkVol1Ch2.pdf*), or by employing the electronic document submission flexibilities provided in the Department's April 3, 2020, ''UPDATED Guidance for Interruptions of Study Related to COVID–19'' (*https://ifap.ed.gov/sites/default/files/attachments/2020-04/040320UPDATEDGuidanceInterruptStudyRelCOVID19Attach.pdf*).

standard to enroll as students, and it could incentivize institutions to take advantage of this dynamic to further their bottom lines. If a broad definition of ''student'' were employed for purposes of emergency financial aid grants to students, unscrupulous institutions could create cheap classes and programming that provides little or no educational value and then use the HEERF grant funding to incentivize individuals not qualified under title IV to enroll as paying students in those classes and programs, thereby qualifying for a grant. Alternatively, institutions could use the HEERF grant funding to incentivize the re-enrollment of students cannot maintain Satisfactory Academic Progress (SAP) due to reasons beyond the qualifying emergency, solely for the purpose of increasing revenues via the tuition such students would pay. Without restriction, institutions could also use HEERF funds for students who are enrolled at the institution but do not intend to receive a degree or certificate, thereby diverting funds from students who are pursuing a degree or certificate in an eligible program.

Instead, interpreting ''student'' to track title IV eligibility for purposes of emergency financial aid grants to students will ensure that institutions are only providing funds to students who are enrolled in an eligible program at an institution and are maintaining SAP in their program, among other requirements. Each of these requirements exists because it focuses the use of Federal resources on valuable educational activities and excludes areas that are more open to waste, fraud, and abuse. This approach will thereby allow the Department to reduce the likelihood and amount of waste, fraud, and abuse in the administration of the HEERF allocations under the CARES Act.

Waiver of Notice and Comment Rulemaking, Negotiated Rulemaking, and Delayed Effective Date Under the Administrative Procedure Act

The Department believes its interim final rulemaking authority must be narrowly construed and exercised only when there is a sound basis for doing so. However, Congress enacted the CARES Act to help Americans cope with the urgent economic and health crises created by the COVID–19 outbreak and created the HEERF to provide emergency financial aid grants to students. In light of the urgent economic challenges facing many students as a result of the crisis, the Department has determined that there is good cause for interim final rulemaking and that such action is in the public interest. In the absence of this interim final rule, the terms defined herein will remain undefined and indefinite, and the potential for waste, fraud, and abuse described above will not have been unaddressed in any legally binding manner.[6]

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed rules. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)). In light of the current national emergency and the importance of institutions properly distributing the HEERF allocations via emergency financial aid grants to students to help with their expenses related to the disruption of campus operations due to COVID–19 as quickly as possible, the normal rulemaking process would be impracticable and contrary to the public interest, so good cause exists for waiving the notice and comment requirements of the APA. Although the Department has issued guidance to this effect already, that guidance is not legally binding, the Department understands that certain institutions have refrained from distributing some or all of their HEERF funds until a final rule is issued clarifying this point in a legally binding manner.

The Department is not required to conduct negotiated rulemaking for this rule. The requirement in HEA section 492 that requires the Department to obtain public involvement in the development of proposed regulations for title IV of the HEA does not apply to this final rule, because it implements the CARES Act, not title IV. Moreover, even if it did apply, section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be ''impracticable, unnecessary, or contrary to the public interest.'' Section 492(b)(2) of the HEA also requires the Secretary to publish the basis for waiving negotiations in the **Federal Register** at the same time as the regulations in question are first published. Even if section 492 applied to this rule, good cause would exist to waive the negotiated rulemaking requirement, since, as explained above, notice and comment rulemaking is not practicable or in the public interest in this case.

The master calendar requirement in section 482 of the HEA likewise does not apply to this rule, because the rule does not relate to the delivery of student aid funds under title IV.

Additionally, the APA generally requires that regulations be published at least 30 days before their effective date, except as otherwise provided by the *agency* for good cause found and published with the *rule* (5 U.S.C. 553(d)(3)). As described above, good cause exists for this rule to be effective upon publication in light of the current national emergency and the importance of institutions properly distributing the HEERF allocations via emergency financial aid grants to students to help with their expenses related to the disruption of campus operations due to COVID–19. The CRA requires a major rule may take effect no sooner than 60 calendar days after an agency submits a CRA report to Congress or the rule is published in the **Federal Register**, whichever is later. 5 U.S.C. 801(a)(3)(A). However, the CRA creates limited exceptions to this requirement. *See id.* § 801(c); § 808. An agency may invoke the ''good cause'' exception under section 808(2) in the case of rules for which the agency has found ''good cause'' under the APA, section 553(b)(B), to issue the rule without providing the public with an advance opportunity to comment. As stated above the Department has found good cause to issue this rule without notice and comment rulemaking and thus we are not including the 60-day delayed effective date in this rule.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (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);

[6] Nor will the Department enforce the title IV eligibility interpretation announced in this rule against distribution of HEERF funds that occurred prior to the publication of this 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 regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation 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 regulation must be fully offset by the elimination of existing costs through deregulatory actions. This rule's designation under Executive Order 13771 will be informed by public comment.

We have also reviewed these regulations 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 this interim final rule only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

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

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with the information collection requirements.

Need for Regulatory Action

The Department is issuing this interim final rule to clarify which students are eligible for emergency financial aid grants under section 18004 of the CARES Act. This final rule is meant to balance flexibility and clarify administration for institutions so the funds can be provided to eligible students as efficiently as possible with eligibility requirements consistent with congressional intent and designed to prevent waste, fraud, and abuse. The emergency financial aid grants are meant to assist students with expenses related to the disruption of on-campus activities, so this final rule is meant to clarify any questions about eligibility so the funds can be disbursed in a timely manner.

As detailed in the preamble of this IFR, in light of the current national emergency and the importance of institutions distributing the HEERF allocations via emergency financial aid grants to students to help with their expenses related to the disruption of campus operations due to COVID–19, the normal rulemaking process would be impracticable and contrary to the public interest. With the definition of ''student'' in ''emergency financial aid grants to students'' uncertain, institutions may be reluctant to award the full allocation for grants to students in time to assist with the COVID–19 related expenses the funds are intended to alleviate.

Costs, Benefits, and Transfers

The emergency financial aid grants under section 18004 of the CARES Act are intended to assist eligible students with expenses related to the disruption of campus activities. In accordance with OMB Circular A–4, we are evaluating the costs and benefits of the IFR compared to a pre-statutory baseline. This IFR defines which students are eligible for the grants but does not change the amount available or the allocation formula for providing the funds to institutions. The amount of transfers available to eligible students in 2020 is a minimum of $6.25 billion and up to $12.5 billion, depending on the amount institutions retain for institutional expenses. We have not discounted or annualized this amount because it is meant to be disbursed to students as efficiently as possible in the current year.

As described in this preamble, the eligibility requirements clarified in this final rule allow students to know if they are eligible to receive such funds from their institution. Limiting eligibility to title IV-eligible students who were enrolled and making P SAP in on-campus programs during the time of coronavirus-related disruptions to campus operations should allow the grants to be targeted for the purpose they were established. By aligning requirements with title-IV eligibility,[7] those individuals who do not meet one or more of the title IV eligibility requirements will be unable to receive HEERF grants.

As institutions will determine how they will distribute funds to their

[7] An exhaustive list of student eligibility requirements can be found in Section 484 of the Higher Education Act of 1965, as amended [20 U.S.C. 1091]. They are as follows (1) enroll or be accepted for enrollment in a program leading to a recognized credential at an eligible IHE and not enrolled in elementary or secondary school (2) if presently enrolled, be maintaining satisfactory academic progress (3) not owe a refund on a Federal student grant or be in default on any Federal student loan (4) submit a Statement of Educational Purpose (5) are a U.S. citizen, National or eligible noncitizen (6) not have been convicted of, or plead nolo contendere or guilty to, a crime involving fraud in obtaining federal student aid (7) have a high school diploma or its equivalent (8) have a valid social security number (9) register with the Selective Service (if required) (10) not been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving Federal student aid. For more information visit: *https://uscode.house.gov/view.xhtml?req=(title:20%20section:1091%20edition:prelim)* and here *https://ifap.ed.gov/federal-student-aid-handbook/08-05-2019-2019-2020-federal-student-aid-handbook-student-eligibility.*

students, the Department does not know the exact distribution of who will receive the grants. Table 1 shows the estimated pool of potential recipients as derived from IPEDS data for institutions that received an allocation. It is not specific to Spring 2020 enrollment but does provide an indication of the number of students who could receive funds. The primary eligibility limitations reflected in the table are the exclusion of non-resident aliens and the use of the percent of students whose programs were exclusively through distance education to estimate eligible on-campus enrollment.

TABLE 1—ESTIMATED POTENTIAL GRANT RECIPIENTS BY CONTROL OF INSTITUTION

	Public	Private	Proprietary	Total
Total Enrollment [8]	18,527,813	4,778,403	1,053,455	24,359,671
Undergraduate	16,872,158	3,208,336	916,722	20,997,216
Graduate	1,655,655	1,570,067	136,733	3,362,455
Non-Resident Alien	692,123	408,696	25,903	1,126,722
Percent All-Distance [9]	11.40	19.20	59.90	
Estimated Potentially Eligible On-Campus Enrollment	15,802,421	3,530,723	412,048	19,745,193

It will be easier for students who have successfully completed a FAFSA and received a valid student aid report (SAR) or institutional student information record (ISIR) for the 2019–20 or 2020–21 award years to receive an emergency financial aid grant because they have already demonstrated their eligibility under title IV. While some students may choose not to fill out a FAFSA because they have other sources of funding for their education, others may lack the necessary information or familiarity with the financial aid process to have information in place already. A number of studies have examined the issue of barriers to FAFSA completion including complexity and lack of counseling. These barriers are particularly challenging for low-income, minority, and first-generation students.[10] Another limitation that will restrict title IV eligible students' access to the emergency financial aid grants is their program's participation in title IV aid. Some programs at title-IV eligible institutions, primarily shorter training courses such as first responder training certificate programs, do not participate. Students enrolled in such programs will not be eligible for the emergency financial aid grants. Students who choose not to fill out a FAFSA but otherwise meet the title IV eligibility criteria may verify their eligibility by completing an application designed by the institution in which the student attests under the penalty of perjury to meeting the requirements of section 484 of the HEA.

In developing this IFR, the Department considered waiving some title IV eligibility requirements related to drug offenses, fraud related to title IV funds, or default. Ultimately, it was determined that eliminating some eligibility criteria and not others would not be fair across groups of students and would not allow institutions to maximize the use of their existing eligibility confirmation processes.

It is unclear how institutions will interpret the language of the CARES Act as they continue distributing emergency financial aid grants to students in the absence of the clarification contained in this rule. Some institutions may choose to continue to follow the guidance the Department has already issued on this subject, while others may adopt their own broader definition of ''student.'' At a minimum, the Department has already brought to the attention of institutions that the restrictions in 8 U.S.C. 1611 apply with regard to the distribution of grants to non-qualifying aliens as defined therein, so those individuals would not qualify for such grants under any interpretation of ''students.'' On the other hand, within the boundaries established by the terms of the CARES Act and other applicable statutes, institutions have discretion in distributing emergency financial aid grants to students, so even if an institution decided to use a broad definition of ''students'' in the absence of this rule, the institution might not exercise its discretion to award grants to everyone who meets that broader definition. It is therefore difficult to estimate with any degree of certainty how institutions would use their HEERF allocations differently for distribution of emergency financial aid grants to students in the absence of this rule.

Students will benefit from assistance in paying additional expenses associated with elements included in their cost of attendance, such as room and board, that changed with the disruption of campus activities. As confirmed by the Internal Revenue Service, the relief provided under section 18004 of the CARES Act will not be considered gross income, so students have no Federal tax consequences to deter them from accepting this assistance. Students will have to work with their institutions to access the funds according to whatever process the institution establishes to award the relief. As described in the Paperwork Reduction Act section of this preamble, students are expected to take 263,138 hours for a total of $4.71 million at a wage rate of $17.89 [11] to apply for emergency relief in 2020.

Institutions are also affected by this final rule. They have some flexibility in determining how they will distribute the funds they were allocated for this emergency relief. They will incur some costs in setting criteria or establishing an application process for their students. We assume the distribution of the funds can largely rely on existing processes and information involved in the disbursement of other title IV aid, but there will be some burden in confirming students' eligibility for the emergency relief, including for students who do not have an existing valid SAR or ISIR for the 2019–20 or 2020–21 award years. This could involve developing an application that includes student attestation under the penalty of

[8] Analysis of IPEDS 2017–18 12-month enrollment file, effy2018 available at *https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx?goToReportId=7*.

[9] National Center for Education Statistics, Digest of Education Statistics 2019, Table 311.15. Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2017 and Fall 2018. Fall 2017 share of students taking exclusively distance education courses. Available at *https://nces.ed.gov/programs/digest/d19/tables/dt19_311.15.asp*.

[10] Owen, Laura and Westlund, Erik (2016) ''Increasing College Opportunity: School Counselors and FAFSA Completion,'' Journal of College Access: Vol. 2: Iss. 1, Article 3. Available at: *http://scholarworks.wmich.edu/jca/vol2/iss1/3*. Literature review discusses barriers and interventions.

[11] Students' hourly rate estimated using Bureau of Labor Statistics (BLS) for Sales and Related Workers, All Other, available at: *https://data.bls.gov/cgi-bin/print.pl/oes/current/oes_nat.htm*. Last accessed May 20, 2020.

perjury to meeting the requirements of section 484 of the HEA. For students who knowingly misrepresent the truth in their attestation, the school may take disciplinary action against the student or require repayment of the emergency grant. As described in the Paperwork Reduction Act section of this preamble, burden on institutions is estimated to increase by 25,680 hours and $1,177,941 at a wage rate of $45.87 for postsecondary education administrators [12] in 2020.

To the extent that students use their emergency financial aid grants for expenses related to elements of their cost of attendance provided by institutions, those institutions will receive some revenue students may otherwise have been unable to pay at this time. Table 2 summarizes the amounts to be allocated to institutions by sector. The full breakout of amounts allocated to individual institutions, including the maximum that can be allocated to institutional costs, is available in the Allocations for section 18004(a)(1) of the CARES Act document [13] on the Department's CARES Act website.[14] These allocations were made according to the formula described in the Methodology for Calculating Allocations document [15] on the Department's CARES Act website. The allocation formula emphasizes institutions' share of Pell Grant recipients with 75 percent of the allocation based on each IHE's share of full-time equivalent (FTE) enrollment of Pell Grant recipients who were not enrolled exclusively in distance education prior to the coronavirus emergency, relative to the share of such individuals in all institutions. The remaining 25 percent is based on the institution's share of FTE enrollment of students who were not Pell Grant recipients and who were not enrolled exclusively in distance education prior to the coronavirus emergency. This formula helps direct relief to institutions that serve lower income students as part of their on-campus operations.

TABLE 2—SUMMARY OF HEERF ALLOCATIONS

Row labels	Sum of total allocation	Sum of minimum allocation to be awarded for emergency financial aid grants to students
Private Non-Profit <2 Yrs	11,121,217	5,560,619
Private Non-Profit 2–3 Yrs	31,469,853	15,734,951
Private Non-Profit 4 Yrs or More	2,441,436,384	1,220,718,556
Proprietary <2 Yrs	314,169,982	157,085,261
Proprietary 2–3 Yrs	415,718,070	207,859,135
Proprietary 4 Yrs or More	388,802,168	194,401,134
Public <2 Yrs	40,318,527	20,159,318
Public 2–3 Yrs	2,655,311,849	1,327,656,148
Public 4 Yrs or More	6,208,906,453	3,104,453,411
Grand Total	12,507,254,503	6,253,628,533

Net Budget Impact

We estimate that the definition of student eligibility for the emergency financial aid grants to students will not have an impact on the Federal budget. The CARES Act provided a maximum of $12.5 billion, with a minimum of $6.25 billion required to be spent on emergency financial aid grants to students and not spent on institutional expenses. The final rule does not impact the Federal budget because it clarifies which students are eligible to receive emergency relief provided by the CARES Act but do not change the amount available for such grants. As described in the Costs, Benefits, and Transfers section related to institutions, allocations have been determined and $11.1 billion of the funding has been disbursed to institutions already, with $50 million held in reserve to account for data limitations in allocating the initial amounts to eligible institutions. We anticipate that $12.5 billion will ultimately be disbursed in 2020, and therefore estimate $12.5 billion in transfers in 2020 relative to a pre-statutory baseline.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the impacts associated with the provisions of these final regulations in 2020, using 3% and 7% discount rates. This table provides our best estimate of the changes in monetized transfers in 2020 as a result of these final regulations. We note that transfers below flow from the Federal Government to eligible students and are processed through institutions.

[12] Based on BLS 2019 median hourly wage rate for postsecondary education administrators in the BLS Occupational Outlook Handbook. Available at *www.bls.gov/ooh/management/postsecondary-education-administrators.htm*. Last accessed May 20, 2020.

[13] Available at *www2.ed.gov/about/offices/list/ope/allocationstableinstitutionalportion.pdf.*

[14] *www2.ed.gov/about/offices/list/ope/caresact.html.*

[15] Available at *www2.ed.gov/about/offices/list/ope/heerf90percentformulaallocationexplanation.pdf.*

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED IMPACTS IN 2020

[In millions]

Category	Benefits	
Assistance may support students continuing in their programs	Not Quantified	
	Costs	
Paperwork burden on institutions to administer funds and on students to apply	7% $5.9	3% $5.9
Category	Transfers	
Relief for eligible students and institutions to help with additional expenses due to disruption of campus activities	7% $12,500	3% $12,500

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under the Administrative Procedure Act (5 U.S.C. 553).

The Secretary certifies that this final rule will 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.

However, as noted in several of the Department's recent regulations, we believe that an enrollment-based standard for small entity status is more applicable to institutions of higher education. The Department recently proposed a size classification based on enrollment using IPEDS data that established the percentage of institutions in various sectors considered to be small entities, as shown in Table 4. We described this size classification in the NPRM published in the **Federal Register** on July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). The Department discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

TABLE 4—SMALL ENTITIES UNDER ENROLLMENT BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	342	1,240	28
2-year	Private	219	259	85
2-year	Proprietary	2,147	2,463	87
4-year	Public	64	759	8
4-year	Private	799	1,672	48
4-year	Proprietary	425	558	76
Total		3,996	6,951	57

This rule will benefit those institutions of higher education that are small entities by allowing them to use a familiar existing eligibility framework to determine who should receive emergency financial aid grants under HEERF. As described in the Regulatory Impact Analysis, institutions may benefit from applying no more than 50 percent of their allocation of HEERF funds to institutional costs, so some small entities will benefit from those revenues. They will also have to establish a process for determining which of their students should receive and disburse the funds accordingly. We expect that the 2,586 estimated small entities allocated funds for this purpose under the CARES Act will spend a total of 5,172 hours totaling $237,240 at a wage rate of $45.87 [11] for postsecondary administrators to administer the distribution of the relief.

Table 5 shows the allocations of funds to small entities by sector, with any institution for which there was no small business indicator available considered a small entity. As for all institutions, the allocations of funds to specific small institutions is available on the Department's CARES website.[12]

TABLE 5—SUMMARY OF ALLOCATIONS TO SMALL ENTITIES BY SECTOR

Sector	Sum of total allocation	Sum of minimum allocation to be awarded for emergency financial aid grants to students
Private Non-Profit <2 Yrs	8,274,977	4,137,498
Private Non-Profit 2–3 Yrs	20,417,294	10,208,669

TABLE 5—SUMMARY OF ALLOCATIONS TO SMALL ENTITIES BY SECTOR—Continued

Sector	Sum of total allocation	Sum of minimum allocation to be awarded for emergency financial aid grants to students
Private Non-Profit 4 Yrs or More	266,608,121	133,304,213
Proprietary <2 Yrs	239,330,457	119,665,488
Proprietary 2–3 Yrs	177,306,399	88,653,273
Proprietary 4 Yrs or More	84,269,294	42,134,681
Public <2 Yrs	29,196,455	14,598,279
Public 2–3 Yrs	28,278,395	14,139,221
Public 4 Yrs or More	56,909,101	28,454,561
Grand Total	910,590,493	455,295,883

As institutions control the distribution of the funds to eligible students and have flexibility to establish a process suitable to their circumstances, no alternatives were considered specifically for small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

In determining eligibility for these funds, IHEs are being directed to use the Department's interpretation of ''student,'' meaning a person who is eligible under section 484 of the HEA to receive title IV aid, as suggested by the references to title IV in the context of section 18004.

We believe that most institutions will expand their current financial aid appeals process and utilize that framework to receive requests for COVID–19 assistance from eligible students. We estimate that each institution that received an allocation would require five hours to set up any new form for students to complete and establish review and recordkeeping procedures to be able to comply with the separate reporting requirements in the Certification and Agreement between the institutions and the Secretary. The estimated burden for the 1,651 private institutions is 8,255 hours (1,651 × 5 hours). The estimated burden for the 1,641 proprietary institutions is 8,205 hours (1,641 × 5 hours). The estimated burden for the 1,844 public institutions is 9,220 (1,844 × 5 hours). The total new burden to all institutions receiving an allocation of funds is 25,680 hours (5,136 institutions × 5 hours).

Using the unique number of title IV aid recipients 10,319,154 (both Federal grant and Federal student loan) for the Award Year 2019–2020 we estimate that 15 percent, or 1,547,873, of those recipients will request additional aid from their institution based on changed circumstances due to the coronavirus. We estimate approximately 20 minutes per students to complete the request for additional aid for a total new burden of 510,798 hours (.33 hours × 1,547,873).

This is a new information collection with a total burden assessment of 536,478 hours for 1,553,009 respondents with a single response. The Department has requested an emergency clearance to allow for the immediate collection of this information. The public will be provided the ability to comment on the proposed burden assessment through the standard information collection process with notice requesting comment being published in the **Federal Register**.

1840–NEW—ELIGIBILITY OF STUDENTS AT INSTITUTIONS OF HIGHER EDUCATION FOR FUNDS UNDER THE CARES ACT

Affected entity	Number of respondents	Number of responses	Hours per response	Total burden	Estimate costs student $17.89 institutions $45.87
Individual Student	1,547,873	1,547,873	.33	510,798	$9,138,176
Private Institution	1,651	1,651	5	8,255	378,657
Proprietary Institution	1,641	1,641	5	8,205	376,363
Public Institution	1,844	1,844	5	9,220	422,921
Total	1,553,009	1,553,009	.....	536,478	10,316,117

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.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final regulation may have federalism implications. We encourage State and local elected officials to review and provide comments on this interim final regulation.

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 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 for free on 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.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001–1003, 1070a, 1070g, 1085, 1087b, 1087d, 1087e, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, 1221e–3, and 3474; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

■ 2. Section 668.2 is amended by adding the definition ''Student,'' in alphabetical order to read as follows:

§ 668.2 General definitions.

* * * * *

Student, for purposes of the phrases ''grants to students'' and ''emergency financial aid grants to students'' in sections 18004(a)(2), (a)(3), and (c) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, is defined as an individual who is, or could be, eligible under section 484 of the HEA, to participate in programs under title IV of the HEA.

(Authority: 20 U.S.C. 1221e–3 3474)

* * * * *

[FR Doc. 2020–12965 Filed 6–15–20; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0229; FRL 10009–40–Region 6]

Air Plan Approval; Texas; Approval of Substitution for Dallas-Fort Worth Area Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is making an administrative change to update the Code of Federal Regulations (CFR) to reflect a change made to the Texas State Implementation Plan (SIP) on February 21, 2020, as a result of EPA's concurrence on substitute transportation control measures (TCMs) for the Dallas-Fort Worth (DFW) 8-hour ozone nonattainment area portion of the Texas SIP. EPA has determined that the substitution of the TCMs is consistent with the Clean Air Act and EPA's national guidance on such substitutions, and therefore falls within the ''good cause'' exemption in the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes an agency to make an action effective immediately.

DATES: This action is effective *June 17, 2020.*

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2020–0229. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Riley, 214–665–8542, *riley.jeffrey@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Under Clean Air Act (CAA) section 176(c)(8), States are allowed to substitute TCMs in approved SIPs for replacement TCMs which achieve equivalent or greater emissions reductions without having to undertake the standard SIP revision process.[1] The DFW area metropolitan planning organization, the North Central Texas Council of Governments (NCTCOG),[2] identified for substitution three TCMs originally approved as High-Occupancy Vehicle (HOV) lanes into the DFW SIP as follows:

[1] The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) transportation funding and authorization bill, which was signed into law on August 10, 2005, revised the CAA's section 176(c) transportation conformity provisions to allow states to substitute or add TCMs into approved SIPs without the standard SIP revision process. These revisions facilitate compliance with the transportation conformity rule's requirements for timely implementation of TCMs (40 CFR 93.113) by expediting the TCM substitution process.

[2] As the Metropolitan Planning Organization for the DFW area, NCTCOG is delegated authority under 30 Texas Administrative Code § 114.270 to implement SIP-approved TCMs for the DFW ozone nonattainment area.

TABLE 1—APPROVAL OF TCMS INTO THE DFW SIP

SIP revision	EPA approval	TCM
April 2000 DFW 1-Hour Ozone Attainment Demonstration.	September 27, 2005 (70 FR 56374)	• IH 35 East corridor (Stemmons Freeway) HOV lane between IH 635 and SH 121. • IH 635 West corridor (LBJ Freeway) HOV lane between Luna Road/IH 35 E and US 75.
May 2007 DFW 1997 8-Hour Ozone Attainment Demonstration.	January 14, 2009 (74 FR 1903)	• IH 635 East corridor (LBJ Freeway) HOV lane between Coit Road and Greenville Avenue.

The NCTGOC determined that since the opening of these HOV lanes, increased congestion in these corridors had resulted from increased population and vehicle miles traveled. As a result, the HOV lanes no longer provided the needed congestion relief and associated nitrogen oxide (NO_X) and volatile organic compound (VOC) air quality benefits approved into the DFW SIP as detailed in Table 1.

As a part of the TCM substitution concurrence process required under CAA section 176(c)(8), the NCTCOG published notice on November 7, 2019 in 20 DFW area newspapers and circulars announcing a November 11, 2019 public meeting to provide information on the proposed TCM substitutions and begin a 30-day public comment period. No public comments were received, and EPA did not provide comment or concurrence during this comment period. On December 12, 2019, the NCTCOG Regional Transportation Council adopted a resolution to substitute these HOV lane TCMs for traffic signalization project TCMs to offset any NO_X and VOC emission reduction credits lost by removing these corridors from HOV lane usage and keep equivalent emission reduction controls in place.

On February 21, 2020, EPA issued concurrence letters to the Texas Commission on Environmental Quality (TCEQ) and the NCTCOG stating that the substitution of the DFW area IH 35E/IH 635 HOV Lane TCMs with traffic signalization project TCMs met the CAA section 176(c)(8) requirements for substituting TCMs in an area's approved SIP, including the requirement that the substitute measures achieve equivalent or greater emission reductions than the control measure to be replaced. On February 18, 2020, the TCEQ issued similar concurrence letters to EPA Region 6 and the NCTCOG. Each of the above-noted concurrence letters are included in the docket to this rulemaking as part of the State of Texas' April 8, 2020 submittal to EPA. *See* EPA's *Guidance for Implementing the Clean Air Act Section 176(c)(8) Transportation Control Measure Substitution and Addition Provision* dated January 2009.

Upon issuance EPA's February 21, 2020 concurrence letters, the HOV Lane substitutions took effect as a matter of federal law.[3] In accordance with the requirements for TCM substitution, on April 8, 2020, the State of Texas submitted through the TCEQ a request for EPA to update the DFW portion of the Texas SIP to reflect EPA's February 21, 2020 approval of the TCM substitution of the HOV Lanes with the traffic signalization project TCMs in its SIP (the subject of this administrative change). Today, EPA is taking administrative action to update the non-regulatory provisions of the Texas SIP in 40 CFR 52.2270(e) to reflect EPA's concurrence on the substitution to convert the IH 35E/IH 635 HOV Lane TCMs to traffic signalization project TCMs:

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date
DFW nine-county area IH–35E/IH–635 HOV Lane TCMs to traffic signalization TCMs. Affected counties are Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman, Rockwall.	Dallas-Fort Worth	4/8/2020

Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' EPA's January 2009 guidance establishes EPA's rationale for utilizing the good cause provision under the APA to take actions relating to TCM substitutions without additional need for public comment because the substitution was originally made through the process approved into the Texas SIP (79 FR 5287) in addition to the CAA section 176(c)(8) statutory provision as applicable, and because the public has had the opportunity to comment on the specific substitution during NCTCOG's public comment period.[4] Effective immediately, today's action codifies provisions which are already in effect. The public had an opportunity to comment on this substitution during the public comment period prior to approval of the substitution. Immediate notice of this action in the **Federal Register** benefits the public by providing the updated Texas SIP Compilation and ''Identification of Plan'' portion of the CFR.

[3] CAA section 176(c)(8)(B) stipulates that concurrence by the MPO, State air pollution control agency and the EPA shall constitute adoption of the substitute control measures, and that once adopted, the substitute measures become, by operation of law, part of the SIP and become federally enforceable.

[4] EPA's rationale for applicability of the APA ''good cause'' exemption to TCM substitution rulemakings is provided in its January 2009 *Guidance for Implementing the Clean Air Act Section 176(c)(8) Transportation Control Measure Substitution and Addition Provision,* EPA–420–B–09–002. *https://nepis.epa.gov/Exe/ZyPDF.cgi/P1002W66.PDF?Dockey=P1002W66.PDF.*

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this administrative action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This administrative action also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This administrative action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This administrative action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The administrative action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This administrative action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's administrative action simply codifies a provision which is already in effect as a matter of law in Federal and approved state programs. 5 U.S.C. 808(2). These announced actions were effective upon EPA's concurrence. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this action in the **Federal Register**. This update to Texas' SIP Compilation is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 14, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—[AMENDED]

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

SUBPART SS—TEXAS

■ 2. In § 52.2270, in paragraph (e), amend the table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' by adding an entry for ''DFW nine-county area IH–35E/IH–635 HOV Lane TCMs to traffic signalization TCMs'' at the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* *	* *	*	*	*
DFW nine-county area IH–35E/IH–635 HOV Lane TCMs to traffic signalization TCMs.	Dallas-Fort Worth: Dallas, Tarrant, Collin, Denton, Parker, Johnson, Ellis, Kaufman and Rockwall Counties.	4/8/2020	6/17/2020 [Insert **Federal Register** citation].	

* * * * *

[FR Doc. 2020–10835 Filed 6–16–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2020–0005; Internal Agency Docket No. FEMA–8631]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674–1087.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Alabama:				
Bayou La Batre, City of, Mobile County	015001	July 30, 1971, Emerg; March 17, 1972, Reg; June 5, 2020, Susp.	June 5, 2020	June 5, 2020.
Chickasaw, City of, Mobile County	015003	February 19, 1971, Emerg; April 28, 1972, Reg; June 5, 2020, Susp.	.....do*	Do.
Citronelle, City of, Mobile County	010277	July 23, 1975, Emerg; June 17, 1977, Reg; June 5, 2020, Susp.	.....do	Do.
Creola, City of, Mobile County	010409	N/A, Emerg; December 31, 1981, Reg; June 5, 2020, Susp.	.....do	Do.
Dauphin Island, Town of, Mobile County	010418	N/A, Emerg; December 11, 1970, Reg; June 5, 2020, Susp.	.....do	Do.
Mobile, City of, Mobile County	015007	September 11, 1970, Emerg; September 15, 1972, Reg; June 5, 2020, Susp.	.....do	Do.
Mobile County, Unincorporated Areas	015008	N/A, Emerg; December 11, 1970, Reg; June 5, 2020, Susp.	.....do	Do.
Mount Vernon, Town of, Mobile County	010169	July 25, 1975, Emerg; December 16, 1977, Reg; June 5, 2020, Susp.	.....do	Do.
Prichard, City of, Mobile County	010170	April 22, 1975, Emerg; February 4, 1981, Reg; June 5, 2020, Susp.	.....do	Do.
Saraland, City of, Mobile County	010171	May 9, 1974, Emerg; December 18, 1979, Reg; June 5, 2020, Susp.	.....do	Do.
Satsuma, City of, Mobile County	010172	January 3, 1975, Emerg; September 29, 1978, Reg; June 5, 2020, Susp.	.....do	Do.
Region VI				
Arkansas:				
Alexander, City of, Pulaski and Saline Counties.	050377	September 26, 1980, Emerg; January 20, 1982, Reg; June 5, 2020, Susp.	.....do	Do.
Bauxite, Town of, Saline County	050527	N/A, Emerg; February 7, 2018, Reg; June 5, 2020, Susp.	.....do	Do.
Benton, City of, Saline County	050192	July 2, 1975, Emerg; December 15, 1981, Reg; June 5, 2020, Susp.	.....do	Do.
Region VII				
Iowa:				
Cerro Gordo County, Unincorporated Areas	190853	December 29, 1999, Emerg; December 1, 2001, Reg; June 5, 2020, Susp.	June 5, 2020	June 5, 2020.
Clear Lake, City of, Cerro Gordo County	190059	August 7, 1975, Emerg; August 4, 1987, Reg; June 5, 2020, Susp.	.....do	Do.
Mason City, City of, Cerro Gordo County	190060	March 21, 1975, Emerg; December 2, 1980, Reg; June 5, 2020, Susp.	.....do	Do.
McIntire, City of, Mitchell County	190458	December 8, 2000, Emerg; May 1, 2011, Reg; June 5, 2020, Susp.	.....do	Do.
Mitchell, City of, Mitchell County	190459	N/A, Emerg; May 13, 2013, Reg; June 5, 2020, Susp.	.....do	Do.
Mitchell County, Unincorporated Areas	190892	January 8, 1999, Emerg; March 1, 2000, Reg; June 5, 2020, Susp.	.....do	Do.
Osage, City of, Mitchell County	190636	N/A, Emerg; April 20, 2017, Reg; June 5, 2020, Susp.	.....do	Do.
Plymouth, City of, Cerro Gordo County	190061	May 24, 1991, Emerg; January 1, 1992, Reg; June 5, 2020, Susp.	.....do	Do.
Rock Falls, City of, Cerro Gordo County	190351	July 4, 1994, Emerg; July 1, 1997, Reg; June 5, 2020, Susp.	.....do	Do.
Rockwell, City of, Cerro Gordo County	190352	October 11, 1990, Emerg; July 1, 1991, Reg; June 5, 2020, Susp.	.....do	Do.
Stacyville, City of, Mitchell County	190461	February 18, 2011, Emerg; February 6, 2013, Reg; June 5, 2020, Susp.	.....do	Do.
Swaledale, City of, Cerro Gordo County	190809	N/A, Emerg; April 3, 2014, Reg; June 5, 2020, Susp.	.....do	Do.
Thornton, City of, Cerro Gordo County	190062	December 12, 1975, Emerg; May 1, 1987, Reg; June 5, 2020, Susp.	.....do	Do.
Ventura, City of, Cerro Gordo County	190674	January 24, 2000, Emerg; May 16, 2012, Reg; June 5, 2020, Susp.	.....do	Do.
Missouri:				
Franklin County, Unincorporated Areas	290493	June 21, 1974, Emerg; October 16, 1984, Reg; June 5, 2020, Susp.	.....do	Do.
Nebraska:				
Decatur, Village of, Burt County	310021	January 21, 1975, Emerg; June 16, 1992, Reg; June 5, 2020, Susp.	.....do	Do.
Herman, Village of, Burt and Washington Counties.	310229	January 10, 1975, Emerg; March 18, 1985, Reg; June 5, 2020, Susp.	June 5, 2020	June 5, 2020.
Lyons, City of, Burt County	310022	March 21, 1975, Emerg; September 4, 1986, Reg; June 5, 2020, Susp.	.....do	Do.
Oakland, City of, Burt County	310023	May 22, 1975, Emerg; May 7, 1979, Reg; June 5, 2020, Susp.	.....do	Do.
Tekamah, City of, Burt County	310024	October 23, 1974, Emerg; August 1, 1979, Reg; June 5, 2020, Susp.	.....do	Do.
Region X				
Oregon:				
Florence, City of, Lane County	410123	March 27, 1975, Emerg; May 17, 1982, Reg; June 5, 2020, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Lane County, Unincorporated Areas	415591	December 31, 1970, Emerg; December 18, 1985, Reg; June 5, 2020, Susp.	.....do	Do.

.....do and Do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Katherine B. Fox,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2020–11333 Filed 6–16–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XY108]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Herring Savings Area in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening the Summer Herring Savings Area 2 in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent the underharvest of the 2020 pollock total allowable catch (TAC) and facilitate pollock harvest by the American Fisheries Act (AFA) inshore sector, AFA mothership sector, and Community Development Quota (CDQ) program in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), July 1, 2020, through 2400 hours, A.l.t., August 15, 2020. Comments must be received at the following address no later than 4:30 p.m., A.l.t., July 2, 2020.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2019–0074, by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to: *https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0074,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

More information and data is available from NMFS at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/inseason-fisheries-management-alaska.*

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to the final 2020 and 2021 harvest specifications for groundfish in the BSAI, the total prohibited species catch (PSC) limit for herring is 2,532 metric tons (mt). The 2020 herring bycatch allowance of 2,299 mt specified for the trawl midwater pollock fishery in the BSAI has been reached. Prior to 2020, the PSC limit had not been reached in the pollock A season, and since 2010 has only been reached in the pollock B season once. NMFS recently became aware of concerns that the pollock sectors would not be able to respond to the unexpected conditions presented in 2020. The sectors' primary concerns are closure of the Herring Savings Areas will increase the length of the fishing season, increase bycatch of both Chinook and chum salmon, increase fishing and observer costs, and reduce fish quality, which will have a disproportionate impact on smaller shoreside vessels. As of June 3, 2020, NMFS has determined that approximately 495,000 mt of pollock TAC remains unharvested for the AFA inshore sector, AFA mothership sector, and CDQ program in the Bering Sea subarea of the BSAI.

Pursuant to the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020) and § 679.21(e)(7)(vi), NMFS prohibited directed fishing for pollock in the Herring Savings Areas of the BSAI on June 15, 2020 (85 FR 35381, June 10, 2020). The Herring Savings Areas are presented in Figure 4 to 50 CFR part 679. Review of the Bering Sea pollock fishery shows that closure of the Summer Herring Savings Area 2 (HSA 2) for the AFA inshore sector, AFA mothership sector, and CDQ program may lead to the underharvest of the 2020 pollock TAC, based on the factors analyzed below.

The area of the HSA 2 is the most productive fishing grounds for these pollock sectors and is closest to the more accessible fishing ports. Closure of HSA 2 starting July 1 through August 15 will force these pollock sectors and CDQ program participants to fish in less productive areas that are further from the most accessible fishing ports. Fishing less productive grounds combined with more time to transit to open fishing grounds will lengthen the time required to fish during the pollock B season (June 10 to November 1, as defined at § 679.23(e)(2)(ii)). Also, longer fishing seasons will increase fishing and observer expenses. As a result, while the average last day of fishing for these sectors is October 2 (for 2010 to 2019), the HSA 2 closure may potentially extend fishing to November 1, 2020, and may prevent the full harvest of the pollock TAC.

Additionally, closing HSA 2 could force the pollock sectors and CDQ participants to areas with higher salmon

bycatch. This, in combination with the factors analyzed in the preceding paragraph, also could extend fishing to the end of the season and compound pollock TAC and salmon bycatch concerns. Fishing later in the B season has been observed to increase the bycatch of other species including Chinook salmon. As analyzed in Amendment 110 to the FMP (81 FR 37534, June 10, 2016), historical salmon PSC rates observed in pollock fishery indicate the closure of the HSA 2 will move these fisheries to areas with higher salmon bycatch and delay these fisheries to time periods of higher Chinook salmon abundance.

For these reasons, closure of the HSA 2 will force the pollock sectors to fish in less productive areas, in areas with higher salmon bycatch, and further distances from fishing ports, which will lengthen fishing over the B season and compound salmon bycatch issues. NMFS has determined that this may lead to the underharvest of the pollock TAC in the B season. To prevent the underharvest of the pollock TAC, NMFS will open the HSA 2 for the AFA inshore and mothership sectors and the CDQ program. This action does not include the AFA catcher/processor sector because it is already prohibited from directed fishing for pollock during the B pollock season in the Catcher Vessel Operational Area (CVOA) (see § 679.22(a)(5) and Figure 2 to 50 CFR part 679). The fishery for pollock in the CVOA overlaps with the HSA 2.

Opening the HSA 2 likely will not result in any conservation concerns for the Bering Sea herring stock. The 2010 to 2019 herring PSC for all pollock sectors in the B season ranges from 47 mt to 2,229 mt with an average of 765 mt. Adding the highest B season herring PSC from the most recent 10 years (2,229 mt) to the current 2020 A season herring PSC of 2,923 mt for all sectors equals 5,152 mt, or about 2 percent of the State of Alaska's estimate for 2020 of herring mature biomass for spawning aggregations in the Bering Sea. However, it is important to note that this is based on the highest B season herring PSC previously caught by all pollock sectors over the most recent 10 years (not an average or anticipated PSC for the remainder of the 2020); that this inseason adjustment only applies to the AFA inshore and mothership sectors and the CDQ program and does not include the AFA catcher/processor sector; and that this year's PSC varied from previous years. For the 2020 A season, the herring PSC was 52 percent catcher/processors and 48 percent inshore/mothership/CDQ, while the 2010 through 2019 average is 31 percent catcher/processors and 69 percent inshore/mothership/CDQ. Finally, NMFS notes that additional herring PSC outside the HSAs will continue regardless of whether the PSC limit is reached in any given year, that there is no overall herring PSC limit, and that a total annual herring bycatch of 2 to 3 percent is close to the historical herring bycatch exploitation rates prior to the implementation of the herring PSC limit (56 FR 15063, April 15, 1991). When implementing the herring PSC limit (Amendment 16a to the FMP), NMFS anticipated that the groundfish trawl fishery's herring bycatch under the 1 percent of the herring biomass limit for a given fishing year would likely approach 2 to 3 percent by the end of a fishing year (56 FR 15063, April 15, 1991).

NMFS consulted with the Council at their June 2020 meeting, and the Council, after receiving oral and written public comment on this issue, unanimously recommended that NMFS use its inseason authority to provide for opening and management, including the potential closure, of the Summer Herring Savings Area 2, throughout the relevant time period (July 1—August 15). Also, the Council and NMFS considered consistency with the Magnuson-Stevens Act's 10 National Standards and sought to balance the competing demands of the National Standards (16 U.S.C. 1851). Specifically, the Council and NMFS recognized the need to balance and be consistent with both National Standard 9 and National Standard 1. National Standard 9 requires that conservation and management measures minimize bycatch to the extent practicable. National Standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry. This inseason adjustment provides the opportunity to monitor herring PSC and minimize salmon PSC, consistent with Amendments 16a and 110 of the FMP, while also providing an opportunity to fully harvest the pollock TAC.

Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), (a)(2)(iii)(D), and (b)(1), (6), (7), and (8), NMFS is terminating the previous closure for HSA 2 only and is opening directed fishing for pollock in the HSA 2 by the AFA inshore sector, AFA mothership sector, and CDQ program in the Bering Sea subarea of the BSAI. This inseason adjustment is based on the determination that it is necessary to prevent underharvest of the pollock TAC and that opening the HSA 2 for the AFA inshore sector, AFA mothership sector, and CDQ program is the least restrictive adjustment necessary to achieve the pollock TAC in The Bering Sea subarea of the BSAI. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of pollock in the Bering Sea subarea of the BSAI, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery, (3) the high historical prohibited species bycatch rates for Chinook and chum salmon observed in the pollock fishery, and (4) potential economic loss to these fisheries.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the HSA 2 to directed fishing for pollock in the BSAI. Without this inseason adjustment, NMFS could not allow the fishery for pollock in the Bering Sea subarea of the BSAI to be harvested in an expedient manner. In particular, this inseason adjustment in intended to allow the affected sectors to fish at more productive fishing grounds, earlier in the season, when there is less salmon bycatch. Any delay will undermine these goals and their ability to harvest their full TAC. For similar reasons, the affected sectors need notice of the re-opening at the earliest possible opportunity so they can plan and conduct fishing operations in a timely manner. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 3, 2020.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until July 1, 2020.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 12, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–13078 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 117

Wednesday, June 17, 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 430

[EERE–2014–BT–STD–0059]

RIN 1904–AD97

Energy Conservation Program: Energy Conservation Standards for Room Air Conditioners

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

ACTION: Notice of webinar and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a webinar to discuss and receive comments on the preliminary analysis it has conducted for purposes of evaluating energy conservation standards for room air conditioners (ACs). The webinar will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards for this product; the results of preliminary analyses performed by DOE for this product; the potential energy conservation standard levels derived from these analyses that DOE could consider for this product should it determine that proposed amendments are necessary; and any other issues relevant to the evaluation of energy conservation standards for room ACs. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available on the DOE website at: *https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0059.*

DATES:

Meeting: DOE will hold a webinar on Wednesday, August 5, 2020 from 10:00 a.m. to 3:00 p.m. See section IV, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, then it will be cancelled.

Comments: Written comments and information will be accepted on or before, August 17, 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–2014–BT–STD–0059, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: RoomAC2014STD0059@ee.doe.gov.* Include the docket number EERE–2014–BT–STD–0059 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 IV 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 *https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0059.* The docket web page contains instructions on how to access all documents, including public comments in the docket. See section IV for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the webinar, 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. Authority
II. History of Energy Conservation Standards Rulemaking for Room Air Conditioners
A. Background
B. Current Process
III. Summary of the Analyses Performed by DOE
A. Engineering Analysis
B. Markups To Determine Prices
C. Energy Use Analysis
D. Life-Cycle Cost and Payback Period Analyses
E. National Impact Analysis
F. Other Energy Conservation Standard Topics
1. Market Failures
2. Emerging Smart Technology Market
3. Other Issues
IV. Public Participation
A. Participation in the Webinar
B. Submission of Comments
V. Approval of the Office of the Secretary

I. Authority

The Energy Policy and Conservation Act of 1975, as amended (EPCA),[1] among other things, authorizes DOE to regulate the energy efficiency of a

[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 (October 23, 2018).

number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include room ACs, the subject of this document. (42 U.S.C. 6292(a)(2)) EPCA prescribed energy conservation standards for these products, and directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(c)(1)–(2)) EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (NOPR) including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

The energy conservation program under EPCA 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. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

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

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and (r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for room ACs appear at Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix F.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including room ACs. EPCA requires that any new or amended energy conservation standard be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including room ACs, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

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

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

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products 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 and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(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 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.	• Markups for Product Price Determination. • Energy Use Determination. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.

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

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS—Continued

EPCA requirement	Corresponding DOE 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.

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for room ACs address standby mode and off mode energy use. In this rulemaking, DOE intends to incorporate such energy use into any amended energy conservation standards it adopts in the final rule.

Before proposing a standard, DOE typically seeks public input on the analytical framework, models, and tools that DOE intends to use to evaluate standards for the product at issue and the results of preliminary analyses DOE performed for the product.

DOE is examining whether to amend the current standards pursuant to its obligations under EPCA. This notice announces the availability of the preliminary TSD, which details the preliminary analyses and summarizes the preliminary results of DOE's analyses. In addition, DOE is announcing a webinar to solicit feedback from interested parties on its analytical framework, models, and preliminary results.

II. History of Energy Conservation Standards Rulemaking for Room Air Conditioners

A. Background

As described in section I of this notice, EPCA prescribed energy conservation standards for room air conditioners. (42 U.S.C. 6295(c)(1)–(2)) Further, EPCA directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(c)(1)–(2)) DOE completed the first of these rulemaking cycles in September 24, 1997 (hereinafter the ''September 1997 Final Rule'') by adopting amended performance standards for room ACs manufactured on or after October 1, 2000. 62 FR 50122. Additionally, DOE completed a second rulemaking cycle to amend the standards for room ACs by issuing a direct final rule published on April 21, 2011 (hereinafter the ''April 2011 Direct Final Rule''), in which DOE prescribed the current energy conservation standards for room ACs manufactured on or after April 21, 2014. 76 FR 22454. DOE subsequently published a final rule amending the compliance date for current room AC standards to June 1, 2014. 76 FR 52852 (Aug. 24, 2011). In a separate notice, also published on August 24, 2011, DOE confirmed the adoption of these energy conservation standards in a notice of effective date and compliance dates for the April 2011 Direct Final Rule. 76 FR 52854. These standards, based on the combined energy efficiency ratio (CEER), expressed in British thermal units per watt-hour (Btu/Wh), are set forth in DOE's regulations at 10 CFR 430.32(b) and are repeated in Table II.1.

TABLE II.1—CURRENT ROOM AIR CONDITIONER ENERGY CONSERVATION STANDARDS

Room AC product class	Minimum CEER (Btu/Wh)
1. Without reverse cycle, with louvered sides, and less than 6,000 Btu/h	11.0
2. Without reverse cycle, with louvered sides and 6,000 to 7,999 Btu/h	11.0
3. Without reverse cycle, with louvered sides and 8,000 to 13,999 Btu/h	10.9
4. Without reverse cycle, with louvered sides and 14,000 to 19,999 Btu/h	10.7
5a. Without reverse cycle, with louvered sides and 20,000 Btu/h to 28,000 Btu/h	9.4
5b. Without reverse cycle, with louvered sides and 28,000 Btu/h or more	9.0
6. Without reverse cycle, without louvered sides, and less than 6,000 Btu/h	10.0
7. Without reverse cycle, without louvered sides and 6,000 to 7,999 Btu/h	10.0
8a. Without reverse cycle, without louvered sides and 8,000 to 10,999 Btu/h	9.6
8b. Without reverse cycle, without louvered sides and 11,000 to 13,999 Btu/h	9.5
9. Without reverse cycle, without louvered sides and 14,000 to 19,999 Btu/h	9.3
10. Without reverse cycle, without louvered sides and 20,000 Btu/h or more	9.4
11. With reverse cycle, with louvered sides, and less than 20,000 Btu/h	9.8
12. With reverse cycle, with louvered sides, and 20,000 Btu/h or more	9.3
13. With reverse cycle, without louvered sides, and less than 14,000 Btu/h	9.3
14. With reverse cycle, without louvered sides, and 14,000 Btu/h or more	8.7
15. Casement-Only	9.5
16. Casement-Slider	10.4

B. Current Process

As part of the current analysis, on June 18, 2015, DOE prepared a Request for Information (hereinafter the ''June 2015 RFI''), which solicited information from the public to help DOE determine whether amended standards for room ACs would result in a significant amount of additional energy savings and whether those standards would be technologically feasible and economically justified. DOE also identified a variety of questions to aid in the development of the technical and economic analyses regarding whether new standards for room ACs may be warranted. In addition, DOE welcomed comments on other issues relevant to the conduct of the rulemaking that may not have been specifically identified in the June 2015 RFI. 80 FR 34843. The June 2015 RFI is available at: *https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0059.*

This preliminary analysis is part of the mandatory review process imposed by EPCA and further seeks input from the public to assist DOE with its determination on whether amended standards pertaining to room ACs are warranted.

Comments received to date as part of the current process have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the products covered in this preliminary analysis, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost (LCC) and payback period (PBP); and (5) national impacts. The preliminary TSD that presents the methodology and results of each of these analyses is available at *https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0059.*

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded if DOE determines that a NOPR is warranted to propose amended energy conservation standards. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and National Impact Analysis (NIA). In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis (MIA) and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the NOPR should one be issued.

A. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency levels of the product that DOE is evaluating as potential energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. The engineering analysis identifies representative baseline products for each product class, which is the starting point for analyzing technologies that provide energy efficiency improvements. ''Baseline products'' refers to a model or models having features and technologies typically found in minimally-efficient products currently available on the market and, for products already subject to energy conservation standards, a model that just meets the current standard. The engineering analysis also identifies higher efficiency levels above the baseline level, based on the range of products currently available on the market. After identifying the baseline and higher-efficiency levels, DOE estimates manufacturer selling prices by using a consistent methodology and pricing scheme that includes material costs and manufacturer markups. Chapter 5 of the preliminary TSD discusses the engineering analysis.

B. Markups To Determine Prices

DOE derives customer prices based on manufacturer markups, retailer markups, distributor markups, contractor markups (where appropriate), and sales taxes. In deriving these markups, DOE determines the major distribution channels for product sales, the markup associated with each party in each distribution channel, and the existence and magnitude of differences between markups for baseline products (baseline markups) and higher-efficiency products (incremental markups). DOE calculates both overall baseline and overall incremental markups based on the markups at each step in each distribution channel. Chapter 6 of the preliminary TSD addresses the markups analysis.

C. Energy Use Analysis

The energy use analysis provides estimates of the annual energy consumption of room ACs. The energy use analysis seeks to estimate the range of energy consumption of the products that meet each of the efficiency levels evaluated as they are used in the field. DOE uses these values in the LCC and PBP analyses and in the NIA. Chapter 7 of the preliminary TSD addresses the energy use analysis.

D. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing and operating a considered product over the course of its lifetime. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCC of the product likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of manufacturer selling price, distribution chain markups, sales taxes, and installation cost); (2) the operating cost of the product (energy cost, water and wastewater cost in some cases, and maintenance and repair cost); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of higher-efficiency products through savings in the operating cost of the product. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline product, by the annual savings in operating costs. Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

E. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from amended standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV for each candidate standard level for room ACs as the difference between a base-case forecast (without amended standards) and the standards-case forecast (with standards). Cumulative energy savings are the sum of the annual NES determined for the lifetime of the products shipped from 2026 to 2055. The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates. Chapter 9 of the preliminary TSD addresses the Shipments Analysis and Chapter 10 of the preliminary TSD addresses the NIA.

F. Other Energy Conservation Standard 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 room ACs.

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 the RFI as they may be applicable to room ACs.

3. Other Issues

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of energy conservation standards for room ACs not already addressed by the specific areas 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 room ACs while remaining consistent with the requirements of EPCA.

IV. Public Participation

DOE invites public participation in this process through participation in the webinar and submission of written comments and information. After the webinar and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Following such consideration, the Department will publish either a determination that the standards for room ACs need not be amended or a NOPR proposing to amend those standards. The NOPR, should one be issued, would include proposed energy conservation standards for the products covered by that rulemaking, and members of the public would be given an opportunity to submit written and oral comments on the proposed standards.

A. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, then it will be cancelled.

Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://cms.doe.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

DOE encourages those who wish to participate in the webinar to obtain the preliminary TSD from DOE's website and to be prepared to discuss its contents. Once again, a copy of the preliminary TSD is available at: *https://www.regulations.gov/docket?D=EERE-2014-BT-STD-0059.* However, webinar participants need not limit their comments to the topics identified in the preliminary TSD; DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this product or that DOE should address in a NOPR should one be issued.

B. Submission of Comments

DOE will accept comments, data, and information regarding this notice before or after the webinar, but no later than the date provided in the **DATES** section at the beginning of this notice.

Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies 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 itself 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. Otherwise, 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 in 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, that are written in English, and that are 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 to *RoomAC2014STD0059@ee.doe.gov* 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).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of availability.

Signing Authority

This document of the Department of Energy was signed on June 5, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy.

This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 11, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–12935 Filed 6–16–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–STD–0042]

RIN 1904–AE59

Energy Conservation Program: Energy Conservation Standards for Air-Cooled Commercial Package Air Conditioning and Heating Equipment and Commercial Warm Air Furnaces

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

ACTION: Request for information; reopening of the public comment period.

SUMMARY: On May 12, 2020, the U.S. Department of Energy (DOE) published a request for information (RFI) pertaining to the energy conservation standards for air-cooled commercial package air conditioning and heating equipment (ACUACs and ACUHPs) and commercial warm air furnaces (CWAFs). The RFI provided an opportunity for submission of written comments, data, and information to the Department by June 11, 2020. Prior to the end of the comment period for the RFI, DOE

received a request from the Air-Conditioning, Heating and Refrigeration Institute (AHRI), as well as from the American Public Gas Association (APGA), seeking additional time to consider the applicability and impact of an updated energy conservation standard for this equipment. In light of these requests, DOE is reopening the comment period for the subject RFI for an additional 14 days.

DATES: The comment period for the subject RFI, published in the **Federal Register** on May 12, 2020, which closed on June 11, 2020, is hereby reopened and extended. Accordingly, DOE will accept written comments, data, and information in response to the RFI submitted no later than July 1, 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–0042 and/or 1904–AE59, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: PkgHVACFurnace2019STD0042@ee.doe.gov.* Include the docket number EERE–2019–BT–STD–0042 and/or RIN 1904–AE59 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. 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.

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 *https://www.regulations.gov/docket?D=EERE-2019-BT-STD-0042.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson and 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) 586–6636 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE published a Request for Information (RFI) pertaining to the energy conservation standards for ACUACs, ACHPs, and CWAFs in the **Federal Register** on May 12, 2020. 85 FR 27941. The RFI initiated a data collection process and seeks input from the public to assist DOE in determining whether amended standards for ACUACs, ACUHPs, and CWAFs, would result in significant additional energy savings and would be technologically feasible and economically justified. In that RFI, DOE requested submission of written comment, data, and information by June 11, 2020.

On May 15, 2020, AHRI, an interested party in the matter, requested a 30-day extension of the public comment period for the RFI that DOE previously published in the **Federal Register** on May 12, 2020.[1] More specifically, AHRI sought additional time to consider the many technical issues raised in the RFI, noting that many of its member manufactures have closed facilities and furloughed staff in response to the COVID–19 crisis.

On May 19, 2020, APGA, also requested a 30-day extension of the public comment period for the RFI that DOE previously published in the **Federal Register** on May 12, 2020, for similar reasons to those expressed in the AHRI request.[2]

On May 27, 2020, AHRI reiterated their request for a comment extension for the RFI. In its request for extension, AHRI noted that DOE has released numerous requests for information since April 12, 2020, which include requests for AHRI and its members to provide data and information to DOE. AHRI's extension request also reiterated the challenges in complying with such requests associated with COVID–19-related company furloughs.[3]

After carefully considering these requests, DOE has determined that reopening the comment period for an additional 14 days to allow additional time for interested parties to submit comments is sufficient. Therefore, DOE is reopening the comment period for the RFI pertaining to the energy conservation standards for ACUACs, ACHPs, and CWAFs, and will accept comments received on and before July 1, 2020, in order to provide interested parties additional time to prepare and submit comments. Accordingly, DOE will consider any comments received by this date to be timely submitted.

Signing Authority

This document of the Department of Energy was signed on June 9, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 11, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–12934 Filed 6–16–20; 8:45 am]

BILLING CODE 6450–01–P

[1] Available at *https://www.regulations.gov/document?D=EERE-2019-BT-STD-0042-0003.*

[2] Available at *https://www.regulations.gov/document?D=EERE-2019-BT-STD-0042-0004.*

[3] Available at *https://www.regulations.gov/document?D=EERE-2019-BT-STD-0042-0005.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0590; Product Identifier 2020–NM–055–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2017–25–04, which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320 211, 212, 214, 231, 232, and 233 airplanes; and Model A321 111, 112, 131, 211, 212, 213, 231, and 232 airplanes. The FAA also proposes to supersede AD 2019–03–17, which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes; and Model A321 series airplanes. AD 2019–03–17 requires revising the existing maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. Since the FAA issued AD 2019–03–17, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by August 3, 2020.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For EASA material that will be incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.*

For the Airbus material identified in this proposed AD that will continue to be IBR, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *https://www.airbus.com.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0590.

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–2020–0590; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, 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 FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0590; Product Identifier 2020–NM–055–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

The FAA will post all comments that are received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the FAA receives about this NPRM.

Discussion

The FAA issued AD 2019–03–17, Amendment 39–19569 (84 FR 6315, February 27, 2019) (''AD 2019–03–17''), for all Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplane; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. AD 2019–03–17 requires revising the existing maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. The FAA issued AD 2019–03–17 to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. AD 2019–03–17 specifies that accomplishing the revision required by paragraph (g) of that AD terminates all requirements of AD 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017) (''AD 2017–17–04'').

Actions Since AD 2019–03–17 Was Issued

Since the FAA issued AD 2019–03–17, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0067, dated March 23, 2020 (''EASA AD 2020–0067'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; Model A320–211, –212, –214, –215,

–216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after January 17, 2020, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0067 describes airworthiness limitations for certification maintenance requirements.

This AD would also require Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018, which the Director of the Federal Register approved for incorporation by reference as of April 3, 2019 (84 FR 6315, February 27, 2019).

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2019–03–17. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2020–0067 described previously, as incorporated by reference. Any differences with EASA AD 2020–0067 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2020–0067 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0067 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2020–0067 that is required for compliance with EASA AD 2020–0067 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0590 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c).

Costs of Compliance

The FAA estimates that this proposed AD affects 1,553 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–03–17 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

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 above, 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:

■ a. Removing Airworthiness Directive (AD) 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017); and AD 2019–03–17, Amendment 39–19569 (84 FR 6315, February 27, 2019); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2020–0590; Product Identifier 2020–NM–055–AD.

(a) Comments Due Date

The FAA must receive comments by August 3, 2020.

(b) Affected ADs

This AD replaces AD 2017–25–04, Amendment 39–19118 (82 FR 58098, December 11, 2017) (''AD 2017–25–04''); and AD 2019–03–17, Amendment 39–19569 (84 FR 6315, February 27, 2019) (''AD 2019–03–17'').

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before January 17, 2020.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address a safety-significant latent failure (that is not annunciated), which, in combination with one or more other specific failures or events, could result in a hazardous or catastrophic failure condition.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–03–17, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 13, 2018: Within 90 days after April 3, 2019 (the effective date of AD 2019–03–17), revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018. The initial compliance time for accomplishing the tasks specified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018, is at the applicable time specified in Airbus A318/A319/A320/A321 ALS Part 3, Certification Maintenance Requirements (CMR), Revision 06, dated June 13, 2018, or within 90 days after April 3, 2019, whichever occurs later. Accomplishing the maintenance or inspection program revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained Restrictions on Alternative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2019–03–17, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0067, dated March 23, 2020 (''EASA AD 2020–0067''). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2020–0067

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0067 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0067 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0067 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0067 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0067, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0067 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0067 does not apply to this AD.

(k) New Provisions for Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed except as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0067.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (m)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) 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.

(ii) AMOCs approved previously as specified in paragraph (j)(1)(ii) of AD 2019–03–17 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2020–0067 that contains RC procedures and tests: Except as required by paragraph (l)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) Related Information

(1) For information about EASA AD 2020–0067, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(2) For information about the Airbus material identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *https://www.airbus.com.*

(3) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0590.

(4) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

Issued on June 9, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–12866 Filed 6–16–20; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[GN Docket No. 20–32; DA 20–594; FRS 16841]

Office of Economics and Analytics and Wireline Competition Bureau Seek Comment on Adjustment Factor Values for the 5G Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Office of Economics and Analytics (Office) and the Wireline Competition Bureau (Bureau) propose and seek comment on specific adjustment factor values for purposes of bidding in the 5G Fund auction as well as for disaggregating legacy support. The Office and Bureau seek comment on these adjustment factor values and specifically on whether these values are appropriate to achieve the Commission's objective of distributing 5G Fund and legacy support to a range of areas across the country that are geographically and economically diverse, and to ensure that the 5G Fund supports those areas that absent such support would be unlikely to reap the benefits of 5G deployment.

DATES: Comments are due on or before July 7, 2020; reply comments are due on or before August 6, 2020.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments identified by GN Docket No. 20–32 on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Commission's Electronic Comment Filing System (ECFS) at *https://www.fcc.gov/ecfs/.* Except when the filer requests that materials be withheld from public inspection, any document may be submitted electronically through the Commission's ECFS. Persons that need to submit confidential filings to the Commission should follow the instructions provided in the Commission's March 31, 2020 public notice, DA 20–361, regarding the procedures for submission of confidential materials.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial Overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, Annapolis, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th St. SW, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

FOR FURTHER INFORMATION CONTACT: Kate Matraves, Economic Analysis Division, Office of Economics and Analytics, (202) 391–6272 or *Catherine.Matraves@fcc.gov*, or Emily Burke, Auctions Division, Office of Economics and Analytics, (202) 418–1470 or *Emily.Burke@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Adjustment Factor Comment Public Notice,* GN Docket No. 20–32, DA 20–594, released on June 5, 2020. The complete text of this document and its appendices is available for public inspection and

copying during regular business hours from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554, except when FCC Headquarters is otherwise closed to visitors. *See* Public Notice, *Restrictions on Visitors to FCC Facilities,* March 12, 2020. The complete text of this document and its appendices are also available on the Commission's website at *https://www.fcc.gov/document/bureau-seek-comment-adjustment-factor-values-5g-fund* or by using the search function for GN Docket No. 20–32 on the Commission's ECFS web page at *https://www.fcc.gov/ecfs/.* Alternative formats (braille, large print, electronic files, audio format) are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418 0530 (voice), (202) 418–0432 (TTY).

I. Introduction

1. On April 23, 2020, the Commission adopted the *5G Fund NPRM and Order,* 85 FR 31636, May 26, 2020, 85 FR 34525, Jun. 5, 2020, in which it proposed to adopt rules and a framework for establishing the 5G Fund for Rural America. Using multi-round reverse auctions, the 5G Fund would provide up to $9 billion to support 5G service in rural areas of the country that otherwise would be unlikely to see unsubsidized deployment. Every American, including those living in rural areas, should have access to high-speed, mobile wireless broadband networks that are capable of providing 5G service in order to facilitate the development of new technologies, foster economic growth, and ensure that educational opportunities are widely available. To account for the relative costs of serving areas that vary in terrain characteristics and potential business cases, the Commission proposed to apply an adjustment factor to make the most difficult areas to serve more attractive at auction in order to encourage more bidding for these areas. The adjustment factor also would be used to transition legacy high-cost support to 5G Fund support. The Office of Economics and Analytics (Office) and the Wireline Competition Bureau (Bureau) seek comment on proposed adjustment factor values and on three economic analyses that have informed their proposed adjustment factor values.

2. In the *5G Fund NPRM and Order,* the Commission declared its commitment to bridging the digital divide and proposed to dedicate universal service funds to bring 5G mobile wireless service to the rural areas where there is likely insufficient financial incentive for mobile wireless carriers to invest in 5G-capable networks absent support. In proposing the 5G Fund as a replacement for Mobility Fund Phase II (which focused on 4G LTE), the Commission recognized that all American consumers, not just those living in urban areas, must have access to the most current and advanced technologies and services available in the marketplace in order to fully participate in today's society. By supporting the construction and operation of 5G mobile broadband networks in areas that may otherwise go unserved, the Commission stated that it can help Americans living, working, and traveling in rural communities gain access to communication options on par with those offered in urban areas.

3. The Commission proposed in the *5G Fund NPRM and Order* to use a multi-round, descending clock auction similar to the Connect America Fund Phase II for Phase I of the 5G Fund to identify: (1) The areas that will receive support; (2) the provider that will be assigned to receive support in each such area; and (3) the amount of support that each winning bidder will be eligible to receive. Further, the Commission proposed that bids for 5G Fund support would be accepted and winning bids would be determined based on a support price per adjusted square kilometer of the eligible area covered by the bid. To determine the adjusted square kilometers of the eligible areas, the Commission proposed to incorporate an adjustment factor into the auction design. This factor would assign a weight to be applied to the actual square kilometers of eligible areas that would reflect, among other things, the relative cost of serving areas with differing terrain characteristics, as well as the potential business case for serving each area. In the *Mobility Fund Phase II Report and Order,* 82 FR 154221 (Mar. 28, 2017), 82 FR 13413 (Mar. 13, 2017), the Commission acknowledged that terrain could affect the cost of deploying service, noting that more mountainous terrains with greater variations in slope are areas that tend to be more costly to serve than level plains. A terrain factor was adopted in Mobility Fund Phase II to weight the area of each square kilometer within a census block such that eligible areas in more mountainous areas would be allocated a greater amount of a competitive ETC's total legacy support to reflect the higher costs of serving such areas. The Commission explained in the *5G Fund NPRM and Order* that the auction format proposed for the 5G Fund is one in which a uniform support rate is offered across all eligible areas, and carriers indicate which specific areas they would service at that rate. If the sum of all payments that would be made at a specific rate given carriers' expressed willingness to serve exceeds the 5G Fund budget, then the rate would decrease and carriers would express their willingness to serve at the lower rate. This process would continue until the payment is less than or equal to the 5G Fund budget. Under this process, carriers would be willing to serve fewer areas as the rate falls, but if the same rate is offered for all remaining areas, more support than is needed would flow to the less costly-to-serve and more profitable remaining areas. The adjustment factor would, therefore, allocate a multiple of any given support rate to more costly and less profitable areas, thereby making them more attractive to serve and increasing the support to such areas.

4. In addition, for purposes of transitioning legacy high-cost support to 5G support, the Commission proposed to disaggregate legacy high-cost support. To account for the relative costs of providing mobile service, the Commission proposed to apply an adjustment factor to these disaggregation steps. This adjustment factor would determine how support will be treated during the transition across difference types of areas—for example, how support will be disaggregated across eligible and ineligible portions of the legacy support area, as well as in eligible portions of the legacy support area where a bidder wins support and where there is no winner. In other words, the Commission proposed to multiply the actual square kilometers of eligible areas and/or disaggregated areas of legacy support by an adjustment factor so as to increase the amount of support per actual square kilometer that goes to more costly or less profitable areas.

5. In the *5G Fund NPRM and Order,* the Commission directed the Office and Bureau to propose and seek comment on the appropriate adjustment factor values and the underlying methodologies that could be used to develop them, and recommended that they inform their proposals by using data from several sources, including the U.S. Geological Survey, historical coverage and infrastructure deployment data received by the Commission, data from the U.S. Census Bureau, spectrum holdings information, and Mobility Fund Phase I auction data. In the *Adjustment Factor Comment Public Notice,* the Office and Bureau propose specific adjustment

factor values for purposes of bidding in the 5G Fund auction as well as for disaggregating legacy support. These proposed values reflect the Office and Bureau's evaluation of the costs and benefits of providing 5G services to different geographic areas, as informed and supported by three economic analyses developed by Commission staff and described in detail in Appendix B to the *Adjustment Factor Comment Public Notice.* The Office and Bureau seek comment on these adjustment factor values and specifically on whether these values are appropriate to achieve the Commission's objective of distributing 5G Fund and legacy support to a range of areas across the country that are geographically and economically diverse, and to ensure that the 5G Fund supports those areas that absent such support would be unlikely to reap the benefits of 5G deployment.

II. Determination of an Adjustment Factor

6. In this section, the Office and Bureau first describe the cost factors underlying the deployment of a 5G network in rural areas, as well as the potential expected revenues for each area, and then propose certain adjustment factor values and provide a summary of the three underlying economic analyses used to develop these values. In Appendix A to the *Adjustment Factor Comment Public Notice,* the Office and Bureau provide a terrain elevation map of the United States. In Appendix B to the *Adjustment Factor Comment Public Notice,* the Office and Bureau provide a detailed description of the three economic analyses under comment, which account for the expected variations in terrain and revenues across different geographic areas.

A. Factors Underlying an Adjustment Factor

7. Deploying 5G wireless networks in rural areas is a capital-intensive investment primarily driven by the costs of deploying base station cell sites. The costs of constructing, operating, and upgrading tower sites, or leasing tower sites, will vary depending on factors such as the location's remoteness, distance to the nearest road, access to backhaul, variance in terrain elevation, land cover, and the cost of local construction and installation labor. The potential coverage area of a site, and hence the number of sites needed, in turn will depend on the specific site location, antenna height above average terrain, terrain variation, foliage and the density of local structures, the spectrum band, and the number of subscribers served. Terrain variation can limit overall signal propagation and cell coverage depending on the specific location of the cell site due to the obstructions of the signal's path. For example, in a hilly area with terrain obstacles, signal propagation losses are more severe at higher frequencies, although a cell site would typically be located on higher ground in order to minimize terrain obstructions.

8. *Site Costs.* The initial capital expenditure for deploying a wireless network base station includes site construction costs, such as site acquisition; site development; leasehold improvements; shelter, including the equipment shelter and installation services; structure cost including the tower structure, design, construction, and installation costs; radio frequency cost including the radio and baseband electronics, antennas, and cables; and backhaul cost including equipment and service to connect the site to the core network. Collocation on an existing tower generally should cost less than building a new tower site, but it is less likely that existing towers are available in more remote and unserved areas. In addition, deploying new sites in hillier terrain is likely to incur higher site costs due to the need to construct backhaul and leasehold improvement requirements such as constructing road and utility access, in addition to excavating a level space with proper drainage to construct a tower. Remote site development costs are largely dependent on the specific location and the leasehold improvements required can vary significantly. It is typically more expensive to provide service to rural subscribers due to the scarcity of utility and other services and the long distances required to travel to reach the sites in less densely populated areas, especially if terrain is more mountainous.

9. *Spectrum.* Spectrum bands can be classified broadly as: Low-band (below 1 GHz), mid-band (between 1 GHz and 6 GHz), and high-band. Each band has unique coverage and capacity properties; low-band spectrum is better suited for wider coverage (both in terms of range as well as better indoor penetration) and higher-band spectrum is better suited for higher capacity and throughput. The wavelength of the signal, which is inversely proportional to frequency, impacts the signal's ability to propagate over and around obstacles and to penetrate various building materials and land cover such as trees and shrubs. A higher frequency signal is generally attenuated more at greater distances than a lower frequency signal due to antenna and atmospheric effects. Frequencies below 1 GHz experience lower propagation losses and therefore can provide coverage over a larger area which leads to cost advantages for network deployment in rural areas. Higher frequency bands, on the other hand, are typically available in larger channel bandwidths which lead to higher throughput speeds but the wavelength of the signal results in greater propagation losses. A higher frequency signal generally encounters higher penetration losses as it propagates through obstructions such as buildings or trees; larger amounts of contiguous spectrum are typically available in higher operating frequencies than in lower frequencies. The additional contiguous spectrum, however, allows for assignment of larger channel bandwidths, thereby making available more capacity as compared to lower frequencies. Mobile wireless carriers, depending on their spectrum holdings, may be able to simultaneously deploy low and mid-band spectrum in rural areas to take advantage of both propagation and capacity capabilities, respectively. If the cost of spectrum is lower in more rural areas, this could significantly offset many of the other higher site costs. In addition, 5G technology enables carrier aggregation to further optimize the desired coverage, throughput, and capacity. Carrier aggregation enables the use of two different channels within the same frequency spectrum or in different spectra, allowing, for example, the augmentation of low band propagation capabilities with mid band capacity advantages.

10. The Office and Bureau propose to use various cost characteristics as outlined here and described in more detail in Appendices A and B to the *Adjustment Factor Comment Public Notice*—including terrain elevation, spectrum frequency and clutter—to capture the relative cost of serving areas with differing terrain characteristics. The Office and Bureau seek comment on this proposal.

11. *Business Case: Demand Factors.* As well as being geographically diverse, the United States is economically diverse. As set out in the *5G Fund NPRM and Order,* in addition to relative cost characteristics, the adjustment factor values the Office and Bureau propose should also capture the expected revenues that might be generated in each area. The Office and Bureau propose to use various economic characteristics—including income, GDP, and population density—as proxies for the demand factors in each of the economic analyses. The Office and Bureau seek comment on this proposal.

B. Proposed Adjustment Factor Values

12. The Commission proposed in the *5G Fund NPRM and Order* to adopt an adjustment factor that would assign a weight to specific geographic areas. The proposed adjustment factor values would increase the likelihood that 5G Fund support is distributed to geographically and economically diverse areas by taking into account the differences among such areas in the costs and benefits of providing services. The Commission also proposed a process in the *5G Fund NPRM and Order* to disaggregate legacy high-cost support. As the Commission explained, to disaggregate legacy support, it ''would overlay the boundaries of eligible areas and the minimum geographic area for bidding over each legacy support recipient's service area[,]'' in effect ''subdivid[ing] the geographic boundary for each carrier's subsidized service area into the smallest constituent piece for which support must be disaggregated and transitioned separately'' and then apply the adjustment factor to each such area. In this way, a larger portion of a carrier's disaggregated legacy high-cost support would be assigned to those portions of its subsidized service area that have a higher adjustment factor, using the same values calculated for bidding. For example, suppose that a carrier receives $100 in legacy high-cost support for its subsidized service area, the entirety of which is eligible for 5G Fund support. If 15 square kilometers of the service area falls within census tract A, which has an adjustment factor value of 2.0, and 70 square kilometers of the service area falls within census tract B, which has an adjustment factor value of 1.0, the Commission would disaggregate its legacy support and assign $30 to the portion of the service area in census tract A and $70 to the portion of the service area in census tract B. The *5G Fund NPRM and Order* directs the Office and Bureau to propose specific values for the adjustment factor and to detail the underlying methodologies that could be used to develop the weights. The Office and Bureau accordingly seek comment on how to apply the adjustment factor to the disaggregation of legacy support.

13. First, the Office and the Bureau seek comment on the adjustment factor values presented in Figure 1, which synthesize and are informed by the three economic analyses. Each of the economic analyses estimates one or more sets of adjustment factor values. To generate the values presented in Figure 1, essentially the Office and Bureau considered a middle ground of the three specific analyses so as to take all three analyses into account, and then rounded for administrative simplicity. The Office and Bureau believe this is the most reasonable way to integrate all the results generated by the Entry Model, the Cell Site Density Model and the Auction Bidding Model. The explanation of the three terrain categories and the demand factors listed in Figure 1 can be found in Appendix A and Appendix B to the *Adjustment Factor Comment Public Notice,* respectively. The Office and Bureau seek comment generally on their proposed adjustment factor values. The Office and Bureau recognize that the Commission does not intend that the adjustment factor that is ultimately adopted will capture the full differences between the costs and expected revenues of providing service to different types of geographic areas. In addition, the Commission stated in the *5G Fund NPRM and Order* that, if necessary, the adjustment factor will be capped to ensure the funding allocation determined by the auction is both equitable and efficient. Commenters are invited to address whether the specific proposed adjustment factor values are consistent with the intentions of the Commission as stated in the *5G Fund NPRM and Order.*

Fig. 1: Proposed Adjustment Factor Values

		Terrain Elevation		
		Flat	Hilly	Mountainous
Demand Factors	Low	1.2	2.4	3.8
	Medium	1.1	2.3	3.5
	High	1.0	2.0	3.0

14. The Office and Bureau seek comment also on the three economic analyses that inform their estimated adjustment factor values. The technical descriptions of the three economic analyses which informed the Office and Bureau's proposal are found in Appendix B to the *Adjustment Factor Comment Public Notice.* The Office and Bureau ask commenters to submit any analysis that alternatively or additionally might inform the adjustment factor values that the Office and Bureau propose. Further, the Office and Bureau seek comment on the data sources staff used, and ask that commenters submit alternative data sources to the extent that they might better inform the Office's and Bureau's analyses. In addition, the Office and Bureau seek comment on whether, in determining whether an area would be likely to receive 5G service, the Office and Bureau have identified appropriately the underlying factors that wireless carriers use in considering whether to deploy 5G service. Finally, the Office and Bureau ask commenters to submit any alternative methodological approaches and

analyses for determining the appropriate adjustment factor values.

15. *Entry Model Adjustment Factor.* In order to estimate how relative costs and revenues differ across geographic areas, the Office and Bureau's first analysis examines how geographic areas' physical and demographic characteristics affect carriers' network deployment decisions. The Office and Bureau assume that carriers only enter areas where their long-run incremental revenues are greater than their long-run incremental cost of deploying wireless mobile service; this implies those areas with high demand and low costs attract a greater number of carriers than those areas with low demand and high costs. To understand what makes an area attractive to carriers, the Office and Bureau estimate an ordered logistic regression of the number of carriers providing service. To proxy for the carriers' expected revenue generated by entering the area and providing service, the Office and Bureau include independent variables such as population, local GDP, and median household income. To proxy for network deployment costs, the Office and Bureau include independent variables such as terrain variation and the percentage of forested land. Finally, the Office and Bureau include a variable that accounts for past universal service support. To construct the adjustment factor, the Office and Bureau solve for the adjustments necessary to offset entry probability differences caused by variations in terrain and income. The Commission has proposed in the *5G Fund NPRM and Order* that the adjustment factor would be applied in the auction bidding system as a multiplicative factor on the number of square kilometers associated with a biddable area, so the Office and Bureau estimate the adjustment factor values that, all else equal, would make the adjusted square kilometers in all areas equally attractive to bidders. To ensure that the model's estimated parameters and resulting adjustment factors are robust to alternative assumptions, the Office and Bureau report the estimation results and the accompanying factors from twelve different specifications of the model.

16. *Cell Site Density Model Adjustment Factor.* In their second analysis, the Office and Bureau estimate the difference in the number of cell sites required to provide high-quality 5G service in hillier terrain areas compared to flat areas. Since more variability in the terrain of a cell site service area tends to reduce the received signal strength at a given location, wireless carriers must, all else equal, build more cell sites in mountainous rural areas compared to flat rural areas to provide the same quality of service (*e.g.,* speed). Using county-level cell site locations and coverage data, the Office and Bureau's model estimates differences in the average coverage area of a site due to the terrain of the site service area, holding all other determinants of cell site coverage areas fixed. To predict cell site coverage areas by terrain category, the Office and Bureau first run a regression analysis of cell site coverage area on variables that account for network capacity, network load, signal propagation, and service quality. Then using the regression model estimates, the Office and Bureau predict the average coverage area of a site in a typical rural area for their three terrain categories (flat, hilly, and mountainous) to calculate an adjustment factor that estimates how many sites per square mile on average are required to deploy comparable 5G mobile service in rural areas within each terrain category. If cell site deployment costs are the same across terrain categories, the adjustment factor values estimate the cost differences in providing wireless service across terrain types. If sites cost more to deploy in more mountainous terrain, then the adjustment factor values are underestimated. The Office and Bureau do not have information on deployment cost variation by terrain, so these potential cost differences are not accounted for in the estimated adjustment factors in the Cell Site Density Model.

17. *Auction Bidding Model Adjustment Factor.* In their third analysis, the Office and Bureau use Mobility Fund Phase I (Auction 901) sealed bid data (*i.e.,* a firm's requested subsidy to provide mobile service to a specified unserved geographic area) to understand how terrain and other factors impact the bid amount requested by a carrier to deploy service. The Office and Bureau assume that a carrier's bid amount is a function of its expected revenues, expected competition in the auction, and expected costs. The Office and Bureau estimate adjustment factor values by applying a regression model that estimates the effect of terrain on the bid amount controlling for variables that determine revenues and costs. To calculate adjustment factor values, the Office and Bureau divide their measure of terrain into the same three categories and then predict the expected ratio of bid amounts in the hilly and mountainous terrain categories over the bid amount in flat terrain while holding all other factors fixed.

III. Procedural Matters

18. *Ex Parte Rules—Permit-But-Disclose.* Pursuant to § 1.1200(a) of the Commission's rules, 47 CFR 1.1200(a), this document shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

19. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b). In proceedings governed by § 1.49(f) of the Commission's rules, 47 CFR 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions Division, Office of Economics and Analytics.

[FR Doc. 2020–12845 Filed 6–16–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 85, No. 117
Wednesday, June 17, 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

Forest Service

Notice of Intent To Issue Forest Order Closing Areas Near Beattie Gulch Trailhead and McConnell Fishing Access North and West of Gardiner, Montana to the Discharge of Firearms

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, is giving notice of intent to issue an order closing the Beattie Gulch Trailhead and McConnell Fishing Access areas north and west of Gardiner, Montana to the discharge of firearms in advance of the public comment period for the proposed closure. At the end of the notice of intent period, the Forest Service will solicit public comments, as specified in this notice, on the proposed forest order.

DATES: The public comment period will begin June 24, 2020. The Forest Service will accept comments on the proposed forest order for 60 days. The notice of the opportunity for public comment, including directions on how to submit comments, will be posted at *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

ADDRESSES: The proposed forest order and the justification for the forest order are available on the Forest Service's website at *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

FOR FURTHER INFORMATION CONTACT: Mike Thom, District Ranger, 406–848–7375, extension 22, *michael.thom@usda.gov.*

Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

I. Advance Notice and Public Comment Procedures

Section 4103 of the John D. Dingell, Jr., Conservation, Management, and Recreation Act (Pub. L. 116–9) requires that the Secretary of Agriculture, acting through the Chief of the Forest Service, provide public notice and comment before permanently or temporarily closing any National Forest System lands to hunting, fishing, or recreational shooting. Section 4103 applies to the proposed forest order closing areas near Beattie Gulch and McConnell Fishing Access north and west of Gardiner, Montana to the discharge of firearms. The public notice and comment process in section 4103(b)(2) requires the Secretary to publish a notice of intent, in the **Federal Register**, of the proposed closure in advance of the public comment period for the closure. This notice meets the requirement to publish a notice of intent in the **Federal Register** in advance of the public comment period.

Following the notice of intent, section 4103(b)(2) requires an opportunity for public comment. Because the proposed forest order would permanently close areas near Beattie Gulch and McConnell Fishing Access, north and west of Gardiner, Montana to the discharge of firearms, the public comment period must be not less than 60 days. The solicitation for public comment will be posted on *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

Section 4103(b)(2) requires the Secretary to respond to public comments received on the proposed forest order, explain how the Secretary resolved any significant issues raised by the comments, and show how the resolution led to the closure. The response to comments on the proposed order, justification for the final order, and the issuance of the final forest order will all be posted on the following website: *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

II. Background and Need for Forest Order

This permanent shooting closure is needed to address potentially imminent harm to human health and safety resulting from the discharge of firearms in these small areas. Bow hunting/shooting would still be allowed. These areas total 23 acres in size collectively, Beattie Gulch is 18 acres and McConnell Fishing access totals 5 acres. The size of both areas has been limited to the minimum necessary to protect public health and safety. The Beattie Gulch area and McConnell Fishing Access permanent closures are needed to address concerns resulting from the discharge of firearms toward developed facilities including the Old Yellowstone Trail South, private property and residences, the Yellowstone River, a powerline, and Montana State Highway 89.

The proposed forest order and the justification for the forest order are available on the Forest Service's websites at *www.fs.usda.gov/main/custergallatin* and *www.fs.usda.gov/about-agency/regulations-policies.*

Lisa A Northrop,
Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2020–13080 Filed 6–16–20; 8:45 am]
BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Ohio 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 Ohio Advisory Committee (Committee) will hold a series of web based hearings to hear testimony regarding COVID–19 and health disparities in the state.

DATES: The hearings will take place on:

- (Session I) Thursday, July 16, 12 p.m.–1:30 p.m. EST
- (Session II) Thursday, July 23, 12 p.m.–1:30 p.m. EST

Public Call Information: (audio only both sessions) Dial: 800–367–2403; Conference ID: 7997507.

Web Access Information: (visual only both sessions) The online portion of the meeting may be accessed through the following links:

- (Session I) Thursday, July 16, 12 p.m.–1:30 p.m. EST: *https://*

cc.readytalk.com/r/3e7wk7eqxm9g&eom

- (Session II) Thursday, July 23, 12 p.m.–1:30 p.m. EST: *https://cc.readytalk.com/r/qimswm0d0zxo&eom*

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 202–618–4158.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. These meetings are free and open to the public through the above listed toll-free number (audio only) and web access links (visual only). Please plan to use *both* the call-in number *and* the web access link in order to fully participate in the meeting. Members of the public may join through the above listed toll-free number. 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 and conference ID number.

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 emailed to Carolyn Allen at *callen@usccr.gov* in the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit may contact the Regional Programs Unit Office at 202–618–4158.

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 *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkGAAQ* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or phone number.

Agenda

Welcome and Roll Call
Panel Discussion: COVID–19 and health disparities in the state
Public Comment
Adjournment

Dated: June 12, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13059 Filed 6–16–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Missouri Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a series of briefings: Thursday, June 25; Thursday, July 16, and Thursday, August 13, 2020 at 12:00 p.m. (Central) for the purpose of discussing the state of Missouri's Covid–19 related voting preparations.

DATES: The briefings will be held on Thursdays, June 25, July 16, and August 13, 2020 at 12:00 p.m. (Central).

Public Call Information: Dial: 888–204–4368, Conference ID: 1750791.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following call-in number: 888–204–4368, conference ID: 1750791. 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 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following each meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional 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, Missouri Advisory Committee link (*https://facadatabase.gov/committee/committee.aspx?cid=258&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Panel Presentations
Question and Answer period
Public Comment
Adjournment

Dated: June 12, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13058 Filed 6–16–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana 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 planning meeting of the

Indiana State Advisory Committee to the Commission will convene by conference call, on Friday, June 19, 2020 at 1:00 p.m. (EST). The purpose of the meeting is to discuss an Indiana Voting Rights Statement.

DATES: Friday, June 19, 2020 at 1:00 p.m. (EST).

Call-In Information: 800–263–0877 and conference call ID: 9922025.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at 202–809–9618.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the telephone number and conference ID listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. 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-in numbers: 800–263–0877 and conference call ID: 9922025.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 202–809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzlgAAA;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Midwestern 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 Midwestern Regional Office at the above phone number or email.

Agenda

I. Welcome and Roll Call
II. Discussion and Vote: IN Voting Rights Statement
III. Public Comment
IV. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the immediacy of the subject matter.

Dated: June 11, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–12992 Filed 6–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

Approved Information Collection Activities; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; Correction

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice; correction.

SUMMARY: On June 9, 2020, the Department of Commerce, published a 30-day public comment period notice in the **Federal Register** with FR Document Number 2020–12413 (Pages 35257–35258), and on March 24, 2020, published a 60-day public comment period notice with FR Document Number 2020–06174 (Page 16612) seeking public comments for an information collection entitled, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' This document referenced incorrect information in the **DATA** section, and Commerce hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For additional information contact the DOC PRA Clearance Officer, Office of Policy and Governance at *PRAcomments@doc.gov.*

SUPPLEMENTARY INFORMATION:

Correction

Data

Estimated Number of Respondents: 141,900.

Estimated Total Annual Burden Hours: 31,848.

Estimated Cost to the Public: $265,188.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the initial publication notice date of June 9, 2020 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 and entering either the title of the collection or the OMB Control Number 0690–0030.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–13074 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–104–2020]

Foreign-Trade Zone 27—Boston, Massachusetts; Application for Subzone; Ipswich Shellfish Company, Inc.; Ipswich, Massachusetts

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Massachusetts Port Authority, grantee of FTZ 27, requesting subzone status for the facility of Ipswich Shellfish Company, Inc., located in Ipswich, Massachusetts. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on June 11, 2020.

The proposed subzone (0.19 acres) is located at 9 & 11 Hayward Street, Ipswich, Essex County, Massachusetts. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 27.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is July 27, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 11, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at

Elizabeth.Whiteman@trade.gov or (202) 482–0473.

Dated: June 11, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–13077 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–051, C–570–052]

Certain Hardwood Plywood Products From the People's Republic of China: Initiation of Anti-Circumvention Inquiries and Scope Inquiries on the Antidumping Duty and Countervailing Duty Orders; Vietnam Assembly

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

SUMMARY: In response to allegations of circumvention from the Coalition for Fair Trade in Hardwood Plywood (the petitioner), the Department of Commerce (Commerce) is initiating country-wide anti-circumvention inquiries to determine whether certain hardwood plywood products (plywood) completed in Vietnam using plywood components (face veneer, back veneer, and/or either an assembled core or individual core veneers) manufactured in the People's Republic of China (China), or Chinese components (assembled cores, multi-ply core panels, or individual core veneers) combined in Vietnam with other components (face and/or back veneers) manufactured in Vietnam or third countries, are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on plywood from China. We are also initiating scope inquiries to determine whether any of the products produced under various production scenarios alleged by the petitioner are covered by the scope of the AD/CVD orders on plywood from China. Finally, we are aligning the deadline for the scope inquiries associated with a covered merchandise referral from U.S. Customs and Border Protection (CBP) under the Enforce and Protect Act of 2015 (EAPA) with the anticircumvention inquiries.

DATES: Applicable June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018, Commerce issued AD and CVD orders on plywood from China.[1] On September 16, 2019, Commerce received an EAPA covered merchandise referral from CBP.[2] On January 17, 2020, Commerce published a notice of initiation of scope inquiries related to this referral in order to determine whether plywood produced by Vietnam Finewood Company Limited from China-origin materials are covered merchandise subject to the *Orders.*[3]

On February 25, 2020, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(c) and (h), the petitioner requested that Commerce issue a scope ruling, or in the alternative, an anti-circumvention ruling, that plywood completed in Vietnam using plywood components manufactured in China, and imported into the United States as Vietnamese-origin plywood, are either within the scope of the *Orders* or are circumventing the *Orders.* Specifically, the petitioner alleged that Chinese plywood components are undergoing minor assembly and finishing in Vietnam that does not remove the merchandise from coverage of the *Orders,* and that these products are entering the United States as Vietnamese-origin plywood for the express purpose of avoiding AD/CVD duties. In the alternative to a scope ruling, the petitioner requested that Commerce find that these products constitute merchandise completed or assembled in a third country that is circumventing, and should be included within, the scope of the *Orders.*[4]

On March 4, 2020, Commerce accepted the petitioner's scope-ruling and circumvention-ruling request and established deadlines for interested parties to provide comments.[5] Between March 18, 2020 and May 1, 2020, we received comments from interested parties in response to the allegations made by the petitioner.[6]

On April 14, 2020, Commerce extended the deadline for either issuing a final scope and/or anti-circumvention ruling or initiating a formal scope and/or anti-circumvention inquiry to June 2, 2020.[7] On May 8, 2020, we requested additional information from the petitioner,[8] and on May 13, 2020, the petitioner submitted its response to this request.[9] In this response, the petitioner requested that Commerce expand its inquiry to determine whether plywood assembled in Vietnam from mainly Chinese components, but also including face and/or back veneers from Vietnam or third countries, are within the scope or are circumventing the *Orders.*[10]

On June 2, 2020, we again extended the deadline to either issue a final scope and/or anti-circumvention ruling or

[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018) (collectively, *Orders*).

[2] *See Certain Hardwood Plywood from the People's Republic of China: Notice of Covered Merchandise Referral and Initiation of Scope Inquiry,* 85 FR 3024 (January 17, 2020) (*EAPA Scope Inquiry Initiation*).

[3] *Id.*

[4] *See* Petitioner's Letter, ''Certain Hardwood Plywood Products from the People's Republic of China: Request for Scope Ruling/Anti-Circumvention Ruling,'' dated February 25, 2020 (Petitioner's Request).

[5] *See* Memorandum, ''Certain Hardwood Plywood Products from the People's Republic of China: Deadline for Comments on the Vietnam Assembly Scope Ruling Request,'' dated March 4, 2020.

[6] *See* Vietnam Timber and Forest Product Association's Letter, ''Certain Hardwood Plywood Products from the People's Republic of China: Response Comments to Scope/Anti-Circumvention Inquiry Requests,'' dated March 18, 2020; *see also* Truong Son Industrial Wood JSC's Letter, ''The Petitioner's Request for Determining Range of Products/Anti-Circumvention Investigation into Certain Hardwood Plywood Products,'' dated March 20, 2020; VietBac Plywood JSC and Plywood Source LLC's Letter, ''Certain Hardwood Plywood Products from the People's Republic of China: Response Comments to Scope/Anti-Circumvention Inquiry Requests,'' dated March 20, 2020; TL Trung Viet Co., Ltd.'s Letter, ''Letter of Request to Consider about Tax Imposition,'' dated March 20, 2020; Thanh Hoa Wood Industry Co., Ltd.'s Letter, ''The Petitioner's Request for Determining Range of Products/Anti-Circumvention Investigation into Certain Hardwood Plywood Products,'' dated March 20, 2020; DH Respondent Letter, ''Hardwood Plywood from the People's Republic of China: Comments to Petitioner's Request for Scope/Anti-Circumvention Inquiry,'' dated March 20, 2020; Importers Alliance's Letter, ''Investigation of the Antidumping and Countervailing Duty Orders on Hardwood Plywood Products from the People's Republic of China, Scope-Vietnam Assembly: Objection to Request for Scope and Anti-Circumvention Inquiry,'' dated March 20, 2020; Vietnam Ministry of Industry and Trade's Letter, ''The Petitioner's Request for Scope of Ruling/Anti-Circumvention Ruling for Hardwood Plywood Products,'' dated March 25, 2020; and Ike Trading Co., Ltd.'s Letter, ''Certain Hardwood Plywood Products from the People's Republic of China: Resubmission of Ike Trading's Scope Comments,'' dated May 1, 2020.

[7] *See* Commerce's Letter, ''Certain Hardwood Plywood Products from the People's Republic of China: Extension of Deadline,'' dated April 14, 2020.

[8] *See* Commerce's Letter, ''Certain Hardwood Plywood from the People's Republic of China: Clarification of Scope Ruling/Anticircumvention Ruling Request,'' dated May 8, 2020.

[9] *See* Petitioner's Letter, ''Hardwood Plywood Products from the People's Republic of China: Coalition's Response to Request for Clarification,'' dated May 12, 2020 (Petitioner's Clarification).

[10] *Id.*

initiate a formal scope and/or anti-circumvention inquiry to June 9, 2020.[11]

Scope of the Orders

The product covered by the *Orders* is hardwood and decorative plywood from China. For a complete description of the scope of the orders, *see* Appendix.

Merchandise Subject to the Anti-Circumvention Inquiries

These anti-circumvention inquiries cover plywood completed in Vietnam using plywood components (face veneer, back veneer, and/or either an assembled core or individual core veneers) manufactured in China, or Chinese components (assembled cores, multi-ply core panels, or individual core veneers) combined in Vietnam with other components (face and/or back veneers) manufactured in Vietnam or third countries, and subsequently exported to the United States.[12]

Initiation of Anti-Circumvention Inquiry Proceedings

Section 781(b) of the Act and 19 CFR 351.225(h) provide that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind subject to the order is completed or assembled in another foreign country before being exported to the United States. In conducting anti-circumvention inquiries under section 781(b)(1) of the Act, Commerce relies upon the following criteria: (A) Merchandise imported into the United States is of the same class or kind as merchandise produced in a foreign country that is the subject of an AD or CVD order or finding; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in another foreign country is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) Commerce determines that action is appropriate to prevent evasion of such order or finding. As discussed below, the petitioner provides evidence with respect to these criteria.

A. Merchandise of the Same Class or Kind

The petitioner states that, pursuant to section 781(b)(1)(A) of the Act, the inquiry merchandise being completed in Vietnam and imported into the United States is of the same class or kind as the merchandise subject to the *Orders*.[13] The petitioner further argues that the products being completed in Vietnam are identical to the subject merchandise produced in China and are entering the United States under the same Harmonized Tariff Schedule subheadings as subject plywood from China.[14]

B. Completion of Merchandise in Another Foreign Country

The petitioner contends that section 781(b)(1)(B)(ii) of the Act covers the completion of plywood in Vietnam, because the main components in the production of plywood are manufactured in China, the country to which the *Orders* apply.[15] The petitioner also asserts that fully- or partially-assembled cores, or individual core veneers, produced in China that are combined in Vietnam with face and/or back veneers produced in Vietnam or a third country should be covered by the *Orders*; according to the petitioner, the vast majority of the cost of the finished plywood, in terms of materials, labor, and investment, is related to the production of the Chinese components (including core veneers in particular).[16]

C. Minor or Insignificant Process

Under sections 781(b)(1)(C) and 781(b)(2) of the Act, Commerce will take into account five factors to determine whether the process of assembly or completion of merchandise in other foreign countries is minor or insignificant. Specifically, Commerce will consider: (A) The level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether the value of processing performed in the foreign country represents a small portion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[17] Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular anti-circumvention inquiry.[18]

1. Level of Investment in the Foreign Country

The petitioner states that, based on the production steps that are occurring in China and Vietnam, the relative investment in Vietnam for the assembly operations at issue is likely minimal. According to the petitioner, with respect to the plywood produced solely from wooden components of Chinese origin, the circumvention involves assembling face and back veneers and/or a core (assembled or individual core veneers) that were manufactured in China, which accounts for the vast majority of the cost of production for plywood. The petitioner asserts that the vast majority of the production process, up through the production of the wooden veneers, occurs in China, and that these parts of the production process require more complex equipment, as well as much more plant space, than the later production processes that occur in Vietnam.

With respect to the plywood assembled in Vietnam from Chinese components and non-Chinese face and/or back veneers, the petitioner claims that the cost and production related to the face and back veneers is minimal relative to the production of core veneers. In particular, the petitioner claims that the majority of the veneers in any given plywood product are used

[11] *See* Commerce's Letter, ''Certain Hardwood Plywood Products from the People's Republic of China: Extension of Deadline,'' dated June 2, 2020.

[12] Specifically, these inquiries will cover plywood completed in Vietnam using: (1) Face veneer, back veneer, and assembled core components manufactured in China; and (2) face veneer, back veneer, and individual core veneers produced in China. Additionally, these inquiries will also examine, should such production scenarios exist, plywood completed in Vietnam using: (1) Fully assembled veneer core platforms manufactured in China and face and/or back veneers produced in Vietnam or third countries; (2) multi-ply panels of glued core veneers manufactured in China that are combined in Vietnam to produce veneer core platforms and combined with either a face and/or back veneer produced in China, Vietnam, or a third country; and (3) core veneers manufactured in China and processed into a veneer core platform in Vietnam and combined with a face and/or back veneer produced in Vietnam or other third country. A veneer core platform is defined as two or more wood veneers that form the core of an otherwise completed hardwood plywood product (*i.e.,* a hardwood plywood product to which the outer (face and back) veneers have not yet been affixed (*see* Petitioner's Request at Exhibit 11).

[13] *See* Petitioner's Request at 33–34.

[14] *Id.* According to the petitioner, the main components of plywood include face and back veneers, and/or either an assembled core or individual core veneers.

[15] *Id.* at 34–35.

[16] *See* Petitioner's Clarification at 2–6.

[17] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103–316, vol. 1 (1994) at 893.

[18] *See Uncovered Innerspring Units from the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order,* 83 FR 65626 (December 21, 2018), and accompanying Issues and Decision Memorandum at 4.

for the core while the face and back veneers each constitute only a single veneer.[19] Therefore, the petitioner contends that, to the extent that Commerce examines production scenarios described above that involve a combination of assembled cores, or individual core veneers, produced in China and face/back veneers produced in Vietnam or third countries, the cost, production, and value remains in the Chinese components (and in the core veneers in particular). As a result, the petitioner maintains that the minor processing that occurs in Vietnam also likely requires a minimal investment in Vietnam.[20]

2. Level of Research and Development in the Foreign Country

The petitioner states that there is likely no research and development occurring in Vietnam because in some cases the Vietnamese producers are just completing the end of the plywood production process. The petitioner asserts that, while the research and development required for setting up a production facility for plywood in China would be substantial, the level of research and development, if any, required for setting up an assembly facility in Vietnam would be very minimal.[21] The petitioner estimates that, for a fully integrated facility, approximately 90 percent of the research and development costs would relate to veneer production, with the vast majority of the veneers used for the core, while only 10 percent of the research and development costs would relate to assembly operations.[22]

3. Nature of the Production Process in the Foreign Country

The petitioner states that the process in Vietnam to complete the assembly of Chinese face and back veneers and Chinese core into plywood, or to apply Vietnamese or third-country face and back veneers to a Chinese core, or core veneers, involves very minimal processing compared to the production steps in China. The production steps that occur in China entail the majority and most significant portion of the production process (*i.e.,* the production of wooden veneers from logs, the vast majority of which are used for the core). The petitioner asserts that in certain cases the only production steps occurring in Vietnam are the layup of the veneers as necessary, and the application of glue and the assembly of the veneers using a cold and hot press, as well as any final trimming, sanding, and/or finishing.[23] Moreover, the petitioner asserts that adding additional veneers to an in-scope veneer core is minor further processing that does not move the completed merchandise out of the scope.[24]

4. Extent of Production Facilities in the Foreign Country

According to the petitioner, the extent of the facilities in Vietnam is necessarily limited because the companies in Vietnam are simply assembling into finished plywood the face and back veneers and/or the core (assembled core or individual core veneers), which are manufactured by Chinese producers. Moreover, the petitioner cites information indicating that there has been no increase in production facilities in Vietnam, despite the massive increase in exports of plywood to the United States.[25] The petitioner also explains that the production facilities required for veneer production, with the vast majority of the veneers used for the core, are substantial compared to those required to assemble face and back veneers and cores (assembled core or individual core veneers).[26]

5. Value of Processing Performed in the Foreign Country

The petitioner asserts that the value of processing in Vietnam represents a minority of the value of the merchandise imported into the United States. According to the petitioner, the production steps that take place in China make up the most significant portion of the production process and the cost of goods sold (COGS) for the plywood. The petitioner also cites to the investigation by the U.S. International Trade Commission (ITC), which found that the percentage of COGS accounted for by raw materials alone ranged from 78.8 percent to 79.4 percent from 2014 through 2016, and that the major raw material costs are the veneer, with the vast majority of the veneers used for the core, and other plywood used in the production of plywood.[27]

The petitioner also provided proprietary data to demonstrate that the most significant portion of the production costs is incurred in China from the production of veneers, and that a very small proportion of the value is accounted for by the assembly of the veneers in Vietnam.[28] The petitioner stated that, to the extent that assembled cores, or individual core veneers, produced in China that are being combined with Vietnam or third-country origin face/back veneers, the cost and production related to the face/back veneers is minimal relative to the production of core veneers and, thus, the vast majority of the cost, production, and value would still remain with the core veneers.[29]

D. Value of Merchandise Produced in the Foreign Country Is a Significant Portion of the Value of the Merchandise

The petitioner emphasizes that the overwhelming majority of the production and costs are accounted for by the raw materials (*i.e.,* the wooden veneers and core that are produced in China and shipped to Vietnam for assembly). According to the petitioner, this demonstrates that the value of the merchandise produced in China, which include the face veneer, back veneer, and/or core (assembled or individual core veneers), accounts for a significant portion of the total value of the merchandise ultimately exported to the United States.[30]

As noted above, the petitioner stated that, for plywood made from core veneers produced in China and further processed and combined with face and/or back veneers produced in Vietnam or a third country, the vast majority of the value of the merchandise exported remains in the core veneers from China.[31]

E. Factors To Consider in Determining Whether Action Is Necessary

Section 781(b)(1)(E) of the Act states that Commerce will determine whether action is appropriate to prevent evasion of an AD or CVD order, and section 781(b)(3) of the Act identifies additional factors that Commerce shall consider in determining whether to include parts or components in an AD or CVD order as part of an anti-circumvention inquiry, including: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in (1)(B) to assemble or complete in the foreign country the

[19] *See* Petitioner's Clarification at 5–6.

[20] *See* Petitioner's Request at 36–37; *see also* Petitioner's Clarification at 9–10 and Exhibits 1 and 3.

[21] *See* Petitioner's Request at 38; *see also* Petitioner's Clarification at 10–11 and Exhibits 1 and 3.

[22] *See* Petitioner's Clarification at 11 and Exhibit 3.

[23] *See* Petitioner's Request at 38–39.

[24] *See* Petitioner's Clarification at 4.

[25] *Id.* at 40; *see also* Petitioner's Clarification at 12–13 and Exhibits 1 and 4.

[26] *See* Petitioner's Clarification at 12–13 and Exhibits 1 and 4.

[27] *See* Petitioner's Request at 41.

[28] *Id.* at 42.

[29] *See* Petitioner's Clarification at 5–6.

[30] *Id.* at 44.

[31] *See* Petitioner's Clarification at 5–6.

merchandise that is subsequently imported in the United States; and (C) whether imports into the foreign country of the merchandise described in (1)(B) have increased after initiation of the investigation which resulted in the issuance of such order or finding.

1. Pattern of Trade

The petitioner argues that the pattern of trade demonstrates circumvention of the *Orders.*[32] The petitioner asserts that, since the investigations and imposition of the *Orders,* Chinese exports of plywood to the United States have decreased substantially. The petitioner further states that U.S imports of plywood from Vietnam have increased by approximately 950 percent while Chinese exports of plywood to Vietnam have effectively doubled since 2015. In addition, trade data submitted by the petitioner indicate that Chinese exports of wood veneers to Vietnam have increased by more than 350 percent over the same period.[33] The petitioner also points out that the Vietnamese government not only has recognized the nature of these trade trends, but it also suspects that the surge in exports of plywood products to the United States from Vietnam is a result of Chinese companies improperly seeking to avoid tariffs.[34]

2. Affiliation

The petitioner asserts that it has reason to believe that some of the Chinese producers/exporters and Vietnamese assembly operators are affiliated. It argues that importers that previously imported Chinese plywood to the United States are now importing significant quantities of plywood from Vietnam from certain Vietnamese producers/exporters. The petitioner claims that this suggests that there may be a relationship between the prior Chinese producers/exporters and the entities that are now importing from Vietnam.[35]

3. Subsequent Import Volume

The petitioner presents evidence indicating that Chinese exports of plywood to the United States have decreased substantially since the implementation of the *Orders.*[36] The evidence also shows that U.S imports of plywood from Vietnam have skyrocketed since 2015, increasing by approximately 950 percent. At the same time, Chinese exports of plywood to Vietnam have doubled.

Conclusion

Based on the available information provided by the petitioner, we determine that there is sufficient basis to initiate anti-circumvention inquiries, pursuant to section 781(b) of the Act and 19 CFR 351.225(h). Commerce will determine whether the merchandise subject to the inquiries (as described in the ''Merchandise Subject to the Anti-Circumvention Inquiry'' section *supra*) is circumventing the *Orders* such that it should be considered to be within the scope of the *Orders.*

We find that the available information warrants initiating these anti-circumvention inquiries on a country-wide basis.[37] Commerce has taken this approach in prior anti-circumvention inquiries, where the facts warranted initiation on a country-wide basis.[38] Consistent with the approach in these prior anti-circumvention inquiries initiated on a country-wide basis, Commerce intends to request comments from interested parties regarding respondent selection and to issue questionnaires to solicit information from producers and exporters in Vietnam concerning their shipments of plywood to the United States and the origin of any plywood components being processed into completed plywood. A company's failure to respond completely and timely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Additionally, as part of these anti-circumvention inquiries, we intend to examine the scope inquiry requests filed by the petitioner under 19 CFR 351.225(c), as discussed below.[39] Our final findings in these anti-circumvention inquiries will include a final finding with regard to the scope inquiries to the extent that they determine whether any of the production scenarios identified by the petitioner are properly considered subject to the scope of the *Orders.* Additionally, Commerce is aligning the deadline to issue a final determination in the EAPA scope inquiries with the deadline associated with these anti-circumvention inquiries.[40]

In accordance with 19 CFR 351.225(l)(2), if Commerce issues preliminary affirmative determinations, we will instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue, entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiries.

Before issuance of any affirmative determination, Commerce intends to notify the ITC of any proposed inclusion of the inquiry merchandise under the scope of the *Orders,* in accordance with section 781(e)(1)(B) of the Act. Pursuant to section 781(f) of the Act, Commerce intends to issue its final determinations within 300 days of the date of publication of this notice of initiation.

Initiation of Scope Inquiries

The scope of the *Orders* states that the scope ''includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the in-scope product.''[41]

The petitioner requests that Commerce confirm that, where Chinese producers and/or exporters are shipping the main components of plywood that are manufactured in China, as explained above, to Vietnam for assembly into completed plywood before being imported to the United States, such further processing does not remove the merchandise from the coverage of the *Orders.*[42] Because the scope of the *Orders* provides that certain types of further processing do not remove the merchandise from the *Orders,* we find it appropriate to also initiate scope inquiries, in accordance with 19 CFR 351.225(e), to determine if any of the products made in the production

[32] *See* Petitioner's Request at 46–47.

[33] *See* Petitioner's Clarification at Exhibit 2.

[34] *See* Petitioner's Request at 46–47.

[35] *Id.* at 48.

[36] *Id.* at 49.

[37] *Id.* at Exhibit 6.

[38] *See, e.g., Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order,* 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

[39] *See* Petitioner's Request at 21–31.

[40] *See EAPA Scope Inquiry Initiation.*

[41] *See* Appendix.

[42] *See* Petitioner's Request at 21–30.

scenarios described by the petitioner are covered by the scope of the *Orders.*

Notification to Interested Parties

This notice is published in accordance with sections 781(b) of the Act and 19 CFR 351.225(e) and (h).

Dated: June 9, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Orders

The merchandise covered by the *Orders* is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2016 (including any revisions to that standard).

For purposes of the *Orders,* a ''veneer'' is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of the *Orders* regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: Ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a ''distressed'' appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

All hardwood and decorative plywood is included within the scope of the *Orders,* without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1,219 x 1,829 mm (48 x 72 inches), 1,219 x 2,438 mm (48 x 96 inches), and 1,219 x 3,048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the in-scope product.

The scope of the orders excludes the following items: (1) Structural plywood (also known as ''industrial plywood'' or ''industrial panels'') that is manufactured to meet U.S. Products Standard PS 1–09, PS 2–09, or PS 2–10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration. *See Multilayered Wood Flooring from the People's Republic of China,* 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and antidumping duty order), and *Multilayered Wood Flooring from the People's Republic of China,* 76 FR 76693 (December 8, 2011) (countervailing duty order), as amended by *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders,* 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as ''solid bamboo''); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an ''Exterior'' or ''Exposure 1'' bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m3 permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of the orders are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the *Orders* is ''ready to assemble'' (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of furniture, (2) all accessory parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and (3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of the orders are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the *Orders* are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, (2) all accessory parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and (3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Excluded from the scope of the orders are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of the orders are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of the orders are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2,413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4155; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165;

4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.33.0620; 4412.33.0640; 4412.33.0670; 4412.33.2630; 4412.33.3235; 4412.33.3255; 4412.33.3265; 4412.33.3275; 4412.33.3285; 4412.33.5700; 4412.34.2600; 4412.34.3235; 4412.34.3255; 4412.34.3265; 4412.34.3275; 4412.34.3285; 4412.34.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.10.9000; 4412.94.5100; 4412.94.9500; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 9403.90.7005; 9403.90.7010; and 9403.90.7080. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2020–13075 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA207]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The SEDAR 70 stock assessment process for Gulf of Mexico greater amberjack will consist of a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 70 Assessment Webinar I for Gulf of Mexico greater amberjack will be held July 2, 2020, from 1 p.m. to 3 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (See Contact Information Below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar are as follows:

1. Using datasets and initial assessment analysis recommended from the data webinars, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

NOTE: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 12, 2020.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–13007 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XQ011]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of application for transshipment permit; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a permit application for transshipment of farmed salmon from aquaculture operations in Maine to processing plants in Canada by Canadian flagged vessels. The application for a transshipment permit is submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act). This action is necessary for NMFS to make a determination that the permit application can be approved.

DATES: Written comments must be received by July 1, 2020.

ADDRESSES: Written comments on this action, identified by RTID 0648–XQ011 should be sent to Kent Laborde in the NMFS Office for International Affairs and Seafood Inspection by email at *kent.laborde@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kent Laborde at (301) 427–8364 or by email at *kent.laborde@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application to transship from U.S. waters to another country using non-U.S. vessels may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated . . . an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below and specifically seeks comment from any owner or operator of a vessel of the United States, which has adequate capacity to perform the transportation of fish described below at fair and reasonable prices.

Summary of Application

NMFS received an application from True North Salmon Limited Partnership and 697002 NB, Inc., requesting authorization to transfer salmon from United States farm pens in Maine to four Canadian vessels for the purpose of transporting the salmon to Black's Harbour, Canada for processing.

The transshipment operations will occur within the boundaries of the State of Maine and within 12 nautical miles from Maine's seaward boundary.

Dated: June 11, 2020.

Alexa Cole,

Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2020–12991 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XG233]

Management Track Assessment for Atlantic Herring, Butterfish, Atlantic Surf Clam, and Longfin Inshore Squid Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Assessment Oversight Panel will convene the Management Track Assessment Peer Review Meeting for the purpose of reviewing Atlantic Herring, Butterfish, Atlantic Surf Clam, and Longfin Inshore Squid. The Management Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by Stock Assessment Workshop (SAW) working groups and reviewed by an independent panel of stock assessment experts called the Assessment Oversight Panel (AOP). The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Management Track Assessment Peer Review Meeting will be held from June 22, 2020–June 25, 2020. The meeting will commence on June 25, 2020 at 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via Google Meet (*https://meet.google.com/rcy-uvyg-dtd*).

FOR FURTHER INFORMATION CONTACT: Michele Traver, 508–495–2195; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the NEFSC website at *https://www.fisheries.noaa.gov/region/new-england-mid-atlantic.* For additional information about the AOP meeting and the stock assessment peer review, please visit the NMFS/NEFSC SAW web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/northeast-region-stock-assessment-process.*

Daily Meeting Agenda—Management Track Peer Review Meeting (Subject To Change; All Times Are Approximate and May Be Changed at the Discretion of the Peer Review Chair)

MONDAY, JUNE 22, 2020

Time	Activity	Lead
10 a.m.–10:15 a.m	Welcome/Logistics; Introductions/Process	Russ Brown/Michele Traver.
10:15 a.m.–12:15 p.m	Atlantic Herring	Jon Deroba.
12:15 p.m.–1:15 p.m	Lunch.	
1:15 p.m.–1:45 p.m	Review/Discussion/Summary	Review Panel.
1:45 p.m.–3:15 p.m	Butterfish	Charles Adams.
3:15 p.m.–3:30 p.m	Break.	
3:30 p.m.–4 p.m	Review/Discussion/Summary	Review Panel.
4 p.m.–4:15 p.m	Public Comment	Public.
4:15 p.m	Adjourn.	

TUESDAY, JUNE 23, 2020

Time	Activity	Lead
9 a.m.–9:15 a.m	Brief Overview and Logistics	Michele Traver/Mike Wilberg (Chair).

TUESDAY, JUNE 23, 2020—Continued

Time	Activity	Lead
9:15 a.m.–10:45 a.m	Atlantic Surf Clam	Dan Hennen.
10:45 a.m.–11 a.m	Break.	
11 a.m.–12 p.m	Atlantic Surf Clam cont.	Dan Hennen.
12 p.m.–1 p.m	Lunch.	
1 p.m.–1:30 p.m	Review/Discussion/Summary	Review Panel.
1:30 p.m.–3 p.m	Longfin Inshore Squid *(Doryteuthis)*	Lisa Hendrickson.
3 p.m.–3:15 p.m	Break.	
3:15 p.m.–4 p.m	Longfin Inshore Squid *(Doryteuthis)* cont.	Lisa Hendrickson.
4 p.m.–4:30 p.m	Review/Discussion/Summary	Review Panel.
4:30 p.m.–4:45 p.m	Public Comment	Public.
4:45 p.m	Adjourn.	

WEDNESDAY, JUNE 24, 2020

Time	Activity	Lead
9 a.m.–9:15 a.m	Brief Overview and logistics	Michele Traver/Mike Wilberg (Chair).
9:15 a.m.–10:15 a.m	Meeting Wrap Up/Discussion of Key Topics	Review Panel.
10:15 a.m.–10:30 a.m	Public Comment	Public.
10:30 a.m.–10:45 a.m	Break.	
10:45 a.m.–12 p.m	Report Writing	Review Panel.
12 p.m.–1 p.m	Lunch.	
1:05 p.m.–5 p.m	Report Writing	Review Panel.
5 p.m	Adjourn.	

THURSDAY, JUNE 25, 2020

Time	Activity	Lead
9 a.m.–5 p.m	Report Writing	Review Panel.

The meeting is open to the public; however, during the 'Report Writing' session on Wednesday, June 23rd, and Thursday, June 24th, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, 508–495–2195, at least 5 days prior to the meeting date.

Dated: June 12, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–13076 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA159]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off of Coastal Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible Renewal.

SUMMARY: NMFS has received a request from Dominion Energy Virginia (Dominion) for authorization to take marine mammals incidental to marine site characterization surveys in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Offshore Virginia (Lease No. OCS–A–0483) as well as in coastal waters where an export cable corridor will be established in support of the Coastal Virginia Offshore Wind Commercial (CVOW Commercial) Project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 17, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or

received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On February 7, 2020, NMFS received a request from Dominion for an IHA to take marine mammals incidental to marine site characterization surveys in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS Offshore Virginia (Lease No. OCS–A–0483) as well as in coastal waters where an export cable corridor will be established in support of the offshore wind project. Dominion's proposed marine site characterization surveys include HRG and geotechnical survey activities. These survey activities would include two survey vessels and occur within both the Lease Area and the export cable corridor. For the purpose of this IHA the Lease Area and export cable corridors are collectively referred to as the Survey Area. Geophysical and shallow geotechnical survey activities are anticipated to be supported by two vessels. Each vessel will transit an estimated 121.54 km of survey lines per day. The application was deemed adequate and complete on May 12, 2020. Dominion's request is for take of a small number of 11 species by Level B harassment only. Neither Dominion nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Dominion proposes to conduct high-resolution geophysical (HRG) and geotechnical surveys in support of offshore wind development projects in the areas of Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS offshore Virginia (#OCS–A 0483) and along potential submarine cable routes to landfall locations in Virginia.

The purpose of the marine site characterization surveys is to support the site characterization, facilities siting, and engineering design of offshore Project facilities including wind turbine generators, offshore substation(s), and submarine cables within the Lease Area and proposed export cable corridor. Underwater sound generated by Dominion's HRG equipment has the potential to result in incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

HRG survey activities are anticipated to last approximately 161 days and are anticipated to commence as soon as possible. Of those days, surveys will be conducted for 149 days in the Lease Area and 12 days in the export cable corridor. This schedule is based on 24-hour operations and includes potential down time due to inclement weather. The survey days are based on total survey line kilometers (km) and represent a combined operational effort of two vessels operating concurrently. The actual allocation of survey effort between the two vessels will be dependent on weather, unforeseen down time, and other operational factors. These vessels will operate at least several kilometers apart, often operating with even greater distances of separation between the two vessels.

Specific Geographic Region

Dominion will conduct surveys within the marine environment of the approximately 122,799-acre Lease Area and along the export cable corridor between the Lease Area and the Virginia shoreline (see Figure 1). Water depths in the Lease Area range from about 22 meters (m) (72 feet [ft]) to 38 m (125 ft). The export cable corridor begins at the western side of the Lease Area and extends southwest toward the coast of

Virginia for approximately 50 kilometers (km) (27 nautical miles [nm]). The export cable corridor will range from 600 m (1,968 ft) to 900 m (2,953 ft) wide and terminate at a proposed cable landing location along the Virginia Beach coastline. The exact landing location (between Croatan Beach and Sandbridge) is yet to be determined.

For the purpose of this application, the Survey Area is defined as the Lease Area plus a 200-m buffer and export cable corridor that will be established in advance of conducting the survey activity. The Survey Area will include two distinct survey segments. The first survey segment will include full coverage HRG surveys conducted in a tartan-pattern survey grid within the Lease Area; for this survey, a 200-m buffer was also included for line turns, run in and out, etc. Then, a full coverage HRG survey of the export cable corridor will cover up to a 900-m-wide corridor.

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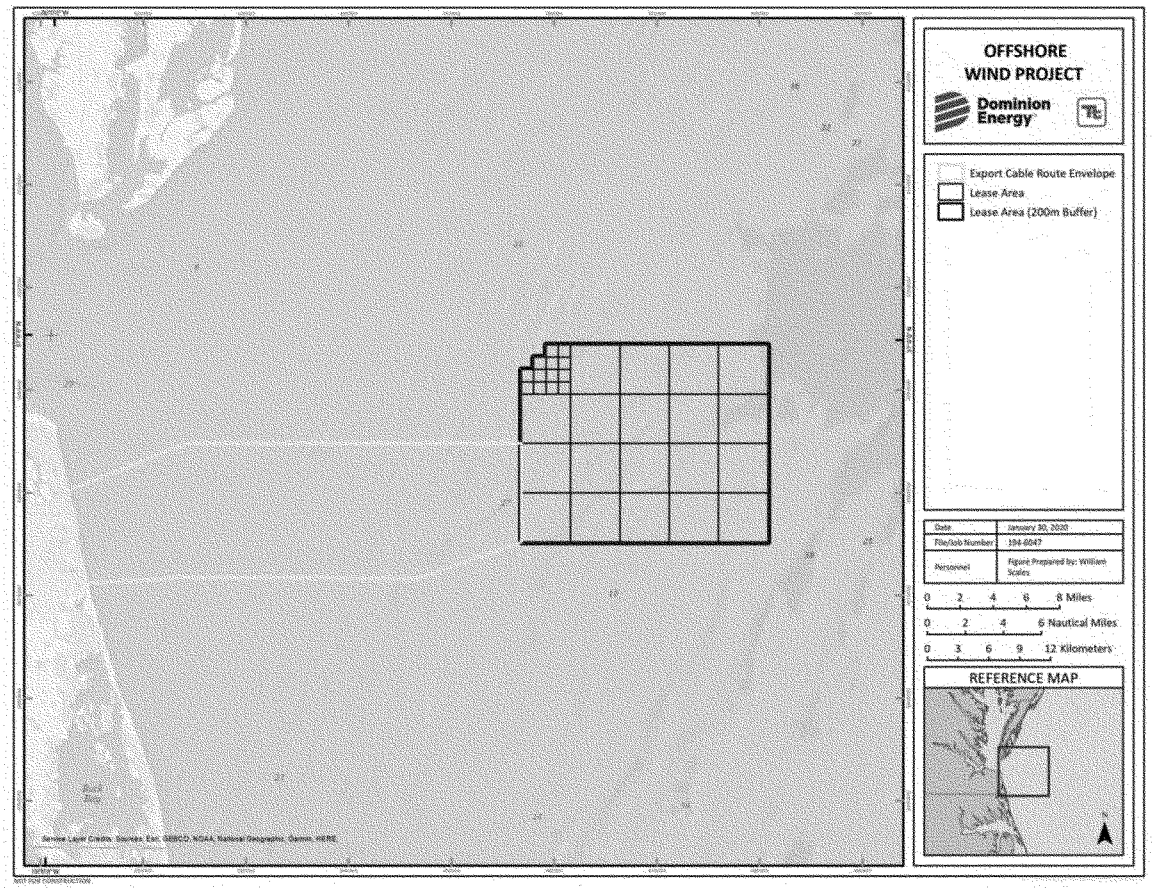

Figure 1 -- Survey Area

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Detailed Description of Specific Activity

The proposed HRG and geotechnical survey activities are described below.

Geophysical Survey Activities

Dominion has proposed that HRG survey operations would be conducted continuously 24 hours per day. The HRG survey activities proposed by Dominion would will include the following:

- Subsea positioning to calculate position by measuring the range and bearing from a vessel-mounted transceiver to an acoustic transponder;
- Depth sounding (multibeam depth sounder) to determine water depths and general bottom topography (currently estimated to range from approximately minimum vessel draft to 38 m [125 ft] in depth);
- Seafloor imaging (sidescan sonar survey) for seabed sediment classification purposes, to identify natural and man-made acoustic targets resting on the bottom as well as any anomalous features; and
- Medium penetration sub-bottom profiler (chirps/parametric profilers/sparkers) to map deeper subsurface stratigraphy as needed (soils down to 75 m [246 ft] to 100 m [328 ft] below seabed).

Table 1 identifies the representative survey equipment that may be used in support of proposed geophysical survey activities that operate below 180 kilohertz (kHz) and produce signals that marine mammals may hear. HRG surveys are expected to use several equipment types concurrently in order to collect multiple aspects of geophysical data along one transect. Selection of equipment combinations is based on specific survey objectives.

TABLE 1—SUMMARY OF GEOPHYSICAL SURVEY EQUIPMENT PROPOSED FOR USE BY DOMINION

HRG system	Representative HRG equipment	Operating frequencies (kHz)	RMS source level [1]	Peak source level [1]	Primary beam width (degrees)	Pulse duration (millisecond)
Subsea Positioning/USBL	Sonardyne Ranger 2 USBL	35–55	188	191	90	1
	EvoLogics S2CR	48–78	178	186	Omnidirectional.	500–600
	ixBlue Gaps	20–30	191	194	200	9–11
Multibeam Echosounder	R2Sonics 2026	170–450	191	221	0.45 × 0.45 – 1 × 1.	0.015–1.115
Synthetic Aperture Sonar (SAS), combined bathymetry/Sidescan [2].	Kraken Aquapix	337	210	213	>135 vertical, 1 horizontal.	1–10
Side Scan Sonar [2]	Edgetech 4200 dual frequency.	300 and 600	[3] 206	[3] 212	140	5–10
Parametric SBP	Innomar SES–2000 medium 100.	2–22	[4] 241	247	2	0.07–1
Non-Parametric SBP	Edgetech 216 Chirp	2–16	193	196	15–25	5–40
	Edgetech 512 Chirp	0.5–12	177	[5] 191	16–41	20
Medium Penetration Seismic	GeoMarine Dual 400 Sparker 800J.	0.25–4	200	[6] 210	Omnidirectional.	0.5–0.8
	Applied Acoustics S-Boom (Triple Plate Boomer 1000J).	0.5–3.5	[7] 203	[7] 213	[8] 60	10

[1] Source levels reported by manufacturer unless otherwise noted.
[2] Operating frequencies are above all relevant marine mammal hearing thresholds, so are not assessed in this IHA.
[3] The source levels are based on data from Crocker and Fratantonio (2016) for the EdgeTech 4200 for 100 percent power and 100 kHz.
[4] The equipment specification sheets indicates a peak source level of 247 dB re 1 μPA m. The average difference between the peak and SPLRMS source levels for sub-bottom profilers measured by Crocker and Fratantonio (2016) was 6 dB. Therefore, the estimated SPLRMS sound level is 241 dB re 1 μPA m.
[5] The source level are based on data from Crocker and Fratantonio (2016) for the EdgeTech 512i for 100 percent power.
[6] The source levels were provided by the manufacturer within the document titled "Noise Level Stacked 400—tuned".
[7] The source levels are based on data from Crocker and Fratantonio (2016) for the Applied Acoustics S-Boom with CSP–N Energy Source set at 1000 Joules.
[8] The beam width was based on data from Crocker and Fratantonio (2016) for the Applied Acoustics S-Boom. dB re 1 μPa m—decibels referenced to 1 microPascal at 1 meter.

The deployment of HRG survey equipment, including the equipment anticipated for use during Dominion's proposed activity, produces sound in the marine environment that has the potential to result in harassment of marine mammals. However, sound propagation in water is dependent on several factors including operating mode, frequency and beam direction of the HRG equipment; thus, potential impacts to marine mammals from HRG equipment are driven by the specification of individual HRG sources. The specifications of the potential equipment proposed for use during HRG survey activities (Table 1) were analyzed to determine which types of equipment would have the potential to result in harassment of marine mammals.

Geotechnical Equipment Use

Geotechnical survey activities will include the following:

- Sample boreholes to determine geological and geotechnical characteristics of sediments;
- Deep cone penetration tests (CPTs) to determine stratigraphy and in situ conditions of the deep surface sediments; and
- Shallow CPTs to determine stratigraphy and *in situ* conditions of the near surface sediments.

Geotechnical investigation activities are anticipated to be conducted from a drill ship equipped with dynamic positioning (DP) thrusters. Sound produced through use of DP thrusters is similar to that produced by transiting vessels and DP thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. NMFS does not believe acoustic impacts from DP thrusters are likely to result in take of marine mammals in the absence of activity- or location-specific circumstances that may otherwise represent specific concerns for marine mammals (*i.e.,* activities proposed in area known to be of particular importance for a particular species), or associated activities that may increase the potential to result in take when in concert with DP thrusters. In this case, we are not aware of any such circumstances. Therefore, NMFS believes the likelihood of DP thrusters used during the proposed geotechnical surveys resulting in harassment of marine mammals to be so low as to be discountable. As DP thrusters are not expected to result in take of marine mammals, these activities are not analyzed further in this document.

Field studies conducted off the coast of Virginia to determine the underwater noise produced by CPTs and borehole drilling found that these activities did not result in underwater noise levels that exceeded current thresholds for Level B harassment of marine mammals (Kalapinski 2015). Given the small size and energy footprint of CPTs and boring cores, NMFS believes the likelihood that noise from these activities would exceed the Level B harassment threshold at any appreciable distance is so low as to be discountable. Therefore, geotechnical survey activities, including CPTs and borehole drilling, are not expected to result in harassment of marine mammals and are not analyzed further in this document.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior

and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments)* and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic SARs (Hayes *et al.* 2019). All values presented in Table 2 are the most recent available at the time of publication and are available in the draft 2019 Atlantic and Gulf of Mexico Marine Mammal Stock Assessments available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA THAT MAY BE AFFECTED BY DOMINION'S PROPOSED ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR	Annual M/SI [4]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)							
Family Balaenidae:							
North Atlantic Right whale.	*Eubalaena glacialis*	Western North Atlantic (WNA).	E/D; Y	428 (0; 418; n/a)	*535 (0.45)	0.8	5.55
Family Balaenopteridae (rorquals):							
Humpback whale.	*Megaptera novaeangliae.*	Gulf of Maine	-/-; N	1396 (0; 1380; n/a)	*1,637 (0.07)	22	12.5
Fin whale	*Balaenoptera physalus.*	WNA	E/D; Y	7,418 (0.25; 6,025; n/a).	4,633 (0.08)	12	2.35
Sei whale	*Balaenoptera borealis.*	Nova Scotia	E/D; Y	6,292 (1.015; 3,098; n/a).	*717 (0.30)	6.2	1
Minke whale	*Balaenoptera acutorostrata.*	Canadian East Coast.	-/-; N	24,202 (0.3; 18,902; n/a).	*2,112 (0.05)	1,189	8
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)							
Family Physeteridae:							
Sperm whale	*Physeter macrocephalus.*	NA	E, D,Y	4,349 (0.28, 3,451; n/a).	5,353 (0.12)	6.9	0
Family Delphinidae:							
Short-finned pilot whale.	*Globicephala macrorhynchus.*	WNA	-/-; Y	28,924 (0.24; 23,637; 2011).	[5] 18,977 (0.11)	236	160
Long-finned pilot whale.	*Globicephala melas*	WNA	-/-; Y	39,215 (0.3; 30,627; n/a).		306	21
Bottlenose dolphin.	*Tursiops truncatus*	WNA Offshore	-/-; N	62,851 (0.23; 15,914; 2011).	[5] 97,476 (0.06)	519	28
		WNA Southern Migratory Coastal.	-/-; Y	3,751 (0.06; 2,353; n/a).		23	0–14.3
Common dolphin.	*Delphinus delphis*	WNA	-/-; N	172,825 (0.21; 145,216;2011).	86,098 (0.12)	1,452	419
Atlantic white-sided dolphin.	*Lagenorhynchus acutus.*	WNA	-/-; N	92,233 (0.71; 54,443; n/a).	37,180 (0.07)	544	26
Atlantic spotted dolphin.	*Stenella frontalis*	WNA	-/-: N	39,921 (0.27; 32,032; 2012).	55,436 (0.32)	303	54.3
Risso's dolphin	*Grampus griseus*	WNA	-/-; N	35,493 (0.19; 30,289; 2011).	7,732 (0.09)	126	49.7
Family Phocoenidae (porpoises):							
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy.	-/-; N	95,543 (0.31; 74,034; 2011).	45,089 (0.12)	851	2175
Order Carnivora—Superfamily Pinnipedia							
Family Phocidae:							
Harbor seal	*Phoca vitulina*	WNA	-/-; N	75,834 (0.15, 66,884; 2012).		2,006	350

TABLE 2—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA THAT MAY BE AFFECTED BY DOMINION'S PROPOSED ACTIVITY—Continued

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR	Annual M/SI [4]
Gray seal [6]	*Halichoerus grypus*	WNA	-/-; N	27,131 (0.19, 23,158, n/a).		1,389	5,410

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region/*. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016, 2017, 2018) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016, 2017, 2018) produced density models to genus level for *Globicephala* spp. and produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance including Canada is approximately 505,000. The referenced PBR value applies only to the U.S. population and is therefore an underestimate for the stock as a whole.

As indicated above, all 16 species (with 17 managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur in the absence of mitigation measures.

North Atlantic Right Whale

The North Atlantic right whale (*Eubalaena glacialis*) is considered one of the most critically endangered populations of large whales in the world and is listed as federally endangered under the ESA. The North Atlantic right whale ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.* 2019). In the late fall months (*e.g.,* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. North Atlantic right whales may be found in feeding grounds within New England waters between February and May, with peak abundance in late March (Hayes *et al.* 2019). The offshore waters of Virginia, including waters of the Survey Area, are used as a migration corridor for right whales. Right whales occur during seasonal movements north or south between important feeding and breeding grounds (Knowlton *et al.* 2002; Firestone *et al.* 2008). Right whales are known to have extensive movements both within and between their winter and summer habitats, and their calving grounds are thought to extend as far north as Cape Fear, North Carolina (Hayes *et al.* 2019). Right whales have been observed in coastal Atlantic waters year-round seasons. They have been acoustically detected off Georgia and North Carolina in 7 of 11 months monitored (Hodge *et al.* 2015). Other recent passive acoustic studies of right whales off the Virginia coast demonstrate their year-round presence in Virginia (Salisbury *et al.* 2016), with increased detections in fall and late winter/early spring. They are typically most common in the spring (late March) when they are migrating north and in the fall (*i.e.,* October and November) during their southbound migration (Kenney and Vigness-Raposa 2010). There were sightings of up to eight right whales on two separate days in coastal Virginia in April of 2018 (April 9 and 11, 2018; Cotter 2019).

However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.* 2017). Movements within and between habitats are extensive, and the area offshore from the Mid-Atlantic states is an important migratory corridor (Waring *et al.* 2016). The Survey Area is not a known feeding area for right whales and right whales are not expected to be foraging there. Therefore, any right whales in the vicinity of the Survey Area are expected to be transient, most likely migrating through the area.

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017 along the U.S. and Canadian coast. A total of 30 confirmed dead stranded whales (21 in Canada; 9 in the United States) have been documented. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 13 of the mortalities thus far. More information is available online at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2020-north-atlantic-right-whale-unusual-mortality-event.*

The proposed Survey Area is part of a migratory Biologically Important Area (BIA) for North Atlantic right whales; this important migratory area is comprised of the waters of the continental shelf offshore the East Coast of the United States and extends from Florida through Massachusetts. NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. Portions of the Survey Area are located within the right whale mid-Atlantic SMA near Norfolk and the mouth of the Chesapeake Bay. The SMA is in effect from November 1 through April 30.

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under

the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpbacks continued to be listed as endangered. NMFS recently evaluated the status of the species, and on September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62259; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the Survey Area.

While migrating, humpback whales utilize the mid-Atlantic as a pathway between calving/mating grounds in the south to their feeding grounds in the north (Hayes *et al.* 2019). Not all humpback whales migrate to the Caribbean during winter, and some individuals of this species are sighted in mid- to high-latitude areas during winter (Swingle *et al.* 1993). The mid-Atlantic area may also serve as important habitat for juvenile humpback whales, as evidenced by increased levels of juvenile strandings along the Virginia and North Carolina coasts (Wiley *et al.* 1995). Similarly, Barco *et al.* (2002) suggested that the mid-Atlantic region primarily represents a supplemental winter feeding ground used by humpbacks.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. This resulted in the declaration of a UME for this species. Partial or full necropsy examinations have been conducted on approximately half of the 123 known cases. Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at*: www.fisheries.noaa.gov/national/marine-life-distress/2016-2020-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.* 2016). Fin whales are present in the Mid-Atlantic region during all four seasons, although sighting data indicate that they are more prevalent during winter, spring, and summer (Hayes *et al.* 2019). While fall is the season of lowest overall abundance off Virginia, they do not depart the area entirely. Fin whales, much like humpback whales, seem to exhibit habitat fidelity to feeding areas (Kenney and Vigness-Raposa 2010; Hayes *et al.* 2019). While fin whales typically feed in the Gulf of Maine and the waters surrounding New England, mating and calving (and general wintering) areas are largely unknown (Hayes *et al.* 2019).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the eastern United States and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.* 2015). In the waters off of Virginia, sei whales are uncommon; however, a 2018 aerial survey conducted by the U.S. Navy recorded sei whales in the area surrounding Norfolk Canyon (U.S. Navy n.d.).

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Waring *et al.* 2016). This species generally occupies waters less than 100 m deep on the continental shelf. Little is known about minke whales' specific movements through the mid-Atlantic region; however, there appears to be a strong seasonal component to minke whale distribution, with acoustic detections indicating that they migrate south in mid-October to early November, and return from wintering grounds starting in March through early April (Risch *et al.* 2014). Northward migration appears to track the warmer waters of the Gulf Stream along the continental shelf, while southward migration is made farther offshore (Risch *et al.* 2014).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 83 strandings at the time of publication of this notice. There have been eight recorded strandings in Virginia and two in North Carolina. This event has been declared a UME. Full or partial necropsy examinations were conducted on more than 60 percent of the whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2020-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.* 2019). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead, 2002). In winter, sperm whales concentrate east and northeast of Cape Hatteras. In spring, distribution shifts northward to east of Delaware and Virginia, and is widespread throughout the central Mid-Atlantic Bight and the southern part of Georges Bank. In the fall, sperm whale occurrence on the continental shelf south of New England reaches peak levels, and there remains a continental shelf edge occurrence in the Mid-Atlantic Bight (Waring *et al.* 2015). Off the coast of Virginia, sperm whales have recently been observed spending a significant amount of time near Norfolk Canyon and in waters over 1,800 m deep (6,000 ft; U.S. Navy n.d. 2017).

Pilot Whale

The two species of pilot whales in the Western Atlantic include the long-finned and short-finned pilot whale. Both species of pilot whale are more generally found along the edge of the continental shelf at depths of 100 to 1,000 m (330 to 3,300 ft), choosing areas of high relief or submerged banks. Long-finned pilot whales, in the western

North Atlantic, are more pelagic occurring in especially high densities in winter and early spring over the continental slope, then moving inshore and onto the shelf in summer and autumn following squid and mackerel populations (Reeves *et al.* 2002). They frequently travel into the central and northern Georges Bank, Great South Channel, and northward into the Gulf of Maine areas during the late spring through late fall (Hayes *et al.* 2019). Short-finned pilot whales prefer tropical, subtropical, and warm temperate waters (Jefferson *et al.* 2015). The short-finned pilot whale mostly ranges from New Jersey south through Florida, the northern Gulf of Mexico, and the Caribbean without any seasonal movements or concentrations (Hayes *et al.* 2019). Populations for both of these species overlap spatially along the mid-Atlantic shelf break between New Jersey and the southern flank of Georges Bank (Hayes *et al.* 2019). The latitudinal ranges of the two species remain uncertain, although south of Cape Hatteras, most pilot whale sightings are expected to be short-finned pilot whales, while north of ~42° N most pilot whale sightings are expected to be long-finned pilot whales (Hayes *et al.* 2019).

Bottlenose Dolphin

The population of bottlenose dolphins in the North Atlantic consists of a complex mosaic of dolphin stocks (Waring *et al.* 2016). There are two stocks that may be found in the vicinity of the Survey Area—the western North Atlantic Offshore Stock (WNAOS) and the Southern Coastal Migratory Stock (SCMS). There are two distinct bottlenose dolphin morphotypes: migratory coastal and offshore. The migratory coastal morphotype resides in waters typically less than 20 m (65.6 ft) deep, along the inner continental shelf (within 7.5 km [4.6 miles] of shore; Hayes *et al.* 2018). This migratory coastal population was further subdivided into seven stocks based largely upon spatial distribution (Waring *et al.* 2016). The SCMS is the coastal stock found south of Assateague, Virginia, to northern Florida and is the stock most likely to be encountered in the vicinity of the export cable portion of the Survey Area. Seasonally, SCMS movements indicate they are mostly found in southern North Carolina (Cape Lookout) from October to December; they continue to move farther south from January to March to as far south as northern Florida and move back north to coastal North Carolina from April to June. SCMS bottlenose dolphins occupy waters north of Cape Lookout, North Carolina, to as far north as Chesapeake Bay from July to August. An observed shift in spatial distribution during a summer 2004 survey indicated that the northern boundary for the SCMS may vary from year to year (Hayes *et al.* 2018). The offshore population consists of one stock (WNAOS) in the western North Atlantic Ocean distributed primarily along the outer continental shelf and continental slope, and distributed widely during the spring and summer from Georges Bank to the Florida Keys with late summer and fall incursions as far north the Gulf of Maine depending on water temperatures (Kenney 1990; Hayes *et al.* 2017). The WNAOS is found seaward of 34 km (21 miles) and in deeper waters).

A combined genetic and logistic regression analysis that incorporated depth, latitude, and distance from shore was used to model the probability that a particular common bottlenose dolphin group seen in coastal waters was of the coastal versus offshore morphotype (Garrison *et al.* 2017a). North of Cape Hatteras during summer months, there is strong separation between the coastal and offshore morphotypes (Kenney 1990; Garrison *et al.* 2017a), and the coastal morphotype is nearly completely absent in waters >20 m depth. South of Cape Hatteras, the regression analysis indicated that the coastal morphotype is most common in waters <20 m deep, but occurs at lower densities over the continental shelf, in waters >20 m deep, where it overlaps to some degree with the offshore morphotype. For the purposes of defining stock boundaries, estimating abundance, and identifying bycaught samples, the offshore boundary of the SMCS is defined as the 20-m isobath north of Cape Hatteras and the 200-m isobath south of Cape Hatteras. In summary, this stock is best delimited in warm water months, when it overlaps least with other stocks, as common bottlenose dolphins of the coastal morphotype that occupy coastal waters from the shoreline to 200 m depth from Cape Lookout to Cape Hatteras, North Carolina, and coastal waters 0–20 m in depth from Cape Hatteras to Assateague, Virginia, including Chesapeake Bay (Hayes *et al.* 2018).

Common Dolphin

The common dolphin is found world-wide in temperate to subtropical seas. In the North Atlantic, common dolphins are commonly found over the continental shelf between the 200-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge. Common dolphins have been noted to be associated with Gulf Stream features (CETAP 1982; Selzer and Payne 1988; Waring *et al.* 1992). The species is seasonally found in abundance between Cape Hatteras and Georges Bank from mid-January to May. Between mid-summer and fall they migrate onto Georges Bank and the Scotian Shelf, and large aggregations occur on Georges Bank in fall (Reeves *et al.* 2002; Hayes *et al.* 2019). The species is less common south of Cape Hatteras, although schools have been reported as far south as the Georgia/South Carolina border (Hayes *et al.* 2019).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Waring *et al.* 2017). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine. Infrequent Virginia and North Carolina observations appear to represent the southern extent of the species' range during the winter months (Hayes *et al.* 2019).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters along the continental shelf from 10 to 200 m (33 to 650 ft) deep to slope waters greater than 500 m (1,640 ft). Their range extends from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200-m isobaths (Waring *et al.* 2014).

Risso's Dolphin

Risso's dolphins are distributed worldwide in tropical and temperate seas and in the Northwest Atlantic occur from Florida to eastern Newfoundland. The species has an apparent preference for steep, shelf-edge habitats between about 400 to 1,000 m (1,312 to 3,280 ft) deep (Baird 2009). Risso's dolphin of the western North Atlantic stock prefers temperate to tropical waters typically from 15 to 20 °C (59 to 68 °F) and are rarely found in waters below 10 °C (50 °F). Off the northeastern U.S. coast, Risso's dolphins are distributed along the continental shelf edge from Cape Hatteras northward to Georges Bank during spring, summer, and autumn. In winter, the range is in the mid-Atlantic Bight and extends outward into oceanic waters. In general, the population occupies the mid-Atlantic continental shelf edge year round (Hayes *et al.* 2019).

Harbor Porpoise

The harbor porpoise inhabits shallow, coastal waters, often found in bays, estuaries, and harbors. In the western Atlantic, they are found from Cape Hatteras north to Greenland. During summer (July to September), harbor porpoises are concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep with a few sightings in the upper Bay of Fundy and on Georges Bank. During fall (October–December) and spring (April–June), harbor porpoises are widely dispersed from New Jersey to Maine, with lower densities farther north and south. They are seen from the coastline to deep waters (>1,800 m) although the majority of the population is found over the continental shelf. The harbor porpoise is likely to occur in the waters of the mid-Atlantic during winter months, as this species prefers cold temperate and subarctic waters (Hayes *et al.* 2019). Harbor porpoise generally move out of the Mid-Atlantic during spring, migrating north to the Gulf of Maine. There does not appear to be a temporally coordinated migration or a specific migratory route to and from the Bay of Fundy region (Hayes *et al.* 2018).

Harbor Seal

Harbor seals are the most abundant seals in the waters of the eastern United States and are commonly found in all nearshore waters of the Atlantic Ocean from Newfoundland, Canada southward to northern Florida (Hayes *et al.* 2019). While harbor seals occur year-round north of Cape Cod, they only occur south of Cape Cod (southern New England to New Jersey) during winter migration, typically September through May (Kenney and Vigness-Raposa 2010; Hayes *et al.* 2019). During the summer, most harbor seals can be found north of Massachusetts within the coastal waters of central and northern Maine as well as the Bay of Fundy (Hayes *et al.* 2019).

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers. Therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. As of March, 2020 there a total of 3,152 reported strandings (of all species), though only 10 occurred in Virginia while 8 were recorded in Maryland. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2020-pinniped-unusual-mortality-event-along.*

Gray Seal

The gray seal occurs on both coasts of the Northern Atlantic Ocean and are divided into three major populations (Hayes *et al.* 2019). The western north Atlantic stock occurs in eastern Canada and the northeastern United States, occasionally as far south as North Carolina. Gray seals inhabit rocky coasts and islands, sandbars, ice shelves and icebergs (Hayes *et al.* 2019). In the United States, gray seals congregate in the summer to give birth at four established colonies in Massachusetts and Maine (Hayes *et al.* 2019). From September through May, they disperse and can be abundant as far south as New Jersey. The range of gray seals appears to be shifting as they are regularly being reported further south than they were historically (Rees *et al.* 2016).

Gray seals are uncommon in Virginia and the Chesapeake Bay. Only 15 gray seal strandings were documented in Virginia from 1988 through 2013 (Barco and Swingle 2014). They are rarely found resting on the rocks around the portal islands of the Chesapeake Bay Bridge Tunnel (CBBT) from December through April alongside harbor seals. Seal observation surveys conducted at the CBBT recorded one gray seal in each of the 2014/2015 and 2015/2016 seasons while no gray seals were reported during the 2016/2017 and 2017/2018 seasons (Rees *et al.* 2016, Jones *et al.* 2018).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)—Continued

Hearing group	Generalized hearing range*
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.* 2006; Kastelein *et al.* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Sixteen marine mammal species (14 cetacean and 2 pinniped (phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), eight are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take by Incidental Harassment section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

This section contains a brief technical background on sound, on the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document. For general information on sound and its interaction with the marine environment, please see, *e.g.,* Au and Hastings (2008); Richardson *et al.* (1995).

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the decibel (dB). A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)), and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa), while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average. Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa^2–s) represents the total energy in a stated frequency band over a stated time interval or event, and considers both intensity and duration of exposure. The per-pulse SEL is calculated over the time window containing the entire pulse (*i.e.,* 100 percent of the acoustic energy). SEL is a cumulative metric; it can be accumulated over a single pulse, or calculated over periods containing multiple pulses. Cumulative SEL represents the total energy accumulated by a receiver over a defined time window or during an event. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0–pk) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source, and is represented in the same units as the rms sound pressure.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources). The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound, which is defined as environmental background sound levels lacking a single source or point (Richardson *et al.* 1995). The sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,*

sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including wind and waves, which are a main source of naturally occurring ambient sound for frequencies between 200 hertz (Hz) and 50 kilohertz (kHz) (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Precipitation can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times. Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz. Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, geophysical surveys, sonar, and explosions. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly.

The sum of the various natural and anthropogenic sound sources that comprise ambient sound at any given location and time depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts. The distinction between these two sound types is not always obvious, as certain signals share properties of both pulsed and non-pulsed sounds. A signal near a source could be categorized as a pulse, but due to propagation effects as it moves farther from the source, the signal duration becomes longer (*e.g.,* Greene and Richardson, 1988).

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or intermittent (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Potential Effects of Underwater Sound

For study-specific citations, please see that work. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.* 1995; Gordon *et al.* 2004; Nowacek *et al.* 2007; Southall *et al.* 2007; Götz *et al.* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that HRG surveys may result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.* 2006; Southall *et al.* 2007; Zimmer and Tyack, 2007; Tal *et al.* 2015). The activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Note that, in the following discussion, we refer in many cases to a review article concerning studies of noise-induced hearing loss

conducted from 1996–2015 (*i.e.,* Finneran, 2015). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several decibels above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2018).

Animals in the Survey Area during the proposed survey are unlikely to incur TTS due to the characteristics of the sound sources, which include relatively low source levels and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.* 2009; Kastelein *et al.* 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.* 2009a; Finneran *et al.* 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the majority of the geophysical survey equipment proposed for use makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.* 1995; Wartzok *et al.* 2003; Southall *et al.* 2007; Weilgart, 2007; Archer *et al.* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of

sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.* 1995; NRC, 2003; Wartzok *et al.* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.* 1997; Finneran *et al.* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.* 1995; Nowacek *et al.* 2007). However, many delphinids approach low-frequency airgun source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.* 2012), indicating the importance of frequency output in relation to the species' hearing sensitivity.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.* 2013a, 2013b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.* 2001; Nowacek *et al.;* 2004; Madsen *et al.* 2006; Yazvenko *et al.* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.* 2001, 2005, 2006; Gailey *et al.* 2007; Gailey *et al.* 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.* 2000; Fristrup *et al.* 2003; Foote *et al.* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.* 1994; Goold, 1996; Stone *et al.* 2000; Morton and Symonds, 2002; Gailey *et al.* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.* 2004; Bejder *et al.* 2006; Teilmann *et al.* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement

from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.* 1996; Bradshaw *et al.* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

We expect that some marine mammals may exhibit behavioral responses to the HRG survey activities in the form of avoidance of the area during the activity, especially the naturally shy harbor porpoise, while others such as delphinids might be attracted to the survey activities out of curiosity. However, because the HRG survey equipment operates from a moving vessel, and the maximum radius to the Level B harassment threshold is relatively small, the area and time that this equipment would be affecting a given location is very small. Further, once an area has been surveyed, it is not likely that it will be surveyed again, thereby reducing the likelihood of repeated impacts within the Survey Area.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from Dominion's use of HRG survey equipment. Previous commenters have referenced a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.* 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.* 2006; Brownell *et al.* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for HRG survey applications. The risk of similar events recurring is likely very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of

glucocorticoids are also equated with stress (Romano *et al.* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.* 1996; Hood *et al.* 1998; Jessop *et al.* 2003; Krausman *et al.* 2004; Lankford *et al.* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

NMFS does not expect that the generally short-term, intermittent, and transitory HRG activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.* 1995; Erbe *et al.* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment if disrupting behavioral patterns. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.* 2000; Foote *et al.* 2004; Parks *et al.* 2007; Di Iorio and Clark, 2009; Holt *et al.* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore, 2014). Masking can be tested directly in captive species (*e.g.,* Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand, 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Marine mammal communications would not likely be masked appreciably by the HRG equipment given the directionality of the signals (for most geophysical survey equipment types proposed for use (Table 1)) and the brief period when an individual mammal is likely to be within its beam.

Vessel Strike

Vessel strikes of marine mammals can cause significant wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus 2001; Laist *et al.* 2001; Vanderlaan and Taggart 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus 2001; Laist *et al.* 2001; Jensen and Silber 2003; Vanderlaan and Taggart 2007). In assessing records with

known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kn). Given the slow vessel speeds and predictable course necessary for data acquisition, ship strike is unlikely to occur during the geophysical surveys. Marine mammals would be able to easily avoid the survey vessel due to the slow vessel speed. Further, Dominion would implement measures (*e.g.,* protected species monitoring, vessel speed restrictions and separation distances; see *Proposed Mitigation*) set forth in the BOEM lease to reduce the risk of a vessel strike to marine mammal species in the Survey Area.

Anticipated Effects on Marine Mammal Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals, but may have potential minor and short-term impacts to food sources such as forage fish. The proposed activities could affect acoustic habitat (see masking discussion above), but meaningful impacts are unlikely. There are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the proposed Survey Area with the exception of migratory BIA for right whales which was described previously. The HRG survey equipment will not contact the substrate and does not represent a source of pollution. Impacts to substrate or from pollution are therefore not discussed further.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.* 1992; Skalski *et al.* 1992; Santulli *et al.* 1999; Paxton *et al.* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.* 2013; Wardle *et al.* 2001; Jorgenson and Gyselman, 2009; Cott *et al.* 2012). More commonly, though, the impacts of noise on fish are temporary.

We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. The duration of fish avoidance of an area after HRG surveys depart the area is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of the proposed HRG survey, the fact that the proposed survey is mobile rather than stationary, and the relatively small areas potentially affected. The areas likely impacted by the proposed activities are relatively small compared to the available habitat in the Atlantic Ocean. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Based on the information discussed herein, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in *Proposed Mitigation* section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic

calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.* 2007, Ellison *et al.* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Dominion's proposed activity includes the use of intermittent (geophysical survey equipment) sources, and therefore the 160 dB re 1 μPa (rms) threshold is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Dominion's proposed activity that may result in the take of marine mammals include the use of both impulsive and non-impulsive sources (geophysical survey equipment).

These thresholds are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For mobile sources such as survey vessels operating HRG equipment, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed. Inputs used in the User Spreadsheet are shown in Table 5 and the resulting Level A harassment isopleths are reported below in Table 6.

Note that NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and therefore recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level B harassment threshold. In

cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment types that may be used during the proposed surveys, the sound levels associated with those HRG equipment types, and the literature sources for the sound source levels contained in Table 5.

TABLE 5—USER SPREADSHEET INPUTS

HRG system	Subsea positioning/USBL			Multibeam echosounder	Side scan sonar	Parametric SBP	Non-parametric SBP		Medium-penetration seismic	
HRG Equipment	Sonardyne Ranger 2	Evologics 82CR	IxBlue GAPS	R2 Sonics 2026	Edgetech 4200 dual frequency	Innomar SES–2000	Edgetech 216 Chirp	Edgetech 512 Chirp	Geo Marine Dual 400 GeoSource Sparker 800j	Applied Acoustics S-Boom (Triple Plate Boomer)
Spreadsheet Tab Used.	D.1: MOBILE SOURCE: Non-Impulsive, Intermittent								F.1: MOBILE SOURCE: Impulsive, Intermittent.	
Source Level	188 RMS	178 RMS	191 RMS	191 RMS	206 RMS	241 RMS	193 RMS	177 RMS	200 RMS/210 PK.	203RMS/ 213 PK.
Weighting Factor Adjustment (kHz).	35/55	48/78	20/30	170	100	2/22	2/16	0.5/12	0.25/4	0.5.
Source Velocity (m/sec).	2.045	2.045	2.045	2.045	2.045	2.045	2.045	2.045	2.045	2.045.
Pulse Duration (seconds).	0.001	0.6	0.011	0.01115	0.01	0.001	0.001	0.02	0.0008	0.01.
1/repetition rate^ (seconds.	0.33	1	1	0.016667	0.125	2	0.25	0.25	0.55	0.25.
Propagation (xLogR)	20	20	20	20	20	20	20	20	20	20.

TABLE 6 — DISTANCES (METERS) TO LEVEL A HARASSMENT REGULATORY THRESHOLDS BY EQUIPMENT CATEGORY[1]

HRG system	Representative HRG equipment	Marine Mammal Group PTS Onset				
		LF cetaceans	MF cetaceans	HF cetaceans	Phocid pinnipeds	Otariid pinnipeds
		199 dB SEL_{cum}	198 dB SEL_{cum}	173 dB SEL_{cum}	201 dB SEL_{cum}	219 dB SEL_{cum}
Multibeam Echosounder	R2Sonics 2026	0	0	14.4	0	0.
Synthetic Aperture Sonar, combined bathymetry/ sidescan.	Kraken Aquapix[2]	N/A	N/A	N/A	N/A	N/A.
Sidescan Sonar	Edgetech 4200 dual Frequency[2].	N/A	N/A	N/A	N/A	N/A.
Parametric SBP	Innomar SES–2000 Medium 100.	12.1	14.7	3,950	4.8	0.1.
Non-Parametric SBP	Edgetech 216 Chirp	0	0	0.4	0	0.
	Edgetech 512 Chirp	0	0	0.1	0	0.
Medium Penetration Seismic.	Geo Marine Dual 400 Sparker 800J.	0.1	0	1.5	0.1	0.
	Applied Acoustics S-Boom (Triple Plate Boomer 1000J).	5.9	0.2	54.2	3.5	0.1.

[1] Distances to the Level A harassment threshold based on the larger of the dual criteria (peak SPL and SEL_{cum}) are shown.
[2] Operating frequency above 180 kHz exceeding upper range of marine mammal hearing.

Note that take of marine mammals through use of the non-impulsive, intermittent sources shown in Table 5, such as the Innomar SES–2000 Medium 100 device, is highly unlikely. See estimated Level B harassment isopleth distances in Table 7. The estimated Level A harassment isopleths (Table 6) are based on the best currently available tools and information, but given aspects of these sources' output (*e.g.,* beam width) that cannot readily be accounted for in the user guidance spreadsheet, these calculated zones should not be interpreted literally. These isopleths are provided only as a reference, interpreted in context of our qualitative understanding of the risk posed through use of these sources when evaluating potential for Level A harassment. In consideration of the foregoing, and in consideration of the proposed mitigation measures (see the Proposed Mitigation section for more detail), the likelihood of the proposed survey resulting in take in the form of Level A harassment is considered so low as to be discountable; therefore, NMFS does not propose to authorize take of any marine mammals by Level A harassment.

NMFS has developed an interim methodology for determining the rms sound pressure level (SPLrms) at the 160-dB isopleth for the purposes of estimating take by Level B harassment resulting from exposure to HRG survey equipment that takes into account source level, beamwidth, water depth, absorption, and operating frequency

(NMFS 2019). Distances to the behavioral threshold are shown in Table 7.

TABLE 7—HRG EQUIPMENT—DISTANCES TO REGULATORY LEVEL B HARASSMENT THRESHOLDS

HRG survey equipment	Source level (SL_{RMS}) (dB re 1μPa)	Lateral distance (m) to level B thresholds used in take analysis
R2Sonics 2026	191	0.3.
Kraken Aquapix[1]	N/A	N/A.
Edgetech 4200 dual frequency[1]	N/A	N/A.
Innomar SES–2000 Medium 100	241	0.7.
Edgetech 216 Chirp	193	10.2.
Edgetech 512 Chirp	177	2.4.
Geo Marine Dual 400 Sparker 800J	200	100.0.
Triple Plate Boomer 1000J	203	21.9.

[1] Operating frequency above 180 kHz, above upper range of marine mammal hearing.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel.

The predominant source is the Geo Marine Dual 400 Sparker 800J (see Table 7), which results in the furthest distance to the Level B harassment criteria (160 $dB_{RMS90\%}$ re 1 μPa) at 100.0 m (328 ft). This source will be employed on an estimated 152 vessel days. During an additional 9 vessel days, the Triple Plate Boomer 1000J would be the predominant source used, with an estimated Level B harassment threshold of 22 m (72 ft) as the basis for determining potential take.

The basis for the take estimate is the number of times that marine mammals are predicted to be exposed to sound levels in excess of Level B harassment criteria. Typically, this is determined by multiplying the ZOI out to the Level B harassment criteria isopleth by local marine mammal density estimates and then correcting for seasonal use by marine mammals, seasonal duration of project-specific noise-generating activities, and estimated duration of individual activities when the maximum noise-generating activities are intermittent or occasional. In the absence of any part of this information, it becomes prudent to take a conservative approach to ensure the potential number of takes is not greatly underestimated. The estimated distance of the daily vessel trackline was determined using the estimated average speed of the vessel and the 24-hour operational period within each of the corresponding survey segments. Using the distance of 100.0 m (328 ft) and 22 m (72 ft) to the 160 dB Level B harassment isopleths for when HRG equipment is in use, the estimated daily vessel track of approximately 121.54 km (75.5 mi) for 24-hour operations, inclusive of an additional circular area to account for radial distance at the start and end of a 24-hour cycle, gives estimates of incidental take by HRG survey equipment based on the ensonified area around the survey equipment as depicted in Table 7.

Based on the maximum estimated distance to the Level B harassment threshold of 100 m (Table 7) and the maximum estimated daily track line distance of 121.54 km, an area of 24.34 km^2 would be ensonified to the Level B harassment threshold per day during the 152 vessel days that the Geo Marine Dual 400 Sparker 800J is in use. The estimated Level B harassment threshold of 22 m (72 ft) associated with the Triple Plate Boomer 1000J would ensonify 5.35 km^2 for 9 vessel days.

TABLE 8—SURVEY SEGMENT DISTANCES AND ZOIS AT LEVEL B HARASSMENT DISTANCES

Survey segment	Number of active survey vessel days	Estimated distances per day (km)	Calculated ZOI per day (km^2)
Lease Area Survey (Sparker In Use)	149	121.54	24.34
Export Cable Corridor Survey (Sparker In Use)	3		
Export Cable Corridor Survey (No Sparker In Use)	9	5.35	

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km^2) by incorporating the estimated marine mammal densities.

A summary of this method is illustrated in the following formula:

$$\text{Estimated Take} = D \times ZOI \times \#\text{ of days}$$

Where:

D = average species density (per km^2) and ZOI = maximum daily ensonified area to relevant thresholds.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.* 2016, 2017, 2018) represent the best available information regarding marine mammal densities in the proposed Survey Area. The density data presented by Roberts *et al.* (2016, 2017, 2018) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and

biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.* 2016). In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. More information is available online at *seamap.env.duke.edu/models/Duke-EC–GOM–2015/.* Marine mammal density estimates in the Survey Area (animals/km^2) were obtained using these model results (Roberts *et al.* 2016, 2017, 2018).

For the purposes of exposure analysis density data from Roberts *et al.* (2016, 2017, and 2018) were mapped within the boundary of the Survey Area for each segment using geographic information systems. For each survey segment, the maximum densities as reported by Roberts *et al.* (2016, 2017, and 2018), were averaged by season over the survey duration (for spring, summer, fall and winter) for the entire HRG Survey Area based on the proposed HRG survey schedule. The maximum average seasonal density within the HRG survey schedule was then selected for inclusion in the take calculations. Note that recently, these data have been updated with new modeling results and have included density estimates for pinnipeds (Roberts *et al.* 2016; 2017; 2018). For pinnipeds, because the seasonality of, and habitat use by, gray seals roughly overlaps with harbor seals, the same estimated abundance has been applied to both gray and harbor seals.

TABLE 9—TOTAL NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

	Lease area		Cable route corridor (sparker in use)		Cable route corridor (no sparker in use)		Adjusted totals	
	Average seasonal density [1] (No./100 km^2)	Calc. take (No.)	Average seasonal density [1] (No./100 km^2)	Calc. take (No.)	Average seasonal density [1] (No./100 km^2)	Calc. take (No.)	Take authorization (No.)	Percentage of population [5]
North Atlantic right whale	0.078	2.816	0.049	0.036	0.049	0.023	[4] 2	0.37
Humpback whale	0.085	3.087	0.066	0.048	0.066	0.032	[4] 3	0.18
Fin whale	0.261	9.448	0.122	0.089	0.122	0.059	[4] 10	0.21
Sei whale	0.002	0.089	0.001	0.000	0.001	0.000	[4] 1	0.15
Sperm whale	0.007	0.238	0.002	0.002	0.002	0.001	[4] 1	0.02
Minke whale	0.114	4.151	0.041	0.030	0.041	0.020	[4] 4	0.19
Long-finned pilot whale [7]; Short-finned pilot whale [7]	0.029	1.038	0.010	0.007	0.010	0.005	[6] 12	0.06
Bottlenose dolphin (Offshore)	18.53	[2] 504.234	50.93	[2] 3.719	50.932	[2] 2.452	511	0.81
Bottlenose dolphin (Southern Migratory Coastal)	18.53	[2] 168.078	50.93	[2] 33.470	50.932	[2] 22.068	224	6.5
Common dolphin	1.84	66.797	0.613	0.447	0.613	0.295	68	0.08
Atlantic white-sided dolphin	1.18	42.992	0.386	0.282	0.386	0.186	44	0.12
Spotted dolphin	0.729	26.425	0.219	0.160	0.219	0.106	27	0.05
Risso's dolphin	0.017	0.605	0.004	0.003	0.004	0.002	6[6]	0.08
Harbor porpoise	1.059	38.396	0.375	0.274	0.375	0.181	39	0.09
Harbor seal [3]; Gray Seal [3]	0.916	33.210	0.806	0.588	0.806	0.388	35	0.02 0.06

Notes:
[1] Cetacean density values from Duke University (Roberts *et al.* 2016, 2017, 2018).
[2] Density model for bottlenose dolphins (Roberts *et al.* 2016, 2017, 2018) does not differentiate between offshore and coastal stocks. Take estimates split based on bottlenose dolphin stock preferred water depths (Reeves *et al.* 2002; Hayes *et al.* 2018).
[3] Pinniped density values reported as ''seals'' and not species-specific.
[4] Take adjusted to 0 given mitigation to prevent take.
[5] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 2. In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For North Atlantic right whales the best available abundance estimate is derived from the North Atlantic Right Whale Consortium 2019 Annual Report Card (Pettis *et al.* 2019). For bottlenose dolphins, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins are derived from NMFS SARs (Hayes *et al.* 2019).
[6] The number of authorized takes (Level B harassment only) for these species has been increased from the estimated take number to mean group size. Sources for mean group size estimates are as follows: Risso's dolphin, pilot whales (NOAA Fisheries Northeast and Southeast Fisheries Science Centers, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011).
[7] Density values reported as a guild for pilot whales at the genus level.

Take authorization is not proposed for six marine mammal species for which potential takes by Level B harassment were estimated based on the modeling approach described above: North Atlantic right, humpback, fin, sei, sperm, and minke whale. Though the modeling resulted in estimates of take for these species as shown in Table 9, take of these species are expected to be avoided due to mitigation.

Note that the number of proposed takes (Level B harassment only) for Risso's dolphin and pilot whales has been increased from the estimated take number to mean group size. (NOAA Fisheries Northeast and Southeast Fisheries Science Centers, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011).

For bottlenose dolphin densities, Roberts *et al.* (2016, 2017, and 2018) does not differentiate by individual stock. Given the southern coastal migratory stock propensity to be found shallower than the 25-m (82-ft) depth isobath north of Cape Hatteras (Reeves *et al.* 2002; Hayes *et al.* 2018) and only during the summer, the export cable corridor segment was roughly divided along the 25-m (82-ft) depth isobath. Roughly 90 percent of the cable corridor is 25 m (82 ft) or less in depth. The Lease Area is mostly located within depths exceeding 25 m (82 ft), where the southern coastal migratory stock would be unlikely. Roughly 25 percent of the Lease Area survey segment is 25 m (82 ft) or less in depth. Therefore, to account for the potential for mixed stocks within the export cable corridor, 90 percent of the estimated take calculation is applied to the southern coastal migratory stock and the remaining applied to the offshore migratory stock within the export cable corridor survey area. Within the Lease Area, 25 percent of the estimated take

calculation is applied to the southern coastal migratory stock and the remaining applied to the offshore migratory stock.

Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. The take calculation methodology as described above resulted in an estimate of 35 total seal takes. An even split between harbor and gray seals (*i.e.,* 18 harbor seal takes and 17 gray seal takes) is proposed, based on an assumption that the likelihood of take of either species is equal.

In the instance of the North Atlantic right whale, Dominion proposed a 500-m (1,640-ft) exclusion zone that exceeds the distance to the Level B harassment isopleth. Given that the proposed mitigation effectively prevents Level B harassment, take has been adjusted to zero individuals. In addition, Dominion proposed a 100-m (328-ft) exclusion zone to be implemented for all non-delphinid large cetaceans, which is expected to preclude potential interactions with humpback, fin, sei, sperm, and minke whales. Therefore, the low calculated take estimates for these whales was adjusted to zero individuals for these species and NMFS is not proposing to authorize take of these whale species.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Marine mammal exclusion zones (EZ) would be established around the HRG survey equipment and monitored by protected species observers (PSO) during HRG surveys as follows:

- 500-m EZ would be required for North Atlantic right whales;
- 100-m EZ would be required for large whale species;
- 25-m (82-ft) EZ when only the Triple Plate Boomer 1000J is in use; and
- 200-m (656-ft) buffer zone for all marine mammals except those species otherwise excluded (*i.e.,* right whale).

If a marine mammal is detected approaching or entering the EZs during the proposed survey, the vessel operator would adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs would visually monitor a 200-m buffer zone. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the EZs) would be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The buffer zone is not applicable when the EZ is greater than 100 meters. PSOs would also be required to observe a 500-m monitoring zone and record the presence of all marine mammals within this zone. The zones described above would be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

Visual Monitoring

NMFS only requires a single PSO to be on duty during daylight hours. Dominion will have one PSO on duty during the day and has voluntarily proposed that a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring would begin no less than 30 minutes prior to ramp-up of HRG equipment and would continue until 30 minutes after use of the acoustic source. PSOs would establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. Visual PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs would estimate distances to observed marine mammals. It would be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. Position data would be recorded using hand-held or vessel global positioning system (GPS) units for each confirmed marine mammal sighting.

Pre-Clearance of the Exclusion Zones

Prior to initiating HRG survey activities, Dominion would implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.,* before ramp-up of HRG equipment begins), the Buffer Zone would also act as an extension of the 100-m EZ in that observations of marine mammals within the 200-m Buffer Zone would also preclude HRG operations from beginning. During this period, PSOs would ensure that no marine mammals are observed within 200 m of the survey equipment (500 m in the case of North Atlantic right whales). HRG equipment would not start up until this 200-m zone (or, 500-m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator would notify a designated PSO of the proposed start of HRG survey equipment as agreed upon with the lead PSO; the notification time should not be less than 30 minutes prior to the planned initiation of HRG equipment order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance. A PSO conducting pre-clearance observations would be notified again immediately prior to initiating active HRG sources.

If a marine mammal were observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment would not begin until the animal(s) has been observed exiting the respective EZ

or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement would include small delphinoids. PSOs would also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Survey Area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment would not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment would be shut down (as described below).

Shutdown Procedures

If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. When shutdown is called for by a PSO, the acoustic source would be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty would have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable EZ. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment would only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.,* 15 minutes for small odontocetes and seals, and 30 minutes for large whales).

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.,* the animal is not required to fully exit the Buffer Zone where applicable) or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement would be waived for certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus, Stenella,* or *Tursiops)* under certain circumstances. If a delphinid(s) from these genera is visually detected within the exclusion zone shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs would use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (100 m or 25 m), shutdown would occur.

Vessel Strike Avoidance

Vessel strike avoidance measures would include, but would not be limited to, the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal.
- All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes: any dynamic management areas (DMAs) when in effect, the Norfolk Seasonal Management Area (SMA) (from November 1 through April 30). See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- Vessel speeds must also be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other protected species, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When protected species are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If protected species are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.
- These requirements do not apply in any case where compliance would create an imminent and serious threat to

a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Project-specific training will be conducted for all vessel crew prior to the start of survey activities. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey activities.

Seasonal Operating Requirements

Dominion will conduct HRG survey activities in the vicinity of the right whale Mid-Atlantic seasonal management area (SMA) near Norfolk and the mouth of the Chesapeake Bay. Activities conducted prior to May 1 will need to comply with the seasonal mandatory speed restriction period for this SMA (November 1 through April 30) for any survey work or transit within this area.

Throughout all phases of the survey activities, Dominion will monitor NOAA Fisheries North Atlantic right whale reporting systems for the establishment of a dynamic management area (DMA). If NOAA Fisheries should establish a DMA in the Lease Area or cable route corridor being surveyed, within 24 hours of the establishment of the DMA Dominion will work with NOAA Fisheries to shut down and/or alter activities to avoid the DMA.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

As described above, visual monitoring would be performed by qualified and NMFS-approved PSOs. Dominion would use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course appropriate for their designated task. Dominion would provide resumes of all proposed PSOs (including alternates) to NMFS for review and approval prior to the start of survey operations.

During survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a single PSO must be on duty and conducting visual observations during the day on all active survey vessels when HRG equipment is operating. Additionally, Dominion has stated their intention to deploy two PSOs on duty during night operations. Visual monitoring would begin no less than 30 minutes prior to initiation of HRG survey equipment and would continue until one hour after use of the acoustic source ceases. PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all survey vessels.

PSOs would be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone. Reticulated binoculars will be available to PSOs for use as appropriate based on conditions and visibility to support the monitoring of marine mammals. Position data would be recorded using hand-held or vessel GPS units for each sighting. Observations would take place from the highest available vantage point on the survey vessel. General 360-degree scanning would occur during the monitoring periods, and target scanning by the PSO would occur when alerted of a marine mammal presence.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal take that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals observed during survey activities (by species, when known), summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

In the event that Dominion personnel discover an injured or dead marine mammal, Dominion shall report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, the IHA-holder shall report the incident to OPR, NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 9, given that NMFS expects the anticipated effects of the proposed survey to be similar in nature. As discussed in the Potential Effects of the Specified Activities on Marine Mammals and Their Habitat section, PTS, masking, non-auditory physical effects, and vessel strike are not expected to occur.

The majority of impacts to marine mammals are expected to be short-term disruption of behavioral patterns, primarily in the form of avoidance or potential interruption of foraging. Marine mammal feeding behavior is not likely to be significantly impacted.

Regarding impacts to marine mammal habitat, prey species are mobile, and are broadly distributed throughout the Survey Area and the footprint of the activity is small; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the availability of similar habitat and resources in the surrounding area the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. The HRG survey equipment itself will not result in physical habitat disturbance. Avoidance of the area around the HRG survey activities by marine mammal prey species is possible. However, any avoidance by prey species would be expected to be short term and temporary.

The status of the North Atlantic right whale population is of heightened concern and, therefore, merits additional analysis. The proposed Survey Area includes a biologically important migratory area for North Atlantic right whales (effective March-April and November-December) that extends from Massachusetts to Florida (LaBrecque, *et al.* 2015). As previously noted, no take of North Atlantic right whales has been proposed for authorization, and HRG survey operations will be required to shut down at 500 m to further minimize any potential effects to this species. This is highly precautionary considering the Level B harassment isopleth for the largest source utilized (*i.e.* Geo Marine Dual 400 Sparker 800J is estimated to be 100 m). The fact that the spatial acoustic footprint of the proposed survey is very small relative to the spatial extent of the available migratory habitat leads us to expect that right whale migration will not be impacted by the proposed survey. Additionally, a UME for right whales was declared in June 2017, primarily due to mortality events in the Gulf of St. Lawrence region of Canada and around

the Cape Cod area of Massachusetts. Overall, preliminary findings support human interactions, specifically vessel strikes or rope entanglements, as the cause of death for the majority of the right whales. Furthermore, these locations are found far to the north of the proposed Survey Area.

No take has been proposed for authorization for ESA-listed species including right, fin, sei, and sperm whales and NMFS does not anticipate that serious injury or mortality would occur to any species, even in the absence of mitigation. The planned survey is not anticipated to affect the fitness or reproductive success of individual animals. Since impacts to individual survivorship and fecundity are unlikely, the planned survey is not expected to result in population-level effects for any ESA-listed species or alter current population trends of any ESA-listed species.

As noted previously, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or distinct population segment (DPS)) remains healthy.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales. Additionally, elevated numbers of harbor seal and gray seal mortalities were first observed in July 2018 and have occurred across Maine, New Hampshire and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (350) is well below PBR (2,006) (Hayes *et al.* 2018). The population abundance of gray seals in the United States is in excess of 27,000 and likely increasing (Wood *et al.* 2019). The estimated abundance increases to 505,000 when seals from Canada are included. Given that any Level B harassment of gray and harbor seals will be minor, short term, and temporary the proposed authorized takes of gray and harbor seals would not exacerbate or compound the ongoing UMEs in any way.

Direct physical interactions (ship strikes and entanglements) appear to be responsible for many of the UME humpback and right whale mortalities recorded. The proposed HRG survey will require ship strike avoidance measures which would minimize the risk of ship strikes while fishing gear and in-water lines will not be employed as part of the survey. Furthermore, the proposed activities are not expected to promote the transmission of infectious disease among marine mammals. The survey is not expected to result in the deaths of any marine mammals or combine with the effects of the ongoing UMEs to result in any additional impacts not analyzed here. NMFS is not proposing to authorize take of large whales and is not proposing to authorize take of any marine mammal species by serious injury, or mortality.

The required mitigation measures are expected to reduce the number and/or severity of takes by giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy and preventing animals from being exposed to sound levels that have the potential to result in more severe Level B harassment during HRG survey activities. Due to the small size of PTS zones no Level A harassment is anticipated or proposed for authorization.

NMFS expects that most takes would primarily be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating of the area, or decreased foraging (if such activity were occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity and with no lasting biological consequences. Since both the source and the marine mammals are mobile, only a smaller area would be ensonified by sound levels that could result in take for only a short period.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No Level A harassment (PTS) is anticipated;
- Any foraging interruptions are expected to be short term and unlikely to be cause significantly impacts;
- Impacts on marine mammal habitat and species that serve as prey species for marine mammals are expected to be minimal and the alternate areas of similar habitat value for marine mammals are readily available;
- Take is anticipated to be by Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the Survey Area;
- Survey activities would occur in such a comparatively small portion of the biologically important areas for north Atlantic right whale migration, that any avoidance of the Survey Area due to activities would not affect migration. In addition, mitigation measures to shut down at 500 m to minimize potential for Level B behavioral harassment would limit both the number and severity of take of the species; and
- Proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize the intensity of potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. For this IHA, take of all species or stocks is below one third of the estimated stock abundance (in fact, take of individuals is less than 7 percent of the abundance for all affected stocks). Additionally, other qualitative factors may be considered in the analysis, such as the

temporal or spatial scale of the activities.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take or propose mitigation measures that would avoid incidental take of endangered or threatened species, in this case with the Greater Atlantic Regional Field Office (GARFO). In the absence of proposed mitigation measures take of North Atlantic right whale, fin whale, sei whale, and sperm whale could potentially occur.

The Permits and Conservation Division has requested initiation of Section 7 consultation with GARFO for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Dominion for conducting HRG surveys off the coast of Virginia for a period of one year after the issuance of the IHA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed HRG surveys. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized;

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 11, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–12997 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XW033]

General Advisory Committee to the U.S. Section to the Inter-American Tropical Tuna Commission and Scientific Advisory Subcommittee to the General Advisory Committee; Meeting Announcements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; consolidation of two meetings.

SUMMARY: NMFS announces a consolidation of the public meeting of the Scientific Advisory Subcommittee (SAS) to the General Advisory Committee (GAC) scheduled on June 17, 2020, with the public meeting of the GAC to the U.S. Section to the Inter-American Tropical Tuna Commission (IATTC) scheduled on June 18, 2020. This newly consolidated SAS and GAC meeting will be held on June 18, 2020, via webinar. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The consolidated meeting of the SAS and GAC will be held on June 18, 2020, from 8:30 a.m. to 3:30 p.m. PDT (or until business is concluded).

ADDRESSES: Please notify William Stahnke (see **FOR FURTHER INFORMATION CONTACT**) if you plan to attend the webinar. Instructions will be emailed to meeting participants before the meeting occurs.

FOR FURTHER INFORMATION CONTACT: William Stahnke, West Coast Region, NMFS, at *william.stahnke@noaa.gov,* or at (562) 980–4088.

SUPPLEMENTARY INFORMATION: On March 5, 2020, NMFS announced that it scheduled a public meeting of the SAS to the GAC on June 17, 2020, and a public meeting of the GAC to the U.S. Section to the IATTC on June 18, 2020 (85 FR 12907). On May 19, 2020, NMFS announced a revision to the format of the public meetings of the SAS and the GAC, which would be held solely by webinar instead of in-person; additionally NMFS announced that the

U.S. Stakeholder conference call to discuss IATTC tropical tuna management in the eastern Pacific Ocean scheduled for May 22, 2020, was cancelled, and the content of that call would be included in the SAS and GAC webinars (85 FR 29931). However, due to the unexpected and recent postponement of the IATTC Scientific Advisory Committee (SAC) Virtual Discussion scheduled for June 16, 2020, and the resulting delay of the release of information and recommendations, there will be limited information available to hold a standalone SAS meeting. Therefore, NMFS is consolidating the SAS and GAC meetings into one webinar on June 18, 2020. This consolidated meeting also includes the content of the cancelled U.S. Stakeholder conference call to discuss tropical tuna management in the eastern Pacific Ocean.

In accordance with the Tuna Conventions Act (16 U.S.C. 951 *et seq.*), the U.S. Department of Commerce, in consultation with the Department of State (the State Department), appoints a GAC to the U.S. Section to the IATTC, and a SAS that advises the GAC. The U.S. Section consists of the four U.S. Commissioners to the IATTC and representatives of the State Department, NOAA, Department of Commerce, other U.S. Government agencies, and stakeholders. The GAC advises the U.S. Section with respect to U.S. participation in the work of the IATTC, focusing on the development of U.S. policies, positions, and negotiating tactics. The purpose of the SAS is to advise the GAC on scientific matters. NMFS West Coast Region staff provide administrative support for the GAC and SAS. The meetings of the GAC and SAS are open to the public, unless in executive session. The time and manner of public comment will be at the discretion of the Chairs for the GAC and SAS.

Currently, the 95th meeting of the IATTC, the 41st Meeting of the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP), and IATTC and AIDCP working group meetings are scheduled to be held, in whatever format, from October 26 to November 6, 2020. However, these dates are subject to change. For more information and updates on these meetings, please visit the IATTC's website: *https://www.iattc.org/MeetingsENG.htm.*

SAS and GAC Meeting Topics

In a memorandum from the IATTC Director to the IATTC Commissioners and Heads of Delegation on June 9, 2020 (Ref. No. 0287–410), the IATTC Director announced that the pre-recorded SAC presentations and the live SAC virtual discussion that were scheduled to occur on June 12 and June 16, 2020, respectively, would be postponed until after the dates scheduled for the meetings of the SAS and GAC. As such, the consolidated SAS and GAC meeting will have a streamlined agenda.

The meeting agenda will include, but is not limited to, the following topics:

(1) Overview of the 2020 IATTC Meetings;

(2) Outcomes of the 2020 stock assessments and stock status updates for tuna, tuna-like species, and other species caught in association with those fisheries in the eastern Pacific Ocean;

(3) Evaluation of the IATTC Staff's Recommendations to the Commission for 2020;

(4) Issues related to non-target species, such as sharks, seabirds, sea turtles;

(5) Evaluation of U.S. priorities for the 95th meeting of the IATTC and priorities from other IATTC members;

(6) Recommendations and evaluations by the SAS and GAC; and

(7) Other issues as they arise.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to William Stahnke (see **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 951 *et seq.*

Dated: June 12, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–13073 Filed 6–12–20; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA183]

Endangered Species; File No. 21516

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for public comments.

SUMMARY: NMFS has received a revised application from Virginia Electric and Power Company, D.B.A. Dominion Virginia Power for an incidental take permit, pursuant to the Endangered Species Act for activities associated with the otherwise lawful continued operation and maintenance of the Dominion Chesterfield Power Station in Chesterfield, VA. We are publishing this notice to inform the public that we are considering issuing a 5-year permit to the applicant that would authorize take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) from the Chesapeake Bay.

DATES: To allow for timely processing of the permit application, we must receive your comments no later than July 17, 2020.

ADDRESSES: The application is available for download and review at *http://www.nmfs.noaa.gov/pr/permits/esa_review.htm* under the section heading ESA Section 10(a)(1)(B) Permits and Applications and at *http://www.regulations.gov.* The application is also available upon request by emailing *nmfs.gar.dominionitp@noaa.gov.*

Submit your comments by including NOAA–NMFS–2017–0051–0001, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/document?D=NOAA-NMFS-2017-0051-0001.*
2. Click the ''Comment Now!'' icon, complete the required fields.
3. Enter or attach your comments.

- *Email:* Submit information to *nmfs.gar.dominionitp@noaa.gov.*

Instructions: We may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the specified period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender is publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Julie Crocker, (978) 282–8480.

SUPPLEMENTARY INFORMATION: We, NMFS, published notice in the **Federal Register** on August 14, 2017 (82 FR 37849), of an application from Virginia Electric and Power Company, D.B.A. Dominion Virginia Power (Dominion) for an incidental take permit (ITP) to take federally listed Atlantic sturgeon belonging to the Chesapeake Bay Distinct Population Segment (Chesapeake Bay DPS) over a 10-year period as a result of impingement and entrainment in the Chesterfield Power Station (CPS) cooling water intake

system and collection during sampling required by section 316(b) of the Clean Water Act (CWA). Dominion provided a draft Habitat Conservation Plan (HCP) that described the conservation program they would implement to minimize and mitigate the impacts of the incidental take. We received 37 comments during the public comment period. In addition, new information became available regarding dispersal of Atlantic sturgeon offspring in the James River, the risk of impingement for adult Atlantic sturgeon at CPS, and operation of the generating units at CPS. Dominion has revised and resubmitted their application and draft HCP to us in response to the public comments received and this new information.

To comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), we prepared an Environmental Assessment (EA) that describes our proposed action and possible alternatives and analyzes the effects of the proposed action and alternatives on the human environment. We will evaluate whether the EA's analysis is adequate to support a Finding of No Significant Impact.

Background

Section 9 of the Endangered Species Act (ESA) and Federal regulations prohibit the ''take'' of Atlantic sturgeon belonging to the Chesapeake Bay DPS. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(2)(A) of the ESA requires an ITP applicant to submit an HCP that specifies the steps the applicant will take to minimize and mitigate the impacts of the taking. Regulations governing ITPs for threatened and endangered species are found at 50 CFR 222.307.

The CPS is a coal-fueled power station in Chesterfield, Virginia in the upper tidal portion of the James River. It operates pursuant to a permit issued by the Virginia Department of Environmental Quality under section 402 of the CWA (the National Pollutant Discharge Elimination System program). CPS is subject to the CWA section 316(b) existing facility rule (79 FR 48300, August 15, 2014).

The revisions to Dominion's ITP application are: A permit for a term of 5-years instead of 10-years; new estimates for take of Atlantic sturgeon larvae by entrainment; and, removing anticipated take by impingement. Based on Dominion's revised approach for estimating take, Dominion anticipates an average annual take of 10,949 (range 1,820–33,789) Atlantic sturgeon larvae from the Chesapeake Bay DPS due to entrainment in the Dominion CPS cooling water intakes. Dominion anticipates the take of no more than one Atlantic sturgeon larvae in water samples needed to complete their required CWA 316(b) studies.

Dominion no longer anticipates take by impingement. Modifications and repairs were made to the intake guards following impingement of four adult Atlantic sturgeon in October 2018. Dominion subsequently determined that through-rack water velocities for the intake guards, trash racks, and traveling screens were less than 2 feet per second (fps) and concluded that healthy adult Atlantic sturgeon are capable of maneuvering against the intake velocity. Juvenile and subadult Atlantic sturgeon are not expected to occur in the vicinity of CPS given their life history attributes. Therefore, Dominion does not anticipate that take by impingement will occur and is not requesting such take in their ITP application.

Dominion does not anticipate and is not requesting take of Atlantic sturgeon at CPS as a result of dredging, constituent discharge, thermal discharge, vessel movements, and shoreline and structure maintenance associated with operation of CPS. Dominion included consideration of the potential effects of CPS operation to shortnose sturgeon (*Acipenser brevirostrum*) in the ITP application but are not requesting take of shortnose sturgeon.

Conservation Plan

Section 10(a)(1)(B) of the ESA specifies that no permit may be issued unless an applicant submits an adequate HCP. Dominion has revised its proposed HCP which describes measures designed to minimize, monitor, and mitigate the incidental take of Atlantic sturgeon. Following the impingement of four adult Atlantic sturgeon in September 2018, Dominion completed a survey of the intake guards, repaired those that were degraded, and replaced a missing guard. Grid openings of the guards were reduced to prevent the smallest adult Atlantic sturgeon in the James River from entering the intake structure. In addition, the intake opening for each of two of the intake units was expanded to reduce water velocity. Based on these changes, Dominion anticipates the risk of impingement for adult Atlantic sturgeon has been minimized to the extent that take is not likely to occur. Dominion will monitor for impingement at the trash racks and at the traveling screens to confirm that take is not occurring.

Dominion proposes to partner with Virginia Commonwealth University (VCU) which will provide Dominion access to VCU's tracking data for acoustically-tagged sturgeon that move upriver of CPS to spawn. In addition, Dominion will contract with VCU to deploy and maintain additional, new, receivers downstream of CPS to better inform when spawning Atlantic sturgeon are in the vicinity of CPS. The information acquired is expected to help inform when sturgeon larvae may be present in the vicinity of CPS. The information can be used by Dominion for timing its remaining sampling to complete the required CWA 316(b) studies. Knowing when spawning adults move past CPS or how long they are present in the vicinity of CPS will provide information necessary to better assess the risk of CPS operations (*e.g.,* intake flows), and to develop site-specific management actions to minimize take (*e.g.,* planning and implementing routine maintenance outages, when practicable, to coincide with peak spawning movements).

Dominion is also proposing to implement a pilot study that tests a new approach for identifying and counting Atlantic sturgeon larvae at CPS. If effective, this approach would provide information to inform minimization measures for Atlantic sturgeon larvae.

The proposed action is the issuance of an ITP and implementation of the proposed HCP. Dominion considered two alternatives to the proposed action in its HCP: (1) No change to existing operations, studies and maintenance at CPS; and, (2) avoiding and minimizing permitted activities (*e.g.,* modifying water withdrawals; modifying the cooling water intake structure; not conducting or not continuing the planned CWA 316(b) studies; not dredging and/or dredging less frequently; not using barges or vessels for the shipment or delivery of bulk materials; not performing or reducing shoreline and structure maintenance activities at CPS).

National Environmental Policy Act

In compliance with NEPA, we analyzed the impacts of the proposed issuance of an ITP and implementation of the HCP, and alternatives. Based on this analysis and any new information resulting from public comment, we will determine if there are any significant impacts caused by the proposed action. We previously prepared a draft EA and

have revised it based on the new information provided by Dominion in their revised ITP application and HCP. We have made the draft, revised, EA available for public inspection online (see **ADDRESSES**).

This notice is provided pursuant to section 10(c) of the ESA and to the NEPA regulations (40 CFR 1506.6). We will evaluate the application, associated documents, and submitted comments received to determine whether the application meets the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

We will publish a record of our final action in the **Federal Register**.

Authority: This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: June 12, 2020.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–13041 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA204]

Schedules for Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops will be held in July, August, and September of 2020. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2020 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held on July 9, July 23, and August 6, 2020. The Safe Handling, Release, and Identification Workshops will be held on July 1, July 17, August 7, August 12, September 9, and September 17, 2020. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Fort Lauderdale, FL; Rosenberg, TX; and Panama City Beach, FL. The Safe Handling, Release, and Identification Workshops will be held in Panama City, FL; Ronkonkoma, NY; Largo, FL; Wilmington, NC; Galveston, TX; and Warwick, RI. See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding the Atlantic Shark Identification and Safe Handling, Release, and Identification workshops are posted on the internet at: *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.* The workshops announced in this notice are in addition to the rescheduled workshops announced in a previous notice (85 FR 33631, June 2, 2020).

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Thus, certificates that were initially issued in 2017 will be expiring in 2020. Approximately 170 free Atlantic Shark Identification Workshops have been conducted since July 2008.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit that first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. July 9, 2020, 12 p.m.–4 p.m., Hampton Inn, 720 East Cypress Creek Road, Fort Lauderdale, FL 33334.
2. July 23, 2020, 12 p.m.–4 p.m., Hampton Inn, 3312 Vista Drive, Rosenberg, TX 77471.
3. August 6, 2020, 12 p.m.–4 p.m., Country Inn and Suites, 10241 Clarence Street, Panama City Beach, FL 32407.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at (386) 852–8588. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the

appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. Certificates issued in 2017 will be expiring in 2020. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 344 free Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. July 1, 2020, 9 a.m.–5 p.m., Hilton Garden Inn, 1101 U.S. Highway 231, Panama City, FL 32405.
2. July 17, 2020, 9 a.m.–5 p.m., Marriott Courtyard, 5000 Express Drive South, Ronkonkoma, NY 11779,
3. August 7, 2020, 9 a.m.–5 p.m., Holiday Inn Express, 210 Seminole Boulevard, Largo, FL 33770.
4. August 12, 2020, 9 a.m.–5 p.m., Hilton Garden Inn, 6745 Rock Spring Road, Wilmington, NC 28405.
5. September 9, 2020, 9 a.m.–5 p.m., Doubletree Hotel, 1702 Seawall Boulevard, Galveston, TX 77550.
6. September 17, 2020, 9 a.m.–5 p.m., Hilton Garden Inn, 1 Thurber Street, Warwick, RI 02886.

Registration

To register for a scheduled Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, smalltooth sawfish, Atlantic sturgeon, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 12, 2020.

Hélène M.N. Scalliet,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2020–13072 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Region Scale & Catch Weighing Requirements

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 17, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0330 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Services (NMFS), Alaska Regional Office, is requesting extension of the currently approved information collection for Alaska Region Scale & Catch Weighing Requirements.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act) authorizes the North Pacific Fishery Management Council to prepare and amend fishery management plans for any fishery in waters under its jurisdiction.

The At-Sea Scales Program was developed in response to the need for catch accounting methods that were more precise and verifiable at the level of the individual haul and less dependent on estimates generated by at-sea observers. This was necessary due to the implementation of large-scale catch share programs that required NMFS to provide verifiable and defensible estimates of quota harvest. Scale and catch-weighing monitoring is required for Western Alaska Community Development Quota Program (CDQ) catcher/processors (C/Ps), American Fisheries Act (AFA) C/Ps, AFA motherships, AFA shoreside processors and stationary floating processors, Central Gulf of Alaska Rockfish Program trawl C/Ps, non-AFA trawl C/Ps participating in Bering Sea and Aleutian Islands (BSAI) trawl fisheries, and longline C/Ps participating in BSAI Pacific cod fisheries. Scale and catch weighing requirements are located at 50 CFR parts 679 and 680.

NMFS has identified three primary objectives for monitoring catch to ensure independent and verifiable data is available for fisheries management. First, monitoring methods must ensure all catch delivered to a processor is weighed and identified to species and provide a verifiable record of the weight and species composition of each delivery. Second, all catch must be weighed using NMFS-approved scales to determine the weight of the catch and provide a record of that weight. Third, monitoring systems, such as video, must be in place to ensure that all catch is accounted for.

Shoreside processors participating in catch share programs have many of the same catch accounting and monitoring goals, but two differences require unique monitoring tools to obtain precise and verifiable catch amounts for quota management. First, shoreside processors vary more in size, facilities, and layout than do catcher/processors or motherships. Second, the State of Alaska is responsible for approving scales used for trade by shoreside processors and has developed an effective program for their inspection and approval.

Because of the wide variations in factory layout, a performance-based catch monitoring system is more appropriate for shoreside processors than a type approval process used for at-sea scales. CMCPs (Catch Monitoring and Control Plans) and CMPs (Crab Monitoring Plans) are submitted by the representative from the shoreside processor and approved by NMFS. CMCPs and CMPs detail a series of performance based standards set out in regulation that ensure that all delivered catch can be effectively monitored by NMFS-authorized personnel, that NMFS-authorized personnel can effectively conduct their monitoring duties, and that all catch is accurately sorted and weighed by species.

Vessels that participate in halibut deck sorting are required to comply with additional monitoring and equipment requirements such as the installation of an observer sampling station on deck and video monitoring requirements. These additional measures are necessary to ensure accurate accounting of halibut sorted on the deck of participating vessels.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email, online, mail, and fax. Daily flow scale and hopper scale tests are reported using an electronic logbook. Printed reports are generated automatically by software. Video monitoring systems record and store video data automatically.

III. Data

OMB Control Number: 0648–0330.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 94.

Estimated Time per Response:

Scale Type Evaluation: 50 hours.

Installation & Maintenance: At-Sea Scales (Maintenance only)—1 minute; Video Monitoring Systems (non-halibut deck sorting)—1 minute; Video Monitoring Systems (halibut—initial year)—12 hours; Observer Deck Sampling Stations (initial year)—12 hours; annual renewal—1 minute;

Inspection Request: 8 minutes.

Daily Scale Test: Notify Observer of Tests—2 minutes; Record of Flow Scale Test—30 minutes; Record of Hopper Scale Test—15 minutes.

Printed Report—Flow Scale: Catch & Cumulative Weight, Audit Trail, Calibration Log, and Fault Log—1 minute each.

Printed Report—Hopper Scale: Catch Weight and Audit Trail—1 minute each.

Video Monitoring: 2 hours.

Notification of Pacific Cod Monitoring Option: 10 minutes.

Catch Monitoring and Control Plan (CMCP): Annual Submission—40 hours; CMCP Addendum—8 hours; Printed Record from Scale—1 minute; Notify Observer—1 minute.

Crab Monitoring Plan (CMP): Annual Submission—16 hours; CMP Addendum—8 hours; Printed Records from Scale—1 minute.

Estimated Total Annual Burden Hours: 10,086 hours.

Estimated Total Annual Cost to Public: $812,371 in recordkeeping and reporting costs.

Respondent's Obligation: Mandatory; Required to Obtain or Retain Benefits.

Legal Authority: 16 U.S.C. 1801 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–13029 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2020–0024]

Patent and Trademark Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations for the Patent and Trademark Public Advisory Committees.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (''1999 Act''), which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters (now codified in the United States Code). The America Invents Act Technical Corrections Act made several amendments to the 1999 Act, including the requirement that the terms of the USPTO Public Advisory Committee members be realigned by 2014 so that December 1 would be used as the start and end date, with terms staggered so that each year, three existing terms expire and three new terms begin on December 1. With this notice, the USPTO is requesting nominations for up to three members of the Patent Public Advisory Committee and for up to three members of the Trademark Public Advisory Committee, for terms of three years beginning on December 1, 2020.

DATES: Nominations must be postmarked or emailed on or before July 31, 2020.

ADDRESSES: Persons wishing to submit nominations should send the nominee's résumé by postal mail to Coke Stewart, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450, or by email to *PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Public Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Coke Stewart, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, at 571–272–8600.

SUPPLEMENTARY INFORMATION: The Advisory Committees' duties include:

- Reviewing and advising the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to the policies, goals, performance, budget, and user fees of the USPTO regarding patents and trademarks, respectively (35 U.S.C. 5); and
- Within 60 days after the end of each fiscal year: (1) Preparing an annual report on matters listed above; (2) transmitting the report to the Secretary of Commerce (''Secretary''), the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publishing the report in the Official Gazette of the USPTO. Id.

Advisory Committees

The Public Advisory Committees are each composed of nine voting members who are appointed by the Secretary and serve at the pleasure of the Secretary for three-year terms. Members are eligible for reappointment for a second consecutive three-year term. The Public Advisory Committee members must be citizens of the United States and are chosen to represent the interests of diverse stakeholders of the USPTO with respect to patents, in the case of the Patent Public Advisory Committee, and trademarks, in the case of the Trademark Public Advisory Committee. Members must represent small and large entity applicants located in the United States in proportion to the number of applications filed by such applicants. The committees must include individuals with ''substantial background and achievement in finance, management, labor relations, science, technology, and office automation.'' 35 U.S.C. 5(b)(3). Each of the Public Advisory Committees also includes three non-voting members representing each labor organization recognized by the USPTO. Administration policy discourages the appointment of federally registered lobbyists to agency advisory boards and commissions (Lobbyists on Agency Boards and Commissions, *https://obamawhitehouse.archives.gov/blog/2009/09/23/lobbyists-agency-boards-and-commissions* (Sept. 23, 2009)); cf. E.O. 13490, 74 FR 4673 (Jan. 21, 2009) (While Executive Order 13490 does not specifically apply to federally registered lobbyists appointed by agency or department heads, it sets forth the Administration's general policy of decreasing the influence of special interests in the Federal Government).

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a three-year term that begins on December 1, 2020, and ends on December 1, 2023. As required by the 1999 Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day (including travel time) they are attending meetings or engaging in the business of that advisory committee. The enabling statute states that members are to be compensated at the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5 of the United States Code. Committee members are compensated on an hourly basis, which is based on the daily rate. While away from home or regular place of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code.

Applicability of Certain Ethics Laws

Public Advisory Committee Members are Special Government Employees within the meaning of section 202 of title 18 of the United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members and assumes that members are not engaged in Public Advisory Committee business for more than 60 days during any period of 365 consecutive days.

- Each member will be required to file a confidential financial disclosure form within 30 days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party in a particular matter that came before the member's committee and that involved at least one specific party. 18 U.S.C. 205(c); see also 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Public Advisory Committee will take place at the call of the respective Committee Chair to

consider an agenda set by that Chair. Meetings may be conducted in person, by telephone, online, or by other appropriate means. The meetings of each advisory committee will be open to the public, but each advisory committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential information. Nominees must have the ability to participate in committee business via the internet.

Andrei Iancu,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2020–13043 Filed 6–16–20; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0094]

Agency Information Collection Activities; Comment Request; Report of Dispute Resolution Under Part C of the Individuals With Disabilities Education Act

AGENCY: Department of Education (ED), Office of Special Education and Rehabilitative Services (OSERS).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 17, 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–0094. 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–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Bae, 202–245–8272.

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: Report of Dispute Resolution Under Part C of the Individuals with Disabilities Education Act.

OMB Control Number: 1820–0678.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 2,240.

Abstract: The Individuals with Disabilities Education Act (IDEA; Pub. L. 108–446) directs the Secretary of Education to obtain data on the dispute resolution process described in Section 615 of the law. This package provides instructions and form necessary for States to report the number of written, signed complaints; mediation requests; and hearing requests and the status of these actions initiated during the reporting year with regards to children served under Part C of IDEA. The form satisfies reporting requirements and is used by OSEP to monitor SEAs and for Congressional and public reporting. No adjustments were made to this data collection therefore we anticipate no change in the response burden associated with this data collection. The Department of Education is interested in public comment addressing the COVID crisis. Specially, are there any considerations to these data collections due to the national emergency caused by the novel Coronavirus disease 2019 (COVID–19). Please note that written comments received in response to this notice will be considered public records.

Dated: June 11, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–12973 Filed 6–16–20; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Standardized Format To Be Used for Both Interim and Final Progress Reporting

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Request for public comment on standardized EAC Progress Report (EAC–PR) format.

SUMMARY: The EAC Office of Grants Management (EAC/OGM) is responsible for distributing, monitoring, and providing technical assistance to states and grantees on the use of Federal funds. EAC/OGM also reports on how the funds are spent, negotiates indirect cost rates with grantees, and resolves audit findings on the use of Help America Vote Act (HAVA) funds. The EAC–PR has been developed for both interim and final progress reports for grants issued under HAVA authority. EAC received emergency clearance of its Coronavirus Aid, Relief and Economic Security (CARES) Act report form due to the public health emergency posed by COVID19. This format builds upon that report for the separate grant awards given by EAC.

DATES: Comments must be received by 5 p.m. EST on Monday, August 17, 2020.

ADDRESSES: To view the proposed EAC–PR format, see: *https://www.eac.gov/payments-and-grants/reporting.* Written comments and recommendations for the proposed information collection should

be sent directly to *HAVAFunding@eac.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the EAC–PR, contact Kinza Ghaznavi, Office of Grants, Election Assistance Commission, *HAVAFunding@eac.gov,* (202) 400–1086.

All requests and submissions should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description

A ''For Comment'' version of the draft format for use in submission of interim and final Progress Reports is posted on the EAC website at: *https://www.eac.gov/payments-and-grants/reporting.* The PR will directly benefit award recipients by making it easier for them to administer Federal grant and cooperative agreement programs through standardization of the types of information required in progress reports—thereby reducing their administrative effort and costs.

After obtaining and considering public comment, the EAC will prepare the format for final clearance. Comments are invited on (a) ways to enhance the quality, utility, and clarity of the information collected from respondents, including through the use of automated collection techniques or other forms of information technology; and (b) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The EAC proposes to collect program progress data for HAVA grantees building upon the emergency approved form OMB Control No: 3265–0020 for the HAVA CARES Act Progress Reports. EAC will use this data to ensure grantees are proceeding in a satisfactory manner in meeting the approved goals and purpose of the project.

The requirement for grantees to report on performance is OMB grants policy. Specific citations are contained in part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.''

Respondents: All EAC grantees and state governments.

ANNUAL BURDEN ESTIMATES

EAC grant	Instrument	Total number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
251	EAC–PR	56	2	1	112
101	EAC–PR	56	2	1	112
2018	EAC–PR	56	2	1	112
CARES	EAC–PR	56	*3	1	168
Total					504

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2020–13032 Filed 6–16–20; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Notice of Orders Issued under Section 3 of the Natural Gas Act During April 2020

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

	FE Docket Nos.
JM & RAL Energy Inc	20–30–NG; 18–102–NG.
Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC.	19–124–LNG.
Sabine Pass Liquefaction, LLC.	19–125–LNG.
Commonwealth Lng, LLC	19–134–LNG.
West Texas Gas, Inc	20–32–NG.
Sacramento Municipal Utility District.	20–34–NG.
Brookfield Renewable Trading and Marketing LP.	20–22–NG.
S.D. Sunnyland Enterprises, Inc.	20–35–LNG.
New York State Electric & Gas Corporation.	20–36–NG.
Esco del Noroeste LLC	20–39–NG.
IGI Resources Inc	20–38–NG.
Pilot Power Group, LLC	20–37–NG; 19–15–NG.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during April 2020, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), and to vacate prior authorization. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2020.* They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on June 12, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4523; 4237–A	04/07/20	20–30–NG; 18–102–NG.	JM & RAL Energy Inc	Order 4523 granting blanket authority to export natural gas to Mexico, and vacating prior authorization (Order 4237–A).
4519	04/14/20	19–124–LNG	Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC.	Order 4519 granting long-term authority to export LNG to Free Trade Agreement Nations.
4520	04/14/20	19–125–LNG	Sabine Pass Liquefaction, LLC.	Order 4520 granting long-term authority to export LNG to Free Trade Agreement Nations.

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

4521	04/17/20	19–134–LNG	Commonwealth LNG, LLC	Order 4521 granting long-term authority to export LNG to Free Trade Agreement Nations.
4524	04/20/20	20–32–NG	West Texas Gas, Inc	Order 4524 granting blanket authority to export natural gas to Mexico.
4525	04/20/20	20–34–NG	Sacramento Municipal Utility District.	Order 4525 granting blanket authority to import natural gas from Canada.
4526	04/22/20	20–22–NG	Brookfield Renewable Trading and Marketing LP.	Order 4426 granting blanket authority to import/export natural gas from/to Canada.
4527	04/22/20	20–35–LNG	S.D. Sunnyland Enterprises, Inc.	Order 4527 granting blanket authority to import LNG from various international sources by vessel, and to export LNG to Canada.
4528	04/22/20	20–36–NG	New York State Electric & Gas Corp.	Order 4528 granting blanket authority to import/export natural gas from/to Canada.
4529	04/23/20	20–39–NG	Esco del Noroeste LLC	Order 4529 granting blanket authority to export natural gas to Mexico.
4530	04/27/20	20–38–NG	IGI Resources, Inc	Order 4530 granting blanket authority to import/export natural gas from/to Canada.
4531; 4351–A	04/27/20	20–37–NG; 19–15–NG.	Pilot Power Group, LLC	Order 4531 granting blanket authority to import/export natural gas from/to Canada, and vacating prior authorization (Order 4351–A).

[FR Doc. 2020–13040 Filed 6–16–20; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice and request for OMB review and comment.

SUMMARY: EIA reinstates the *Residential Energy Consumption Survey* (RECS), with changes, under OMB Control Number 1905–0092, as required by the Paperwork Reduction Act of 1995. RECS collects data on energy characteristics, consumption, and expenditures for the residential sector of the United States. This collection is comprised of five forms including: Form EIA 457–A *Household Survey,* Form EIA 457–D *Energy Supplier Survey: Household Propane Usage,* Form EIA 457–E *Energy Supplier Survey: Household Electricity Usage,* Form EIA 457–F *Energy Supplier Survey: Household Natural Gas Usage,* and Form EIA 457–G *Energy Supplier Survey: Household Fuel Oil/Kerosene Usage.*

DATES: Comments regarding this information collection must be received on or before July 17, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

And send a copy to: James Berry, Survey Manager, 1000 Independence Avenue, SW, EI–22, U.S. Energy Information Administration, Washington, DC 20585, or by email at *james.berry@eia.gov.*

FOR FURTHER INFORMATION CONTACT: James Berry at 202–586–5543 or by email at *james.berry@eia.gov.* The forms are available online at: *http://www.eia.gov/survey/#eia-457.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0092;

(2) *Information Collection Request Title:* EIA–457A, D, E, F, G, *2020 Residential Energy Consumption Survey*;

(3) *Type of Request:* Reinstatement with changes of a previously approved collection;

(4) *Purpose:* RECS collects information on energy use in housing units and includes a series of data collections from households and household energy suppliers. RECS data are used to generate official statistics about the energy characteristics, consumption, and expenditures of U.S. homes. EIA has conducted the RECS periodically since 1978 and the 2020 RECS will be the 15th data collection for the program.

Form EIA 457–A *Household Survey* collects information on the presence and characteristics of a wide range of energy consuming devices in homes, including heating and cooling equipment, appliances, and electronics. The *Household Survey* also asks respondents about key structural features and demographic characteristics that impact energy usage. Forms EIA 457–D, E, F, and G are *Energy Supplier Surveys.* These surveys collect monthly electricity and natural gas billing data from household survey respondent energy suppliers (*e.g.,* utilities), and periodic propane and fuel oil delivery data from bulk fuel suppliers.

RECS is integral part of EIA's mandate to collect and publish energy end-use consumption data, and the program represent the most comprehensive national and sub-national results available on energy consumption in homes. RECS is the only national and subnational data series that allows policy makers and program implementers in both public and private organizations to analyze trends in energy consumption for the residential sector. RECS fulfills planning, analyses, and decision-making needs of DOE, other Federal agencies, state governments, utilities, researchers, and energy analysts in the private sector.

(4a) *Changes to Information Collection:* EIA will use online questions via internet and mail hardcopy questionnaires as the two modes of collection for Form EIA 457–A *Household Survey.* This dual collection mode represents a change from prior collection cycles of RECS where computer assisted personal interviewing (CAPI) was the primary method for collecting household energy characteristics data. EIA piloted three tests using internet and mail questionnaires to determine the feasibility of using these alternative data collection methods. Based on extensive analysis of sample representativeness, nonresponse bias, and data quality, EIA determined that collecting this information via internet and by mail were viable modes for 2020 and future RECS data collections.

EIA will collect 2020 RECS Household Survey responses from approximately 20,000 households. The larger sample enables EIA to produce more precise estimates for key energy metrics, as well as produce some estimates for all 50 states and the District of Columbia.

EIA revised Form EIA 457–A *Household Survey* to improve the quality of responses for traditional energy-consuming devices, collect information on changes in residential consumption patterns, and collect information on emerging technologies. The new questions collect the most relevant information necessary to estimate household energy use and to inform energy end-use modeling. For Forms EIA 457–D, E, F, and G *Energy Supplier Surveys* the number of customer (household) billing and delivery months requested increases from 20 to 24 months. The additional four months of energy data improves the practical utility of the energy data reported and enables EIA to analyze household energy consumption patterns before, during, and after COVID–19.

(5) *Annual Estimated Number of Respondents:* 5,628.

(6) *Annual Estimated Number of Total Responses:* 5,628.

(7) *Annual Estimated Number of Burden Hours:* 3,951.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained in the normal course of business. For household respondents no additional record keeping or other burden is required outside the interview process. The annualized cost of burden hours to all household, and energy supplier respondents is estimated to be $316,633 (3,951 annual burden hours times the current hourly rate of $80.14). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Please refer to the supporting statements as well as the forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: 42 U.S.C. 7135, 15 U.S.C. 772(b), 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on June 11th, 2020.

Thomas Leckey,

Assistant Administrator for Energy Statistics, U.S. Energy Information Administration.

[FR Doc. 2020–13039 Filed 6–16–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8946–000]

Gorsich, Matthew; Notice of Filing

Take notice that on June 10, 2020, Matthew Gorsich, submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2018) and part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45 (2019).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

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 July 1, 2020.

Dated: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13018 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2028–000]

Bitter Ridge Wind Farm, 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 Bitter Ridge Wind Farm, 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 *July 1, 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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13027 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20–952–000]

Stagecoach Pipeline & Storage Company LLC; Notice of Petition for Declaratory Order

Take notice that on June 9, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2019), Stagecoach Pipeline & Storage Company LLC (Petitioner), filed a petition for declaratory order (Petition), requesting that the Commission issue a declaratory order removing uncertainty as to whether sections 4 and 5 of the Natural Gas Act and Part 154 of the Commission's regulations provide the Commission concurrent jurisdiction with United States Bankruptcy Courts, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on July 9, 2020.

Dated: June 11, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13035 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2019–000]

Gray County Wind, 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 Gray County Wind, 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 *July 1, 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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13024 Filed 6–16–20; 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: EG20–183–000.
Applicants: Aviator Wind, LLC.
Description: Aviator Wind, LLC Submits EWG Self-Certification.
Filed Date: 6/11/20.
Accession Number: 20200611–5041.
Comments Due: 5 p.m. ET 7/2/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1281–001.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2020–06–10 Compliance Filing in Docket No. ER20–1281 to be effective 1/28/2020.
Filed Date: 6/10/20.
Accession Number: 20200610–5139.
Comments Due: 5 p.m. ET 7/1/20.

Docket Numbers: ER20–1656–001.
Applicants: MidAmerican Energy Company.
Description: Tariff Amendment: Joint Pricing Zone Revenue Allocation Agt-3rd Rev (Amended) to be effective 6/1/2020.
Filed Date: 6/10/20.
Accession Number: 20200610–5187.
Comments Due: 5 p.m. ET 7/1/20.

Docket Numbers: ER20–2028–000.
Applicants: Bitter Ridge Wind Farm, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 7/1/2020.
Filed Date: 6/11/20.
Accession Number: 20200611–5002.
Comments Due: 5 p.m. ET 7/2/20.

Docket Numbers: ER20–2029–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2020–06–11_SA 3501 METC–MEC North GIA (J937) to be effective 5/29/2020.
Filed Date: 6/11/20.
Accession Number: 20200611–5017.
Comments Due: 5 p.m. ET 7/2/20.

Docket Numbers: ER20–2030–000; TS20–5–000.
Applicants: Altavista Solar, LLC.
Description: Petition for Waiver of Open-Access Requirements of Order Nos. 888, et al. of Altavista Solar, LLC.
Filed Date: 6/10/20.
Accession Number: 20200610–5209.
Comments Due: 5 p.m. ET 7/1/20.

Docket Numbers: ER20–2031–000.
Applicants: Mission Solar, LLC.
Description: Appeal and Protest of Mission Solar, LLC.
Filed Date: 6/8/20.
Accession Number: 20200608–5240.
Comments Due: 5 p.m. ET 6/29/20.

Docket Numbers: ER20–2032–000.
Applicants: Hardin Wind, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization Pursuant to Section 205 to be effective 8/10/2020.
Filed Date: 6/11/20.
Accession Number: 20200611–5096.
Comments Due: 5 p.m. ET 7/2/20.

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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13019 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3511–024]

Lower Saranac Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 3511–024.

c. *Date filed:* May 29, 2020.

d. *Applicant:* Lower Saranac Hydro, LLC.

e. *Name of Project:* Groveville Hydroelectric Project.

f. *Location:* On Fishkill Creek, in the City of Beacon, Dutchess County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Elise Anderson, Senior Environmental Permitting Specialist, Lower Saranac Hydro, LLC, Enel Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810; Phone: (978) 447–4408 or email at *elise.anderson@enel.com.*

i. *FERC Contact:* Jeremy Feinberg at (202) 502–6893 or *jeremy.feinberg@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: July 28, 2020.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

m. The application is not ready for environmental analysis at this time.

n. The existing Groveville Mills Hydroelectric Project consists of: (1) A 167-foot-long, 37-foot-high concrete gravity dam, with a 140-foot-long spillway having a crest elevation of 172.4 feet National Geodetic Vertical Datum of 1929 (NGVD29) and topped with 3-foot-high wooden flashboards; (2) an impoundment with a gross storage capacity of approximately 43 acre-feet and a surface area of 5 acres at a normal pool elevation of 175.4 feet NGVD29; (3) an intake structure with two gates and a 27-foot-high, 34-foot-wide trashrack; (4) a 9-foot-diameter, approximately 140-foot-long riveted steel underground penstock; (5) a powerhouse containing three fixed-output turbine-generator units with a total rated capacity of 927 kilowatts; (6) a 4-foot-high submerged stilling basin weir approximately 60 feet downstream of the dam spillway; (7) a 20-foot-wide, 90-foot-long tailrace; (8) a 20-foot-long underground generator lead connecting to a step-up transformer that connects to a 13.2-kilovolt, 40-foot-long underground transmission line that then connects to a 15-foot-long aerial transmission line before connecting to the regional grid; and (9) appurtenant facilities.

The project operates in a modified run-of-river mode. The project had an average annual generation of 1,762.7 megawatt-hours between 2012 and 2019.

o. A copy of the application may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–3511). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY). At this time, the Commission has suspended access to its 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.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—August 2020
Request Additional Information—August 2020
Issue Acceptance Letter—November 2020
Issue Scoping Document 1 for comments—December 2020
Request Additional Information (if necessary)—February 2021
Issue Scoping Document 2 (if necessary)—March 2021
Issue Notice of Ready for Environmental Analysis—March 2021
Commission issues Environmental Assessment (EA)—September 2021
Comments on EA—October 2021

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13033 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1988–000]

Northern Colorado Wind Energy Center II; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Northern Colorado Wind Energy Center II'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 *July 1, 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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13023 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–52–000]

Constellation Mystic Power, LLC v. ISO New England, Inc.; Notice of Complaint

Take notice that on June 10, 2020, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206(b), Constellation Mystic Power, LLC (Complainant) filed a formal complaint against ISO New England, Inc., (Respondent), requesting that the Commission prohibit the Respondent

from (1) implementing an unfiled revision to a planning procedure that would significantly affect the rates, terms and conditions of jurisdictional services by dramatically changing the way in which the Respondent conducts its annual transmission security review of capacity auction retirement bids and the Network Model upon which the capacity auction is based, and (2) violating certain requirements of its Tariff, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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.

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.

Comment Date: 5:00 p.m. Eastern Time on June 30, 2020.

Dated: June 11, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13034 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2012–000]

Orbit Bloom Energy, 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 Orbit Bloom Energy, 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 *July 1, 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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13021 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX20–5–000]

AES North American Development, LLC; Notice of Filing

Take notice that on June 8, 2020, pursuant to sections 211 of the Federal Power Act,[1] and Rule 211 and 214 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[2] AES North American Development, LLC (AES) filed an application requesting that the Commission issue an order directing San Diego Gas & Electric Company to provide interconnection and transmission service for AES's proposed 40 MW Battery Energy Storage System.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

[1] 16 U.S.C. 824j, (2012 & Supp. V. 2017).

[2] 18 CFR 385.211, 385.214 (2019).

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (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 June 29, 2020.

Dated: June 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13013 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1980–000]

Cedar Springs Wind, 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 Cedar Springs Wind, 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 *July 1, 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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13022 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1986–000]

Day County Wind I, 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 Day County Wind I, 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 *July 1, 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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13020 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1985–000]

Northern Colorado Wind Energy Center, 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 Northern Colorado Wind Energy Center, 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 July 1, 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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13025 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–947–000.
Applicants: Rockies Express Pipeline, LLC.
Description: Section 4(d) Rate Filing: REX 2020–06–05 Negotiated Rate Agreement to be effective 6/5/2020.
Filed Date: 6/5/20.
Accession Number: 20200605–5199.
Comments Due: 5 p.m. ET 6/17/20.

Docket Numbers: RP20–948–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Section 4(d) Rate Filing: Limited Section 4 Station 240 LNG to be effective 5/1/2020.
Filed Date: 6/8/20.
Accession Number: 20200608–5164.
Comments Due: 5 p.m. ET 6/22/20.

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 date(s). 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: June 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13016 Filed 6–16–20; 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: EG20–182–000.
Applicants: Rattlesnake Flat, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 6/8/20.
Accession Number: 20200608–5191.
Comments Due: 5 p.m. ET 6/29/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1172–003.
Applicants: Wisconsin Electric Power Company.
Description: Compliance filing: Settlement Compliance Filing to be effective 1/1/2018.
Filed Date: 6/9/20.
Accession Number: 20200609–5099.
Comments Due: 5 p.m. ET 6/30/20.

Docket Numbers: ER20–2015–000.
Applicants: Pacific Gas and Electric Company.
Description: Request for One-Time Waiver of Pacific Gas and Electric Company.
Filed Date: 6/8/20.
Accession Number: 20200608–5212.
Comments Due: 5 p.m. ET 6/29/20.

Docket Numbers: ER20–2016–000.
Applicants: Gichi Noodin Wind Farm, LLC.
Description: Baseline eTariff Filing: Gichi Noodin Wind Farm LLC MBR Application Filing to be effective 8/1/2020.
Filed Date: 6/9/20.
Accession Number: 20200609–5044.
Comments Due: 5 p.m. ET 6/30/20.

Docket Numbers: ER20–2017–000.
Applicants: Innolith Snook, LLC.
Description: Tariff Cancellation: Tariff cancellation to be effective 6/9/2020.
Filed Date: 6/9/20.
Accession Number: 20200609–5082.
Comments Due: 5 p.m. ET 6/30/20.

Docket Numbers: ER20–2018–000.
Applicants: Versant Power.
Description: Section 205(d) Rate Filing: Service Agreements Notice of Succession to Versant Power to be effective 5/11/2020.
Filed Date: 6/9/20.
Accession Number: 20200609–5138.
Comments Due: 5 p.m. ET 6/30/20.

Docket Numbers: ER20–2019–000.
Applicants: Gray County Wind, LLC.
Description: Baseline eTariff Filing: Gray County Wind, LLC Application for MBR Authority to be effective 8/9/2020.
Filed Date: 6/9/20.
Accession Number: 20200609–5156.
Comments Due: 5 p.m. ET 6/30/20.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR19–8–001.
Applicants: North American Electric Reliability Corporation.
Description: Request of the North American Electric Reliability Corporation to expend funds to develop the ERO Enterprise Secure Evidence Locker.
Filed Date: 6/8/20.
Accession Number: 20200608–5222.
Comments Due: 5 p.m. ET 6/15/20.

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: June 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13017 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1991–000]

Ponderosa Wind, 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 Ponderosa Wind, 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 *July 1, 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: June 11, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13026 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt

of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending 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 toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
None.		
Exempt:		
RP20–859–000	5–27–2020	U.S. Congress [1]

[1] U.S. Senators John Hoeven, Kevin Cramer, and U.S. Representative Kelly Armstrong.

Dated: June 9, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13014 Filed 6–16–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0263; FRL–10009–83]

FIFRA Scientific Advisory Panel; Notice of Public Meetings and Request for Nominations of Ad Hoc Expert Reviewers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4-day public peer review meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to consider and review the use of new approach methodologies (NAMs) to derive extrapolation factors and evaluate developmental neurotoxicity for human health risk assessment. Preceding the public peer review meeting, there will be a public preparatory virtual meeting, conducted via teleconference and webcast, to consider the scope and clarity of the draft charge questions for this peer review. In addition, EPA is requesting nominations of prospective candidates for service as *ad hoc* reviewers to assist the FIFRA SAP with this review. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for this review by following the instructions provided in this notice.

DATES:

Nominations: Submit nominations of candidates to serve as *ad hoc* reviewers on or before July 2, 2020.

Preparatory Virtual Meeting: The preparatory virtual meeting will be held on August 25, 2020, from 1:00 p.m. to approximately 4:00 p.m. (EDT). You must register online on or before August 25, 2020, to receive the webcast meeting link and audio teleconference information. You must submit your written comments or request time to present oral comments for the preparatory virtual meeting on or before noon, August 21, 2020.

Peer Review Meeting: The 4-day public peer review meeting will be held September 15–18, 2020, from 9:00 a.m. to approximately 5:00 p.m. (EDT) (as needed, updated times for each day may be provided in the meeting agenda that will be posted in the docket at *http://www.regulations.gov* and the FIFRA SAP website at *http://www.epa.gov/SAP*). To make oral comments during the peer review meeting and be included on the meeting agenda, please register by noon on September 9, 2020. Any written comments submitted for the peer review meeting on or before September 9, 2020, will be provided to the FIFRA SAP for their consideration before the meeting. Comments received after September 9, 2020, and prior to the oral public comment period during the meeting will be available to the FIFRA SAP for their consideration during the meeting.

Special accommodations: Requests for special accommodations should be submitted on or before August 25, 2020, to allow EPA time to process these requests.

ADDRESSES:

Nominations: Submit your nominations of candidates to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**.

Preparatory Virtual Meeting: Registration is required to participate during the public preparatory virtual meeting. Please refer to the FIFRA SAP website at *http://www.epa.gov/sap* for information on how to register.

Peer Review Meeting: The location of the 4-day public peer review meeting will be announced on the FIFRA SAP website at *http://www.epa.gov/sap.* You may also subscribe to the following listserv for alerts regarding this and other SAP-related activities: *https://public.govdelivery.com/accounts/USAEPAOPPT/subscriber/new?topic_id=USAEPAOPPT_101.* This peer review meeting may also be viewed via webcast. Please refer to the FIFRA SAP website at *http://www.epa.gov/sap* for information on how to access the webcast.

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

Comments: Submit requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

Submit written comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0263, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.* For additional instructions related to this meeting, see **SUPPLEMENTARY INFORMATION**.

Please note that due to the current COVID–19 public health emergency the EPA Docket Center (EPA/DC) and Reading Room were closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.* For questions about this docket, you may also contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Tamue Gibson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–7642; email address: *gibson.tamue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. Where can I access information about the FIFRA SAP and this meeting?

Information about the FIFRA SAP and this meeting is available on the FIFRA SAP website at *http://www.epa.gov/scipoly/sap* and in the docket for this meeting, identified by docket ID number EPA–HQ–OPP–2020–0263, at *http://www.regulations.gov.*

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

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see Tips for Effective Comments at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What is the purpose of the FIFRA SAP?

The FIFRA SAP serves as one of the primary scientific peer review mechanisms of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide independent scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on human health and the environment. The FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix I). The FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation (NSF). The FIFRA established a Science Review Board consisting of at least 60 scientists who are available to the FIFRA SAP on an *ad hoc* basis to assist in reviews conducted by FIFRA SAP. As a scientific peer review mechanism, the FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of the FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. What is the purpose of this public meeting?

In 2007, the National Research Council (NRC)'s report on *Toxicity Testing in 21st Century: A Vision and a Strategy* was published which encouraged a new paradigm in toxicity testing that reduces the reliance on laboratory animals while moving towards *in vitro* and *in silico* predictive approaches that are more efficient and human relevant. EPA's Office of Pesticide Programs (OPP) has developed a strategic vision for implementing the 2007 NRC report that has multiple components involving a combination of computational and predictive modeling approaches, *in vitro* techniques, and limited, targeted *in vivo* testing.

EPA is actively engaged in numerous activities with respect to reducing laboratory animal use and implementing *in vitro* and computational approaches. As NAMs can provide human relevant information that may be challenging to obtain with whole animal testing. EPA is also interested in using *in vitro* and computational approaches for reducing the reliance on default assumptions for risk assessment, including the application of 10X uncertainty factors for inter- and intra-species extrapolation.

In recent years, EPA began collaborative work with academia, and industry to use organophosphate pesticides (OPs) as a case study for the development of NAMs for purposes of using data to inform extrapolation/uncertainty and safety factors in lieu of reliance on default factors.

The Agency is interested in using *in vitro* data to derive extrapolation factors and evaluate developmental neurotoxicity for human health risk assessment. Specifically, the Agency is seeking advice and recommendation from the FIFRA SAP on scientific issues associated with the evaluation and utility of NAMs as part of a weight of evidence evaluation of developmental neurotoxicity potential and the use of *in vitro* acetylcholinesterase inhibition data to develop interspecies and/or intraspecies data-derived extrapolation factors for organophosphate pesticides.

C. How can I access the FIFRA SAP documents and meeting minutes?

EPA's background paper, the supporting materials, and draft charge/questions provided to the FIFRA SAP will be available by late-June as described in Unit I.B. The Agency will provide additional background documents (*e.g.,* the meeting agenda) as the materials become available. In addition, the FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will also be made available as described in Unit I.B.

III. Nominations for Ad Hoc Expert Reviewers

A. How do I nominate someone to be considered as an ad hoc expert reviewer to assist the FIFRA SAP in this peer review?

As part of a broader process for developing a pool of candidates for each review, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as *ad hoc* reviewers. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific topic. Nominees should be identified by name, occupation, position, address, email address, and telephone number. The Agency will consider all nominations of prospective candidates for this review that are received on or before the deadline identified in the **DATES** section. Final selection of *ad hoc* reviewers is a discretionary function of the Agency.

B. Who can I nominate to be considered as an ad hoc expert reviewer to assist the FIFRA SAP in this peer review?

Individuals nominated for this meeting should have expertise in one or more of the following areas: (i) Data derived extrapolation factors; (ii) Development and implementation of new approach methodologies; (iii) Statistics; (iv) Developmental neurotoxicity; (v) *In vitro* to *in vivo* extrapolation; and (vi) Organophosphate pesticides. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to provide expert comments on the scientific issues for this review.

C. How will EPA select ad hoc expert reviewers to assist the FIFRA SAP in this peer review?

The selection of scientists to serve on a FIFRA SAP review is based on the function of the Panel and the expertise needed to address the Agency's charge to the Panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency, except EPA. Other factors considered during the selection process include availability of the potential reviewer to fully participate in the Panel's review, absence of any conflicts of interest or appearance of loss of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of loss of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on a FIFRA SAP review. Numerous qualified candidates are identified for each review; therefore, selection decisions involve carefully weighing a number of factors, including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the Panel. In order to have the collective breadth of experience needed to address the Agency's charge for this review, the Agency anticipates selecting approximately twelve *ad hoc* scientists.

FIFRA SAP members and *ad hoc* reviewers are subject to the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, conflict of interest statutes in Title 18 of the United States Code and related regulations. In anticipation of these requirements, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks, bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess whether there are financial conflicts of interest, appearance of a loss of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP.

EPA plans to make a list of candidates under consideration as prospective *ad hoc* panelists for this meeting available for a 15-calendar day public comment period in July 2020. The list of the FIFRA SAP members and *ad hoc* reviewers participating at this meeting will be available as described in Unit I.B.

Those who are selected from the pool of prospective candidates will be asked to attend the preparatory and peer review meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes and final report.

IV. Public Participation

A. How may I participate in the public peer review meeting?

You may participate in the public peer review meeting by following the instructions in this unit. To ensure proper receipt of comments, nominations or other requests by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2020–0263 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages written comments for the peer review meeting be submitted using the instructions in **ADDRESSES** and Unit I.B. and C, on or before the date set in the **DATES** section. Comments received after this date and prior to the end of the oral public comment period during the meeting will still be provided to the FIFRA SAP for their consideration. Anyone submitting written comments after this date, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments during the meeting should email the DFO prior to the meeting to arrange for distribution of their comments to the FIFRA SAP.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments to the FIFRA SAP during the peer review meeting to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before the date set in the **DATES** section in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the peer review meeting and, to the extent that time permits, the Chair of the FIFRA SAP may permit the presentation of oral comments at the peer review meeting by interested persons who have not previously requested time.

The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Oral comments before the FIFRA SAP during the peer review meeting are limited to 5 minutes unless arrangements have been made prior to the date set in the **DATES** section. In addition, each speaker should email a copy of his/her comments to the DFO prior to the meeting for distribution to the FIFRA SAP.

3. *Webcast.* This meeting may also be viewed via webcast. Please refer to the FIFRA SAP website at *http://www.epa.gov/sap* for information on how to access the webcast.

B. How may I participate in the preparatory virtual meeting?

Registration for the preparatory virtual meeting is required. To participate by listening or making a comment during this meeting, please visit: *http://www.epa.gov/sap* to register. Registration online will be confirmed by

email that will include the webcast meeting link and audio teleconference information.

1. *Written comments.* Written comments for the preparatory virtual meeting should be submitted, using the instructions in **ADDRESSES** and Unit I.B. and C, on or before the date set in the **DATES** section.

2. *Oral comments.* Registration is required to participate in the preparatory virtual meeting. Please visit the FIFRA SAP website at *http://www.epa.gov/sap* to register online. Each individual or group wishing to make brief oral comments to the FIFRA SAP during the preparatory virtual meeting should submit their request when registering online or with the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before the date set in the **DATES** section. Oral comments before the FIFRA SAP during the preparatory virtual meeting are limited to approximately 5 minutes due to the time constraints of this meeting.

3. *Webcast.* The preparatory meeting will be webcast only. Please refer to the FIFRA SAP website at *http://www.epa.gov/sap* for information on how to access the webcast. Registration is required.

Authority: 5 U.S.C. App. I; 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: June 8, 2020.

Hayley Hughes,

Director, Office of Science Coordination and Policy.

[FR Doc. 2020–13010 Filed 6–16–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0060; FRL–10010–41]

Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1, Table 1A, Table 1B and Table 2 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an April 17, 2020 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II to voluntarily cancel and amend to terminate uses of these product registrations. In the April 17, 2020 notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received 5 public comments on the notice, but they did not merit its further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0060, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Tables 1, 1A, 1B and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
264–612	264	Nortron E.C	Ethofumesate.
264–615	264	Nortron G.S	Ethofumesate.
279–3564	279	Tackle Herbicide	Glyphosate-isopropylammonium & Imazethapyr.
279–3570	279	Tackle II Herbicide	Glyphosate-isopropylammonium & Imazethapyr.
1258–1270	1258	Densil CA	Chlorothalonil & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–170	2693	Fiberglass Bottomkote with Biolux II—Black.	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredients
2693–181	2693	Tri-Lux III with Bio-Lux 5490 Blue	Copper thiocyanate & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–183	2693	Micron CSC Plus with Biolux Shark White.	Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–189	2693	Tri-Lux Blue	Copper thiocyanate & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–199	2693	Trilux with Biolux Black	Copper thiocyanate & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–202	2693	CSC Plus—Blue	Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–204	2693	CSC Plus—Blue	Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–208	2693	Fiberglass Bottomkote with Biolux—Blue.	Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–209	2693	Fiberglass Bottomkote Act with Biolux—Blue.	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide.
2693–213	2693	Super KL Plus with Irgarol—Blue	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide.
2693–216	2693	Prop & Drive Clear Aerosol	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)-.
2693–218	2693	Fiberglass Bottomkote Act with Biolux II—Black.	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide.
2693–224	2693	Micron Extra Blue	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide.
2693–227	2693	Act—Blue	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N'-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide.
4170–100	4170	Oxyfect-G Peroxide Disinfectant Cleaner.	Hydrogen peroxide.
4170–101	4170	Oxyfect-H Peroxide Disinfectant Cleaner.	Hydrogen peroxide.
4822–510	4822	Vanish Drop-Ins	Trichloro-s-triazinetrione.
5185–401	5185	Bioguard Back-Up Algae Inhibitor	Alkyl* dimethyl benzyl ammonium chloride *(61% C12, 23% C14, 11% C16, 2.5% C18 2.5% C10 and trace of C8) & Alkyl* dimethyl benzyl ammonium chloride *(95% C14, 3% C12, 2% C16).
6836–211	6836	Bromchlor G	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl- & 1,3-Dibromo-5,5-dimethylhydantoin.
8730–49	8730	Hercon Insectape with Propoxur	Propoxur.
8730–77	8730	Hercon Disrupt Bio-Flake VBN	Verbenone.
10324–66	10324	Defend Quaternary Pine Oil	Pine oil; 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride; Alkyl* dimethyl benzyl ammonium chloride *(50% C14, 40% C12, 10% C16); 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride & 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride.
39398–4	39398	Sumithion Technical	Fenitrothion.
41750–1	41750	Awlgrip Awlstar Antifouling Gold Label Bp501 Light Blue.	Cuprous oxide.
41750–2	41750	Awlgrip Awlstar Antifouling Gold Label BP401 Medium Green.	Cuprous oxide.
60061–31	60061	Pettit Marine Paint Sea Mate Antifouling Bottom Paint.	Cuprous oxide.
60061–50	60061	Pettit Marine Paint Anti Fouling Trinidad 75 Red 1675.	Cuprous oxide.
60061–54	60061	Pettit Unepoxy Standard Antifouling Bottom Paint 1810 Black.	Cuprous oxide.
60061–58	60061	Pettit Unepoxy Antifouling Atlantic Formula.	Cuprous oxide.
63310–8	63310	Rhizopon AA Water Soluble Tablets	Indole-3-butyric acid.
71368–45	71368	Blightban C9–1	Pantoea agglomerans strain C9–1.
73771–2	73771	Bloomtime Biological FD Biopesticide	Pantoea agglomerans strain E325; NRRL B–21856.
89442–38	89442	Mep-6X Select	Mepiquat chloride.
91234–176	91234	A275.01	Cyazofamid.
92044–5	92044	CAC Etoxazole Technical	Etoxazole.
AR–190002	87978	Heligen	Polyhedral occlusion bodies of Helicoverpa zea Nucleopolyhedrovirus ABA–NPV–U.

TABLE 1A—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
432–893	432	Ronstar 50 WSP Herbicide	Oxadiazon.

The registrant of the product listed in Table 1A, of Unit II, has requested the effective date of December 31, 2020, for the cancellation.

TABLE 1B—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
CA–040026	62719	Lorsban* 75WG	Chlorpyrifos.
CA–080009	62719	Lorsban Advanced	Chlorpyrifos.
CA–080010	62719	Lorsban Advanced	Chlorpyrifos.
CA–080011	62719	Lorsban Advanced	Chlorpyrifos.
CA–080012	62719	Lorsban Advanced	Chlorpyrifos.

The registrant of the products listed in Table 1B, of Unit II, has requested the effective date of December 31, 2019, for the cancellations.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
8764–1	8764	Freshgard 25	o-Phenylphenol, sodium salt	Apples, cantaloupes, carrots, cherries, cucumbers, nectarines, peaches, peppers, pineapples, plums, sweet potatoes & tomatoes.
60063–7	60063	Echo 720	Chlorothalonil	Dried peas.
84229–40	84229	Amtide Tebuconazole Technical Fungicide.	Tebuconazole	Wood treatment.

Table 3 of this unit includes the names and addresses of record for all the registrants of the products listed in Tables 1, 1A, 1B and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
264	Bayer CropScience, LP, 800 N. Lindbergh Blvd., St. Louis, MO 63167.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 5000 CentreGreen Way, Suite 400, Cary, NC 27513.
1258	Arch Chemicals, Inc., 1200 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
2693	International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
4170	Betco Corp. Ltd, d/ba Betco Corporation, 400 Van Camp Road, Bowling Green, OH 43402.
4822	S.C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403.
5185	Bio-Lab, Inc., P. O. Box 300002, Lawrenceville, GA 30049–1002.
6836	Lonza, LLC, 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960.
8730	Aberdeen Road Company, D/B/A Hercon Environmental, P. O. Box 435, Emigsville, PA 17318.
8764	John Bean Technologies Corporation, D/B/A JBT Foodtech, 1660 Iowa Ave., Suite 100, Riverside, CA 92507.
10324	Mason Chemical Company, 9075 Centre Pointe Dr., Suite 400, West Chester, OH 45069.
39398	Sumitomo Chemical America, Inc., Agent Name: Technology Sciences Group, Inc., 1150 18th Street NW, Suite 1000, Washington, DC 20036.
41750	International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
60061	Kop-Coat, Inc., 36 Pine Street, Rockaway, NJ 07866.
60063	Sipcam Agro USA, Inc., 2525 Meridian Pkwy., Suite 350, Durham, NC 27713.
62719	Dow Agrosciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
63310	Hortus USA Corp, P.O. Box 1956, Old Chelsea Station, New York, NY 10113.
71368	NuFarm, Inc., Agent Name: NuFarm Americas, Inc., 4020 Aerial Center Pkwy., Suite 101, Morrisville, NC 27560.
73771	Verdesian Life Sciences U.S., LLC, Division Name: D/B/A Verdesian Life Sciences, 1001 Winstead Drive, Suite 480, Cary, NC 27513.
84229	Tide International, USA, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
87978	Agbitech Pty Ltd., Agent Name: Forster & Associates Consulting, LLC, P. O. Box 4097, Greenville, DE 19807.
89442	Prime Source, LLC, Agent Name: Wagner Regulatory Associates, Inc., P. O. Box 640, 7217 Lancaster Pike, Suite A, Hockessin, DE 19707.
91234	Atticus, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332–9122.
92044	CAC Chemical Americas, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th St., Ct. NW, Gig Harbor, WA 98332.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received five public comments; four of them are anonymous, in response to the April 17, 2020 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of products listed in Tables 1, 1A, 1B and 2 of Unit II. The Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation and use termination.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses of the registrations identified in Tables 1, 1A, 1B, and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1, 1A, 1B, and 2 of Unit II are canceled and amended to terminate the affected uses. The effective date of the cancellations and amendments listed in Table 1 and Table 2 that are subject of this notice is June 17, 2020. The effective date of the cancellation listed in Table 1A that is subject of this notice is December 31, 2020. The effective date of the cancellations listed in Table 1B that are subject of this notice is December 31, 2019. Any distribution, sale, or use of existing stocks of the products identified in Tables 1, 1A, 1B, and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of Apr 17, 2020 (85 FR 21428) (FRL–10007–07). The comment period closed on May 18, 2020.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

A. For Product 10324–66

For product 10324–66, listed in Table 1 of Unit II, the registrant has requested 18-months to sell existing stocks. The registrant will be permitted to sell and distribute existing stocks of the product for 18-months after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, the registrant will be prohibited from selling or distributing the product, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

B. For Product 432–893

For product 432–893, listed in Table 1A of Unit II, the registrant has requested the cancellation date to be December 31, 2020; therefore, the registrant will be permitted to sell and distribute existing stocks of the voluntarily canceled product for 1 year after the effective date of the cancellation, which will be until December 31, 2021. Thereafter, the registrant will be prohibited from selling or distributing the product, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

C. For Products CA–040026, CA–080009, CA–080010, CA–080011 & CA–080012

For products CA–040026, CA–080009, CA–080010, CA–080011 & CA–080012, listed in Table 1B of Unit II, the registrant has requested the cancellation date to be December 31, 2019; therefore, the registrant will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be until December 31, 2020. Thereafter, the registrant will be prohibited from selling or distributing these products, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

For all other voluntary cancellations, identified in Table 1 of Unit II, the registrants may continue to sell and distribute existing stocks of the products listed in Table 1 until June 17, 2021, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing the products listed in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses, registrants are permitted to sell or distribute products listed in Table 2 of Unit II under the previously approved labeling until December 17, 2021, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated use identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 4, 2020.

Delores Barber,

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

[FR Doc. 2020–13047 Filed 6–16–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0443; FRL–10010–49]

Octamethylcyclotetra-siloxane (D4); Manufacturer Request for Risk Evaluation Under the Toxic Substances Control Act (TSCA); Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of and soliciting public comment on a manufacturer request for a risk evaluation of octamethylcyclotetra-siloxane (D4) under the Toxic Substances Control Act (TSCA). The request was made by Dow Silicones Corporation, Elkem Silicones USA Corporation, Evonik Corporation, Momentive Performance Materials,

Shin-Etsu Silicones of America, Inc.; and Wacker Chemical Corporation through the American Chemistry Council's Silicones Environmental, Health, and Safety Center (SEHSC). EPA conducts risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment without consideration of costs or other non-risk factors, including an unreasonable risk to potentially exposed or susceptible subpopulations, under the conditions of use. In the docket associated with this request is the manufacturer request for an EPA-conducted risk evaluation and possible additional conditions of use EPA has identified for inclusion within the scope of a risk evaluation of D4. After considering comments received in response to this solicitation, EPA will determine whether to grant or deny the manufacturer request. All TSCA risk evaluations, whether EPA-initiated or manufacturer-requested, will be conducted in the same manner.

DATES: Comments must be received on or before August 3, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0443, by one of the following methods:

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

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room were closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Bethany Masten, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail Code 7404T, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8803; email address: *masten.bethany@epa.gov.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this apply to me?

This notice is directed to the public in general and may be of interest to persons who currently or may manufacture (including import), process, distribute, use, and/or dispose of D4. Since other entities may also be interested in these risk evaluations, EPA has not attempted to describe all the specific entities that may be affected by this action.

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

TSCA section 6(b) requires that EPA conduct risk evaluations on existing chemical substances and identifies the minimum components EPA must include in all chemical substance risk evaluations. 15 U.S.C. 2605(b). The risk evaluation must not consider costs or other non-risk factors. 15 U.S.C. 2605(b)(4)(F)(iii). The specific risk evaluation process is set out in 40 CFR part 702 and summarized on EPA's website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.*

TSCA section 6(b) also allows manufacturers of a chemical substance to request an EPA-conducted risk evaluation on the chemical substance. TSCA required EPA to develop the form and manner under which these requests must be made, and the criteria for which EPA will determine whether to grant a request. These requirements and criteria are set out in 40 CFR 702.37.

Under 40 CFR 702.37(e)(3), EPA is required to assess whether the circumstances identified in a manufacturer request for a risk evaluation constitute conditions of use (as defined under TSCA section (3)(4) and implementing regulations (40 CFR 702.33), and whether those conditions of use warrant inclusion within the scope of a risk evaluation for the chemical substance. EPA will also assess what, if any, additional conditions of use warrant inclusion within the scope of a risk evaluation for the chemical substance. EPA will conduct these assessments based on the same considerations applied in the same manner as it would for a risk evaluation in the EPA-initiated risk evaluation process.

No later than 60 business days after receiving a manufacturer request for risk evaluation that EPA has determined to be facially complete (meeting the criteria set forth in 40 CFR 702.37(e)(1)), EPA is required to submit for publication the receipt of the request in the **Federal Register**, open a public docket for the request (which must contain the manufacturer request and EPA's possible additional conditions of use), and provide no less than 45 calendar days for public comment. This notice identifies the docket containing the manufacturer request, EPA's possible additional conditions of use, and the basis for including those possible additional conditions of use. During the public comment period, the public may submit comments and information relevant to the requested risk evaluation, as well as the additional possible conditions of use EPA is including in the docket.

After the comment period closes, the Agency has up to 60 days to either grant or deny the request to conduct a risk evaluation under 40 CFR 702.37(e)(6). EPA will review the request along with any additional information received during the comment period, and grant the request if it determines the request meets all of the following requirements listed under 40 CFR 702.37(e)(6)(ii):

- The circumstances identified in the request constitute conditions of use that warrant inclusion in a risk evaluation for the chemical substance;
- EPA has all the information needed to conduct such risk evaluation on the conditions of use that were the subject of the request; and
- All other criteria and requirements of 40 CFR 702.37 have been met.

C. What action is EPA taking?

EPA is announcing the availability of and soliciting public comment on a manufacturer request for a risk evaluation of D4 under TSCA section 6(b) that is described in detail in Unit II. Also available in the docket associated with this request are the manufacturer request and possible additional conditions of use EPA identified for inclusion in a risk evaluation of D4. This notice satisfies 40 CFR 702.37(e)(4).

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

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that

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

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

II. Summary of This Manufacturer Request

On March 19, 2020, EPA received a complete manufacturer request for a TSCA risk evaluation of D4 that was made by Dow Silicones Corporation, Elkem Silicones USA Corporation, Evonik Corporation, Momentive Performance Materials, Shin-Etsu Silicones of American, Inc.; and Wacker Chemical Corporation through the American Chemistry Council's Silicones Environmental, Health, and Safety Center (SEHSC). After determining the request was facially complete (*i.e.,* EPA determined that the request appeared to be consistent with the requirements in 40 CFR 702.37(b) through (d), such as including all the necessary information in those paragraphs), EPA notified the public of the receipt of the request on April 8, 2020 via a listserv announcement to stakeholders.

A. What is octamethylcyclotetra-siloxane (D4)?

D4 is used to make other silicone chemicals and as an ingredient in some personal care products. This substance is listed on the TSCA Inventory with CA Index Name ''Cyclotetrasiloxane, 2,2,4,4,6,6,8,8-octamethyl-'' and the associated Chemical Abstracts Service Registry Number (CASRN) 556–67–2.

B. What are the conditions of use?

The manufacturer request for a risk evaluation of D4 identifying conditions of use of interest to the manufacturer is included in docket EPA–HQ–OPPT–2018–0443. Subject to further analysis and public comment, EPA anticipates including activities identified in the request as conditions of use in the risk evaluation of D4.

EPA has identified additional conditions of use pursuant to 40 CFR 702.37(e)(3), which are also included in docket EPA–HQ–OPPT–2018–0443.

III. Request for Comment

The docket associated with this request contains the manufacturer request (excluding information claimed as CBI), EPA's possible additional conditions of use as described 40 CFR 702.37(e)(3), and the basis for these possible additions. During the comment period, the public may submit comments and information relevant to the requested risk evaluation; in particular, commenters are encouraged to identify any information not included in the request that the commenters believe would be needed to conduct a risk evaluation, and to provide any other information relevant to EPA's possible additional conditions of use, such as information on other conditions of use of the chemical substance than those included in the request or in EPA's possible additional conditions of use. 40 CFR 702.37(e)(4). In addition, at any time prior to the end of the comment period, the requesting manufacturer(s) may supplement the original request with any new information it receives. 40 CFR 702.37(e)(5).

Authority: 15 U.S.C. 2601 *et seq.*

Andrew Wheeler,

Administrator.

[FR Doc. 2020–13037 Filed 6–16–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0463; FRS 16846]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before August 17, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of internet Protocol

(IP) Captioned Telephone Service, CG Docket Nos. 03–123, 10–51, and 13–24.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or household; State, Local and Tribal Government.

Number of Respondents and Responses: 5,072 respondents; 7,989 responses.

Estimated Time per Response: 0.1 hours (6 minutes) to 80 hours.

Frequency of Response: Annually, semi-annually, monthly, on occasion, and one-time reporting requirements; Recordkeeping and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority for the information collection requirements is found at section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, in Title IV of the Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 14,445 hours.

Total Annual Cost: $291,700.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *https://www.fcc.gov/general/privacy-act-information#pia.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On December 21, 2001, the Commission released the 2001 TRS Cost Recovery Order, document FCC 01–371, published at 67 FR 4203, January 29, 2002, in which the Commission, among other things:

(1) Required internet-based TRS providers to submit certain projected TRS-related cost and demand data to the TRS Fund administrator to be used to calculate the rate; and

(2) directed the TRS Fund administrator to expand its data collection forms accordingly.

In 2003, the Commission released the 2003 Second Improved TRS Order, published at 68 FR 50973, August 25, 2003, which among other things required that TRS providers offer certain local exchange carrier (LEC)-based improved services and features where technologically feasible, including a speed dialing requirement which may entail voluntary recordkeeping for TRS providers to maintain a list of telephone numbers. See also 47 CFR 64.604(a)(3)(vi)(B).

In 2007, the Commission released the Section 225/255 VoIP Report and Order, published at 72 FR 43546, August 6, 2007, extending the disability access requirements that apply to telecommunications service providers and equipment manufacturers under 47 U.S.C. 225, 255 to interconnected voice over internet protocol (VoIP) service providers and equipment manufacturers. As a result, under rules implementing section 225 of the Act, interconnected VoIP service providers are required to publicize information about telecommunications relay services (TRS) and 711 abbreviated dialing access to TRS. See also 47 CFR 64.604(c)(3).

In 2007, the Commission also released the 2007 Cost Recovery Report and Order and Declaratory Ruling, published at 73 FR 3197, January 17, 2008, in which the Commission:

(1) Adopted a new cost recovery methodology for interstate traditional TRS and interstate STS based on the Multi-state Average Rate Structure (MARS) plan, under which interstate TRS compensation rates are determined by weighted average of the states' intrastate compensation rates, and which includes for STS additional compensation approved by the Commission for STS outreach;

(2) adopted a new cost recovery methodology for interstate captioned telephone service (CTS), as well as internet Protocol captioned telephone service (IP CTS), based on the MARS plan;

(3) adopted a cost recovery methodology for internet Protocol (IP) Relay based on a price cap like methodology;

(4) adopted a cost recovery methodology for VRS that adopted tiered rates based on call volume;

(5) clarified the nature and extent that certain categories of costs are compensable from the Fund; and

(6) addressed certain issues concerning the management and oversight of the Fund, including prohibiting financial incentives offered to consumers to make relay calls.

The 2007 TRS Cost Recovery Order requires that state relay administrators and TRS providers submit to the TRS Fund administrator the following information annually, for intrastate traditional TRS, STS, and CTS:

(1) The per-minute compensation rate(s) and other compensation received for the provision of TRS;

(2) whether the rate applies to session minutes or conversation minutes, which are a subset of session minutes;

(3) the number of intrastate session minutes; and

(4) the number of intrastate conversation minutes.

Also, STS providers must file a report annually with the TRS Fund administrator and the Commission on their specific outreach efforts directly attributable to the additional compensation approved by the Commission for STS outreach.

In 2011, to help prevent waste, fraud, and abuse, the Commission adopted three VRS orders to curtail these harmful practices. Each of these orders (collectively, the 2011 VRS Orders) included information collection requirements.

On April 6, 2011, in document FCC 11–54, the Commission released the 2011 Fraud Prevention Order, published at 76 FR 30841, May 27, 2011, which included several measures designed to eliminate the waste, fraud and abuse, while ensuring that VRS remains a viable and a valuable communication tool for Americans who use it on a daily basis.

On July 28, 2011, in document FCC 11–118 the Commission released the VRS Certification Order, published at 76 FR 47469, August 5, 2011, amending its rules for certifying internet-based TRS providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of internet-based TRS.

On October 17, 2011, in document FCC 11–155, the Commission released the Second VRS Certification Order, published at 76 FR 67070, October 31, 2011, addressing three petitions related to the VRS Certification Order by revising the burdens contained in the requirements for the submission of documentation of a provider's VRS equipment and technologies and the submission of documentation regarding sponsorship arrangements.

The following are the final information collection requirements contained in the 2011 VRS Orders:

(1) The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a TRS provider shall certify, under penalty of perjury, that: (1) Minutes submitted to the Interstate TRS Fund (Fund) administrator for

compensation were handled in compliance with the Commission's rules and are not the result of impermissible financial incentives to generate calls, and (2) cost and demand data submitted to the Fund administrator related to the determination of compensation rates are true and correct.

(2) VRS providers shall: (a) Submit to the Commission and the TRS Fund administrator a call center report twice a year and (b) notify the Commission and the TRS Fund administrator at least 30 days prior to any change to their call centers' locations.

(3) VRS providers shall submit detailed call data records (CDRs) and speed of answer compliance data to the Fund administrator.

(4) TRS providers shall use an automated record keeping system to capture the CDRs and shall submit such data electronically in standardized form to the TRS Fund administrator.

(5) internet-based TRS providers shall retain the CDRs that are used to support payment claims submitted to the Fund administrator for a minimum of five years, in an electronic format.

(6) VRS providers shall: (a) Maintain copies of all third-party contracts or agreements and make them available to the Commission and the TRS Fund administrator upon request; and (b) describe all agreements in connection with marketing and outreach activities in their annual submissions to the TRS Fund administrator.

(7) TRS providers shall provide information about their TRS whistleblower protections to all employees and contractors, in writing.

In 2018, the Commission released the IP CTS Modernization Order, published at 83 FR 30082, June 27, 2018, in which the Commission:

(1) Determined that it would transition the methodology for IP CTS cost recovery from the MARS plan to cost-based rates and adopted interim rates; and

(2) added two cost reporting requirements for IP CTS providers: (i) In annual cost data filings and supplementary information provided to the TRS Fund administrator, IP CTS providers that contract for the supply of services used in the provision of TRS, shall include information about payments under such contracts, classified according to the substantive cost categories specified by the TRS Fund administrator; and (ii) in the course of an audit or otherwise upon demand, IP CTS providers must make available any relevant documentation. 47 CFR 64.604(c)(5)(iii)(D)(1), (6).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–13061 Filed 6–16–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201305–001.

Agreement Name: CMA CGM/Marfret Mediterranean—Caribbean/U.S. Gulf Vessel Sharing Agreement.

Parties: CMA CGM S.A. and Campagnie Maritime Marfret.

Filing Party: Draughn Arbona; CMA CGM (America) LLC.

Synopsis: The amendment adds Jamaica to the geographic scope of the Agreement.

Proposed Effective Date: 7/20/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/22400.

Dated: June 12, 2020.

Rachel E. Dickon,

Secretary.

[FR Doc. 2020–13044 Filed 6–16–20; 8:45 am]

BILLING CODE 6730–02–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 public portions of 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(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* 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 July 2, 2020.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *ACE Investments, LLC, Newburg, Missouri; Aaron C. Espinoza, individually and as owner of Ace Investments LLC, also of Newburg, Missouri; Kyle Espinoza, Nashville, Tennessee; the Charles G. Bollinger Revocable Trust, the Velma Bollinger Marital Trust, Charles G. Bollinger, as trustee of both trusts, all of Hernando, Florida; and Faith Limited Partnership, Charles G. Bollinger, as general partner;* as a group acting in concert to acquire voting shares of Newburg Insurance Agency, Inc., and thereby indirectly acquire voting shares of Citizens Bank of Newburg, both of Rolla, Missouri.

Board of Governors of the Federal Reserve System, June 12, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–13052 Filed 6–16–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10525]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing

an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 17, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number_Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/Paperwork ReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10525 PACE Quality Data Monitoring and Reporting

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title:* PACE Quality Data Monitoring and Reporting; *Use:* The Programs of All-Inclusive Care for the Elderly (PACE) program is a unique model of managed care service delivery for the frail elderly, most of whom are dually-eligible for Medicare and Medicaid benefits. To be eligible to enroll in PACE, an individual must: Be 55 or older, live in the service area of a PACE organization (PO), need a nursing home-level of care (as certified by the state in which he or she lives), and be able to live safely in the community with assistance from PACE.

PACE organizations are responsible for providing all required Medicare and Medicaid covered services, and any other service that the interdisciplinary team (IDT) determines necessary to improve and maintain a participant's overall health condition (42 CFR 460.92). POs must also comply with the quality monitoring and reporting requirements outlined in §§ 460.140, 460.200(b)(1), 460.200(c) and 460.202. POs are also required to report certain unusual incidents to other Federal and State agencies consistent with applicable statutory or regulatory requirements (see 42 CFR 460.136(a)(5)). *Form Number:* CMS–10525 (OMB control number: 0938–1264); *Frequency:* Annual; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 131; *Total Annual Responses:* 1,143; *Total Annual Hours:* 156,414. (For policy questions regarding this collection contact Donna Williamson at 410–786–4647.)

Dated: June 11, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–12993 Filed 6–16–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0345]

Agency Information Collection Activities; Proposed Collection; Comment Request; Data To Support Drug Product Communications as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a generic clearance to collect information to support communications used by FDA about drug products.

DATES: Submit either electronic or written comments on the collection of information by August 17, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 17, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 17, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely

if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2014–N–0345 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Data To Support Drug Product Communications as Used by the Food and Drug Administration.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Data To Support Drug Product Communications as Used by the Food and Drug Administration

OMB Control Number 0910–0695—Extension

This information collection supports Agency outreach efforts. Testing of communication messages in advance of a communication campaign provides an important role in improving FDA communications as they allow for an indepth understanding of individuals' attitudes, beliefs, motivations, and feelings. The methods to be employed include individual in-depth interviews, general public focus group interviews, intercept interviews, self-administered surveys, gatekeeper surveys, and professional clinician focus group interviews, all on a voluntary basis. The methods to be used serve the narrowly defined need for direct and informal opinion on a specific topic and, as a qualitative research tool, have two major purposes: (1) To obtain information that is useful for developing variables and measures for formulating the basic objectives of risk communication campaigns; and (2) to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. We will use these methods to test and refine our ideas and to help develop messages and other communications but will generally conduct further research before making important decisions, such as adopting new policies and allocating or

redirecting significant resources to support these policies. We will use this mechanism to test messages about regulated drug products on a variety of subjects related to consumer, patient, or health care professional perceptions and about use of drug products and related materials, including but not limited to, direct-to-consumer prescription drug promotion, physician labeling of prescription drugs, medication guides, over-the-counter drug labeling, emerging risk communications, patient labeling, online sale of medical products, and consumer and professional education. Annually, we project about 45 communication studies using the variety of test methods listed in this document. We are requesting an extension of these burden hours so as not to restrict our ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Interviews/Surveys	43,875	1	43,875	0.21925 (12 minutes)	9,620

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection has not changed since the last OMB approval.

Dated: June 5, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13079 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0307]

Recommendations To Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components.'' The guidance provides blood establishments that collect blood and blood components with revised recommendations intended to reduce the possible risk of transmission of Creutzfeldt-Jakob disease (CJD) and variant Creutzfeldt-Jakob disease (vCJD) by blood and blood components. The recommendations in the guidance apply to the collection of Whole Blood and blood components intended for transfusion or for use in further manufacturing, including Source Plasma. The guidance finalizes the draft guidance of the same title dated January 2020, and supersedes the document entitled ''Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products, Guidance for Industry,'' dated May 2010, and updated January 2016.

DATES: The announcement of the guidance is published in the **Federal Register** on June 17, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–D–0307 for ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sana F. Hussain, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Recommendations to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt Jakob Disease by Blood and Blood Components.'' This document was posted on FDA's website on April 2, 2020 (see section III for electronic access to the guidance). The guidance provides blood establishments that collect blood and blood components with revised recommendations intended to reduce the possible risk of transmission of CJD and vCJD by blood and blood components. The recommendations in the guidance apply to the collection of Whole Blood and blood components intended for transfusion or for use in further manufacturing, including Source Plasma. FDA is revising or removing our prior recommendations to screen blood donors for: (1) Geographic risk of possible exposure to bovine spongiform encephalopathy, including time spent on U.S. military bases in Europe; (2) receipt of a blood transfusion in certain vCJD risk countries; (3) risk factors for iatrogenic CJD (*i.e.,* a history of taking human cadaveric pituitary-derived growth hormone); (4) having blood relatives with CJD; and (5) a history of injecting bovine insulin.

In the **Federal Register** of January 31, 2020 (85 FR 5668), FDA announced the availability of the draft guidance of the same title dated January 2020. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. Based on these comments, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated January 2020, and supersedes the document entitled ''Revised Preventive Measures to Reduce the Possible Risk of Transmission of Creutzfeldt-Jakob Disease and Variant Creutzfeldt-Jakob Disease by Blood and Blood Products, Guidance for Industry,'' dated May 2010, and updated January 2016.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on recommendations to reduce the possible risk of transmission of CJD and vCJD by blood and blood components. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR 601.12 and Form FDA 356h have been approved under OMB control number 0910–0338; the collections of information in 21 CFR parts 610 and 630 have been approved under OMB control number 0910–0116.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances* or *https://www.regulations.gov.*

Dated: June 12, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13055 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0965]

Request for Nominations for Voting Members on a Public Advisory Committee; Pharmacy Compounding Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting nominations for members to serve on the Pharmacy Compounding Advisory Committee (the Committee), Division of Advisory Committee and Consultant Management, Center for Drug Evaluation and Research. The Committee provides advice on scientific, technical, and medical issues concerning human drug compounding under the Federal Food, Drug, and Cosmetic Act (FD&C Act), and, as required, any other product for which FDA has regulatory responsibility, and makes appropriate recommendations to the Commissioner of Food and Drugs.

DATES: Nominations received on or before August 17, 2020, will be given first consideration for membership on the Pharmacy Compounding Advisory Committee. Nominations received after August 17, 2020, will be considered for nominations to the Committee as later vacancies occur.

ADDRESSES: All nominations for membership should be sent electronically by logging into the FDA Advisory Committee Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring,

MD 20993–0002. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Regarding all nomination questions for membership, the primary contact is: Yvette Waples, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002; 301–796–9001, Fax: 301–847–8533, email: *PCAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

FDA is requesting nominations for voting members on the Pharmacy Compounding Advisory Committee.

I. General Description of the Committee's Duties

The Committee provides advice on scientific, technical, and medical issues concerning human drug compounding under sections 503A and 503B of the FD&C Act (21 U.S.C 353a and 353b), and, as required, any other product for which FDA has regulatory responsibility, and makes appropriate recommendations to the Commissioner of Food and Drugs.

In implementing sections 503A and section 503B of the FD&C Act, the Agency may consult the Committee on: (1) Drug products for inclusion on a list of drug products that have been withdrawn or removed from the market because such drug products or components of such drug products have been found to be unsafe or not effective, and therefore cannot be compounded; (2) bulk drug substances for inclusion on lists of bulk drug substances that may be used in compounding; and (3) drug products for inclusion on a list of drug products that present demonstrable difficulties for compounding.

Meetings are held approximately one to two times a year, announced in the **Federal Register**, and are open to the public except as determined otherwise by the Commissioner or designee in accordance with the Government in the Sunshine Act (5 U.S.C. 552b(c)) and the Federal Advisory Committee Act (Pub. L. 92–463). Notice of all meetings shall be given to the public.

II. Criteria for Voting Members

The Committee consists of a core of 12 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of pharmaceutical compounding, pharmaceutical manufacturing, pharmacy, medicine, and related specialties. These members will include representatives from the National Association of Boards of Pharmacy, the U.S. Pharmacopeia, pharmacists with current experience and expertise in compounding, physicians with background and knowledge in compounding, and patient and public health advocacy organizations. Almost all non-Federal members of this committee serve as Special Government Employees. Members will be invited to serve for terms of up to 4 years.

III. Nomination Procedures

Any interested person may nominate one or more qualified individuals for membership on the advisory committee. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee, including current business address and/or home address, telephone number, and email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Committee Nomination Portal (see **ADDRESSES**). Nominations must also specify the advisory committee for which the nominee is recommended. Nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters related to financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 11, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13042 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1211]

Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry.'' The revised guidance provides blood establishments that collect blood or blood components, including Source Plasma, with FDA's revised donor deferral recommendations for individuals with increased risk for transmitting human immunodeficiency virus (HIV) infection. FDA is also recommending that these blood establishments make corresponding revisions to their donor educational materials, donor history questionnaires, and accompanying materials, along with revisions to donor requalification and product management procedures. The guidance also incorporates certain other recommendations related to donor educational materials. The guidance announced in this notice supersedes the guidance of the same title dated December 2015.

DATES: The announcement of the guidance is published in the **Federal Register** on June 17, 2020.

The Agency is soliciting public comment, but is implementing this guidance immediately, because the Agency has determined that prior public participation is not feasible or appropriate. Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://*

www.regulations.gov will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–D–1211 for ''Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115 (§ 10.115(g)(5))).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products; Guidance for Industry.'' This document was posted on FDA's website on April 2, 2020 (see section III for electronic access to the guidance). The revised guidance provides blood establishments that collect blood or blood components, including Source Plasma, with FDA's revised donor deferral recommendations for individuals with increased risk for transmitting HIV infection. FDA is also recommending that these blood establishments make corresponding revisions to their donor educational materials, donor history questionnaires, and accompanying materials, along with revisions to donor requalification and product management procedures. The guidance also incorporates certain other recommendations related to donor educational materials. FDA expects implementation of these revised recommendations will not be associated with any adverse effect on the safety of the blood supply. Furthermore, implementation of the recommendations in this guidance may help to address significant blood shortages that are occurring as a result of a current and ongoing Coronavirus Disease 2019 (COVID–19) public health emergency. The guidance announced in this notice supersedes the guidance of the same title dated December 2015.

In light of the COVID–19 public health emergency, FDA is issuing this guidance for immediate implementation in accordance with § 10.115(g)(3) without initially seeking prior comment because the Agency has determined that prior public participation is not feasible or appropriate (see § 10.115(g)(2) and section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i))). FDA expects that the revised recommendations will increase the availability of blood and blood components while maintaining the safety of blood and blood components.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115(g)(2)). The guidance represents the current thinking of FDA on ''Revised Recommendations for Reducing the Risk of Human Immunodeficiency Virus Transmission by Blood and Blood Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–

3520). The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR parts 610, 630, and 640 have been approved under OMB control number 0910–0116; and the collections of information for consignee notification have been approved under OMB control number 0910–0681.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, *https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders*, or *https://www.regulations.gov*.

Dated: June 12, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13051 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0086]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Potential Tobacco Product Violations Reporting Form

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) 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 July 17, 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 0910–0716. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *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.

Potential Tobacco Product Violations Reporting

OMB Control Number 0910–0716—Extension

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended section 201 *et seq.* of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321 *et seq.*) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. FDA is requesting an extension of OMB approval for the collection of information to accept consumer and other stakeholder feedback and notification of potential violations of the FD&C Act, as amended by the Tobacco Control Act.

The public is crucial in helping FDA enforce tobacco regulations to protect America's youth. FDA created the Tobacco Call Center (with a toll-free number: 1–877–CTP–1373) to assist the public with reporting potential violations of the Tobacco Control Act. FDA will evaluate any information reported and may conduct followup investigations if necessary. When callers report a violation, the caller will be asked to provide as much certain information as they can recall, including: The date the potential violation occurred; product type (*e.g.,* cigarette, smokeless, roll-your-own, cigar, e-cigarette, hookah, pipe tobacco); tobacco brand; potential violation type; type of potentially violative promotional materials; who potentially violated, including the name, address, phone number, and email address of the potential violator. The caller will also be asked to list the potential violator's website (if available), describe the potential violation, and provide any additional files or information pertinent to the potential violation.

FDA currently provides a form that may be used to solicit this information from the public (Form FDA 3779, Potential Tobacco Product Violations Report) and seeks renewal of Form FDA 3779. The public and interested stakeholders are able to report information regarding possible violations of the Tobacco Control Act by submitting information online, via email, postal mail, or by calling FDA's Tobacco Call Center. Instructions on how to report possible violations of the Tobacco Control Act can be found at (*https://www.fda.gov/tobacco-products/compliance-enforcement-training/report-potential-tobacco-product-violation*).

In the **Federal Register** of October 15, 2019 (84 FR 55161), FDA published a 60-day notice requesting public comment on the proposed collection of information. Two PRA related comments were received.

(Comment 1) FDA received a comment urging the Agency to publicize the availability of the Potential Tobacco Product Violations Report (PTVR) form more broadly. The comment further urged that if FDA does not already have a dissemination plan for this information collection actively, it must create one because it is important that consumers, retailers, and other stakeholders are aware of this form in order to be most helpful. The comment indicated that it is important that FDA disseminate the violations reporting form more broadly to the public so people are aware of how they can report the various types of violations.

(Response) There are multiple options available for industry and the public to report potential violations of the Tobacco Control Act, and FDA has publicized the form on multiple occasions, including when the FDA Commissioner issued public statements regarding the youth vaping epidemic and potential electronic nicotine delivery systems-related seizures. FDA's website (*https://www.fda.gov/tobacco-products/compliance-enforcement-training/report-potential-tobacco-product-violation*) has a link to submit the online PTVR form (*https://www.accessdata.fda.gov/scripts/ptvr/index.cfm*).

As referenced previously in this notice, there are many additional options for submission, which can be found at *https://www.fda.gov/tobacco-products/compliance-enforcement-training/report-potential-tobacco-product-violation.*

(Comment 2) FDA received a comment which stated that the original

burden of this collection of information of 1,500 hours was too low and that the commenter believes more violations occur than 1,500. The commenter pointed to the number of Warning Letters and Civil Money Penalties FDA issued in 2019 to support this statement.

(Response) After reviewing the PTVR submissions again over the past 5 years we have made an adjustment to our burden estimate. The number of complaints submitted by the public is not reflective of the total number of reported violations of the FD&C Act and implementing regulations. In 2019, FDA received over 3,000 annual PTVR complaint reports and issued over 14,600 Warning Letters, 4,700 Civil Money Penalties, and 17 No-Tobacco-Sale-Orders. Reports of potential violations from the public are critical in helping FDA enforce tobacco regulations to protect America's youth. The PTVR form was designed to provide the public with a means of reporting violations of the FD&C Act to the Center for Tobacco Products. FDA conducts our own investigations and inspections to followup on complaints that may be submitted through PTVR submissions. FDA evaluates each report submitted to determine if the activity is a potential violation of the FD&C Act or related regulations before deciding what followup action, if any, is necessary. FDA now estimates we will receive 5,370 reports annually.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity and Form FDA 3779	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reporting violations of the FD&C Act, as amended by the Tobacco Control Act via telephone, online form, mail or email.	2,685	2	5,370	0.25 (15 minutes)	1,343

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that submitting the information (by telephone, online form, mail or email) will take 0.25 hour (*i.e.,* 15 minutes) per response. This estimate is based on the type and rate of reporting that has been submitted through the Potential Tobacco Violation Report Form in the past.

FDA estimates the number of annual respondents to this collection of information will be 2,685, who will each submit 2 reports by telephone, online form, mail or email. Each report is expected to take 0.25 hour to complete and submit; therefore, total burden hours for this collection of information is estimated to be 1,343 hours (5,370 responses × 0.25 hour per response).

We have adjusted our burden estimate based on the updated number of reports received to approximately 5,370 forms annually, which more accurately reflects the projected number of submissions based on current trends. Using these new figures, our estimated burden for the information collection signifies an overall increase to reflect 2,685 respondents per year and 1,343 hours.

Dated: June 5, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13071 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0601]

Mylan Institutional LLC et al.; Withdrawal of Approval of 16 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on March 9, 2020. The document announced the withdrawal of approval (as of April 8, 2020) of 16 abbreviated new drug applications (ANDAs) from multiple applicants. The document indicated that FDA was withdrawing approval of the following four ANDAs after receiving a withdrawal request from Lupin Pharmaceuticals, Inc., 111 South Calvert St., Harborplace Tower, 21st Floor, Baltimore, MD 21202: ANDA 065488, Azithromycin Oral Suspension, Equivalent to (EQ) 100 milligrams (mg) base/5 milliliters (mL); EQ 200 mg base/5 mL; ANDA 078410, Topiramate Tablets, 25 mg, 50 mg, 100 mg, and 200 mg; ANDA 090441, Imipramine Hydrochloride Tablets, 10 mg, 25 mg, and 50 mg; and ANDA 200563, Ciprofloxacin Oral Suspension, 250 mg/5 mL and 500 mg/5 mL. Before FDA withdrew the approval of these ANDAs, Lupin Pharmaceuticals, Inc., informed FDA that it did not want the approval of the ANDAs withdrawn. Because Lupin Pharmaceuticals, Inc., timely requested that approval of these ANDAs not be withdrawn, the approval of ANDAs 065488, 078410, 090441, and 200563 is still in effect.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Monday, March 9, 2020 (85 FR 13661), in FR Doc. 2020–04691, the following correction is made:

On page 13661, in the table, the entries for ANDAs 065488, 078410, 090441, and 200563 are removed.

Dated: June 12, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13070 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2000–D–0187 (Formerly Docket No. 2000D–1267)]

Revised Recommendations To Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled ''Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry.'' The revised guidance provides blood establishments that collect blood and blood components with FDA's recommendations to reduce the risk of transfusion-transmitted malaria. The recommendations contained in this guidance apply to the collection of Whole Blood and blood components, except Source Plasma. Blood establishments are not required to assess Source Plasma donors for malaria risk. The guidance announced in this notice supersedes the guidance entitled ''Recommendations for Donor Questioning, Deferral, Reentry, and Product Management to Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry'' dated August 2013 and updated August 2014.

DATES: The announcement of the guidance is published in the **Federal Register** on June 17, 2020. The Agency is soliciting public comment, but is implementing this guidance immediately, because the Agency has determined that prior public participation is not feasible or appropriate. Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2000–D–0187 for ''Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance entitled ''Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry.'' This document was posted on FDA's website on April 2, 2020 (see section III for electronic access to the guidance). The revised guidance document provides blood establishments that collect blood and blood components with FDA's recommendations to reduce the risk of transfusion-transmitted malaria. The recommendations contained in this guidance apply to the collection of Whole Blood and all blood components, except Source Plasma. Blood establishments are not required to assess Source Plasma donors for malaria risk (see 21 CFR 630.15(b)(8)).

The guidance revises the recommendations in the August 2013 guidance, updated August 2014, by reducing from 1 year to 3 months the recommended deferral period for certain

blood donors who are residents of a non-endemic country and who travel to malaria-endemic areas. In addition, the guidance provides notice of an alternative procedure to permit the collection of blood and blood components from such donors without a deferral period, provided the blood components are pathogen-reduced using an FDA-approved pathogen reduction device, effective against *Plasmodium falciparum,* according to manufacturer's instructions for use. The revised recommendations are based on the current epidemiological data on malaria, the risk of transfusion-transmitted malaria and the availability of FDA-approved devices. FDA expects implementation of these revised recommendations will not be associated with any adverse effect on the safety of the blood supply. Furthermore, early implementation of the recommendations in this guidance may help to address significant blood shortages that are occurring as a result of a current and ongoing Coronavirus Disease 2019 (COVID–19) public health emergency.

The guidance announced in this notice supersedes the guidance entitled ''Recommendations for Donor Questioning, Deferral, Reentry, and Product Management to Reduce the Risk of Transfusion-Transmitted Malaria; Guidance for Industry'' dated August 2013 and updated August 2014.

In light of the COVID–19 public health emergency, FDA is issuing this guidance for immediate implementation in accordance with § 10.115(g)(3) without initially seeking prior comment because the Agency has determined that prior public participation is not feasible or appropriate (see § 10.115(g)(2) and section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i))). FDA expects that the revised recommendations will increase the availability of blood and blood components while maintaining the safety of blood and blood components.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115(g)(2)). The guidance represents the current thinking of FDA on ''Revised Recommendations to Reduce the Risk of Transfusion-Transmitted Malaria.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 601 and Form FDA 356h have been approved under OMB control number 0910–0338; 21 CFR parts 606 and 630 have been approved under OMB control number 0910–0116; and the collections of information for consignee and transfusion recipient physician notification have been approved under OMB control number 0910–0681.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders,* or *https://www.regulations.gov.*

Dated: June 12, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13066 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1893]

Patient-Focused Drug Development: Collecting Comprehensive and Representative Input; Guidance for Industry, Food and Drug Administration Staff, and Other Stakeholders; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry, FDA staff, and other stakeholders entitled ''Patient-Focused Drug Development: Collecting Comprehensive and Representative Input.'' This guidance is the first of a series of four methodological guidance documents that FDA committed to develop to address in a stepwise manner how to collect and submit information from patients and caregivers for medical product development and regulatory decision making. This guidance finalizes the draft guidance of the same title issued on June 13, 2018.

DATES: The announcement of the guidance is published in the **Federal Register** on June 17, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1893 for ''Patient-Focused Drug Development: Collecting Comprehensive and Representative Input.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Meghana Chalasani, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6304, Silver Spring, MD 20993–0002, 240–402–6525, Fax: 301–847–8443, *Meghana.Chalasani@fda.hhs.gov* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *Stephen.Ripley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry, FDA staff, and other stakeholders entitled ''Patient-Focused Drug Development: Collecting Comprehensive and Representative Input.'' This guidance (Guidance 1) is the first of a series of four guidance documents that FDA committed to develop to address in a stepwise manner how stakeholders (patients, researchers, medical product developers, and others) can collect and submit information on the patient experience for medical product development and regulatory decision making. This series of guidance documents is intended to facilitate the advancement and use of systematic approaches to collect and use robust and meaningful patient and caregiver input that can more consistently inform medical product development and regulatory decision making. The purpose of Guidance 1 is to present methods for collecting information on the patient experience that is representative of the intended population to inform the development and evaluation of medical products throughout the medical product lifecycle. In addition, this document discusses methods on how to operationalize and standardize the collection, analysis, and dissemination of patient experience data. Guidance 1 also includes a glossary of terms that will be used in one or more of the series of four guidance documents.

From the outset, FDA recognized that developing this guidance would benefit from public input from the wider community of patients, patient advocates, academic researchers, expert practitioners, drug developers, and other stakeholders. On December 18, 2017, FDA conducted a public workshop to discuss this topic. FDA considered stakeholder input from the workshop and associated public docket when drafting this guidance (FDA–2017–N–5896).

This guidance finalizes the draft guidance entitled ''Patient-Focused Drug Development: Collecting Comprehensive and Representative Input,'' issued on June 13, 2018 (83 FR 27618). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include removing most of the section and appendix on methods for collecting and analyzing patient experience data since that information will be covered in later guidances in the series. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Patient-Focused Drug Development: Collecting Comprehensive and Representative Input.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act

This guidance refers to collections of information from ''individuals under treatment or clinical examination in connection with research,'' which are not subject to review by the Office of Management and Budget under 5 CFR 1320.3(h)(5). This guidance also refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: June 10, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13046 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–3592]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Certificates of Confidentiality

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.

DATES: Submit written comments (including recommendations) on the collection of information by July 17, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *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. All comments should be identified with the OMB control number 0910–0130. 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.

Protection of Human Subjects and Institutional Review Boards; Certificates of Confidentiality

OMB Control Number 0910–0130—Revision

This information collection supports Agency guidance regarding the issuance of Certificates of Confidentiality (CoCs). The 21st Century Cures Act (Cures Act) (Pub. L. 114–255, section 2012) amended the Public Health Service Act, section 301(d) (42 U.S.C. 241(d)), to help protect the privacy of human subject research participants from whom identifiable, sensitive information is being collected or used in furtherance of the research. Historically, a CoC generally protected a researcher from being compelled in a legal proceeding (such as by subpoena or court order) to disclose identifiable and sensitive information about the research participant, created or compiled for purposes of the human subject research. The Cures Act broadened the protections of the statutory provision by affirmatively prohibiting holders of CoCs from disclosing such information unless a specific exception applies. For efficiency of Agency operations, we are revising information collection currently approved under OMB Control No. 0910–0130 pertaining to the protection of human subjects and institutional review boards to include information collection pertaining to the issuance of CoCs. 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.

The Cures Act simplified certain aspects of the issuance of CoCs by requiring that CoCs be issued for federally funded human subject research that collects or uses identifiable, sensitive information (referred to in the draft guidance as mandatory CoCs). For non-federally funded research, issuance of CoCs is not required but may be issued at the discretion of FDA (referred to in the draft guidance as discretionary CoCs) when the study involves a product subject to FDA's jurisdiction and regulatory authority. FDA intends to continue receiving such requests and will issue discretionary CoCs as appropriate.

To assist respondents with information collection attendant to CoCs, we developed the draft guidance document entitled ''Certificates of Confidentiality; Draft Guidance for Sponsors, Sponsor-Investigators, Researchers, Industry, and Food and Drug Administration Staff.'' The draft guidance is intended to provide information on how to request a discretionary CoC, the statutory requirements for requesting such a CoC, and the statutory responsibilities associated with possessing a CoC. Although the mandatory CoC and the discretionary CoC are issued under different processes, the protections afforded by the issuance of either CoC are identical and the statutory responsibilities are applicable to both. The draft guidance was developed and issued consistent with our Good Guidance Practice regulations at 21 CFR 10.115 which provide for comment at any time. The draft guidance is available at: *https://www.fda.gov/media/132966/download.* We intend to finalize the draft guidance and are revising the associated information collection accordingly.

In the **Federal Register** of November 25, 2019 (84 FR 64906), we published a notice announcing the availability of the draft guidance entitled ''Certificates of Confidentiality; Draft Guidance for Sponsors, Sponsor-Investigators, Researchers, Industry, and Food and Drug Administration Staff; Availability,'' including an analysis of burden that may be attributable to the information collection recommendations. Although we received some comments requesting that clarifying discussion be included with regard to topics covered in the guidance, no comments were received in response to the four information collection topics solicited under the PRA.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Draft guidance for sponsors, sponsor-investigators, researchers, industry, and FDA staff on CoCs	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submissions of CoC Requests From Sponsors, Sponsor-Investigators, or Authorized Representatives	150	1	150	2	300

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the number of CoC requests we have received prior to the Cures Act, we estimate receiving approximately 150 discretionary CoC requests annually. We estimate that approximately 150 sponsors, sponsor-investigators, or authorized representatives will submit requests. Preparing and sending each request would take approximately 2 hours

Dated: June 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13081 Filed 6–16–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Renewal of the President's Council on Sports, Fitness and Nutrition's Charter

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) is hereby giving notice that the charter for the President's Council on Sports, Fitness, and Nutrition (hereafter referred to as the Council) has been renewed.

FOR FURTHER INFORMATION CONTACT: Jennifer Anne Bishop, ScD, MPH, Designated Federal Official, U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion; 1101 Wootton Parkway, Suite 420, Rockville, Maryland 20852; telephone: (240) 276–9567; email address *Jennifer.bishop@hhs.gov.* Additional information is available on the Council's website at: *https://www.hhs.gov/fitness/about-pcsfn/executive-order/index.html#charter.*

SUPPLEMENTARY INFORMATION: The Council is charged with advising the President, through the Secretary of Health and Human Services (Secretary), concerning progress made in carrying out the provisions of Executive Order 13265, as amended by Executive Order 13824, which aims to expand and encourage youth sports participation and to promote the overall physical fitness, health, and nutrition of all Americans. The Council promotes this goal through external outreach, raising public awareness, and recommending to the President, through the Secretary, actions to accelerate such progress. Executive Order 13824 directs the Secretary to carry out the responsibilities for public health and human services and to recognize the benefits of youth sports participation, physical activity, and a nutritious diet in helping create habits that support a healthy lifestyle. The Executive Order also directs the Secretary to develop a national strategy to expand children's participation in youth sports, encourage regular physical activity, including active play, and promote good nutrition for all Americans. Published in September 2019, the National Youth Sport Strategy (NYSS) focuses on children and youth in communities with below-average sports participation and communities with limited access to athletic facilities or recreational areas. The Council is tasked to provide additional support in promoting, shaping, and executing elements of the NYSS.

On May 13, 2020, the Secretary of Health and Human Services approved the renewal of the Council's charter. The new charter was executed and filed with the appropriate Congressional committees and the Library of Congress on May 17, 2020. The renewal of the Council's charter gives the Council authorization to operate until May 16, 2022.

A copy of the Council's charter is available on the Council's website at: *https://www.hhs.gov/fitness/about-pcsfn/executive-order/index.html#charter.*

A copy of the charter can also be obtained by accessing the Federal Advisory Committee Act Database that is managed by the Committee Management Secretariat under the General Services Administration. The website for the FACA database is *https://facadatabase.gov.*

Dated: June 10, 2020.

Carter Blakey,

Acting Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 2020–12972 Filed 6–16–20; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Board of Scientific Counselors for Basic Sciences, National Cancer Institute and the Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences, National Cancer Institute.

Date: July 13, 2020.

Time: 10:00 a.m. to 11:45 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Mehrdad M. Tondravi, Ph.D., Chief, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W302, Rockville, MD 20852, 240–276–5664, *tondravim@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

Date: July 13, 2020.

Time: 10:00 a.m. to 11:45 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Brian E. Wojcik, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660, *wojcikb@mail.nih.gov.*

Name of Committee: Board of Scientific Counselors for Basic Sciences, National Cancer Institute.

Date: July 13, 2020.

Time: 11:45 a.m. to 2:10 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Virtual Meeting).

Contact Person: Mehrdad M. Tondravi, Ph.D., Chief, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W302, Rockville, MD 20852, 240–276–5664, *tondravim@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12978 Filed 6–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: National Animal and Biological Material Resource Centers and Resource-related Research Projects.

Date: July 14, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.

Date: July 16–17, 2020.

Time: 9:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immuno-Oncology Research.

Date: July 16–17, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mehrdad Mohseni, M.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Pediatric and Obstetric Pharmacology and Therapeutics.

Date: July 16, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Musculoskeletal Biology.

Date: July 16, 2020.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, 301–435–1787, *srikanth.ranganathan@nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Intra- and Inter-personal Determinants and Behavioral Interventions Study Section.

Date: July 16–17, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–806–6596, *rubertm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Cell Biology.

Date: July 16, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Integrative Neuroscience.

Date: July 16, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD, 20892–7814, 301–435–1787, *borzanj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Sleep Circuits.

Date: July 16, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12975 Filed 6–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Review Subcommittee Member Conflict Review.

Date: June 29, 2020.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2116, MSC 6902, Bethesda, MD 20817, (301) 443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12976 Filed 6–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Leveraging Health Information Technology (Health IT) to Address Minority Health and Health Disparities.

Date: July 14, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Neuroimaging and Low Vision Technologies.

Date: July 17, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary G. Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, *marygs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biochemistry and Biophysics of Biological Macromolecules.

Date: July 17, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Surgical Sciences, Biomedical Imaging, and Bioengineering.

Date: July 17, 2020.

Time: 11:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12982 Filed 6–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: July 16, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: Welcome and Chairwoman's Remarks, Legislative Update, and Director's Update.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Amy Williams, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, MSC 2580, Bethesda, MD 20892, 240–781–3360, *williaam@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCRA: *http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12977 Filed 6–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 9, 2020, 9:30 a.m. to July 9, 2020, 6:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on June 9, 2020, 85 FR 35316.

This notice is being amended to change the meeting time from 9:30 a.m.–6:00 p.m. to 8:00 a.m.–6:00 p.m. The meeting is closed to the public.

Dated: June 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12981 Filed 6–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Detection and Therapy.

Date: July 14, 2020.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Laura Asnaghi, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443–1196, *laura.asnaghi@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biochemistry and Biophysics of Biological Macromolecules.

Date: July 16–17, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7846, Bethesda, MD 20892, (301) 435–1504, *sudha.veeraraghavan@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Immunology.

Date: July 16–17, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 435–0908, *lguo@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: July 16–17, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4152, MSC 7846, Bethesda, MD 20892, (301) 827–6009, *lin.reigh-yi@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology and Bioengineering.

Date: July 16–17, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raj K Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR–15–358: Molecular and Cellular Causal Aspects of Alzheimer's Disease.

Date: July 16, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Adem Can, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 435–1042, *cana2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics on Metabolism.

Date: July 16, 2020.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liliana N Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 6158, MSC 7890, Bethesda, MD 20892, (301) 827–7609, *liliana.berti-mattera@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–20–005: Transformative Research (R01) to Understand Down Syndrome.

Date: July 17, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Leslie Itsara, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Room 5156, MSC 7760, Bethesda, MD 20892, (301) 402–5174, *leslie.itsara@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12980 Filed 6–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cancer Molecular Pathobiology Study Section, June 29,

2020, 8:00 a.m. to June 30, 2020, 5:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on June 02, 2020, 85 FR 33690.

This notice is being amended to change the meeting start time from 8:00 a.m. to 9:00 a.m. Meeting Date and Location remain the same. The meeting is closed to the public. The meeting is closed to the public.

Dated: June 11, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12979 Filed 6–16–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0002; Internal Agency Docket No. FEMA–B–2037]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before September 15, 2020.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2037, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://www.fema.gov/preliminaryfloodhazarddata* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Stark County, North Dakota and Incorporated Areas Project: 15–08–0156S Preliminary Date: January 30, 2020	
City of Belfield	City Hall, 208 Main Street North, Belfield, ND 58622.

Community	Community map repository address
City of Dickinson	City Hall, 99 2nd Street East, Dickinson, ND 58601.
City of South Heart	City Hall, 103 6th Street Northwest, South Heart, ND 58655.
Unincorporated Areas of Stark County	Stark County Courthouse, 51 3rd Street East, Dickinson, ND 58601.

[FR Doc. 2020–13036 Filed 6–16–20; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6199–N–02]

Notice of HUD Vacant Loan Sales (HVLS 2020–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sales of reverse mortgage loans; change of bid date.

SUMMARY: On February 25, 2020, HUD published a notice intending to competitively offer multiple residential reverse mortgage pools consisting of approximately 700 reverse mortgage notes secured by properties with a loan balance of approximately $150 million. This document identifies a change in the bid date.

DATES: This change in date is effective *June 17, 2020.*

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 7th Street SW, Room 3136, Washington, DC 20410; telephone 202–708–2625, extension 3927 (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 at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On February 25, 2020, HUD announced its intention to competitively offer multiple residential reverse mortgage pools consisting of approximately 700 reverse mortgage notes secured by properties with a loan balance of approximately $150 million on March 18, 2020.[1] The sale was to consist of due and payable Secretary-held reverse mortgage loans. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse. That notice also generally described the bidding process for the sale and certain persons who are ineligible to bid.

Due to the COVID–19 pandemic, HUD did not proceed with the offer. This notice informs the public that HUD's offering of multiple residential reverse mortgage pools consisting of approximately 700 reverse mortgage notes will now be held on June 24, 2020. A detailed description of the bidding process can be found in the February 25, 2020 notice at 85 FR 10711, available at *https://www.govinfo.gov/content/pkg/FR-2020-02-25/pdf/2020-03743.pdf.*

Dated: June 11, 2020.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2020–12990 Filed 6–16–20; 8:45 am]

BILLING CODE 4210–67–P

[1] *See* 85 FR 10711 (Feb. 25, 2020).

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A51010.999900]

Proclaiming Certain Lands as Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 114 acres, more or less, an addition to the reservation of the Shakopee Mdewakanton Sioux Community of Minnesota on June 3, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Box #44, Albuquerque, New Mexico 87104, or telephone (505) 563–3132.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. The land was proclaimed to be the Shakopee Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota, Scott County, and State of Minnesota.

Shakopee Reservation for the Shakopee Mdewakanton Sioux Community of Minnesota

1 Parcel—Fifth Principal Meridian, Scott County, Minnesota

Legal Descriptions Containing 114 Acres, More or Less

Tollefson Parcel, 411 T 1029

That part of the Southwest Quarter of Section 14, Township 115, Range 22, Scott County, Minnesota, lying southerly of the center line of County Road No. 16, also known as Eagle Creek Boulevard, except the following described parcel:

Commencing at the southeast corner of said Southwest Quarter of Section 14; thence North 0 degrees 18 minutes 13 seconds East, assumed bearing, along the east line of said Southwest Quarter, a distance of 1198.75 feet to the point of beginning of the land to be described; thence North 89 degrees 41 minutes 47 seconds West 314.88 feet; thence southwesterly 176.44 feet, along a tangential curve, concave to the southeast, having a radius of 400.00 feet, and a central angle of 25 degrees 16 minutes 23 seconds; thence North 31 degrees 36 minutes 25 seconds West, not tangent to the last described curve 118.74 feet; thence South 74 degrees 28 minutes 13 seconds West 140.73 feet; thence North 86 degrees 59 minutes 05 seconds West 446.87; thence North 0 degrees 17 minutes 27 seconds East 892.61 feet to the center line of County Road No.16, also known as Eagle Creek Boulevard; thence South 76 degrees 11 minutes 41 seconds East, along said center line, a distance of 1162.51 feet to the east line of said Southwest Quarter; thence South 0 degrees 18 minutes 13 seconds West, along said east line, a distance 666.45 feet to the point of beginning.

Abstract Property

The above described lands contain a total of 114 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–13064 Filed 6–16–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A501010.999900253G]

Indian Gaming; Tribal-State Class III Gaming Compact Taking Effect in the State of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Model Tribal Gaming Compact between the United Keetoowah Band of Cherokee Indians in Oklahoma and the State of Oklahoma (Compact), and the Extension of State-Tribal Gaming Compact between the State Of Oklahoma and the United Keetoowah Band of Cherokee Indians in Oklahoma (Extension), are taking effect.

DATES: The Compact and Extension take effect on June 17, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts are subject to review and approval by the Secretary. The Secretary took no action on the Model Tribal Gaming Compact between the United Keetoowah Band of Cherokee Indians in Oklahoma and the State of Oklahoma, or the Extension of State-Tribal Gaming Compact between the State of Oklahoma and the United Keetoowah Band of Cherokee Indians in Oklahoma within 45 days of their submission. Therefore, the Compact and the Extension are considered to have been approved, but only to the extent they are consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–13062 Filed 6–16–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201D0102DR/DS5A300000/DR.5A311.IA000118]

Native American Business Development Institute (NABDI) Grant; Solicitation of Proposals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Office of Indian Energy and Economic Development (IEED), through its Native American Business Development Institute (NABDI), is soliciting proposals from Tribes for technical assistance funding to hire consultants to perform feasibility studies of economic development opportunities located in designated Opportunity Zones. Eligibility for funding is limited to those applicants whose proposed projects, businesses, or technologies will be located in designated Opportunity Zones. These grants are also intended to fund applicants to obtain qualified guidance on how the development projects, businesses, or technologies they propose can attract investments from an Opportunity Fund.

DATES: Applications will be accepted until 11:59 p.m. ET on September 15, 2020.

ADDRESSES: Email applications to *NABDIgrant@bia.gov* in accordance with the directions at Step 4 of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. James R. West, Native American Business Development Institute (NABDI) Manager, Office of Indian Energy and Economic Development, Room 6049–B, 12220 Sunrise Valley Drive, Reston, Virginia 20191; telephone: (202) 595–4766; email: *jamesr.west@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information
II. Number of Projects Funded
III. Background
IV. Eligibility for Funding
V. Who May Perform Feasibility Studies Funded by NABDI Grants
VI. Applicant Procurement Procedures
VII. Limitations
VIII. NABDI Application Guidance
IX. Review and Selection Process
X. Evaluation Criteria
XI. Transfer of Funds
XII. Reporting Requirements for Award Recipients
XIII. Conflicts of Interest
XIV. Questions and Requests for IEED Assistance
XV. Separate Document(s)
XVI. Paperwork Reduction Act
XVII. Authority

I. General Information.

Award Ceiling: 75,000.

Award Floor: 25,000.

CFDA Number: 15.133.

Cost Sharing or Matching Requirement: No.

Number of Awards: 20–25.

Category: Business Development.

II. Number of Projects Funded. IEED anticipates award of approximately twenty (20) to twenty-five (25) grants under this announcement ranging in value from approximately $25,000 to $75,000. The program can fund projects only one year at a time. IEED will use a competitive evaluation process based on criteria described in the Review and Selection Process section at section IX of this notice.

III. Background. The Office of the Assistant Secretary—Indian Affairs, through IEED, is soliciting proposals from Indian Tribes, as defined at 25 U.S.C. 5304(e), for grant funding to retain consultants to perform feasibility studies of economic development opportunities located in an Opportunity Zone. Consultants may include universities and colleges, private consulting firms, non-academic/non-profit entities, or others. The feasibility studies will empower Tribes to make informed decisions regarding their economic futures. Feasibility studies may concern the viability of an economic development project or business or the practicality of a technology a Tribe may choose to pursue in an Opportunity Zone. These studies will also address how a proposed economic development project, business, or technology can attract investment from an Opportunity Fund, which is an investment vehicle set up either as a partnership or corporation, for investing in eligible property or businesses located in an Opportunity Zone (26 U.S.C. 1400Z–2(d)).

The IEED administers this program through its Division of Economic Development (DED).

These grants will be funded under a non-recurring appropriation of the BIA budget. Congress appropriates funds on a year-to-year basis. Thus, while some projects may extend over several years, funding for successive years depends on each fiscal year's appropriations.

The funding periods and amounts referenced in this solicitation are subject to the availability of funds at the time of award, as well as the Department of the Interior (DOI) and Indian Affairs priorities at the time of the award. Neither DOI nor Indian Affairs will be held responsible for proposal or application preparation costs. Publication of this solicitation does not obligate DOI or Indian Affairs to award any specific grant or to obligate all or any part of available funds. Future funding is subject to the availability of appropriations and cannot be guaranteed. DOI or Indian Affairs may cancel or withdraw this solicitation at any time.

IV. Eligibility for Funding. Only Indian Tribes, as defined at 25 U.S.C. 5304(e), are eligible for NABDI grants. Under that statutory definition, eligible entities include any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.,* which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. Indian Tribes are referred to using the term ''Tribe'' throughout this notice.

Eligibility for NABDI funding is further limited to proposed economic development projects, businesses, and technologies that will be located within designated Opportunity Zones. Opportunity Zones were added to the tax code by the Tax Cuts and Jobs Act on December 22, 2017, 26 U.S.C., 1400Z–1 and 1400Z–2. An Opportunity Zone is an economically distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. A map and list of Opportunity Zones can be found at: *https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx.*

V. Who may Perform Feasibility Studies Funded by NABDI Grants. The applicant determines who will conduct its feasibility study. An applicant has several choices, including but not limited to:

- Universities and colleges;
- Private consulting firms; or
- Non-academic, non-profit entities.

VI. Applicant Procurement Procedures. The applicant is subject to the procurement standards in 2 CFR 200.318 through 200.326. In accordance with 2 CFR 200.318, an applicant must use its own documented procurement procedures which reflect Tribal laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in Part 2 of the Code of Federal Regulations.

VII. Limitations. NABDI grant funding must be expended in accordance with applicable statutory and regulatory requirements, including 2 CFR part 200. As part of the grant application review process, IEED may conduct a review of an applicant's prior IEED grant awards(s).

Applicants that are currently under BIA sanction Level 2 or higher resulting from non-compliance with the Single Audit Act are ineligible for a NABDI award. Applicants at Sanction Level 1 will be considered for funding.

An applicant may submit more than one grant application. For example, an applicant may submit an application to study the practicality of developing a Tribal business and a separate application to assess whether that business would be competitive in the global marketplace. However, applications should address one project and any submissions that contain multiple project proposals will not be considered. IEED will apply the same objective ranking criteria to each proposal.

The purpose of NABDI grants is to fund feasibility studies for proposed economic development projects, businesses, and technologies only. NABDI awards may not be used for:

- Establishing or operating a Tribal office;
- Indirect costs or administrative costs as defined by the Federal Acquisition Regulation (FAR);
- Purchase of equipment that is used to develop the feasibility studies, such as computers, vehicles, field gear, etc. (however, leasing of this type of equipment for the purpose of developing feasibility studies is allowed);
- Creating Tribal jobs to complete the project. An NABDI grant is not intended to create temporary administrative jobs or supplement employment for Tribal members;
- Legal fees;
- Application fees associated with permitting;
- Training;
- Contract negotiation fees;
- Feasibility studies of energy, mineral, energy legal infrastructure, or broadband related projects, businesses, or technologies that are addressed by IEED's Energy and Mineral Development Program (EMDP), Tribal Energy Development Capacity (TEDC), or National Tribal Broadband Grant (NTBG) annual grant programs; and
- Any other activities not authorized by the grant award letter.

VIII. NABDI Application Guidance. All NABDI applicants must use the standard form Application for Federal Assistance SF–424. This form can be found at *www.grants.gov.*

A complete proposal must contain the five mandatory components as described below.

Step 1. Complete the Application for Federal Assistance SF–424

Instructions To Download the Application for Federal Assistance SF–424

1. Go to *www.grants.gov.*
2. Select the ''forms'' tab. This will open a page with a table titled ''SF–424 FAMILY FORMS.''
3. Under the column ''Agency Owner,'' third row down, is listed, *Grants.gov* —Application for Federal Assistance SF–424.
4. Click on the blue PDF letters to download the three-page document.

Application for Federal Assistance SF–424 (Mandatory Component 1)

Within the Application for Federal Assistance SF–424, please complete the following sections:

- Item 8a. Applicant Information—Legal Name.
- Item 8b.
- Item 8c.
- Item 8d. Address.
- Item 8f. Name and contact information of person to be contacted on matters involving this application.
- Item 9. Select I: Indian/Native American Tribal Government (Federally Recognized).
- Item 11. CFDA Title box—Type in the numbers: 15.133.
- Item 12. Title box—Type in: IEED NABDI Grant.
- Item 15. Descriptive Title of Applicant's Project. Type in short description of proposal.
- Item 21. Read certification statement. Check ''agree'' box.
- Authorized Representative section: Be sure to type in the Tribal leader's information. Be sure to include the Tribal leader's preferred title (*e.g.,* Governor, President, Chairman).

Save the Application for Federal Assistance SF–424, name the file using the following format: *Tribal Name* NABDI Grant Application SF–424.

Example for naming the SF–424 Application for Federal Assistance file: Pueblo of Laguna NABDI Grant Application SF–424.

Step 2. Prepare the Project Narrative, Budget, Critical Information Page, and Obtain a Tribal Resolution

Project Narrative (Mandatory Component 2)

The Project Narrative must not exceed 15 pages. At a minimum, it should include:

- A technical description of the project and, if applicable, an explanation of how the proposed new study does not duplicate previous work;
- A description of the project objectives and goals;
- Deliverable products that the consultant is expected to generate, including interim deliverables (such as status reports and technical data to be obtained) and final deliverables (the feasibility study); and
- Resumes of key consultants and personnel to be retained, if available, and the names of subcontractors, if applicable. This information may be included as an attachment to the application and will not be counted towards the 15-page limitation.

In addition, where applicable, the Project Narrative Attachment Form, referenced below, must contain a description of the consultant(s) the applicant wishes to retain, including the consultant's contact information, technical expertise, training, qualifications, and suitability to undertake the feasibility study. This may be included as an attachment to the Project Narrative and will not be counted toward the 15-page limitation.

Project Narratives are not judged based on their length. Please do not submit any attachments or documents beyond what is listed above, *e.g.,* Tribal history.

Budget (Mandatory Component 3)

The budget should consist of a one-page, detailed budget estimate in Excel format with applicable attachments listed below. The budget must identify the amount of grant funding requested and a comprehensive breakdown of all projected and anticipated expenditures, including contracted personnel fees, consulting fees (hourly or fixed), travel costs, data collection and analysis costs, computer rentals, report generation, drafting, advertising costs for a proposed project and other relevant project expenses, and their subcomponents.

- Travel costs should be itemized by airfare, vehicle rental, lodging, and per diem, based on the current Federal government per diem schedule.
- Data collection and analysis costs should be itemized in sufficient detail for the IEED review committee to evaluate the charges.
- Other expenses may include computer rental, report generation, drafting, and advertising costs for a proposed project.

Critical Information Page (Mandatory Component 4)

Applicants must include a critical information page that includes:

- Project Manager's contact information;
- DUNS number;
- An active Automated Standard Application for Payment (ASAP) number;
- Counties where the project is located; and
- Congressional District number where the project is located.

Tribal Resolution (Mandatory Component 5)

Applicants must include a Tribal resolution issued in the fiscal year of the grant application, authorizing the submission of a FY 2020 NABDI grant application. It must be signed by authorized Tribal representative(s). The Tribal resolution must also include:

- A description of the feasibility study to be developed; and
- An explicit reference to the Project Narrative being submitted.

Step 3. Submit the Completed NABDI Grant Proposal

Applicants must submit the five mandatory components (SF–424, the project narrative, budget, critical information page, and tribal resolution) as attachments in a single email to *NABDIgrant@bia.gov* (the email listed in the **ADDRESSES** section of this notice).

Be sure to:

- State ''NABDI APPLICATION NARRATIVE AND SF–424'' in the email subject line; and
- Include ''Attention: James R. West, Program Analyst, Office of Indian Energy and Economic Development'' in the first line of the email.

Applications and mandatory attachments received and date-stamped after the time listed in the **DATES** section of this notice will not be considered by the Awarding Official. IEED will accept applications at any time before the deadline and will send a notification of receipt to the return email address on the application package, along with a determination of whether the application is complete.

Incomplete Applications. Applications submitted without one or more of the five mandatory components described above will be returned to the applicant with an explanation. The applicant will then be allowed to correct any deficiencies and resubmit the proposal for consideration on or before the deadline. This option will not be available to an applicant once the deadline has passed.

IX. Review and Selection Process. Upon receiving a NABDI application, IEED will determine whether the application is complete and that the proposed project does not duplicate or overlap previous or currently funded IEED technical assistance projects. Any proposal that is received after the date and time in the **DATES** section of this notice will not be reviewed. If an application is not complete and the submission deadline has not passed, the applicant will be notified and given an opportunity to resubmit its application.

The IEED Review Committee (Committee), comprised of IEED staff, staff from other Federal agencies, and subject matter experts, will evaluate the proposals against the ranking criteria. Proposals will be evaluated using the four ranking criteria listed below, with a maximum achievable total of 100 points.

Final award selections will be approved by the Assistant Secretary—Indian Affairs and the Associate Deputy Secretary, U.S. Department of the Interior. Applicants not selected for award will be notified in writing.

X. Evaluation Criteria

The Project's Economic Benefits: 60 points. The proposal should clearly state how the project would create jobs and stimulate economic activity within a Native community. The Committee will prefer proposals from applicants who can demonstrate that their communities suffer from economic malaise and unemployment and that the study will address these conditions. It will also examine whether these communities have the financial resources to address these conditions absent NABDI grant assistance.

The Applicant's Commitment to the Project: 15 points. The applicant's willingness to consider implementing recommendations resulting from the feasibility study must be clearly stated in the proposal and the Tribal resolution. Note that this is *not* a statement for mandatory implementation; rather, it is an affirmation that the applicant is willing to implement the proposed project if the study concludes that it is feasible. The decision on whether to implement the project will always lie with the applicant. The willingness-to-implement statement should sufficiently explain how the applicant intends to accomplish this task.

Focus on Obtaining Investment from an Opportunity Fund: 15 points. The Committee will gauge an applicant's focus on obtaining qualified guidance on how to attract investment for the proposed economic development project, business, or technology from an Opportunity Fund.

Authenticity: 10 points. The Committee understands that applicants may intend that the consultant(s) they retain to prepare the NABDI proposal will also conduct the feasibility study if the grant is awarded. This does not prejudice an applicant's chances of being selected as a grantee. However, the IEED review committee will view unfavorably proposals that show little evidence of communication between the consultant(s) and the applicant or scant regard for the applicant community's unique circumstances. Facsimile applications prepared by the same consultant(s) and submitted by multiple applicants will receive particular scrutiny in this regard.

NABDI applications will be ranked using only these criteria (as described above)—

- *The Project's Economic Benefits:* 60.
- *The Applicant's Commitment to the Project:* 15.
- *Focus on Obtaining Investment from an Opportunity Fund:* 15.
- *Authenticity:* 10.
- *Total:* 100.

XI. Transfer of Funds. IEED's obligation under this solicitation is contingent on receipt of congressionally appropriated funds. No liability on the part of the U.S. Government for any payment may arise until funds are made available to the awarding officer for this grant and until the recipient receives notice of such availability, to be confirmed in writing by the grant officer.

All payments under this agreement will be made by electronic funds transfer through the ASAP. All award recipients are required to have a current and accurate DUNS number to receive funds. All payments will be deposited to the banking information designated by the applicant in the System for Award Management (SAM).

XII. Reporting Requirements for Award Recipients. The applicant must deliver all products and data required by the signed Grant Agreement for the proposed NABDI feasibility study project to IEED within 30 days of the end of each quarter and 90 days after completion of the project.

IEED requires that deliverable products be provided in both digital format and printed hard copies. Reports can be provided in either Microsoft Word or Adobe Acrobat PDF format. Spreadsheet data can be provided in Microsoft Excel, Microsoft Access, or Adobe PDF formats. All vector figures should be converted to PDF format. Raster images can be provided in PDF, JPEG, TIFF, or any of the Windows metafile formats. The contract between the grantee and the consultant conducting the NABDI funded feasibility study must include deliverable products and require that the products be prepared in the format described above.

The contract should include budget amounts for all printed and digital copies to be delivered in accordance with the grant agreement. In addition, the contract must specify that all products generated by a consultant belong to the grantee and cannot be released to the public without the grantee's written approval. Products include, but are not limited to, all reports and technical data obtained, maps, status reports, and the final report.

In addition, this funding opportunity and financial assistance award must adhere to the following provisions:

XIII. Conflicts of Interest

Applicability

- This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- In the procurement of supplies, equipment, construction, and services by recipients and by sub-recipients, the conflict of interest provisions in 2 CFR 200.318 apply.

Requirements

- Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or sub-recipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or sub-recipient or in development of the requirement leading to the funding announcement.
- No actual or prospective recipient or sub-recipient may solicit, obtain, or use non-public information regarding the evaluation, award, administration of an award to that recipient or sub-recipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or sub-recipient.

Notification

- Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.
- Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by sub-recipients.
- Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.
- Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make the required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR part 180).

Data Availability

- Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce,

publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

• Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:

○ The scientific data relied upon;
○ The analysis relied upon; and
○ The methodology, including models, used to gather and analyze data.

XIV. Questions and Requests for IEED Assistance. IEED staff may provide technical consultation, upon written request by an applicant. The request must clearly identify the type of assistance sought. Technical consultation does not include funding to prepare a grant proposal, grant writing assistance, or pre-determinations as to the likelihood that a proposal will be awarded. The applicant is solely responsible for preparing its grant proposal. Technical consultation may include clarifying application requirements, confirming whether an applicant previously submitted the same or similar proposal, and registration information for SAM or ASAP.

XV. Separate Document(s):

• Application for Federal Assistance SF–424 Form.

• Project Narrative, Budget, Tribal Resolution, and Critical Information page.

XVI. Paperwork Reduction Act: The information collection requirements contained in this notice have been reviewed and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3504(h). The OMB control number is 1076–0178. The authorization expires on December 31, 2020. An agency may not conduct or sponsor, and you are not required to respond to, any information collection that does not display a currently valid OMB Control Number.

XVII. Authority: This is a discretionary grant program authorized under the Snyder Act (25 U.S.C. 13) and the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94). The Snyder Act authorizes the BIA to expend such moneys as Congress may appropriate for the benefit, care, and assistance of Indians for the purposes listed in the Act. NABDI grants facilitate two of the purposes listed in the Snyder Act: ''General support and civilization, including education'' and ''industrial assistance and advancement.'' The Further Consolidated Appropriations Act 2020 authorizes the BIA to ''carry out the operation of Indian programs by direct expenditure, contracts, cooperative agreements, compacts, and grants, either directly or in cooperation with States and other organizations.''

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–13063 Filed 6–16–20; 8:45 am]

BILLING CODE 4337–10–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1132]

Certain Motorized Vehicles and Components Thereof; Commission Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and a Cease and Desist Order; 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 found a violation of section 337 of the Tariff Act of 1930 (''section 337''), as amended, in this investigation. The Commission has issued a limited exclusion order (''LEO'') prohibiting the importation by respondents Mahindra & Mahindra Ltd. (''M&M'') of Mumbai, India and Mahindra Automotive North America, Inc. (''MANA'') of Auburn Hills, Michigan (collectively, ''Respondents'') of certain motorized vehicles and components thereof that infringe complainant's asserted trade dress. The Commission has also issued cease and desist orders (''CDOs'') directed to respondents M&M and MANA. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.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: The Commission instituted this investigation on September 13, 2018, based on a complaint, as amended, filed by FCA US LLC of Auburn Hills, Michigan (''Complainant''). *See* 83 FR 46517 (Sept. 13, 2018). The complaint 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 motorized vehicles and components thereof by reason of: (1) Infringement of U.S. Trademark Registration Nos. 4,272,873; 2,862,487; 2,161,779; 2,794,553; and 4,043,984 (collectively, ''the registered trademarks''); (2) trademark dilution and unfair competition in violating the complainant's common law trademark rights; and (3) trade dress infringement. *See id.* The notice of investigation names M&M and MANA as respondents in this investigation. *See id.* The Office of Unfair Import Investigations is also a party to this investigation. *See id.*

On November 8, 2019, the ALJ issued the FID finding a violation of section 337. Specifically, the FID finds that Respondents' Roxor vehicle infringes Complainant's Jeep trade dress but not its registered trademarks. The FID also finds that the domestic industry requirement is satisfied with respect to both claims. The RD recommends that the Commission issue an LEO barring entry of Respondents' articles that infringe the asserted trade dress and CDOs against Respondents. In addition, the RD recommends that the Commission set a bond during the period of Presidential review at ten (10) percent on unassembled Roxor components or one (1) percent on the finished Roxor vehicle.

On December 9, 2019, the private parties also filed statements on the public interest pursuant to Commission Rule 210.50. On December 6, 2019, members of the public, including Prime Mold, AdventureVet, Milton Manufacturing, and Midwest Manufacturing LLC, also filed written submissions in response to the **Federal Register** notice requesting public interest comments. *See* 84 FR 63890 (Nov. 19, 2019).

On January 22, 2020, the Commission issued a notice determining to review the FID in part. *See* 85 FR 5035 (Jan. 22, 2020). The Commission's notice also requested written submissions on remedy, the public interest, and

bonding. On February 7, 2020, the parties, including OUII, filed written submissions in response to the notice, and on February 14, 2020, the parties filed responses thereto.

Having examined the record of this investigation, including the FID, the RD, and the parties' and non-parties' submissions, the Commission has determined to affirm with modification the FID's determination of a violation of section 337. Specifically, as explained in the Commission Opinion filed concurrently herewith, the Commission has determined to affirm with modification the FID's findings with respect to the issues under review, *i.e.*: (1) Validity, infringement, and importation in connection with Complainant's trade dress infringement claim; and (2) non-infringement and domestic industry with respect to Complainant's claim of infringement of its registered trademarks. All findings in the FID that are not inconsistent with the Commission's determination are affirmed.

Accordingly, the Commission finds that there is a violation of section 337 with respect to Complainant's trade dress infringement claim. The Commission has determined that the appropriate remedy is an LEO against Respondents' infringing products, and CDOs against respondents M&M and MANA. The Commission has also determined that the public interest factors enumerated in subsections 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude the issuance of the LEO and CDOs. The Commission has further determined to set a bond during the period of Presidential review at ten (10) percent on unassembled Roxor components or one hundred (100) percent on the finished Roxor vehicle (19 U.S.C. 1337(j)).

The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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: June 11, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–12996 Filed 6–16–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1124]

Certain Powered Cover Plates; Issuance of a General Exclusion Order and Four Cease and Desist Orders; Termination of 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 general exclusion order (''GEO'') and four cease and desist orders (''CDOs'') in the above-captioned investigation. The Commission has terminated this investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., 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: The Commission instituted the investigation on July 23, 2018, based on a complaint filed by SnapRays, LLC d/b/a SnapPower of Vineyard, UT (''SnapPower,'' or ''Complainant''). 83 FR 34871 (July 23, 2018). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain powered cover plates by reason of infringement of certain claims of U.S. Patent Nos. 9,871,324; 9,882,361 (''the '361 patent''); 9,917,430; and U.S. Design Patent No. D819,426. *Id.* at 34872. The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named the following respondents: (1) Ontel Products Corporation of Fairfield, New Jersey; (2) Dazone, LLC of Ontario, Canada (''Dazone''); (3) Shenzhen C-Myway of Shenzhen, Guangdong, China; (4) E-Zshop4u LLC of Howey in the Hills, Florida; (5) Desteny Store of Fort Meyers, Florida (''Desteny''); (6) Zhongshan Led-Up Light Co., Ltd. of Zhongshan, Guangdong, China; (7) AllTrade Tools LLC of Cypress, California; (8) Guangzhou Sailu Info Tech. Co., Ltd. of Guangzhou, Gunagdong, China; (9) Zhejiang New-Epoch Communication Industry Co., Ltd. of Yueging, Zhejiang, China (''NEPCI''); (10) KCC Industries of Eastvale, California; (11) Vistek Technology Co., Ltd. of Fuyong, Baoan, Shenzhen, China (''Vistek''); (12) Enstant Technology Co., Ltd. of Xixiang Baoan District, Shenzhen, China (''Enstant''); and (13) Manufacturers Components Incorporated of Pompano Beach, Florida (''MCI''). *Id.* The Office of Unfair Import Investigations is participating in the investigation.

The Commission previously terminated the investigation as to, or found in default, all named respondents except Enstant and Vistek (collectively, ''Enstant/Vistek''). Order No. 5 (Sept. 26, 2018), *non-reviewed* Notice (Oct. 29, 2018); Order No. 6 (Sept. 26, 2018), *non-reviewed* Notice (Oct. 29, 2018); Order No. 8 (Sept. 28, 2018), *non-reviewed* Notice (Oct. 23, 2018); Order No. 12 (Oct. 2, 2018), *non-reviewed* Notice (Nov. 27, 2018); Order No. 18 (Nov. 28, 2018), *non-reviewed* Notice (Dec. 21, 2018); Order, No. 36 (Apr. 11, 2019), *non-reviewed* Notice (May 8, 2019).

Respondents Enstant and Vistek chose not to contest importation and infringement. Similarly, there were no genuine disputes of material fact with respect to the technical prong of the domestic industry (''DI'') requirement. As a result, the presiding administrative law judge (''ALJ'') decided these legal issues against Enstant and Vistek and the Defaulting Respondents through orders granting complainant SnapPower's motions for summary determination. *See* Order No. 39 (July 10, 2019) (Importation and Infringement); Order No. 40 (July 22, 2019) (Technical DI)).

On August 12, 2019, the ALJ issued an ''Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond'' (''ID/RD'') finding a violation of section 337 with respect to the participating respondents Enstant and Vistek and defaulting respondents Dazone, Desteny, MCI, and NEPCI (collectively, ''Defaulting Respondents'') under all of the asserted patents. *See* ID/RD at 125–26.

The final ID notes that ''Respondents Enstant and Vistek filed a motion for summary determination of non-infringement ('Redesign SD Motion') of

[the '361 patent] by Redesign Models P001 (Smart Wall Plate Charger, Decor Outlet, with USB charger) and P002 (Smart Wall Plate Charger, Duplex Outlet with USB charger).'' ID/RD at 14. In the Redesign SD Motion, Enstant sought summary determination that powered cover plate model numbers P001 and P002 (''Enstant's Redesigns'') do not infringe claims 1, 3–4, 10, 14, 17, 21, and 23–24 of the '361 patent. Redesign SD Motion at 16. The final ID finds, however, that ''Enstant's and Vistek's Redesign SD Motion was effectively rendered moot by rulings on Motions in Limine even though Enstant and Vistek's Redesign SD Motion was granted during the March 29, 2019 Teleconference.'' ID/RD at 14 (citing Tel. Tr. at 7:15–9:14 (Mar. 29, 2019)).

The ALJ's rulings on Motions in Limine addressed: (1) Enstant/Vistek's Motion in Limine (''Respondents' MIL'') to preclude Complainant SnapPower from asserting or providing evidence during the evidentiary hearing (''Hearing'') that the Enstant Redesigns infringe any SnapPower patents, Order No. 42 at 1 (Aug. 12, 2019) (citing Motion Docket No. 1124–041 (Feb. 19, 2019); Respondents' MIL at 2); and (2) SnapPower's Corrected Motion In Limine (''SnapPower MIL'') to preclude evidence of the Enstant Redesigns from the Hearing, and in the alternative, to permit SnapPower to assert infringement against the Redesigns by amending the Complaint and Notice of Investigation, Order No. 42 at 2 n. 2 (citing Motion Docket No. 1124–033 (Feb. 13, 2019), SnapPower MIL at 1). *See also* ID/RD at 14–15.

On October 11, 2019, the Commission determined to review the final ID in part and to remand the investigation to the ALJ for a remand initial determination (''RID'') to address the final ID's finding that Enstant/Vistek's Redesign SD Motion is moot. 84 FR 55985–86 (Oct. 18, 2019).

By not reviewing the relevant portion of the final ID, *see id.* at 55986, the Commission found a violation of section 337 with respect to participating respondents Enstant and Vistek, and the Defaulting Respondents Dazone, Desteny, NEPCI, and MCI. *See id.* at 55985–86. *See also* ID/RD at 3–4, 125–26.

On January 30, 2020, the ALJ issued an RID, granting Enstant's Redesign SD Motion. Specifically. the RID finds that there is no dispute that Enstant's Redesigns do not infringe claims 1, 3–4, 10, 14, 17, 21, and 23–24 of the '361 patent—the only patent asserted against Enstant's Redesigns. RID at 15–20. No party petitioned for review of the RID. The Commission determined not to review the RID. *See* 85 FR 21457–59 (Apr. 17, 2020) (''Commission Notice''). The Commission also requested written submissions on remedy, the public interest, and bonding. *Id.* at 21458–59.

On March 30, 2020, all parties to the investigation filed their opening written submissions on remedy, the public interest, and bonding. On April 7, 2020, all parties filed their responsive written submissions. No other submissions were received by the Commission.

Having examined the record in this investigation, including the parties' submissions on remedy, the public interest, and bonding filed in response to the Commission Notice, the Commission has determined that the appropriate form of relief in this investigation is: (1) A GEO prohibiting the unlicensed entry of infringing powered cover plates, which are electrical receptacle covers with built-in functionality, that infringe one or more of claims 1, 4, 8, 9, 10, 13, 17, and 19 of the '324 patent; claims 1, 4, 10, 14, 21, 23, and 24 of the '361 patent; claims 1, 2, 3, 7, 18, and 19 of the'430 patent; and the claim of the D'426 patent that are manufactured, and imported from, abroad; and (b) CDOs directed at Respondents Dazone, Desteny, MCI, and NEPCI, and their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. As noted above, Enstant's Redesigns do not fall within the scope of these remedial orders with respect to the asserted claims of the 361 patent.

The Commission has further determined that the public interest factors enumerated in subsections (d)(l) and (f)(1) (19 U.S.C. 1337(d)(l), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined to impose a bond of one hundred (100) percent of entered value of the covered products during the period of Presidential review (19 U.S.C. 1337(j)).

The investigation is terminated.

The Commission vote for this determination took place on June 11, 2020.

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: June 11, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–12994 Filed 6–16–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TPA–105–008]

Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Update; Notice of Institution of Investigation and Schedule of a Public Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Notice of investigation and scheduling of a public hearing.

SUMMARY: The Commission has instituted Investigation No. TPA–105–008, Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Report, for the purpose of preparing the second of two reports required by section 105(f)(2) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015. Section 105(f)(2) requires that the Commission submit to the House Committee on Ways and Means and the Senate Committee on Finance two reports, one by June 29, 2016, and a second by June 29, 2021, on the economic impact on the United States of all trade agreements with respect to which Congress has enacted an implementing bill under trade authorities procedures since January 1, 1984.

DATES:

September 21, 2020: Deadline for filing requests to appear at the public hearing.

September 25, 2020: Deadline for filing prehearing briefs and statements.

October 6, 2020: Public hearing.

October 23, 2020: Deadline for filing post-hearing briefs and statements.

November 6, 2020: Deadline for filing all other written submissions.

June 29, 2021: Transmittal of Commission report to the Committees.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be submitted electronically and addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Project Leaders Tamara Gurevich (202–205–3403 or *tamara.gurevich@usitc.gov*) or David Guberman (202–708–1396 or *david.guberman@usitc.gov*) for information specific to this

investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (*https://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background: On June 29, 2015, the President signed the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (TPA). Section 105(f)(2) of the Act (19 U.S.C. 4204(f)(2)) requires the Commission to submit two reports to the House Committee on Ways and Means and Senate Committee on Finance, one in 2016 and a second not later than mid-2021, on the economic impact of trade agreements implemented under trade authorities procedures since 1984. Section 105(f)(2) provides as follows:

(2) REPORT ON IMPACT OF TRADE PROMOTION AUTHORITY.—Not later than one year after the date of the enactment of this Act, and not later than 5 years thereafter, the United States International Trade Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the economic impact on the United States of all trade agreements with respect to which Congress has enacted an implementing bill under trade authorities procedures since January 1, 1984.

The Commission submitted its first report on June 29, 2016 (Inv. No. 332–555, Pub. No. 4614) and will submit the second report by June 29, 2021.

For purposes of this report the Commission considers the trade agreements covered to include the Uruguay Round Agreements, the North American Free Trade Agreement (NAFTA), the United States-Mexico-Canada Agreement (USMCA), and U.S. free trade agreements with Australia, Bahrain, Canada, Chile, Colombia, the Dominican Republic and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua), Israel, Jordan, Korea, Morocco, Oman, Panama, Peru, and Singapore.

The Commission has instituted an investigation under section 105(f)(2) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 for the purpose of preparing this report and also for the purpose of assisting the public in the filing and inspection of documents and also to make the report more readily accessible to the public through the Commission's website.

Public Hearing: A public hearing in connection with this investigation will be held beginning at 9:30 a.m. on October 6, 2020. Information about the place and form of the hearing, including about how to participate in or view the hearing, will be posted on the Commission's website at (*https://usitc.gov/research_and_analysis/what_we_are_working_on.htm*). Once on that web page, scroll down to the entry for investigation No. TPA–105–008, Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2021 Report, and click on the link to ''hearing instructions.'' Interested parties should check the Commission's website periodically for updates.

Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., September 21, 2020 in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed no later than 5:15 p.m., September 25, 2020; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., October 23, 2020. In the event that, as of the close of business on September 21, 2020, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after September 21, 2020, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., November 6, 2020. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Confidential Business Information. Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: Persons wishing to have a summary of their position included in the report should include a summary with their written submission and should mark the summary as having been provided for that purpose. The summary should be clearly marked as ''summary for inclusion in the report'' at the top of the page. The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: June 11, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–12995 Filed 6–16–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–667]

Importer of Controlled Substances Application: Woodfield Distribution, LLC

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 July 17, 2020. Such persons may also file a written request for a hearing on the application on or before July 17, 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 June 3, 2020, Woodfield Distribution, LLC, 951 Clint Moore Road, Suite A, Boca Raton, Florida 33487–2804, applied to be registered as an importer of the following basic class(es) of controlled substance:

Controlled substance	Drug code	Schedule
Nabilone	7379	II

The company plans to import this controlled substance for phase I of a clinical study. Approval of permit applications will occur only when the registrant's 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 (FDA)-approved or non-approved finished dosage forms for commercial sale.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–13008 Filed 6–16–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–668]

Bulk Manufacturer of Controlled Substances Application: Cambrex Charles City

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 August 17, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on May 6, 2020, Cambrex Charles City, 1205 11th Street, Charles City, Iowa 50616–3466, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Amphetamine	1100	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
ANPP (4-Anilino-N-phenethyl-4-piperidine).	8333	II
Phenylacetone	8501	II
Codeine	9050	II
Oxycodone	9143	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium extracts	9610	II
Opium fluid extract	9620	II
Opium tincture	9630	II
Opium, powdered	9639	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Fentanyl	9801	II

The company plans to manufacture the above-listed controlled substances in bulk for conversion to other controlled substances and sales to its customers for dosage form development, clinical trials and use in stability qualification studies. No other activities for these drug codes are authorized for this registration.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–13009 Filed 6–16–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 05–20]

Sunshine Act Meeting

SUMMARY: The Foreign Claims Settlement Commission, pursuant to its regulations and the Government in the Sunshine Act, hereby gives notice in regard to the scheduling of open meetings as follows:

DATES: Thursday, June 25, 2020, at 10 a.m.

PLACE: This meeting will be held by teleconference. There will be no physical meeting place.

STATUS: Open. Members of the public who wish to observe the meeting via teleconference should contact Patricia M. Hall, Foreign Claims Settlement Commission, Tele: (202) 616–6975, two business days in advance of the meeting. Individuals will be given call-in information upon notice of attendance to the Commission.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, advance notices of intention to observe an open meeting, and requests for teleconference dial-in information may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Brian M. Simkin,

Chief Counsel.

[FR Doc. 2020–13131 Filed 6–15–20; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0029]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) 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 July 17, 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:

(1) 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;

(2) 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended and the Prison Rape Elimination Act for Applicants to the STOP Formula Grant Program

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0029. U.S. Department of Justice, Office on Violence Against Women

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and the Violence Against Women Act of 2013. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory. As a result of VAWA 2013 and the penalty provision of the Prison Rape Elimination Act (PREA), States are required to certify compliance with PREA. If States cannot certify compliance, they have the option of forfeiting five percent of covered funds or executing an assurance that five percent of covered funds will be used towards coming into compliance with PREA

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) 10 minutes to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as amended and the Prison Rape Elimination Act

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 10 hours

If additional information is required contact: Melody Braswell, Deputy 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: June 11, 2020.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2020–12968 Filed 6–16–20; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Comment Request; Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by August 17, 2020.

ADDRESSES: Electronic submission: You may submit comments and attachments electronically at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Crystal Rennie by telephone at (202) 693–0456, (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Crystal Rennie by telephone at (202) 693–0456, (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or

continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The U.S. Department of Labor (DOL) headquarters building, the Frances Perkins Building has conference and meeting capabilities located in its public space areas that entities outside of the Department may request to use. Use of public space in Federal buildings is governed by Section 581(h) of Title 40 of the United States Code (40 U.S.C. Section 581(h)). DOL has authority to issue occasional use permits to organizations engaging in ''cultural,'' ''educational,'' or ''recreational'' activities (permits are not available for ''commercial'' purposes.) FMR 102–74, Subpart D—Occasional Use of Public Buildings establishes rules and regulations for the occasional use of public areas of public buildings for cultural, educational and recreational activities as provided by 40 U.S.C. 581(h)(2). The public space use application in this **Federal Register** notice is designed to obtain information from entities outside DOL to help DOL comply with the Federal and Departmental rules and regulations.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1225–0087.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OASAM.

Type of Review: Extension.

Title of Collection: Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.

Form: Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building (Form DL1–6062B).

OMB Control Number: 1225–0087.

Affected Public: Private Sector—not-for-profit institutions.

Estimated Number of Respondents: 10.

Frequency: Annually.

Total Estimated Annual Responses: 10.

Estimated Average Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 1 hour.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Crystal R. Rennie,

Acting Departmental Clearance Officer.

[FR Doc. 2020–13056 Filed 6–16–20; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Information Collection; Escape and Evacuation Plans (OMB Control No. 1219–0046)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Escape and Evacuation Plans.

DATES: All comments must be received on or before August 17, 2020.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for docket number MSHA–2020–0020. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at

MSHA.information.collections@dol.gov (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101 (a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

Title 30 of the Code of Federal Regulations (CFR) section 57.11053 requires the development of specific escape and evacuation plans that address the unique conditions of each underground metal and nonmetal mine. Section 57.11053 also requires that mine operators make revisions to the escape and evacuation plan for an underground metal and nonmetal mine as mining progresses. The plan must be available to representatives of MSHA and conspicuously posted at the mine at locations convenient to all persons on the surface and underground. The mine operator and MSHA are required to jointly review the plan at least once every 6 months.

The following information is required with each escape and evacuation plan submission:

(1) Mine maps or diagrams showing directions of principal air flow, location of escape routes, and locations of existing telephones, primary fans, primary fan controls, fire doors, ventilation doors, and refuge chambers;

(2) Procedures to show how the miners will be notified of an emergency;

(3) An escape plan for each working area in the mine, including instructions showing how each working area should be evacuated;

(4) A firefighting plan;

(5) Procedures for surface personnel to follow in an emergency, including the notification of proper authorities and the preparation of rescue equipment and other equipment which may be used in rescue and recovery operations; and

(6) A statement of the availability of emergency communication and transportation facilities, emergency power, and ventilation, and the location of rescue personnel and equipment.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Escape and Evacuation Plans. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to 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.

Background documents related to this information collection request are available at *https://regulations.gov* and in DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice from the previous collection of information.

III. Current Actions

This information collection request concerns provisions for Escape and Evacuation Plans. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0046.

Affected Public: Business or other for-profit.

Number of Respondents: 193.

Frequency: On occasion.

Number of Responses: 386.

Annual Burden Hours: 3,281 hours.

Annual Respondent or Recordkeeper Cost: $1,930.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Roslyn B. Fontaine,

Certifying Officer.

[FR Doc. 2020–13001 Filed 6–16–20; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at 202–693–4734. Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at *https://www.dol.gov/agencies/vets/about/advisorycommittee*.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Monday, July 13, 2020 by contacting Mr. Gregory Green at 202–693–4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This Notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a) (2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES: Thursday, July 23, 2020 beginning at 9:00 a.m. and ending at approximately 12:00 p.m. (EST).

ADDRESSES: The address of the open meeting will be online. Meeting number: 161 170 0798, Meeting password: CmnMaM6b@23.

Meeting link: *https://dol.webex.com/dol/j.php?MTID=m9fb40c7a69e5515b8de3ee8e5f7b9a16.* Audio connection: 1–877–951–0575 (US), Call-in toll-free number (Verizon) 1–203–369–7915 (US), Call-in number (Verizon) Attendee access code: 611 135 8.

Notice of Intent To Attend the Meeting: All meeting participants should submit a notice of intent to attend by Monday, July 13, 2020, via email to Mr. Gregory Green at *green.gregory.b@dol.gov,* subject line ''July 2020 ACVETEO Meeting.''

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: Assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9:00 a.m. Welcome and remarks, John Lowry, Assistant Secretary, Veterans' Employment and Training Service
9:10 a.m. Administrative Business, Gregory Green, Designated Federal Official
9:15 a.m. Small Business Administration (SBA) briefing on COVID–19 impact and resources for small business and entrepreneurs
9:45 a.m. National Association of State Workforce Agencies (NASWA) briefing on COVID–19 impact on unemployment and delivery of services
10:15 a.m. Regional Veterans Employment Coordinator (RVEC) briefing on Pre & Post COVID–19 impact on employers and veterans
10:45 a.m. Office of Disability Employment Policy (ODEP) briefing on the Veterans Return to Integrated Competitive Employment (RICE)
11:15 a.m. Subcommittee Discussion/Assignments, Committee Chairperson
11:30 a.m. Public Forum, Gregory Green, Designated Federal Official
12:00 p.m. Adjourn

Signed in Washington, DC, this 12th day of June 2020.

John Lowry,

Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2020–13057 Filed 6–16–20; 8:45 am]

BILLING CODE 4510–79–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–156 and CP2020–170; CP2020–171; CP2020–172; MC2020–157 and CP2020–173; MC2020–158 and CP2020–174; CP2020–175]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 19, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–156 and CP2020–170; *Filing Title:* USPS Request to Establish New Priority Mail—Non-Published Rates Product (PMRPR–2) and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 11, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 19, 2020.

2. *Docket No(s).:* CP2020–171; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 11, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* June 19, 2020.

3. *Docket No(s).:* CP2020–172; *Filing Title:* Notice of United States Postal

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 11, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* June 19, 2020.

4. *Docket No(s).:* MC2020–157 and CP2020–173; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 2 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 11, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Lawrence Fenster; *Comments Due:* June 19, 2020.

5. *Docket No(s).:* MC2020–158 and CP2020–174; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 3 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 11, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Lawrence Fenster; *Comments Due:* June 19, 2020.

6. *Docket No(s).:* CP2020–175; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 11, 2020; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* June 19, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–13053 Filed 6–16–20; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–169; Order No. 5544]

Inbound Competitive Multi-Service Agreements With Foreign Postal Operators

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recent filing by the Postal Service that it has entered into the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (FPOs). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 19, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Commission Action
III. Ordering Paragraphs

I. Introduction

On June 11, 2020, the Postal Service filed a notice with the Commission pursuant to 39 CFR 3035.105 and Order No. 546,[1] giving notice that it has entered into an Inbound Competitive Multi-Service Agreement with a Foreign Postal Operators (FPOs). The Notice concerns the inbound portions of the competitive product agreement PRIME United States Postal Service Tracked Service Agreement, referred to as the ''PRIME Agreement.'' Notice at 1. The Postal Service seeks to include the PRIME Agreement within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010–34) product. *Id.*

The Postal Service asserts that the PRIME Agreement ''is functionally equivalent to the baseline agreement filed in Docket No. MC2010–34 because the terms of this agreement are similar in scope and purpose to the terms of the CP2010–95 Agreement.'' *Id.* at 3. Concurrent with the Notice, the Postal Service filed supporting financial documentation and the following documents:

- Attachment 1—an application for non-public treatment;
- Attachment 2—the PRIME Agreement;
- Attachment 3—Governors' Decision No. 19–1;
- Attachment 4—a certified statement required by 39 CFR 3035.105(c)(2). *Id.* at 4–5.

The Postal Service states it intends for the PRIME Agreement to take effect on July 1, 2020. *Id.* at 1, 5. The Postal Service presents rates related to inbound competitive portions of the PRIME Agreement and not the rates paid by the Postal Service to each FPO for outbound competitive delivery. *Id.* at 5.

The Postal Service states that the PRIME Agreement is in compliance with 39 U.S.C. 3633 and is functionally equivalent to the inbound competitive portions of the CP2010–95 agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34) product. *Id.* at 9. For these reasons, the Postal Service states that the PRIME Agreement should be added to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34) product. *Id.*

II. Commission Action

The Commission establishes Docket No. CP2020–169 to consider the Notice. Interested persons may submit comments on whether the PRIME Agreement is consistent with 39 U.S.C. 3633 and 39 CFR 3035.105 and whether it is functionally equivalent to the inbound competitive portions of the Docket No. CP2010–95 agreement, which was included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010–34) product. Comments are due by June 19, 2020.

The Notice and related filings are available on the Commission's website (*http://www.prc.gov*). The Commission encourages interested persons to review the Notice for further details.

The Commission appoints Katalin K. Clendenin to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2020–169 for consideration of the matters raised by the Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operators, PRIME United States Postal Service Tracked Service Agreement, filed on June 11, 2020.

[1] Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Service Agreement with Foreign Postal Operators, June 11, 2020 (Notice). Docket Nos. MC2010–34 and CP2010–95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Service Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by June 19, 2020.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2020–13054 Filed 6–16–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89052; File No. 4–698]

Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail by BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Options Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange LLC, 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 Arca, Inc., NYSE American, LLC, NYSE Chicago, Inc. and NYSE National, Inc.

June 11, 2020.

I. Introduction

On April 14, 2020, the Operating Committee for Consolidated Audit Trail, LLC, on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''): [1] BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Options Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Long-Term Stock Exchange LLC, Investors' Exchange, LLC, Miami International Securities Exchange, LLC, MIAX EMERALD, LLC, MIAX PEARL, LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., NYSE American, LLC and NYSE National, Inc. (collectively, the ''Participants,'' ''self-regulatory organizations,'' or ''SROs'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] and Rule 608 thereunder,[3] a proposed amendment to the CAT NMS Plan to revise data reporting requirements for Firm Designated ID.[4] The Commission is publishing this notice to solicit comments from interested persons on the amendment.[5]

II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the amendment, along with information required by Rule 608(a)(4) and (5) under the Exchange Act,[6] as prepared and submitted by the Participants to the Commission.[7] The proposed revisions to the CAT NMS Plan, as prepared and submitted by the Participants, are attached as Appendix A.

A. Description of the Amendments to the CAT NMS Plan

Section 1.1 of the CAT NMS Plan defines the term ''Firm Designated ID'' to mean ''a unique 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 for each business date.'' As discussed in more detail below, the Participants propose to amend the requirements for Firm Designated IDs in four ways: (1) To prohibit the use of account numbers as Firm Designated IDs for trading accounts that are not proprietary accounts; (2) to require that the Firm Designated ID for a trading account be persistent over time for each Industry Member so that a single account may be tracked across time within a single Industry Member; (3) to permit the use of relationship identifiers as Firm Designated IDs in certain circumstances; and (4) to permit the use of entity identifiers as Firm Designated IDs in certain circumstances.

1. Prohibit Use of Account Numbers

The Participants believe that the use of account numbers as the Firm Designated ID could give rise to additional security risks related to CAT Data. By prohibiting the use of account numbers as Firm Designated IDs, the Participants intend to limit the potential capture of sensitive data in the CAT that could be used to effect an unauthorized transaction in an account.

The Participants propose to prohibit the use of account numbers as the Firm Designated ID solely for trading accounts that are not proprietary accounts. After discussions with the industry, the Participants believe that each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the actual account number for any proprietary account of the Industry Member when reporting the Firm Designated ID to CAT.

Accordingly, the Participants propose to amend the definition of a ''Firm Designated ID'' in Section 1.1 to provide that Industry Members may not use account numbers as the Firm Designated ID for trading accounts that are not proprietary accounts. Specifically, the Participants propose to add the following to the definition of a Firm Designated ID: ''provided, however, such identifier may not be the account number for such trading account if the

[1] On February 27, 2015, BOX Options Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Options Exchange, Inc., Cboe Exchange Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange LLC, Nasdaq BX, Inc., Nasdaq ISE LLC, Nasdaq GEMX, 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. filed with the Commission, pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS thereunder, the CAT NMS Plan. 15 U.S.C. 78k–1; 17 CFR 242.608. The 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); 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order''). On January 30, 2017, the Commission noticed for immediate effectiveness an amendment to the Plan to add MIAX PEARL, LLC as a Participant. *See* Securities Exchange Act Release No. 79898, 82 FR 9250 (February 3, 2017). On March 1, 2019, the Commission noticed for immediate effectiveness an amendment to the Plan to add MIAX Emerald, LLC as a Participant. *See* Securities Exchange Act Release No. 85230, 84 FR 8356 (March 7, 2019). On November 2, 2019, the Commission noticed for immediate effectiveness an amendment to the Plan to add Long-Term Stock Exchange LLC as a Participant. *See* Securities Exchange Act Release No. 87595, 84 FR 65447 (November 27, 2019).

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Brent J. Fields, Secretary, Commission, dated April 20, 2020.

[5] 17 CFR 242.608.

[6] *See* 17 CFR 242.608(a)(4) and (a)(5).

[7] *See supra* note 4.

trading account is not a proprietary account.'' [8]

2. Persistent Firm Designated ID

The CAT NMS Plan currently requires that the Firm Designated ID assigned by an Industry Member to a trading account be unique for each account for each business date. The Participants believe, however, that the Firm Designated ID assigned by an Industry Member to a trading account should be persistent over time, not for each business day.[9] With this change, a single account could be tracked across time within a single Industry Member using the Firm Designated ID. Without such a change, such tracking would only be possible using Customer information. Accordingly, the proposed persistence requirement would enhance the regulatory utility of the order and transaction data without accessing Customer information.

To effect this change, the Participants propose to amend the definition of ''Firm Designated ID'' in Section 1.1 of the CAT NMS Plan to add ''and persistent'' after ''unique'' and delete ''for each business date'' so that the definition of ''Firm Designated ID'' would read, in relevant part, as follows:

> 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.

Together with adding a requirement of persistence to the Firm Designated ID definition, deleting ''for each business date'' would make clear that the same, unique Firm Designated ID must be used by an Industry Member for a trading account over time, which will facilitate the regulatory use of CAT Data by searching with the Firm Designated ID.

3. Relationship Identifiers

The Participants propose to permit an Industry Member to provide a relationship identifier as the Firm Designated ID, rather [than] an identifier that represents a trading account, in certain scenarios in which an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt (*e.g.,* certain institutional accounts, managed accounts, accounts for individuals).[10] In such scenarios, the trading account structure may not be available when a new order is first received from a client and, instead, only an identifier representing the client's trading relationship is available. In these limited instances, the Industry Member may provide an identifier used by the Industry Member to represent the client's trading relationship with the Industry Member instead of an account number.

When a trading relationship is established at a broker-dealer for clients, the broker-dealer typically creates a parent account, under which additional subaccounts are created. However, in some cases, the broker-dealer establishes the parent relationship for a client using a relationship identifier as opposed to an actual parent account. The relationship identifier could be any of a variety of identifiers, such as a short name for a relevant individual or institution. This relationship identifier is established prior to any trading for the client. If a relationship identifier has been established rather than a parent account, and an order is placed on behalf of the client, any executed trades will be kept in a firm account (*e.g.,* a facilitation or average price account) until they are allocated to the proper subaccount(s), *i.e.,* the accounts associated with the parent relationship identifier connecting them to the client.

Relationship identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. The clients have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order receipt workflows operate using relationship identifiers, not accounts.

For Firm Designated ID purposes, as with an identifier for a trading account, the relationship identifier must be persistent over time. The relationship identifier also must be unique among all identifiers from any given Industry Member. With these requirements, a single relationship could be tracked across time within a single Industry Member using the Firm Designated ID. In addition, the relationship identifier must be masked as the relationship identifier could be a name or otherwise provide an indication as to the identity of the relationship. The masking requirement would avoid potentially revealing the identity of the relationship.

An example of the use of a relationship identifier as a Firm Designated ID would be as follows: Suppose that Big Fund Manager is known in Industry Member A's systems as ''BFM1.'' When an order is placed by Big Fund Manager, the order is tagged to BFM1. Industry Member A could use a masked version of BFM1 in place of the Firm Designated ID representing a trading account when reporting a new order from Big Fund Manager instead of the account numbers to which executed shares/contracts will be allocated at a later time via a booking or other system. Similarly, another example of the use of a relationship identifier as a Firm Designated ID would involve an individual in place of the Big Fund Manager in the above example.

To permit the use of relationship identifiers as a Firm Designated ID as described above, the Participants propose to amend the definition of a ''Firm Designated ID'' in Section 1.1 to state that a Firm Designated ID means, in part, ''a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked.''

4. Entity Identifiers

The Participants propose to permit Industry Members to provide an entity identifier, rather than an identifier that represents a trading account, when an employee of the Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination. An entity identifier is an identifier of the Industry Member that represents the firm discretionary relationship with the client rather than a firm trading account.

[8] Appendix C of the CAT NMS Plan noted that broker-dealers would be permitted to use an account number as the Firm Designated ID. Section A, Appendix C, CAT NMS Plan at C–8. The Participants do not propose to amend this statement in Section A of Appendix C of the CAT NMS Plan as it is a one-time report addressing ''the requirements set forth in SEC Rule 613(a)(1)(i) through (a)(1)(vi) that the 'Participants specify and explain the choices they made to meet the requirements specified in [SEC Rule 613] for the [CAT].' '' Appendix C of the CAT NMS Plan at C–1.

[9] If an Industry Member assigns a new account number or entity identifier to a client or customer due to a merger, acquisition or some other corporate action, then the Industry Member should create a new Firm Designated ID to identify the new account identifier/relationship identifier/entity identifier in use at the Industry Member for the entity. In addition, if a previously assigned Firm Designated ID is no longer in use by an Industry Member (*e.g.,* if the trading account associated with the Firm Designated ID has been closed), then an Industry Member may reuse the Firm Designated ID for another trading account. The Plan Processor will maintain a history of the use of each Firm Designated ID, including, for example, the effective dates of the Firm Designated ID with respect to each associated trading account.

[10] The Commission has corrected the grammar of this sentence by adding the word ''than.''

The scenarios in which a firm uses an entity identifier are comparable to when a firm uses a relationship identifier (as described above) except the entity identifier represents the Industry Member rather than a client. As with relationship identifiers, entity identifiers are used in circumstances in which the account structure is not available to the trading system at the time of order placement. In this workflow, the Industry Member's order handling and execution system does not have an account number at the time of order origination. The relevant clients that will receive an allocation of the execution have established accounts prior to the trade that satisfy relevant regulatory obligations for opening accounts, such as Know Your Customer and other customer obligations. However, the order origination workflows operate using entity identifiers, not accounts.

For Firm Designated ID purposes, as with the identifier for a trading account or a relationship, the entity identifier must be persistent over time. The entity identifier also must be unique among all identifiers from any given Industry Member. The Participants believe that each Industry Member must make its own risk determination as to whether it believes it is necessary to mask the entity identifier when using an entity identifier to report the Firm Designated ID to CAT.

An example of the use of an entity identifier as a Firm Designated ID would be when Industry Member 1 has an employee that is a registered representative that has discretion over several client accounts held at Industry Member 1. The registered representative places an order that he will later allocate to individual client accounts. At the time the order is placed, the trading system only knows it involves a representative of Industry Member 1 and it does not have a specific trading account that could be used for Firm Designated ID reporting. Therefore, Industry Member 1 could report IM1, its entity identifier, as the FDID with the new order.

To permit the use of an entity identifier as a Firm Designated ID as described above, the Participants propose to amend the definition of a ''Firm Designated ID'' in Section 1.1 to state that a Firm Designated ID means, in part, ''a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination.''

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants propose to implement the Firm Designated ID with the commencement of Industry Member CAT reporting.

D. Development and Implementation Phases

The Participants propose to implement the Firm Designated ID with the commencement of Industry Member CAT reporting.

E. Analysis of Impact on Competition

The Participants believe the proposed amendments will have a positive impact on competition, efficiency and capital formation. The Participants believe that the use of account numbers as the Firm Designated ID could give rise to additional security risks related to CAT Data. By proposing to revise the CAT NMS Plan to prohibit the use of account numbers as Firm Designated IDs, the Participants intend to limit the potential capture of sensitive data in the CAT that could be used to effect an unauthorized transaction in an account. By enhancing the security of the CAT, this proposed change to the CAT NMS Plan would further the goals of efficiency and capital formation.

In addition, the Participants believe that the proposed persistence requirement would enhance the regulatory utility of the order and transaction data without accessing Customer information. With this change, a single account could be tracked across time within a single Industry Member using the Firm Designated ID. Without such a change, such tracking would only be possible using Customer information. By enhancing the regulatory utility of the CAT while reducing the need to access Customer information, the proposed amendment would enhance the efficiency and capital formation of our markets.

Furthermore, the proposed amendments to permit the use of relationship identifiers and entity identifiers as Firm Designated IDs will enhance the efficiency of CAT reporting. These changes will permit Industry Members to continue to maintain existing order workflows, rather than employing resources to alter those workflows solely for CAT reporting purposes.

Finally, the Participants do not believe that the proposed amendments would impact competition among Industry Members. The proposed amendments would revise the data reporting requirements for Firm Designated IDs, and, as such, are applicable to all Industry Members. In addition, given that the proposed amendments rely on existing workflows, the proposed amendments would not cause certain Industry Members to incur additional expenses to alter their existing workflows.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Plan Sponsors in Accordance with Plan

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 or has otherwise become effective under Rule 608. The Participants, by a vote of the Operating Committee taken on April 14, 2020, have authorized the filing of this proposed amendment with the SEC in accordance with the Plan.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method and Frequency of Processor Evaluation

Not applicable.

K. Dispute Resolution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. In particular, the Commission seeks comment on the following:

(1) Do commenters agree that using account numbers as a Firm Designated ID could give rise to additional security risks for CAT Data?

(2) Should each Industry Member make its own determination as to whether it is necessary to mask the actual account number for any

proprietary account of the Industry Member when reporting the Firm Designated ID?

(3) Should each Industry Member make its own determination as to whether it is it necessary to mask the entity identifier when using an entity identifier to report a Firm Designated ID?

(4) Would requiring the Firm Designated ID assigned by a broker-dealer to be persistent and unique for each account for each business date be sufficient to allow a single account to be tracked across time within a single Industry Member's records?

(5) Does the proposed amendment clearly define when and under what circumstances relationship identifiers could be used by Industry Members in lieu of standard Firm Designated IDs? Should the amended definition of Firm Designated ID, or the Participants' Compliance Rules,[11] specify when or how relationship identifiers can be used? Does the proposed definition of Firm Designated ID make clear what it means for relationship identifiers to be ''masked''?

(6) Does the proposed amendment clearly define when entity identifiers could be used by Industry Members in lieu of standard Firm Designated IDs? Should the amended definition of Firm Designated ID, or the Participants' Compliance Rules, specify when entity identifiers can be used?

(7) Would the proposed amendment providing for usage of relationship identifiers and entity identifiers have any negative impact on customer obligations that broker-dealers have with regard to client accounts, such as know-your-customer obligations?

(8) Would the proposed amendment cause Industry Members to incur additional expenses to alter their existing workflows? If so, what is the scope of these additional expenses?

(9) Would the proposed amendment impact efficiency, competition or capital formation?

(10) Would the proposed amendment impact competition? If so, what type of competitors would be affected and in what market? Would this change in competition affect the services and/or prices customers experience in this market?

(11) Would any efficiency gains of the proposed amendment impact capital formation? If so, how? Would there be other impacts on capital formation?

(12) Do commenters agree with the Participants that by enhancing the regulatory utility of the CAT while reducing the need to access Customer information, the proposed amendment would enhance the efficiency and capital formation of our markets? How so?

(13) Will the proposed amendment enhance the efficiency of CAT reporting by permitting the usage of relationship identifiers and entity identifiers as Firm Designated IDs? Will the proposed amendment permit Industry Members to maintain existing order workflows, rather than employing resources to alter those workflows solely for CAT reporting purposes?

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 4–698 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 4–698. 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 plan amendment that are filed with the Commission, and all written communications relating to the amendment 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 Participants' offices. 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 4–698 and should be submitted on or before July 8, 2020.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

Appendix A

[additions italicized; deletions bracketed]

LIMITED LIABILITY COMPANY AGREEMENT OF CONSOLIDATED AUDIT TRAIL, LLC

* * * * *

ARTICLE I

Section 1.1. *Definitions.* As used throughout this Agreement (including, for the avoidance of doubt, the Exhibits, Appendices, Attachments, Recitals and Schedules identified in this Agreement):

* * * * *

''Firm Designated ID'' means *(1)* a unique *and persistent* identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository *provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account; (2) a unique and persistent relationship identifier when an Industry Member does not have an account number available to its order handling and/or execution system at the time of order receipt, provided, however, such identifier must be masked; or (3) a unique and persistent entity identifier when an employee of an Industry Member is exercising discretion over multiple client accounts and creates an aggregated order for which a trading account number of the Industry Member is not available at the time of order origination,* where each such identifier is unique among all identifiers from any given Industry Member [for each business date].

* * * * *

[FR Doc. 2020–13000 Filed 6–16–20; 8:45 am]

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[11] 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. *See* CAT NMS Plan, *supra note* 1, at Section 1.1. Section 3.11 states that ''[e]ach Participant shall comply with and enforce compliance, as required by SEC Rule 608(c), by its Industry Members with the provisions of SEC Rule 613 and of this Agreement, as applicable, to the Participant and its Industry Members. The Participants shall endeavor to promulgate consistent rules (after taking into account circumstances and considerations that may impact Participants differently) requiring compliance by their respective Industry Members with the provisions of SEC Rule 613 and this Agreement.'' *See id.* at Section 3.11.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 85 FR 35966, June 12, 2020.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, June 17, 2020 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Wednesday, June

17, 2020 at 2:00 p.m. has been changed to Wednesday, June 17, 2020 at 12:30 p.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Secretary, in the Office of the Secretary at (202) 551–5400.

Dated: June 12, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–13089 Filed 6–15–20; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–777, OMB Control No. 3235–0729]

Proposed Collection for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form N–CEN

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Form N–CEN under the Investment Company Act of 1940.'' Form N CEN is used to collect annual, census-type information for registered funds. Filers must submit this report electronically using the Commission's electronic filing system ''(EDGAR'') in Extensible Markup Language (''XML'') format. The purpose of Form N–CEN is to satisfy the filing and disclosure requirements of Section 30 of the Investment Company Act, and of rule 30a–1 thereunder.

We estimate that the average annual hour burden to complete the generally applicable items on Form N–CEN response will be 12.31 hours per year. We estimate that the aggregate annual hour burden to complete the generally applicable items will be 34,899 hours per year. We therefore estimate that filers would have total average annualized paperwork related expenses related to complete the generally applicable items of $12,249,496.35 for reports on Form N–CEN. Additionally, we estimate that filers will be required to file 12,365 responses related to liquidity risk management items on Form N–CEN. We estimate that the average annual hour burden of the liquidity risk management items on Form N–CEN will be one hour per response per year, for an additional average annual hour burden of 12,365 hours and average aggregate time costs of $4,340,115. Additionally, we estimate that filers will be required to file 9,854 responses regarding swing pricing. We estimate that the average annual hour burden as a result of the swing pricing-related items on Form N–CEN will be an additional 0.5 hour per fund per year for an average annual hour burden of 4,927 hours and average aggregate time costs of $1,729,377. We estimate that filers will be required to file 2,091 responses regarding rule 6c–11. For these responses related to rule 6c–11, we an average annual hour burden of 0.1 hour per response per year, for an average annual hour burden of 209.1 hours and average aggregate time costs of $73,394.1.

We estimate that the total hour burdens and time costs associated with Form N–CEN, including the burdens associated with the liquidity-related, swing pricing-related, and rule 6c–11-related items, will result in an average annual hour burden of 52,397 hours and average aggregate time costs of $18,392,382.45.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 12, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13069 Filed 6–16–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89047; File No. SR–CboeBZX–2020–048]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

June 11, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''BZX Options'').[3]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 19% of the market share and currently the Exchange represents only approximately 9% of the market share.[4] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange's fee schedule sets forth standard rebates and rates applied per contract. For example, the Exchange assesses a standard rebate of $0.25 per contract for Customer orders that add liquidity in Penny Pilot Securities and a standard rebate of $0.85 per contract in Non-Penny Pilot Securities. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, the Exchange currently offers four Customer Non-Penny Pilot Add Volume Tiers under footnote 12 of the fee schedule which provide enhanced rebates between $0.92 and $1.05 per contract for qualifying Customer orders which meet certain add liquidity thresholds and yield fee code NY.[5] Under the current Customer Non-Penny Pilot Add Volume Tiers, a Member may receive an enhanced rebate where the Member has an ADAV[6] in Customer orders, or Customer and Market Maker and/or Firm orders greater or equal to a specified percentage of OCV.[7] The Exchange now proposes to adopt a Customer Non-Penny Pilot Add Volume Tier 5.

The Exchange believes the proposed Customer Non-Penny Pilot Add Volume Tier will provide Members an additional opportunity to receive an enhanced rebate for meeting the corresponding proposed criteria. The Exchange believes the proposed tier, along with the existing tiers, also provide an incremental incentive for Members to strive for the highest tier levels, which provide increasingly higher rebates for such transactions. Particularly, the Exchange proposes to add new Customer Non-Penny Pilot Add Volume Tier 5, which would provide an enhanced rebate of $1.06 per contract on qualifying orders (*i.e.,* yielding fee code NY) where a Member has (1) an ADAV in Customer orders greater than or equal to 2.00% of average OCV; and (2) an ADAV in Customer Non-Penny orders greater than or equal to 1.00% of average OCV. The proposed tier provides an additional opportunity for Members to achieve an increased enhanced rebate on their Customer Non-Penny liquidity adding orders (NY) by reaching a new Customer Non-Penny Pilot tier. Specifically, the proposed fee change is designed to encourage overall Customer liquidity adding order flow (both Penny and Non-Penny orders). The Exchange believes that incentivizing more Customer order flow will create more trading opportunities, which, in turn attracts Market-Makers. A resulting increase in Market-Maker activity may facilitate tighter spreads, which may lead to additional increase of order flow in Non-Penny orders from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[8] in general, and furthers the requirements of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it provides an additional opportunity for Members to receive a higher rebate by providing additional criteria they can reach for. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[10] including the Exchange,[11]

[3] The Exchange initially filed the proposed fee changes on June 1, 2020 (SR–CboeBZX–2020–046). On June 2, 2020, the Exchange withdrew that filing and submitted this filing.

[4] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (May 29, 2020), available at *https://markets.cboe.com/us/options/market_statistics/.*

[5] Orders yielding fee code NY are Customer orders that add liquidity in Non-Penny Pilot securities and are offered a rebate of $0.85.

[6] ''ADAV'' means average daily added volume calculated as the number of contracts added, ''ADRV'' means average daily removed volume calculated as the number of contracts removed, and ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[7] ''OCC Customer Volume'' or ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] *See e.g.,* BOX Options Fee Schedule, Section 1(A)(1) [sic], which offers tiered rebates for Public Customer orders in Non Penny Pilot Classes for members that reach certain thresholds of ''maker'' customer volume in multiply-listed options classes ranging from $0.15 to $0.60; Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 1, Customer Volume Tiers, which provide tiered rebates for Customer Non-Penny and Penny orders where Members meet certain volume thresholds, ranging from $0.10 to $0.21.

[11] *See e.g.,* The Exchange's Fee Schedule, Footnotes 1 and 12, Customer Penny Pilot and Non-Penny Pilot Volume Tiers which provide enhanced rebates for Customer orders where Members meet

and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including pricing incentives tied to comparable tiers.[12]

Moreover, the Exchange believes proposed Customer Non-Penny Pilot Add Volume Tier 5 is a reasonable means to encourage Members to increase their liquidity on the Exchange, specifically their Customer add volume order flow. The Exchange believes that adopting an additional tier under the Customer Non-Penny Pilot Add Volume Tiers will encourage Members to increase their general Customer liquidity adding order flow (both in Penny and Non-Penny securities) on the Exchange in order to achieve the proposed increased enhanced rebate on their qualifying orders (*i.e.,* yielding fee code NY). Increased Customer liquidity benefits all investors by attracting Market-Makers, which facilitates tighter spreads, signaling additional corresponding order flow (thus, more execution opportunities) from other types of market participants. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange also believes that the proposed enhanced rebate is reasonable based on the difficulty of satisfying the tier's criteria and ensures the proposed rebate and criteria thresholds appropriately reflect the incremental difficulty to achieve the existing Customer Non-Penny Pilot Add Volume Tiers. The proposed criteria under Tier 5 remains in line with the incremental increases in ADAV as a percentage of average OCV from Tier 1 through Tier 3 for Customer orders or for both Customer orders plus other firm-type orders. For example, the proposed criteria in Tier 5 poses an incremental increase in difficulty from Tier 4 (which may be met if a Member adds an ADAV in Customer orders greater than or equal to 2.10% of average OCV) as the sum of overall Customer orders greater than or equal to 2.00% of average OCV plus Customer Non-Penny orders greater than or equal to 1.00% of average OCV presents a two-pronged criteria with thresholds that hover around or are higher than thresholds in preceding tiers. Thus, the Exchange believes the two criteria in proposed Tier 5 pose, in total, an incrementally more difficult tier that Members may strive to achieve. As such, the Exchange believes the enhanced rebate of $1.06 offered under proposed Tier 5, over the $1.05 enhanced rebate offered under Tier 4, is a reasonable, incremental increase that corresponds to the incremental increase in difficulty in achieving proposed Tier 5.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because all Members will be eligible for the proposed tier and the corresponding enhanced rebate will apply uniformly to all Members that reach the proposed tier criteria. That is, the proposed tiers are designed as an incentive to any and all Members interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the proposed enhanced rebate if the tier criteria is met. Further, the Exchange offers similar tiered pricing to Firm, Broker Dealer, Joint-Back Office,[13] Away Market Maker,[14] and Market Maker [15] orders for liquidity adding volume and corresponding rebates for their qualifying Non-Penny Pilot orders.

Additionally, the Exchange believes that a couple of Members have a reasonable opportunity to satisfy the tier's criteria, which is more stringent than other existing Customer Non-Penny Pilot Add Volume Tiers. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed tier, the Exchange anticipates at least one or two Members meeting, or being reasonably able to meet, the proposed criteria; however, the proposed tier is open to any Member that satisfies the tier's criteria. The Exchange believes the proposed tier could provide an incentive for other Members to submit additional liquidity on the Exchange to qualify for the proposed enhanced rebate. The Exchange also notes that the proposed tier will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the corresponding enhanced rebate.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [16]

The Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies uniformly to market participants. As discussed above, the Exchange believes that adopting a tier with additional criteria to the existing Customer Non-Penny Pilot Add Volume Tiers will encourage Members to increase their order flow in Non-Penny securities on the Exchange. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price

certain volume thresholds ranging from $0.35 to $1.05.

[12] *See supra* note 10.

[13] *See* the Exchange's Fee Schedule, Footnote 8, Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tiers, wherein Tier 4 offers a rebate of up to $0.82 per contract to Members satisfying the tier.

[14] *See* the Exchange's Fee Schedule, Footnote 11, Away Market Maker Non-Penny Pilot Add Volume Tiers, wherein Tier 2 offers a rebate of up to $0.52 per contract to Members satisfying the tier.

[15] *See* the Exchange's Fee Schedule, Footnote 7, Market Maker Non-Penny Pilot Add Volume Tiers, wherein the applicable tiers offer rebates ranging from $0.45 up to $0.88 per contract.

[16] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

discovery, promoting market transparency and improving investor protection. Also, as indicated above, the Exchange does not believe that the proposed rule change would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as it offers similar tiered pricing to Firm, Broker Dealer, Joint-Back Office,[17] Away Market Maker,[18] and Market Maker [19] orders for liquidity adding volume and corresponding rebates for their qualifying Non-Penny Pilot orders.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 19% of the market share.[20] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [22] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and paragraph (f) of Rule 19b–4 [24] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-CboeBZX–2020–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–048 and should be submitted on or before July 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

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[17] *See supra* note 13.

[18] *See supra* note 14.

[19] *See supra* note 15.

[20] *Supra* note 4.

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[22] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89051]

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(d)(ii)(A)(2) and (B) of the National Market System Plan Governing the Consolidated Audit Trail

June 11, 2020.

I. Introduction

By letter dated June 5, 2020 (''Participant Letter''), 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. (''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'') request that the Securities and Exchange Commission (the ''Commission'' or the ''SEC''), pursuant to the Commission's authority under Section 36 of the Exchange Act [1] and Rule 608(e) of Regulation NMS under the Exchange Act,[2] grant exemptive relief from Sections 6.4(d)(ii)(A)(2) and (B) of the national market system plan governing the consolidated audit trail (the ''CAT NMS Plan'').[3] Specifically, the Participants request that the Commission provide exemptive relief from Section 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan, which state that each Participant, through its Compliance Rule,[4] must require its Industry Members [5] to record and report to the Central Repository [6] the following information: (1) The SRO-Assigned Market Participant Identifier [7] of the clearing broker or prime broker, if applicable, for orders that are executed in whole or in part; [8] and (2) a cancelled trade indicator for trades that are cancelled.[9]

For the reasons set forth below, this Order grants the Participants' request for exemptive relief from the above-described provisions of the CAT NMS Plan, subject to certain conditions.

II. Description

As described in the Participant Letter, FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility, and FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') already collect and are required to report to the Central Repository, among other data, the clearing number of the clearing broker and the cancelled trade indicator in order to clear and publish trades (''FINRA Facility Data'').[10] The Participants propose an approach wherein the FINRA Facility Data submitted to the Central Repository would be used as the source for the clearing number of the clearing broker [11] instead of requiring Industry Members to record and report the SRO-Assigned Market Participant Identifier of the clearing broker (if applicable) for orders that are executed in whole or in part.[12] Likewise, instead of requiring Industry Members to record and report a cancelled trade indicator for trades that are cancelled, FINRA Facility Data submitted to the Central Repository would be the source of the cancelled trade indicator.[13]

The Participants explain that FINRA Facility Data would still be reported to the Central Repository in each instance currently required under the CAT NMS Plan. Industry Members would continue to be required to submit either a trade report or a trade cancellation with the requisite information to a FINRA Facility, in accordance with existing rules set by each Participant for its members.[14] For cancelled trades, Industry Members would continue to be required to submit a trade cancellation to a FINRA Facility. The Compliance Rules would further require Large Industry Members [15] and Small Industry Members that report to the Order Audit Trail System (''Small OATS Reporters'') that are unable to submit a cancelled trade indicator to a FINRA Facility to record and report directly to the Central Repository a cancelled trade indicator, as well as a cancelled trade timestamp, beginning on June 22, 2020.[16] Similarly, for orders executed in part or in whole, Industry Members would continue to be required to submit a trade report with the clearing number of the clearing broker to a FINRA Facility. The Compliance Rules would further require Large Industry Members and Small OATS Reporters that are unable to submit the clearing number of the clearing broker to a FINRA Facility to record and report directly to the Central Repository the clearing number for the order, as well as contra party

[1] 15 U.S.C. 78mm.

[2] 17 CFR 242.608(e).

[3] The Commission approved the CAT NMS Plan, as modified, on November 15, 2016. *See* Securities Exchange Act Release Nos. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''CAT NMS Plan Approval Order''). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct activities related to the consolidated audit trail (the ''Company'').

[4] The CAT NMS Plan defines ''Compliance Rule'' as ''the rule(s) promulgated by such Participant as contemplated by Section 3.11.'' *See id.,* at Section 1.1.

[5] The CAT NMS Plan defines ''Industry Member'' as a ''member of a national securities exchange or a member of a national securities association.'' *See id.*

[6] The CAT NMS Plan defines ''Central Repository'' as ''a repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement.'' *See id.*

[7] The CAT NMS Plan defines ''SRO-Assigned Market Participant Identifier'' as ''an identifier assigned to an Industry Member by a[self-regulatory organization or ''SRO''] or an identifier used by a Participant.'' *See id.*

[8] *See id.* at Section 6.4(d)(ii)(A)(2).

[9] *See id.* at Section 6.4(d)(ii)(B). *See also* Letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated June 5, 2020, *available at https://catnmsplan.com/sites/default/files/2020-06/06.05.20-Exemptive-Request-RE-TRF-Facility.pdf* (''Participant Letter'').

[10] *See* Participant Letter, at 2. FINRA Rules 6380A, 6380B, 6622, and 6282 require participants of a FINRA Facility to report transactional data. *See* FINRA Rules, *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules.*

[11] Although Section 6.4(d)(ii)(A)(2) of the CAT NMS Plan also states that the Participants must require, through their Compliance Rules, that Industry Members record and report the SRO-Assigned Market Participant Identifier of the prime broker (if applicable) for orders that are executed in whole or in part, the Participants have not requested exemptive relief from that requirement.

[12] The Participants state that the clearing number of the clearing broker is an SRO-Assigned Market Participant Identifier under the CAT NMS Plan, because it is assigned by The Depository Trust Company, which is an SRO under the Exchange Act. *See* Participant Letter, at 3 n.10.

[13] *See id.* at 3.

[14] *See id.* at 6.

[15] For the purposes of this exemptive relief, the term ''Large Industry Members'' shall mean all Industry Members other than Small Industry Members. The CAT NMS Plan defines ''Small Industry Member'' as ''an Industry Member that qualifies as a small broker-dealer as defined in SEC Rule 613.'' *See* CAT NMS Plan, *supra* note 3, at Section 1.1. Small Industry Members that do not report to the Order Audit Trail System are not scheduled to begin reporting to the Central Repository until December 13, 2021, *see* Participant Letter, at 6 n.19, but they would be subject to the same Compliance Rules that would already be in place for Large Industry Members and Small OATS Reporters.

[16] *See* Participant Letter, at 3, 6. If the cancellation is rejected by the FINRA Facility and is not successfully re-entered by the Industry Member, then the Industry Member would be required to report to the Central Repository a cancelled trade indicator, as well as a cancelled trade timestamp. If the cancellation is rejected but successfully re-entered by the Industry Member, the Industry Member would not be required to separately report the cancellation to the Central Repository. *See id.* at 3 n.10.

information, beginning on April 26, 2021.[17]

In the Participant Letter, the Participants state that they would require the Plan Processor[18] to link FINRA Facility Data to Industry Member execution reports submitted to the Central Repository beginning on October 26, 2020.[19] The Participants explain that the Compliance Rules would require Industry Members to submit to the Central Repository an execution report submitted to a FINRA Facility for the corresponding trade report or trade cancellation, beginning on June 22, 2020.[20] Industry Members would be required to report a unique trade identifier, beginning on October 26, 2020, that would be used by the Plan Processor to link the FINRA Facility Data, including the number of the clearing broker and cancelled trade information, with the Industry Member's execution report.[21] Specifically, if an Industry Member submits a trade report to a FINRA Facility pursuant to applicable Participant rules and reports the corresponding execution to the Central Repository, the Industry Member would also be required to report to the Central Repository the unique trade identifier reported by the Industry Member to such FINRA Facility for the trade.[22]

The Participants state that there are four limited instances in which an Industry Member would be unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report. The first scenario involves the circumstances in which an Industry Member executes a trade between two desks or departments involving proprietary accounts. Because there is no change in beneficial ownership, no trade is reported to a FINRA Facility.[23] The second scenario involves the circumstances in which an Industry Member executes a trade and must report the trade via Form T instead of to a FINRA Facility, such as where the security symbol is no longer available or the firm's market participant identifier is no longer active.[24] The third scenario involves the circumstances in which a trade is executed by a non-FINRA member firm that has no FINRA Facility reporting obligation and was reported to the FINRA Facility by the FINRA member counterparty.[25] The fourth scenario involves the circumstances in which an Industry Member is on the contra side of a negotiated trade reported to a FINRA Facility via a Qualified Service Representative Agreement or Automatic Give-up Agreement, such that the trade was automatically submitted to a FINRA Facility without the Industry Member taking any action on the trade.[26] The Participants represented to the Commission that these scenarios are rare and do not involve a large number of trades. In these instances, the Participants stated that the Compliance Rules would require an Industry Member to record and report the relevant data directly to the Central Repository by June 22, 2020 for cancelled trades and by April 26, 2021 for orders executed in whole or in part.[27]

Noting the current difference in the timestamp granularity requirements for Industry Member reporting to a FINRA Facility and Industry Member reporting to the Central Repository,[28] the Participants further state that FINRA will seek to amend its FINRA Facility rules and technical specifications to accept timestamps up to the granularity required by the CAT NMS Plan and to implement such changes by December 15, 2021 for FINRA's Trade Reporting Facilities and FINRA's Alternative Display Facility and by December 15, 2022 for FINRA's OTC Reporting Facility.[29]

III. Request for Relief

The Participants request that the Commission grant each Participant exemptive relief from Section 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan, which state that the Participants must require, through their Compliance Rules, that Industry Members record and report to the Central Repository the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable, for orders that are executed in whole or in part, and a cancelled trade indicator for trades that are cancelled, when such data is reported by FINRA to the Central Repository as part of the FINRA Facility Data and subject to the above-described conditions.[30]

Once the alternative approach described above is fully implemented, the Participants believe that the FINRA Facility Data would be an equivalent and more reliable source for the clearing and cancellation data required by the CAT NMS Plan than similar data provided separately by each Industry Member.[31] The FINRA Facility Data is already used for clearing and publishing trades.[32] Inadvertent errors reported to a FINRA Facility may also result in a trade break.[33] In addition, the Participants state that their proposed alternative approach would avoid burdening Industry Members with the cost and effort of reporting data regarding clearing brokers and cancelled

[17] *See id.* at 6–7.

[18] The CAT NMS Plan defines ''Plan Processor'' as ''the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and Sections 4.3(b)(i) and 6.1, and with regard to the Initial Plan Processor, the Selection Plan, to perform the CAT processing functions required by SEC Rule 613 and set forth in this Agreement.'' *See* CAT NMS Plan, *supra* note 3, at Section 1.1.

[19] *See* Participant Letter, at 6. The Company has entered into an agreement with FINRA CAT LLC that obligates FINRA CAT LLC to act as the Plan Processor and to perform the functions and duties contemplated by the CAT NMS Plan. The Company may further obligate the Plan Processor to perform the necessary linkage through this agreement.

[20] *See id.* The Participants clarify that ''the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facilities would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility would be the FINRA Compliance Number.'' *See id.*

[21] The Participants clarify that ''the unique trade identifier for the OTC Reporting Facility and the Alternative Display Facility would be the Compliance ID, for the FINRA/Nasdaq Trade Reporting Facilities would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility would be the FINRA Compliance Number.'' *See id.*

[22] *See id.*

[23] *See id.* at 3. According to the Participants, these types of trade represented approximately 0.3 percent of the trades captured in FINRA's Order Audit Trail System in the fourth quarter of 2019. *See id.* at 3–4.

[24] *See id.* at 4. According to the Participants, in 2019, there were only 1,640 trades reported on Form T. *See id.*

[25] *See id.* The Participants do not provide statistics for this scenario, but stated that it did not implicate a large number of trades. *See id.*

[26] *See id.* According to the Participants, only 2 percent of the executions in the fourth quarter of 2019 were negotiated trades and only approximately 0.1 percent of executions were the above-described type of negotiated trades. *Id.*

[27] *See id.* at 6–7. *See also* notes 14–17 and associated text *supra,* for a discussion of the data that the Compliance Rules would require an Industry Member to record and report to the Central Repository.

[28] The CAT NMS Plan states that Participants shall, through their Compliance Rules, require Industry Members to report transaction data to the Central Repository in milliseconds or in finer increments if Industry Members utilize such finer increments in their order handling or execution systems. *See* CAT NMS Plan, *supra* note 3, at Section 6.8(b); *see also* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020) (granting time-limited exemptive relief allowing the Participants to require Industry Members using timestamps finer than the minimum required by the CAT NMS Plan to truncate such timestamps after the nanosecond level). A FINRA Facility, by contrast, only collects data using timestamps up to milliseconds. *See* Participant Letter, at 5.

[29] *See* Participant Letter, at 7.

[30] *See* Participant Letter, at 5–7. *See* notes 14–22, 27–29 and associated text *supra* for a discussion of these conditions.

[31] *See* Participant Letter, at 5.

[32] *See id.*

[33] *See id.* at 2 n.9.

trades pursuant to two reporting regimes.[34]

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.'' [35] 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.[36]

The Commission believes that, pursuant to Section 36 of the Exchange Act, exemptive relief is appropriate in the public interest and consistent with the protection of investors, and that, pursuant to Rule 608(e) under the Exchange Act, exemptive 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 the perfection of the mechanisms of, a national market system. Relying on FINRA Facility Data in lieu of requiring Industry Members to report the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable, and a cancelled trade indicator will be more efficient and more cost-effective for Industry Members, because this proposed alternative approach will avoid burdening Industry Members with reporting data regarding clearing brokers and cancelled trades pursuant to two reporting regimes. Moreover, once the alternative approach is fully implemented, FINRA Facility Data provided to the CAT would be equivalent to the data required by Sections 6.4(d)(ii)(A)(2) and (B).

The Commission believes that the conditions proposed by the Participants in their request for exemptive relief are also appropriate, including the condition that FINRA will continue to report FINRA Facility Data to the Central Repository, the condition that the Participants will require the Plan Processor to link FINRA Facility Data to Industry Member execution reports submitted to the Central Repository, conditions specifying that the Participants' Compliance Rules will require Industry Members to report directly to the Central Repository if they do not submit the required information to a FINRA Facility or are unable to provide a link between the execution reported to the Central Repository and the corresponding FINRA Facility trade report or trade cancellation, and the condition that FINRA would seek to amend its FINRA Facility rules and technical specifications to permit each FINRA Facility to accept timestamps up to the granularity required by the CAT NMS Plan.[37] The Commission believes that such conditions will help to ensure the collection of relevant and equivalent data regarding cancelled trades and clearing brokers.

The Commission also believes that the phased implementation of the Participants' alternative approach is appropriate. Although some elements of the Participants' alternative approach will not be fully implemented until 2021 or 2022, including direct reporting by Industry Members of clearing numbers and contra party information in certain circumstances, the Participants have indicated that these elements would only affect a limited or *de minimis* amount of data.[38] The Commission therefore believes that granting the requested exemptive relief according to the timeline proposed by the Participants is unlikely to have a significant impact on regulators' short-term ability to use the transactional data reported to the Central Repository. Moreover, the Commission believes that granting exemptive relief according to the timeline proposed by the Participants will simultaneously provide Industry Members with immediate relief from incurring duplicative costs and encourage progress towards full implementation of the alternative approach on a reasonable and feasible schedule.

To the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.[39]

Accordingly, *it is hereby ordered,* pursuant to Section 36(a)(1) of the Exchange Act [40] and Rule 608(e) under the Exchange Act,[41] that the Commission grants the Participants' request for exemptive relief, as set forth in the Participant Letter, from the requirements in Section 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan, subject to the conditions described by the Participants and in this Order.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12998 Filed 6–16–20; 8:45 am]

BILLING CODE 8011–01–P

[34] *See id.* at 5.

[35] 15 U.S.C. 78mm(a)(1).

[36] 17 CFR 242.608(e).

[37] *See* notes 14–22, 27–29 and associated text *supra* for a discussion of these conditions. The Participants have an obligation to enforce Industry Member compliance with their own rules, including the Compliance Rules and FINRA's rules relating to its trade reporting facilities. *See, e.g.,* note 10 *supra.*

[38] *See, e.g.,* notes 23–26 and associated text *supra.*

[39] *See* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322, 31335 (May 22, 2020). If the Participants do not meet the conditions set forth herein, on the schedule set forth herein, their ability to recover fees from Industry Members could be impacted pursuant to the terms of Section 11.6 of the CAT NMS Plan. *See* CAT NMS Plan, *supra* note 3, at Section 11.6 (effective June 22, 2020). Specifically, linkage of execution reports submitted to the Central Repository by Industry Members to corresponding FINRA trade reports and Industry Member reporting of unique trade identifiers, scheduled to begin on October 26, 2020, along with any related changes to the Compliance Rules, will now be relevant to the Full Implementation of Core Equity Reporting milestone (Period 2), which must be satisfied no later than December 31, 2020. Functionality enabling Industry Members to report clearing numbers and contra party information directly to the Central Repository, scheduled to begin on April 26, 2021 for Large Industry Members and Small OATS Reporters, along with any related changes to the Compliance Rules and FINRA's Trade Reporting Facilities and FINRA's Alternative Display Facility acceptance of timestamps up to the granularity required by the CAT NMS Plan, scheduled to begin by December 15, 2021, will now be relevant to the Full Availability and Regulatory Utilization of Transactional Database Functionality milestone (Period 3), which must be satisfied no later than December 31, 2021. FINRA's OTC Reporting Facility acceptance of timestamps up to the granularity required by the CAT NMS Plan, scheduled to begin by December 15, 2022, will now be relevant to the Full Implementation of CAT NMS Plan Requirements milestone (Period 4), which must be satisfied no later than December 30, 2022.

[40] 15 U.S.C. 78mm(a)(1).

[41] 17 CFR 242.608(e).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89046; File No. SR–MRX–2020–11]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7

June 11, 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 June 1, 2020, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule at Options 7 in connection with the pricing for orders entered into the Exchange's Price Improvement Mechanism (''PIM'').

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7 to adopt separate fees for complex PIM orders that will be identical to the current fees for regular PIM orders. The Exchange also proposes to amend the PIM break-up rebates to provide the rebate only for PIM orders that meet specified size requirements. In connection with the foregoing changes, the Exchange also proposes to amend its Pricing Schedule to set forth its PIM pricing in a separate section for better readability. Each change is discussed in detail below.

Background

For regular PIM orders, the Exchange currently charges a PIM originating fee in Penny and Non-Penny Symbols of $0.20 per contract for Non-Priority Customers[3] and $0.00 per contract for Priority Customers.[4] The Exchange also charges all market participants a PIM contra-side fee in Penny and Non-Penny Symbols of $0.05 per contract. Members that execute an average daily volume (''ADV'') of 10,000 PIM originating contracts or greater within a month are eligible for a reduced PIM contra-side fee of $0.02 per contract (in lieu of $0.05 per contract). In addition, the Exchange presently charges PIM response fees of $0.50 per contract in Penny Symbols and $1.10 per contract in Non-Penny Symbols.[5]

The Exchange currently pays a regular PIM break-up rebate to an originating Priority Customer PIM order that executes with a response (order or quote), other than the PIM contra-side order, of $0.40 per contract in Penny Symbols and $1.00 per contract in Non-Penny Symbols. Notwithstanding the foregoing, Members that execute an ADV of 10,000 PIM originating contracts or greater within a month will receive a break-up rebate of $1.05 per contract in Non-Penny Symbols (in lieu of $1.00 per contract).

As it relates to complex PIM orders, the Exchange currently charges Non-Priority Customers a uniform $0.15 per contract fee for all complex orders, including complex orders submitted into the Complex PIM. The $0.15 per contract fee applies to an originating order, contra-side order and responses entered into MRX's Complex PIM. No complex order fees are presently assessed to Priority Customers, including Priority Customer complex PIM orders.

PIM Fees

The Exchange now proposes to adopt separate fees for complex PIM orders within new Section 5.E of Options 7 that will be identical to the current fees assessed for regular PIM orders. In particular, the Exchange proposes to charge all complex Non-Priority Customer PIM originating orders in Penny and Non-Penny Symbols the $0.20 per contract PIM originating fee that it currently assesses to all regular Non-Priority Customer PIM originating orders, and, for complex Priority Customer PIM originating orders, the $0.00 per contract PIM originating fee it currently assesses to regular Priority Customer PIM originating orders. Likewise, the Exchange proposes to assess all market participants $0.05 per contract for complex PIM contra-side orders in Penny and Non-Penny Symbols, identical to how regular PIM contra-side orders are charged today. The Exchange further proposes to offer market participants an opportunity to lower the proposed complex PIM contra-side fee from $0.05 to $0.02 per contract if they execute an ADV of 10,000 PIM originating contracts or greater within a month, identical to the reduced regular PIM contra-side fee it currently offers market participants today.[6] In addition, the Exchange proposes to assess responses entered into complex PIM at the same rate as the fees currently assessed for regular PIM responses (*i.e.,* $0.50 per contract in Penny Symbols and $1.10 in Non-Penny Symbols).

PIM Break-up Rebate

The Exchange also proposes to adopt complex PIM break-up rebates that are similar to the regular PIM break-up rebates described above, with two differences. First, the Exchange proposes, for complex PIM orders only, to pay a higher break-up rebate of $0.45 per contract (in lieu of $0.40 per contract) with respect to a Priority Customer PIM originating order in Penny Symbols for qualifying Members that execute an ADV of 10,000 PIM originating contracts or greater within a month.[7] Currently for regular PIM orders, the Exchange only provides a higher break-up rebate with respect to a Priority Customer PIM originating order in Non-Penny Symbols ($1.05 per contract in lieu of $1.00 per contract), not Penny Symbols, to qualifying Members that meet this ADV threshold.[8] Second, the Exchange proposes to provide break-up rebates only for Priority Customer PIM originating orders that meet specified size requirements. Specifically, the Exchange proposes to apply the break-up rebates only to regular PIM orders of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Non-Priority Customers consist of Market Makers (including Market Maker orders sent to the Exchange by EAMs), Non-Nasdaq MRX Market Makers (FarMM), Firm Proprietary/Broker-Dealers, and Professional Customers.

[4] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq MRX Options 1, Section 1(a)(36).

[5] The PIM response fees are the same as the response fees presently charged for all other Crossing Orders. *See* Options 7, Section 3, Table 2.

[6] *See* proposed note 1 in Options 7, Section 5.E.

[7] *See* proposed note 3 in Options 7, Section 5.E.

[8] As discussed later in this filing, the Exchange's proposal will offer this higher Non-Penny Symbol rebate of $1.05 per contract for both regular and complex PIM orders. *See* proposed note 3 in Options 7, Section 5.E.

500 or fewer contracts and to complex PIM orders where the largest leg is 500 or fewer contracts.[9] As such, the break-up rebates currently offered to regular Priority Customer PIM originating orders of more than 500 contracts will be eliminated under this proposal. The Exchange is seeking to attract smaller and medium sized Priority Customer PIM order flow to MRX with this change.

Otherwise, the Exchange will apply the same break-up rebates to complex Priority Customer PIM originating orders as the current rebates applied to regular Priority Customer PIM originating orders, provided that such PIM orders meet the proposed size requirement of 500 or fewer contracts. Thus, the break-up rebates will be $0.40 per contract in Penny Symbols and $1.00 per contract in Non-Penny Symbols, applicable to Priority Customer PIM originating orders that are 500 or fewer contracts (for regular orders) and where the largest leg is 500 or fewer contracts (for complex orders). Furthermore, Members that execute an ADV of 10,000 PIM originating contracts or greater within a month will be eligible to receive, Exchange will apply the break-up rebate of $1.05 per contract in Non-Penny Symbols (in lieu of $1.00 per contract)

Technical Changes

For better readability, the Exchange proposes to relocate the fees and rebates for regular PIM orders currently within Table 2 of Options 7, Section 3 into new Section 5.E, titled ''PIM Pricing for Regular and Complex Orders,'' to group them with the proposed pricing for complex PIM orders. In connection with the foregoing changes, the Exchange also proposes to amend Options 7, Sections 3 and 4 to clarify that regular and complex PIM orders are subject to separate pricing in Options 7, Section 5.E. Lastly, the Exchange is correcting a typo in note 1 of Options 7, Section 4 to revise ''abovereferenced'' to ''above-referenced.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [12]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

PIM Fees

The Exchange believes that the proposed fee structure for complex PIM orders (*i.e.,* originating, contra-side, and responses) is reasonably designed because the proposed fees will be aligned with the fees currently in place for regular PIM orders. The proposed fee structure is designed to promote order flow through the complex PIM, which benefits all market participants by providing additional trading opportunities at improved prices. While the Exchange is increasing the complex PIM originating fees for Non-Priority Customers [14] and the complex PIM response fees for all market participants [15] under this proposal, the proposed fees will harmonize the complex PIM fees with the regular PIM fees assessed today. While the all market participants will be charged higher complex PIM response fees than the fees currently assessed, the Exchange believes that the increased fees are appropriate to offset the significant break-up rebates to Priority Customers who submit PIM orders as proposed herein.[16]

As proposed, the Exchange will also charge complex PIM contra-side orders at the same rate as regular PIM contra-side order today. The proposed changes will decrease the complex PIM contra-side fee for certain market participants while increasing the fee for others. In particular, the Exchange believes that its proposal to assess Non-Priority Customers a decreased complex PIM contra-side fee [17] is reasonable because the Exchange is seeking to encourage these market participants to submit a greater amount of order flow to the MRX PIM auction. The Exchange believes it is

[9] *See* proposed note 2 in Options 7, Section 5.E.

[10] 15 U.S.C. 78 f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[14] The complex PIM originating fees will increase from $0.15 to $0.20 per contract for Non-Priority Customers in all symbols. As discussed above, this fee will remain at $0.00 for Priority Customers.

[15] The complex PIM response fees will increase (i) in Penny Symbols, from $0.15 to $0.50 per contract for Non-Priority Customers and from $0.00 to $0.50 per contract for Priority Customers, and (ii) in Non-Penny Symbols, from $0.15 to $1.10 per contract for Non-Priority Customers and from $0.00 to $1.10 per contract for Priority Customers.

[16] As discussed above, the Exchange proposes to offer break-up rebates to Priority Customer PIM originating orders of 500 or fewer contracts (regular PIM orders) or where the largest leg is 500 or fewer contracts (complex PIM orders), which execute with any response other than the PIM contra-side order. This rebate will be (i) $0.40 per contract in Penny Symbols (or, for complex PIM orders only, $0.45 for Members that execute an ADV of 10,000 PIM originating contracts or greater within a month for complex PIM orders only), and (ii) $1.00 per contract in Non-Penny Symbols (or, for both regular and complex PIM orders, $1.05 for Members that execute an ADV of 10,000 PIM originating contracts or greater within a month).

[17] The complex PIM contra-side fee will decrease from $0.20 to $0.05 per contract for Non-Priority Customers in all symbols.

reasonable to assess Priority Customers an increased complex PIM contra-side fee [18] because the Exchange will also offer Priority Customers an opportunity to receive significant break-up rebates for any originating Priority Customer PIM order that meets the requirements described herein. In addition, Priority Customers will continue to receive free executions on their complex PIM originating orders as is the case today. Furthermore, all market participants will have the opportunity to reduce their $0.05 contra-side PIM fees to $0.02 per contract if they execute an ADV of 10,000 PIM originating contracts or greater within a month, thereby incentivizing market participants to send additional PIM order flow to MRX. Greater liquidity in the PIM auction provides additional opportunities for price improvement. The Exchange further notes that the proposed fees are generally within the range of fees assessed by another exchange that employs a similar fee structure for its price improvement mechanisms.[19]

The Exchange believes that the proposed fees for complex PIM orders (*i.e.,* originating, contra-side, and responses) are equitable and not unfairly discriminatory as the fees will be more standardized across regular and complex PIM orders, and across market participant types, with the exception that Priority Customers will continue to not be charged a fee for PIM originating orders. The Exchange believes it is equitable and not unfairly discriminatory to not charge Priority Customers a complex PIM originating fee as the Exchange has historically offered lower pricing or other incentives to Priority Customer orders in order to incentivize such order flow to the Exchange. Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants by providing more trading opportunities, which in turn attracts Market Makers and other market participants that may trade with this order flow.

PIM Break-up Rebate

The Exchange believes that the proposed PIM break-up rebates are reasonable because these incentives will attract additional order flow to PIM, particularly smaller to medium sized Priority Customer PIM orders (*i.e.,* 500 or fewer contracts). By providing break-up rebates of $0.40 (Penny Symbols) and $1.00 (Non-Penny Symbols) to Priority Customer PIM originating orders that execute with any response other than the PIM contra-side order, and by offering these rebates only to PIM orders of 500 or fewer contracts, the proposal is designed to encourage Members to execute this order flow in the Exchange's PIM. Additional PIM order flow provides all market participants with additional trading opportunities at improved prices. The Exchange notes that other exchanges, including its affiliate Nasdaq ISE (''ISE''), impose size requirements for certain rebates and credits.[20] Furthermore, the Exchange believes that providing higher break-up rebates to Members that execute a higher ADV of PIM originating orders as described above will encourage Members to send additional PIM order flow to MRX in order to qualify for the higher rebates. The Exchange also believes that the proposed break-up rebates are set at reasonable rates because they are aligned with the rebates currently provided for regular Priority Customer PIM originating orders.

The Exchange believes that the proposed break-up rebates are equitable and not unfairly discriminatory because the proposed rebates will apply equally to all Priority Customer PIM originating orders that execute against PIM responses. While Priority Customers will receive the break-up rebate, as opposed to other market participants, the Exchange believes that this application of the rebate is equitable and not unfairly discriminatory because Priority Customer order flow enhances liquidity on the Exchange. This, in turn, provides more trading opportunities and attracts other market participants, thus facilitating tighter spreads, increased order flow and trading opportunities to the benefit of all market participants. Moreover, as stated above, the Exchange has historically provided lower pricing or other incentives to Priority Customers in order to attract such order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of Exchange market participant at a competitive disadvantage. The proposed changes to the Exchange's PIM pricing program are all designed to incentivize market participants to direct PIM order flow to the Exchange. While some aspects of the proposal apply directly to Priority Customers (through the free executions of PIM originating orders and application of the break-up rebates), the Exchange believes that the proposed changes taken together will fortify and encourage additional PIM order flow to MRX. As noted above, all market participants will benefit from any increase in market activity that the proposal effectuates.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their

[18] The complex PIM contra-side fee will increase from $0.00 to $0.05 per contract for Priority Customers in all symbols.

[19] *See* MIAX Options (''MIAX'') Fee Schedule, Section 1(a)(vi) (MIAX Complex Price Improvement Mechanism (''cPRIME'') Fees), which provides for comparable rates for similar originating (*i.e.,* agency) orders, contra-side orders and responses submitted into its cPRIME auctions. For example, MIAX assesses all non-Priority Customers a fee of $0.30 for cPRIME agency orders and $0.04 for cPRIME contra-side orders. MIAX also assesses all market participants a fee of $0.50 (Penny Classes) and $0.99 (Non-Penny Classes) for cPRIME responses. As it relates to the Non-Penny response fee, while the Exchange will charge a higher complex PIM response fee, the proposed fee is intended to offset the proposed break-up rebates as discussed below.

[20] *See* ISE Pricing Schedule, Options 7, Section 4, note 1, which sets forth a Priority Customer complex rebate that is provided to complex orders where the largest leg of the order is under fifty contracts and trades with quotes and orders on the regular order book; Cboe Options (''Cboe'') Fee Schedule, Volume Incentive Program (''VIP''), which provides that VIP credits on orders executed electronically in Cboe's Automated Improvement Mechanism (''AIM'') will be capped at 1,000 contracts per order for simple executions and 1,000 contracts per leg for complex executions; and MIAX Fee Schedule, Section 1(a)(iii) (Priority Customer Rebate Program), which provides that the per contract credit for cPRIME Agency Orders is assessable to the first 1,000 contracts per leg for each cPRIME Agency Order.

competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[21] and Rule 19b–4(f)(2)[22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2020–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2020–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2020–11 and should be submitted on or before July 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89050; File No. SR–NYSE–2020–49]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

June 11, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 1, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 its Price List to (1) adopt a step up tier for member organizations adding liquidity in Non-Displayed Limit Orders in Tapes A, B and C securities; (2) revise the credits for member organizations qualifying for Step Up Tier 2 Adding Credit; and (3) extend through June 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April and May 2020. The Exchange proposes to implement the fee changes effective June 1, 2020. 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 its Price List to (1) adopt a step up tier for member organizations adding liquidity in Non-Displayed Limit Orders in Tapes A, B and C securities; (2) revise the credits for member organizations qualifying for Step Up Tier 2 Adding Credit; and (3) extend through June 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April and May 2020.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange. The proposed changes also respond to the current volatile market

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor, which are both related to the ongoing spread of the novel coronavirus (''COVID–19'').

The Exchange proposes to implement the fee changes effective June 1, 2020.

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.'' [5] Indeed, equity trading is currently dispersed across 13 exchanges,[6] 31 alternative trading systems,[7] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tape A, B and C securities combined is less than 13%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to the competitive environment described above, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange by offering a new pricing tier to incentivize member organizations to step up their liquidity-providing Non-Displayed Limit Orders and Mid-Point Liquidity (''MPL'') Orders on the Exchange and revising the credits for member organizations adding liquidity by qualifying for Step Up Tier 2 Adding Credit.

Moreover, beginning on March 16, 2020, in order to slow the spread of COVID–19 through social distancing measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a temporary basis, to fully electronic trading.[9] On May 14, 2020, the Exchange announced that on May 26, 2020 trading operations on the Trading Floor would resume on a limited basis to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID–19.[10] The proposed rule change responds to these unprecedented events by extending the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for June 2020.

Proposed Rule Change

Step Up Tier for Adding Liquidity in Non-Displayed Limit Orders

The Exchange proposes to adopt a step up tier that would offer credits to member organizations providing non-displayed liquidity to the Exchange in Tape A, B, and C securities.

As proposed, a member organization that

- sends orders that add liquidity to the Exchange in Non-Displayed Limit Orders, and
- that has adding average daily volume (''ADV'') in Non-Displayed Limit Orders and MPL Orders in Tapes A, B, and C consolidated ADV (''CADV'') [11] combined, excluding any liquidity added by a Designated Market Makers (''DMM''), that is at least 0.02% of NYSE CADV over that member organization's May 2020 adding liquidity in Non-Displayed Limit Orders and MPL Orders as a percentage of NYSE CADV (the ''Baseline Tape A Share'')

would receive a credit of $0.0005 for adding liquidity if the increase in Adding ADV over the Baseline Tape A Share is at least 0.02% and less than 0.04%. If the increase in Adding ADV over the Baseline Tape A Share is at least 0.04% and less than 0.08%, a member organization meeting the above requirements would receive a credit of $0.0010. If the increase in Adding ADV over the Baseline Tape A Share is at least 0.08% or more, a member organization meeting the above requirements would receive a credit of $0.0015.

For example, Member Organization A had an adding ADV in Non-Displayed Limit Orders and MPL Orders in Tape A, Tape B and Tape C securities combined of 6 million shares in the baseline month of May 2020 when Tape A, Tape B and Tape C CADV combined (''US CADV'') was 10.0 billion shares or 0.06% of US CADV. Further assume that in the billing month, Member Organization A had an adding ADV in Non-Displayed Limit Orders and MPL Orders combined of 10 million shares when US CADV was again 10 billion shares, or 0.10% of US CADV. In this scenario, Member Organization A would have a step up percentage of US CADV of 0.04% (0.10% minus 0.06%), which would qualify Member Organization A for a credit of $0.0010 per share for Non-Displayed Limit Orders.

If Member Organization A had an adding ADV of 18 million shares, or 0.18%, for a step up ADV of 0.12%, Member Organization A would instead qualify for a credit of $0.0015 because Member Organization A's increase in Adding ADV over the Baseline Tape A Share is at least 0.08%.

If in the same billing month Member Organization A's adding ADV of 18 million shares was solely in Non-Displayed Limit Orders (*i.e.,* the share

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[6] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110* [sic].

[10] *See* Trader Update, dated May 14, 2020, available here: *https://www.nyse.com/traderupdate/history#110000251588* [sic].

[11] The terms ''ADV'' and ''CADV'' are defined in footnote * [sic] of the Price List.

number did not include MPL Orders) for an Adding ADV in Non-Displayed Limit Orders of 0.18%, Member Organization A would also qualify for the existing Non-Displayed Limit Order credit of $0.0018 by meeting the existing adding ADV requirement of 0.15%. In this scenario, Member Organization A would achieve the higher of the two credits, or $0.0018.

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in Non-Displayed Limit Orders and MPL Orders they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because the proposed tier requires a member organization to increase the volume of its trades in orders that add liquidity over that member organization's May 2020 baseline, the Exchange believes that the proposed credit would provide an incentive for all member organizations to send additional liquidity to the Exchange in order to qualify for it.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Since the tier's requirements utilize an increase in volume from the most recent month, the Exchange does not know how many member organizations could qualify for the proposed tiered credits based on their current trading profile on the Exchange, but the Exchange notes that, since the lowest step up is only an Adding ADV of 0.02% of US CADV in Non-Display Limit Orders and MPL Orders combined, the Exchange believes that many member organizations could qualify if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

Revised Credits for the Step Up Tier 2 Adding Credit

Under the current Step Up Tier 2 Adding Credit, a member organization that sends orders, except Mid-Point Liquidity Orders (''MPL'') and Non-Displayed Limit Orders, that add liquidity (''Adding ADV'') in Tape A securities receive a credit of $0.0029 if:

- The member organization quotes at least 15% of the National Best Bid or Offer (''NBBO'') [12] in 300 or more Tape A securities on a monthly basis, and
- the member organization's Adding ADV in Tapes A, B and C securities as a percentage of Tapes A, B and C CADV, excluding any orders by a DMM, that
  - is at least two times more than the Member Organization's Adding ADV in Tapes A, B and C securities in July 2019 as a percentage of Tapes A, B and C CADV, and
  - adds liquidity as an Supplemental Liquidity Provider in Tape A securities of at least 0.10% of NYSE CADV, and
  - exceeds the Member Organization's Adding ADV, excluding any liquidity added by a DMM, in Tapes A, B and C securities in July 2019 as a percentage of Tapes A, B and C CADV by at least 0.20% of Tapes A, B and C CADV.

In addition, a member organization that meets these requirements, and thus qualifies for the $0.0029 credit, would be eligible to receive an additional $0.00005 per share if trades in Tapes B and C securities against the member organization's orders that add liquidity, excluding orders as a Supplemental Liquidity Provider (''SLP''), equal to at least 0.20% of Tape B and Tape C CADV combined.

The Exchange proposes two higher credits for member organizations that meet the current Step Up Tier 2 Adding Credit requirements and increase their Adding ADV, excluding any liquidity added by a DMM, in Tapes A, B and C securities in July 2019 as a percentage of Tapes A, B and C CADV (''July 2019 Adding ADV'').

Specifically, member organizations whose Adding ADV as a percentage of US CADV represents an increase of at least 0.20% and less than 0.35% over their July 2019 Adding ADV as a percentage of US CADV would receive the current $0.0029 credit. Member organizations whose Adding ADV as a percentage of US CADV represents an increase of at least 0.35% and less than 0.45% over their July 2019 Adding ADV as a percentage of US CADV would receive a $0.0030 credit. Finally, member organizations whose Adding ADV as a percentage of US CADV represents an increase of at least 0.45% or more over their July 2019 Adding ADV as a percentage of US CADV would receive a $0.0031 credit.

The Exchange does not propose to change any of the other requirements to qualify for the Step Up Tier 2 Adding Credit.

[12] *See* Rule 1.1(q) (defining ''NBBO'' to mean the national best bid or offer).

The purpose of this proposed change is to incentivize member organizations to increase the liquidity-providing orders in Tape A securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that add liquidity, the Exchange's fee structure would incentivize member organizations to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange. The Exchange proposes higher credits under this tier to provide an incentive for member organizations to send more orders because they would then qualify for the credits. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because, as proposed, the tier requires a member organization to increase the volume of its trades against orders that add liquidity, the Exchange believes that the proposed higher credits based on a commensurate increase in Adding ADV would provide an incentive for member organizations to route additional liquidity to the Exchange in order to qualify for the higher credits.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. No firms currently qualify for the proposed higher Step Up Tier 2 Adding Credits based on their current trading profile on the Exchange, but the Exchange believes that at least five member organizations could qualify for the tier if they so choose. The Exchange notes that, given the lower requirement for Adding ADV of 0.20% as a percentage of US CADV requirement when compared to other Exchange Adding Tiers (for example, Tier 1 Adding Credit and Tier 2 Adding Credit), a number of firms would be eligible to qualify if they so choose. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

Fee Waivers for Trading Floor-Based Member Organizations

As noted above, on March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective March 23, 2020, as a precautionary measure to prevent the potential spread of COVID–19. Following the temporary closure of the Trading Floor, the Exchange waived certain equipment fees for the booth telephone system on the Trading Floor and associated service charges for the months of April and May.[13] On May 26, 2020, the Trading Floor reopened on a limited basis to a reduced number of Floor brokers to accommodate health-focused considerations. DMMs continue to operate remotely.[14]

For the months of April and May, the Exchange waived the Annual Telephone Line Charge of $400 per phone number and the $129 fee for a single line phone, jack, and data jack. The Exchange also waived related service charges, as follows: $161.25 to install single jack (voice or data); $107.50 to relocate a jack; $53.75 to remove a jack; $107.50 to install voice or data line; $53.75 to disconnect data line; $53.75 to change a phone line subscriber; and miscellaneous telephone charges billed at $106 per hour in 15 minute increments.[15] These fees were waived for (1) member organizations with at least one trading license, a physical Trading Floor presence, and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020, and (2) member organizations with at least one trading license that are Designated Market Makers with 30 or fewer assigned securities for the billing month of March 2020.

Because the Trading Floor will continue to operate with reduced capacity, the Exchange proposes to extend the waiver of these Trading Floor-based fees through June 2020. To effectuate this change, the Exchange proposes to add ''and June'' between ''May'' and ''2020'' in footnote 11 to the Price List.

In order to further reduce costs for member organizations with a Trading Floor presence, the Exchange also waived the April and May 2020 monthly portion of all applicable annual fees for (1) member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020, and (2) member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020.[16]

The Exchange proposes to also waive the June 2020 monthly portion of all applicable annual fees for member organizations with at least one trading license, a physical Trading Floor presence and Floor broker executions accounting for 40% or more of the member organization's combined adding, taking, and auction volumes during March 1 to March 20, 2020. The indicated annual trading license fees would also be waived for June 2020 for member organizations with at least one trading license that are DMMs with 30 or fewer assigned securities for the billing month of March 2020. To effectuate this change, the Exchange proposes to add ''and June'' between ''May'' and ''2020'' in footnote 15.

This proposed extension of the fee waivers would reduce monthly costs for member organizations with a Trading Floor presence whose operations were disrupted by the Floor closure, which lasted approximately two months, and remains partially closed. The Exchange believes that extension of the fee waiver would ease the financial burden associated with the ongoing partial Trading Floor closure. The Exchange believes that all member organization that conduct business on the Trading Floor would benefit from this proposed fee change.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[18] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[19]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, member organizations can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Step Up Tier for Adding Liquidity in Non-Displayed Limit Orders

Given the competitive environment, the proposed Step Up Tier for Adding Liquidity in Non-Displayed Limit Orders would provide an incentive for member organizations to route additional liquidity providing orders to the Exchange in Tape A securities.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide a higher credit for orders that provide additional liquidity. The Exchange believes that requiring member

[13] *See* Securities Exchange Act Release No. 88602 (April 8, 2020), 85 FR 20730 (April 14, 2020) (SR–NYSE–2020–27); Securities Exchange Act Release No. 88874 (May 14, 2020), 85 FR 30743 (May 20, 2020) (SR–NYSE–2020–29). *See* footnote 11 of the Price List.

[14] DMMs will be provided access to the Trading Floor on trading days when an IPO Auction or Core Open Auction for a post-IPO public offering is scheduled. DMMs will continue to otherwise be absent from the Trading Floor and, thus, all intra-day trading and other Auctions will be conducted remotely by DMMs.

[15] The Service Charges also include an internet Equipment Monthly Hosting Fee that the Exchange did not waive for April and May 2020 and that the Exchange does not propose to waive for June 2020.

[16] *See* note 13, *supra. See* footnotes 15 of the Price List.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) & (5).

[19] *See* Regulation NMS, 70 FR at 37499.

organizations to have an Adding ADV in Non-Displayed Limit Orders and MPL Orders in Tapes A, B and C CADV combined, excluding any liquidity added by a DMM, that is at least 0.02% of NYSE CADV over that member organization's May 2020 adding liquidity in Non-Displayed Limit Orders and MPL Orders taken as a percentage of NYSE CADV in order to qualify for the proposed Step Up Tier is reasonable because it would encourage additional non-displayed and mid-point liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and price improvement present on the Exchange.

Similarly, the Exchange believes that it is reasonable to provide an incremental credit to member organizations that meet the requirements of the Step Up Tier that add additional liquidity in Non-Displayed Limit Orders and MPL Orders. Since the proposed Step Up Tier would be new with a requirement for increased Adding ADV over the baseline month, no member organization currently qualifies for the proposed pricing tier. As previously noted, there are a number of member organizations that could qualify for the proposed higher credit but without a view of member organization activity on other exchanges and off exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed higher credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

Step Up Tier 2 Adding Credit

The Exchange believes that higher credits for meeting the Step Up Tier 2 Adding Credit requirements is reasonable. Specifically, the Exchange believes that offering higher credits for increased Adding ADV of a minimum and maximum percentage over a baseline would provide an incentive for member organizations to route additional liquidity providing orders to the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange. The Exchange believes it is reasonable to provide incrementally higher credits for orders that provide additional liquidity because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of displayed liquidity present on the Exchange. Because, as proposed, the tier requires a member organization to increase the volume of its trades against orders that add liquidity, the Exchange believes that the proposed higher credits based on a commensurate increase in Adding ADV would provide an incentive for member organizations to route additional liquidity to the Exchange in order to qualify for the higher credits.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. As previously noted, there are currently a number of firms that could qualify for the proposed higher Step Up Tier 2 Adding Credits based on their current trading profile on the Exchange if they so choose, but without a view of member organization activity on other exchanges and off exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed higher credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

Fee Waivers for Trading Floor-Based Member Organizations

The proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations is reasonable in light of the partial continued closure of the NYSE Trading Floor. Beginning March 2020, markets worldwide have experienced unprecedented declines and volatility because of the ongoing spread of COVID–19 also resulted in the temporary closure of the NYSE Trading Floor. As noted, the Trading Floor was recently partially reopened on a limited basis to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID–19. The proposed change is designed to reduce costs for Floor participants for the month of June 2020 and therefore ease the financial burden faced by member organizations that conduct business on the Trading Floor while it continues to operate with reduced capacity.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

Step Up Tier for Adding Liquidity in Non-Displayed Limit Orders

The Exchange believes that the proposed Step Up Tier is equitable because the magnitude of the additional credit is not unreasonably high relative to the current tiered credits for Non-Displayed Limit orders that add liquidity of $0.0010 and $0.0018. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery.

The Exchange believes that requiring member organizations to having an Adding ADV in Non-Displayed Limit Orders and MPL Orders in Tapes A, B and C CADV combined, excluding any liquidity added by a DMM, that is at least 0.02% of NYSE CADV over that member organization's May 2020 adding liquidity in Non-Displayed Limit Orders and MPL Orders combined taken as a percentage of NYSE CADV in order to qualify for the proposed credits would also encourage additional displayed liquidity on the Exchange. Since the proposed Step Up Tier would be new, no member organization currently qualifies for it. As noted, there are currently no member organizations that could qualify for the proposed higher credit, but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for the tier.

The Exchange believes the proposed higher credit is reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality and increased price improvement on the Exchange. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations would be eligible to qualify for the higher credit proposed in Step Up Tier if they increase their Adding ADV in Non-Displayed Limit orders and MPL Orders combined over

their own baseline of order flow. The Exchange believes that offering a higher step up credits for providing liquidity if the step up requirements for Tape A, Tape B and Tape C securities are met, will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

Step Up Tier 2 Adding Credit

The Exchange is not proposing to adjust the current requirements to qualify for the Step Up Tier 2 Adding Credit, which will remain the same for all market participants. Rather, the proposal would provide incrementally higher credits for member organizations that increase Adding ADV over the current baseline. The Exchange believes that the proposed higher credits are equitable because the magnitude of the additional credits is not unreasonably high compared to the current credit for Step Up Tier 2 and also relative to the other adding tier credits, which noted above range from $0.0015 to $0.0022, in comparison to the credits paid by other exchanges for orders that provide additional step up liquidity.[20] The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery.

The Exchange believes that requiring member organizations to having an Adding ADV in Non-Displayed Limit Orders and MPL Orders in Tapes A, B and C CADV combined, excluding any liquidity added by a DMM, that is at least 0.02% of NYSE CADV over that member organization's May 2020 adding liquidity in Non-Displayed Limit Orders and MPL Orders taken as a percentage of NYSE CADV in order to qualify for the proposed credits would also encourage additional displayed liquidity on the Exchange. Since the proposed Step Up Tier would be new, no member organization currently qualifies for it. As noted, there are currently no member organizations that currently qualify for the proposed higher credit, but without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization qualifying for the tier. The Exchange believes the proposed higher credits are reasonable as it would provide an additional incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations would be eligible to qualify for the higher credits proposed in Step Up Tier 2 if they increase their Adding ADV over their own baseline of order flow accordingly. The Exchange believes that offering higher step up credits for providing liquidity if the step up requirements for Tape A securities are met, will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

Fee Waivers for Trading Floor-Based Member Organizations

Finally, the proposed extension of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations to June 2020 are also an equitable allocation of fees. The proposed waivers apply to all Trading Floor-based firms meeting specific requirements during the period that the Trading Floor is partially open. The proposed change is equitable as it merely continues the fee waiver granted in April and May 2020, and is designed to reduce monthly costs for Trading Floor-based member organizations that are unable to fully conduct Floor operations.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant.

Step Up Tier for Adding Liquidity in Non-Displayed Limit Orders

The Exchange believes it is not unfairly discriminatory to provide additional per share step up credits for adding liquidity in Non-Displayed Limit Orders, as the proposed credits would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Step Up Tier's requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide additional incrementally higher credits for increased adding ADV over the member organization's May 2020 adding liquidity in Non-Displayed Limit Orders and MPL Orders combined taken as a percentage of NYSE CADV because the proposed higher credits would equally encourage all member organizations to provide additional liquidity on the Exchange in Non-Displayed Limit Orders and MPL Orders. As noted, the Exchange believes that the proposed credit would provide an incentive for member organizations to send additional liquidity to the Exchange in order to qualify for the additional credits. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Step Up Tier 2 Adding Credit

The Exchange believes it is not unfairly discriminatory to provide higher per share step up credits, as the proposed credit would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed Step Up Tier 2 requirements. For the same reason, the Exchange believes it is not unfairly discriminatory to provide additional incremental credits to member organizations that satisfy the Step Up Tier 2 requirements and add liquidity in Tape A, B and C securities. Further, the Exchange believes the proposed Step Up Tier 2 credits would incentivize member organizations that meet the current tiered requirements to send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed change is not

[20] *See* Cboe BZX Fee Schedule, which has adding credits ranging from $0.0025 to $0.0032, at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/.*

unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Fee Waivers for Trading Floor-Based Member Organizations

The proposed continuation of the waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during June 2020 is not unfairly discriminatory because the proposed waivers would benefit all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange is not proposing to waive the Floor-related fixed indefinitely, but rather during the period that the Trading Floor is not fully open. The proposed fee change is designed to ease the financial burden on Trading Floor-based member organizations that cannot fully conduct Floor operations.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[21] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As further discussed above, the Exchange believes that the proposed changes would encourage the continued participation of member organizations on the Exchange by providing certainty and fee relief during the unprecedented volatility and market declines caused by the continued spread of COVID–19. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [22]

Intramarket Competition. The proposed changes are designed to respond to the current competitive environment and to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current and proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. Further, the proposed continued waiver of equipment and related service fees and the applicable monthly trading license fee for Trading Floor-based member organizations during June 2020 provide a degree of certainty and ease the financial burden on Trading Floor-based member organizations impacted by the temporary closing and partial reopening of the Trading Floor. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As previously noted, the Exchange's market share of trading in Tape A, B and C securities combined is less than 13%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to provide a degree of certainty and ease the financial burdens of the current unsettled market environment, and permit affected member organizations to continue to conduct market-making operations on the Exchange and avoid unintended costs of doing business on the Exchange while the Trading Floor is not fully open, which could make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [23] of the Act and subparagraph (f)(2) of Rule 19b–4 [24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[21] 15 U.S.C. 78f(b)(8).

[22] Regulation NMS, 70 FR at 37498–99.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–49 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–2020–49. 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–NYSE–2020–49 and should be submitted on or before July 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12989 Filed 6–16–20; 8:45 am]

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[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89045; File No. SR–NYSEAMER–2020–45]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the NYSE American Options Fee Schedule To Adopt a New Incentive Program for Floor Brokers

June 11, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') to adopt a new incentive program for Floor Brokers. The Exchange proposes to implement the fee change effective June 5, 2020.[4] The proposed 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on June 1, 2020 (SR–NYSEAMER–2020–43) and withdrew such filing on June 5, 2020.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule to introduce a new incentive program for Floor Broker organizations (each a ''Floor Broker'') to encourage Floor Brokers to increase their billable volume on the Exchange.

Specifically, the Exchange proposes to offer a rebate of $35,000 to Floor broker organizations for each month that a Floor Broker achieves a certain minimum level of average daily volume (''ADV'') of billable contracts, as specified below.

The Exchange proposes to implement the rule changes on June 5, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[6] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[7]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[6] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[7] Based on OCC data, *see id.,* the Exchange's market share in equity-based options declined from 9.82% for the month of January 2019 to 8.08% for the month of January 2020.

products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. To respond to this competitive marketplace, the Exchange has established incentives to assist Floor Brokers in attracting more business to the Exchange—including the Percentage Growth Incentive for certain Floor Brokers [8]—as such participants serve an important function in facilitating the execution of orders via open outcry, which promotes price discovery on the public markets. To the extent that these incentives succeed, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

Proposed Rule Change

The Exchange proposes to adopt a Floor Broker Billable Volume Rebate (''Rebate'').[9] As proposed, a Floor Broker would earn a rebate of $35,000 for each month that the Floor Broker achieves certain ADV in billable ADV. The calculation for billable ADV applies to manual executions and QCCs, but excludes any Customer volume and non-billable Professional Customer QCC volume, Firm Facilitation trades, and any volume calculated to achieve the Firm Monthly Fee Cap and the Strategy Execution Fee Cap, regardless of whether either of these caps is achieved.[10] In short, any volume (or contract side) for which a Floor Broker is (potentially) not billed, including because of monthly fee caps, would not count towards achieving the Rebate. To qualify for the proposed monthly Rebate, a Floor Broker must execute the greater of:

(I) 75,000 contract sides in billable ADV or

(ii) 150% of the Floor Broker's total billable ADV in contract sides during the first half of 2019 (*i.e.,* January–June 2019).[11]

The Exchange believes that 75,000 contract sides in billable ADV (*i.e.,* 150% of 50,000 contract sides) is a reasonable minimum threshold for a Floor Broker, including one that is new to the Exchange, to achieve given that numerous Floor brokers exceeded this volume requirement in 2019, even though it was not required. Similarly, the Exchange believes that the minimum alternative threshold of 150% of a Floor Broker's total billable ADV in contract sides during the first half of 2019 is reasonable for those Floor Brokers that achieve more than 75,000 ADV billable contract sides, given the increased options volume executed by Floor Brokers in the past year.

The Exchange believes the proposed Rebate would encourage Floor Brokers to seek out, and increase, diverse order flow for execution on the Exchange. The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those that may offer similar incentives. Thus, ATP Holders have a choice of where they direct their order flow. Fees and rebates for Floor Broker activity are designed to encourage Floor Brokers to execute a variety of transaction types on the Exchange, and the FB Billable Volume Rebate is intended to augment those fees and rebates with an incentive to encourage executing billable volume. The Exchange notes that all market participants stand to benefit from any increase in billable volume by Floor Brokers, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any Floor Brokers would avail themselves of this proposed fee change. However, all Floor brokers are potentially eligible for this Rebate.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[16]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed FB Billable Volume Rebate, which offers two alternative methods to achieve the Rebate, is reasonable because it is designed to incent Floor Brokers to increase the amount and variety of billable order flow directed to the Exchange. The Exchange notes that all market participants stand to benefit from any increase in billable volume by Floor Brokers, which promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange believes it is reasonable to only include transactions for which a Floor Broker is billed in the calculation for the FB Volume Rebate because Floor Brokers are already incented to execute

[8] *See* Fee Schedule, Section III.E, Floor Broker Fixed Cost Prepayment Incentive Program (the ''FB Prepay Program'').

[9] *See* proposed Fee Schedule, Section III.E.2, Floor Broker Billable Volume Rebate (the ''FB Billable Volume Rebate''). To accommodate this change, the Exchange proposes (re)name Section III.E of the Fee Schedule ''Floor Broker Incentive and Rebate Programs,'' and to number the FB Prepay Program and the FB Billable Volume Rebate as subsection 1 and 2. *See* proposed Fee Schedule, Table of Contents (setting forth new Section III.E.1,2) and Section III.E.1,2.

[10] *See* proposed Fee Schedule, Section III.E.2.

[11] *See id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Reg NMS Adopting Release, *supra* note 5, at 37499.

[15] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[16] Based on OCC data, *see id.,* the Exchange's market share in equity-based options declined from 9.82% for the month of January 2019 to 8.08% for the month of January 2020.

transactions for non-billable business (*e.g.,* Customer volume and Firm Facilitation trades or those on which monthly fees are capped per the Firm Monthly Fee Cap and the Strategy Execution Fee Cap) because there is no charge.

Finally, to the extent the proposed pricing incentives attract greater volume and liquidity, the Exchange believes the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The proposed rule changes are designed to incent ATP Holders to direct liquidity to the Exchange, thereby promoting market depth, price discovery and improvement and enhancing order execution opportunities for market participants.

The Exchange cannot predict with certainty whether any Floor Brokers would avail themselves of this proposed fee change. However, all Floor brokers are potentially eligible for this Rebate.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and Floor Brokers can opt to attempt to trade sufficient volume to achieve the Rebate or not. All Floor Brokers have the ability to qualify for the same Rebate under two alternatives means offered (*i.e.,* the greater of at least 75,000 contract sides in billable ADV or 150% of the Floor Broker's total billable ADV in contract sides during the first half of 2019).

In addition, the proposed change applies to qualifying Floor Brokers equally and because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support.

Moreover, the proposed Rebate is designed to incent Floor Brokers to encourage ATP Holders to aggregate their executions—particularly billable volumes—at the Exchange as a primary execution venue. To the extent that the proposed changes attract more billable volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is not Unfairly Discriminatory

The Exchange believes that the proposed Rebate is not unfairly discriminatory because the proposed modifications would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The proposed Rebate is not unfairly discriminatory to non-Floor Brokers because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support.

The proposed Rebate is based on the amount and type of business transacted on the Exchange and Floor Brokers are not obligated to try to achieve the Rebate. Rather, the proposed Rebate is designed to encourage these participants to utilize the Exchange as a primary trading venue (if they have not done so previously) or increase billable volume sent to the Exchange. To the extent that the proposed changes attract more order flow to the Exchange (including to the Floor), this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [17]

Intramarket Competition. The proposed Rebate is designed to assist Floor Brokers in (continuing to) attract additional order flow to the Exchange, including to the Floor, which would enhance the quality of quoting and may increase the volumes of contracts trade on the Exchange. To the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that this is appropriate because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support.

To the extent that this function is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[18] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the

[17] *See* Reg NMS Adopting Release, *supra* note 5, at 37499.

[18] *See supra* note 6.

Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[19]

The Exchange believes that the proposed Rebate change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent Floor Brokers to direct trading interest to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment. And, in fact, the Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, by encouraging additional orders to be sent to the Exchange for execution, including to the Floor.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[20] of the Act and subparagraph (f)(2) of Rule 19b–4[21] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[22] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–45 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–2020–45. 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–2020–45, and should be submitted on or before July 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12984 Filed 6–16–20; 8:45 am]

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[19] Based on OCC data, *supra* note 7, the Exchange's market share in equity-based options was 9.82% for the month of January 2019 and 8.08% for the month of January 2020.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89043; File No. SR–BOX–2020–18]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Section II of the Fee Schedule (Manual Transaction Fees) on the BOX Options Market LLC Facility

June 11, 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 June 1, 2020, BOX Exchange LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule to the BOX Options Market LLC (''BOX'') facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to amend Section II (Manual Transaction Fees).[5]

The Exchange first proposes to amend QOO Order Fees for Professional Customers in Section II.A of the BOX Fee Schedule. Specifically, the Exchange proposes to decrease the Professional Customer QOO Order Fee in Penny Pilot Classes and Non-Penny Pilot Classes from $0.25 per contract to $0.10 per contract. Next, the Exchange proposes to amend Section II.C of the BOX Fee Schedule. Specifically, the Exchange proposes to reduce the QOO Order Rebate for all Professional Customer QOO Orders to $0.05.[6]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange notes that it operates in a highly competitive market in which the Exchange must continually reassess its fees in order to maintain its competitiveness within the options exchange industry. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

The Exchange believes the proposed change to reduce Professional Customer QOO Order fees is reasonable, equitable, and not unfairly discriminatory because it is intended to attract a greater number of Professional Customer QOO orders to the Exchange. The Exchange believes the potential increased volume would create better trading opportunities that benefit all market participants. Specifically, greater volume and liquidity from increased order flow could create more trading opportunities and tighter spreads. Further, the Exchange believes it is equitable and not unfairly discriminatory to assess Professional Customers lower fees for manual transactions than Broker Dealers and Market Makers because, by definition, Professional Customers are a different type of market participant. Specifically, Professional Customers are not brokers or dealers in securities; they are persons (or entities) that place more than 390 orders per day on average for their own beneficial account. The Exchange notes that assessing lower fees for Professional Customers compared to Broker Dealers and Market Makers is not novel as BOX currently assesses lower fees for Professional Customers than Broker Dealers and Market Makers in another part of its Fee Schedule.[8] Further, the Exchange notes that Cboe Exchange Inc. (''Cboe'') currently assesses different fees for Professional Customers compared to Broker-Dealers and Market Makers for floor transactions.[9] In addition, the Exchange believes the proposed $0.10 fee is reasonable when compared to fees assessed for similar transactions for Professional Customers at another exchange.[10] Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory, as the proposed change applies to all Professional Customer QOO Orders presented on the Trading Floor by Floor Brokers.

The Exchange believes the proposal to reduce the QOO Order Rebate for all Professional Customer QOO transactions is reasonable. Specifically, the Exchange believes the proposed $0.05 rebate is balanced by the potential increase in Professional Customer volume directed toward the Exchange's Floor Brokers who would benefit from a rise in rebate opportunities because of the increased volume from Professional Customer orders. The Exchange believes that the rebate will continue to incentivize Floor Brokers to execute Professional Customer QOO Orders on the Trading Floor. The Exchange also notes that Floor Brokers will continue to receive a $0.075 per contract rebate on all other qualifying QOO Orders presented to the Trading Floor. Lastly, the Exchange believes that the proposal to lower the QOO Order Rebate for Professional Customer executions is equitable and not unfairly discriminatory because the proposed change applies to all Professional Customers' QOO Orders presented to the Trading Floor equally.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that is operates in a highly competitive market in which competitors are free to modify their own fee schedules. The Exchange believes that the proposal to reduce the QOO Order fee for Professional Customers does not impose a burden on competition. Although the reduction in QOO Order Fees to $0.10 for manual executions only applies to Professional Customers, the proposed change is aimed at encouraging increased Professional Customer options volume, which may provide greater trading opportunities for all market participants. The Exchange believes this enhances competition as it is intended to increase the competitiveness of BOX by adopting an additional pricing incentive in order to attract order flow and incentivize Professional Customer executions on the Exchange.

Further, the Exchange does not believe that reducing the QOO Order rebate for Professional Customer executions will impose an undue burden on intermarket competition. Several other competing exchanges have open outcry trading floors and market participants can readily direct order flow to any these venues if they deem BOX's manual transaction fees to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its

[5] Orders initiated and presented on the Trading Floor in open outcry, as opposed to initiated electronically. Manual transactions consist of Qualified Open Outcry (''QOO'') Orders. All fees, rebates and applicable caps will apply to both sides of the paired QOO Order.

[6] Currently, Floor Brokers receive a $0.075 per contract rebate for Professional Customer QOO Orders presented on the Trading Floor.

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* BOX Fee Schedule Section I.D. Qualified Contingent Cross (''QCC'') Transactions. The Exchange notes that Professional Customers are charged no fee for QCC transactions where Broker Dealers and Market Makers are charged $0.17 for their QCC transactions.

[9] For manual transactions, Cboe charges $0.12 per contract for professional customers (''U'' capacity code); $0.25 per contract for Broker-Dealers (''BA'' code); and $0.23 for Market-Makers (''MA'' code). *See* Cboe Fees Schedule ''Options Transaction Fee Per Contract; Manual''.

[10] *Id.*

fees to remain competitive with other exchanges. The Exchange does not believe the proposed rule change to reduce the QOO Order rebate for Professional Customer executions would burden intramarket competition as it would apply uniformly to all Floor Brokers on the BOX Trading Floor. The proposed rule change reflects a competitive pricing structure designed to incentivize Professional Customers to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [11] and Rule 19b–4(f)(2) thereunder,[12] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–18. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–18, and should be submitted on or before July 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12983 Filed 6–16–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89049; File No. SR–NYSEAMER–2020–44]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying the NYSE American Options Fee Schedule

June 11, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 modify the NYSE American Options Fee Schedule (''Fee Schedule'') to extend through June 2020 certain fee changes implemented for April and May 2020. The Exchange proposes to implement the fee change effective June 5, 2020.[4] The proposed 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 purpose of this filing is to modify the Fee Schedule to extend through June 2020 certain fee changes implemented for April and May 2020, as described below. The Exchange proposes to implement the fee change effective May 28, 2020.

On March 18, 2020, the Exchange announced that it would temporarily close the Trading Floor, effective Monday, March 23, 2020, as a

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on May 28, 2020 (SR–NYSEAMER–2020–42) and withdrew such filing on June 5, 2020.

precautionary measure to prevent the potential spread of COVID–19. Following the temporary closure of the Trading Floor, the Exchange temporarily modified certain fees for April and May 2020.[5] Although the Trading Floor partially reopened on May 26, 2020 and normal open outcry activity is now supported, because the Trading Floor remained closed for a longer period than expected—including seven business days in March, all of April and the first three weeks of May and will continue to operate with reduced capacity due to COVID–19 considerations, the Exchange proposes to extend the fee waiver through June 2020.

Waiver of Floor-Based Fixed Fees

First, the Exchange proposes to extend through June 2020 the waiver of the following Floor-based fix fees, which relate directly to Floor operations, are charged only to Floor participants and do not apply to participants that conduct business off-Floor:

- Floor Access Fee;
- Floor Broker Handheld
- Transport Charges
- Floor Market Maker Podia;
- Booth Premises; and
- Wire Services.[6]

This proposed extension of the fee waiver would reduce monthly costs for Floor participants whose operations continue to be disrupted, despite the fact that the Trading Floor has partially reopened. In reducing this monthly financial burden, the proposed change would allow affected participants to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor (and now staffing back on-Floor) and recoup losses as a result of the unanticipated Floor closure and partial reopening. Absent this change, such participants may experience an unexpected increase in the cost of doing business on the Exchange.[7] The Exchange believes that all ATP Holders that conduct business on the Trading Floor would benefit from this proposed fee change.

Floor Broker QCC Cap

Second, the Exchange proposes to extend through June 2020 the increase in the maximum allowable Floor Broker credit, which is typically $425,000 up to $625,000 per month per Floor Broker (the ''FB QCC Cap'').[8] Following the temporary closure of the Trading Floor, the Exchange experienced an unanticipated surge in QCC trades. Despite the fact that the Floor has partially reopened, the Exchange believes that extending this fee change would allow incentives to operate as intended and encourage Floor Brokers (particularly those whose operations continue to be disrupted during the partial reopening of the Floor) to execute volume on the Exchange and to continue to execute all—and increase the number of—QCC transactions on the Exchange.

Absent the proposed change, participating Floor Brokers—whose operations were disrupted by the unanticipated Floor closure and now partial reopening—could experience an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Floor Brokers trading QCCs. The Exchange believes that extending the increase in the FB QCC Cap through June would provide Floor Brokers with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading.

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from this proposed fee change. However, the Exchange believes the proposed change is necessary to prevent Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the Cap, particularly those Floor Brokers whose operations may continue to be disrupted as the Floor has only partially reopened.

Strategy Fee Execution Cap

Finally, the Exchange proposes to extend through June 2020 the inclusion of reversals and conversions executed as QCCs (''RevCon QCCs'') in the $1,000 daily Strategy Execution Cap (the ''Strategy Cap'').[9] Absent this change, RevCon QCCs are not eligible for the Strategy Cap (but instead are subject to QCC Fees & Credits).[10] With the temporary closure of the Trading Floor, which continued longer than anticipated, Floor Brokers were unable to execute RevCons in open outcry. Floor Brokers, however, were able to execute RevCon QCCs electronically via the Exchange systems. Although the Floor has reopened with limited capacity due to COVID–19 considerations, the Exchange believes the proposed inclusion of RevCon QCCs in the Strategy Cap, which is available to all ATP Holders, would encourage ATP Holders (including those acting as Floor Brokers) to execute their RevCon QCC volume on the Exchange, particularly given that the Floor has reopened only in a limited capacity, and to continue to increase the number of such RevCon QCC transactions during the month of June.

The Exchange cannot predict with certainty whether any ATP Holders would benefit from this proposed fee change. At present, whether or when an ATP Holder qualifies for the Strategy Cap varies day-to-day, month-to-month. That said, the Exchange believes that ATP Holders would be encouraged to take advantage of the modified Cap. In addition, the Exchange believes the proposed change is necessary to prevent ATP Holders from diverting RevCon QCC order flow from the Exchange to a more economical venue.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and

[5] *See* Securities Exchange Act Release Nos. 88595 (April 8, 2020), 85 FR 20737 (April 14, 2020) (SR–NYSEAMER–2020–25) (waiving Floor-based fixed fees); 88682 (April 8, 2020), 85 FR 20799 (April 14, 2020) (SR–NYSEAMER–2020–26) (raising Floor Broker QCC Rebate Cap); 88682 (April 17, 2020), 85 FR 22772 (April 23, 2020) (SR–NYSEAMER–2020–31) (including reversals and conversions in Strategy Execution Fee Cap). *See also* Securities Exchange Act Release No. 88840 (May 8, 2020), 85 FR 28992 (May 14, 2020) (SR–NYSEAMER–2020–37) (extending April 2020 fee changes through May 2020).

[6] *See* proposed Fee Schedule, Section III.B, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, and IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees. The Exchange notes that it will correct a typographical error, that states ''for April 2020 and May only,'' which adds clarity and transparency to the Fee Schedule. *See* proposed Fee Schedule, Section IV. Monthly Floor Communication, Connectivity, Equipment and Booth or Podia Fees (providing that certain fees are waived, ''[f]or April, May and June 2020 only . . .'').

[7] The Exchange will refund participants of the Floor Broker Prepayment Program for any prepaid June 2020 fees that are waived. *See* proposed Fee Schedule, Section III.E (providing that ''the Exchange will refund certain of the prepaid Eligible Fixed costs that were waived for April, May and June 2020, per Sections III.B and IV'').

[8] *See* proposed Fee Schedule, Section I.F., QCC Fees & Credits, n. 1 (setting forth available credits to Floor Brokers and providing that ''[t]he maximum Floor Broker credit paid shall not exceed $425,000 per month per Floor Broker firm (the ''Cap''), except that for the months of April, May and June 2020, the Cap would be $625,000 per Floor Broker firm'').

[9] *See* proposed Fee Schedule, Sections I.J., Strategy Execution Fee Cap (including RevCon QCCs in the Strategy Cap during April, May and June 2020) and Section I.F., QCC Fees & Credits, n. 1 (providing that ''[the Floor Broker credit will not apply to any QCC trades that qualify for the Strategy Cap during the months of April, May and June 2020 (per Section I.J.)'').

[10] *See* Fee Schedule, Section I.F., QCC Fees & Credits.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[14] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[15]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and credits can have a direct effect on the ability of an exchange to compete for order flow. The proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as ATP Holders—whose operations may have been and may continue to be (unintentionally) disrupted by the unanticipated temporary closure of the Floor and subsequent reopening in a limited capacity—may direct their order flow to any of the 16 options exchanges.

Waiver of Floor-Based Fixed Fees

This proposed extension of the fee waiver is reasonable, equitable, and not unfairly discriminatory because it would reduce monthly costs for Floor participants whose operations have been disrupted by the unanticipated Floor closure for approximately two months. In reducing this monthly financial burden, the proposed change would allow affected participants to reallocate funds to assist with the cost of shifting and maintaining their prior fully-staffed on-Floor operations to off-Floor (and now staffing back on-Floor) and recoup losses as a result of the unanticipated Floor closure and partial reopening. Absent this change, such participants may experience an unexpected increase in the cost of doing business on the Exchange.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits as it merely continues the fee waiver granted in April and May 2020, which impacts fees charged only to Floor participants whose operations continue to be disrupted by the partial reopening of the Floor and do not apply to participants that conduct business off-Floor.

The Exchange believes that the proposal is not unfairly discriminatory because the proposed continuation of the fee waiver would affect all similarly-situated market participants on an equal and non-discriminatory basis.

The Exchange believes that all ATP Holders that conduct business on the Trading Floor would benefit from this proposed fee change.

FB QCC Cap

This proposed extension of the increase to the FB QCC Cap through June is reasonable, equitable, and not unfairly discriminatory because it would allow Exchange incentives to operate as intended and continue encourage QCC volume, which saw an uptick in volume on the Exchange following the temporary closure of the Trading Floor.

The proposed change would also facilitate fair and orderly markets by attempting to avoid an unintended increase in the cost of Floor Brokers' QCC trading on the Exchange, given that the Floor has only reopened on a partial basis due to COVID–19 considerations. Absent the proposed change, participating Floor Brokers could experience an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its Floor Brokers trading QCCs. The Exchange believes that the proposed increase to the Cap for June when the Trading Floor is open, but only in a limited capacity, would provide Floor Brokers with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading. To the extent that the proposed change attracts more QCC trades to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

The Exchange cannot predict with certainty whether any Floor Brokers would benefit from this proposed fee change. However, Exchange also believes the proposed change is necessary to prevent Floor Brokers from diverting QCC order flow from the Exchange if and when they hit the FB QCC Cap, particularly those Floor Brokers whose operations continue to be disrupted as the Trading Floor has only opened in a limited capacity due to COVID–19 considerations.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange during June and Floor Brokers can opt to avail themselves of the modified Cap (*i.e.,* by executing more QCC transactions) or not. The proposed change would incent Floor Brokers to attract increased QCC order flow to the Exchange that might otherwise go to other options exchanges.

The Exchange believes it is not unfairly discriminatory to modify the maximum allowable credit on QCC transactions to Floor Brokers because the proposed modification would be available to all similarly-situated market participants (*i.e.,* Floor Brokers) on an equal and non-discriminatory basis.

Strategy Cap

This proposed extension of the inclusion of RevCon QCCs in the $1,000 daily Strategy Cap for June 2020 is reasonable, equitable, and not unfairly discriminatory because it would encourage ATP Holders to execute their RevCon QCC volume on the Exchange, particularly those whose operations continue to be impacted by the partial reopening of the Floor, and to increase the number of such RevCon QCC transactions during the month of June. Further, the proposal is designed to

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[14] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[15] Based on OCC data, *see id.,* the Exchange's market share in equity-based options declined from 9.82% for the month of January 2019 to 8.08% for the month of January 2020.

encourage ATP Holders to aggregate all Strategy Executions—including RevCon QCCs—at the Exchange as a primary execution venue. To the extent that the proposed change attracts more Strategy Executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits and not unfairly discriminatory because it is based on the amount and type of business transacted on the Exchange and ATP Holders can opt to avail themselves of the modified Strategy Cap (*i.e.,* by executing more RevCon QCC transactions) or not.

The Exchange believes it is not unfairly discriminatory to extend the modification of the Strategy Cap through June because the proposed change would be available to all similarly-situated market participants on an equal and non-discriminatory basis.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would encourage the continued participation of affected ATP Holders, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [16]

Intramarket Competition. The proposed continuation of the April and May 2020 fee changes through June 2020 are designed to reduce monthly costs for Floor participants whose operations continue to be disrupted, despite the fact that the Trading Floor has partially reopened, as well as to avoid an unintended increase in trading costs given that the Floor has only reopened in a limited capacity. In reducing this monthly financial burden, the proposed change would allow Floor participants to reallocate funds to assist with the cost of shifting and maintaining their previously on-Floor operations to off-Floor. In addition, the continuation of the April/May 2020 fee changes is designed to attract additional order flow (particularly QCC trades and RevCon QCCs) to the Exchange. The Exchange believes that the proposed fee waiver would not impose a disparate burden on competition among market participants on the Exchange because off-Floor market participants are not subject to these Floor-based fixed fees.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[17] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[18]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to reduce monthly costs for Floor participants whose operations have been disrupted by the unanticipated Floor closure and to encourage ATP Holders to direct trading interest (particularly QCCs and RevCon QCCs) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [19] of the Act and subparagraph (f)(2) of Rule 19b–4 [20] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–44 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–2020–44. This file number should be included on the subject line if email is used. To help the Commission process and review your

[16] *See* Reg NMS Adopting Release, *supra* note 13, at 37499.

[17] *See supra* note 14.

[18] Based on OCC data, *supra* note 15, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January, 2020.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(2).

[21] 15 U.S.C. 78s(b)(2)(B).

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–2020–44, and should be submitted on or before July 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12988 Filed 6–16–20; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89048; File No. SR–GEMX–2020–14]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX's Pricing Schedule at Options 7, Sections 3 and 4

June 11, 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 June 1, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX's Pricing Schedule at Options 7, Section 3, ''Regular Order Fees and Rebates,'' and Options 7, Section 4, ''Other Options Fees and Rebates,'' regarding the Market Access and Routing Subsidy (''MARS'').

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

GEMX proposes to amend its Pricing Schedule at Options 7, Section 3, ''Regular Order Fees and Rebates,'' and Options 7, Section 4, ''Other Options Fees and Rebates,'' regarding the Market Access and Routing Subsidy (''MARS''). Specifically, the Exchange proposes to: (1) Amend the MARS Payment tiers within Options 7, Section 4B; and (2) pay a rebate in connection with MARS within Options 7, Section 3. Each change is described below in greater detail.

By way of background, MARS pays a subsidy to GEMX Members that provide certain order routing functionalities to other GEMX Members and/or use such functionalities themselves. GEMX pays participating GEMX Members to subsidize their costs of providing routing services to route orders to GEMX. The Exchange believes that MARS will continue to attract higher volumes of equity and ETF options volume to the Exchange from non-GEMX market participants as well as GEMX Members.

MARS System Eligibility

To qualify for MARS, a GEMX Member's order routing functionality is required to meet certain criteria. Specifically the Member's routing system (hereinafter ''System'') is required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including GEMX; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with GEMX's API to access current GEMX match engine functionality. The Member's System also needs to cause GEMX to be one of the top four default destination exchanges for (a) individually executed marketable orders if GEMX is at the national best bid or offer (''NBBO''), regardless of size or time or (b) orders that establish a new NBBO on GEMX's Order Book, but allow any user to manually override GEMX as the default destination on an order-by-order basis. Any GEMX Member may apply for MARS, provided the above-referenced requirements are met, including a robust and reliable System.

MARS Eligible Contracts

A MARS Payment is paid to GEMX Members that have System Eligibility and have routed the requisite number of Eligible Contracts daily in a month, which were executed on GEMX. For the purpose of qualifying for the MARS Payment, Eligible Contracts include: Non-Nasdaq GEMX Market Maker (FarMM);[3] Firm Proprietary[4]/Broker-Dealer;[5] and Professional Customer[6] orders that are executed. Eligible Contracts do not include qualified contingent cross or ''QCC'' Orders[7] or

[3] A ''Non-Nasdaq GEMX Market Maker'' is a market maker as defined in Section 3(a)(38) of the Act, as amended, registered in the same options class on another options exchange.

[4] A ''Firm Proprietary'' order is an order submitted by a Member for its own proprietary account.

[5] A ''Broker-Dealer'' order is an order submitted by a Member for a broker-dealer account that is not its own proprietary account.

[6] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer.

[7] A QCC Order is comprised of an originating order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Supplementary Material .01 of GEMX Options 3, Section 7, coupled with a contra-side order or orders totaling an equal number of contracts. *See* Options 3, Section 7(j).

Price Improvement Mechanism or ''PIM'' Orders.[8] Options overlying NDX are not considered Eligible Contracts.

MARS Payment

GEMX Members that have System Eligibility and have executed the requisite number of Eligible Contracts in a month would be paid the following per contract rebates:

Tiers	Average daily volume (''ADV'')	MARS payment
1	10,000	$0.07
2	15,000	0.10
3	20,000	0.13

The specified MARS Payment is paid on all executed Eligible Contracts that add liquidity, which are routed to GEMX through a participating GEMX Member's System and meet the requisite Eligible Contracts ADV. No payment will be made with respect to orders that are routed to GEMX, but not executed. Also, a GEMX Member will not be entitled to receive any other revenue for the use of its System specifically with respect to orders routed to GEMX.

Proposal—MARS Payment

The Exchange proposes to amend the MARS Payment tiers to increase each of the 3 tiers by $0.01. Therefore, Tier 1, which requires an average daily value (''ADV'') of 10,000 contracts and currently pays a rebate of $0.07 per contract, would be amended to pay $0.08 per contract. Tier 2, which requires an ADV of 15,000 contracts and currently pays a rebate of $0.10 per contract, would be amended to pay $0.11 per contract. Tier 3, which requires an ADV of 20,000 contracts and currently pays a rebate of $0.13 per contract, would be amended to pay $0.14 contract. The Exchange believes that paying a higher rebate will attract even higher volumes of equity and ETF options volume to the Exchange from non-GEMX market participants as well as GEMX Members. The Exchange would continue to pay the MARS Payment on all executed Eligible Contracts that add liquidity, which are routed to GEMX through a participating GEMX Member's System and meet the requisite Eligible Contracts ADV. The Exchange would continue to make no payment with respect to orders that are routed to GEMX, but not executed.

Proposal—Rebate

The Exchange proposes to pay an additional $0.05 per contract rebate, in addition to the Tier 1 Maker Rebate in Options 7, Section 3 for Penny Symbols and SPY, for Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders that qualify as MARS Eligible Contracts,[9] pursuant to Options 7, Section 4B, and were routed through a qualifying GEMX Member's routing system.[10] Today, the Exchange pays a Tier 1 Maker Rebate of $0.20 per contract for Market Maker, Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders. Priority Customers are paid a $0.25 per contract Tier 1 Maker Rebate. The proposed rebate would be in addition to the Tier 1 Maker Rebate for Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders. The additional rebate would not apply to Market Maker and Priority Customer orders.

With this rebate, the Exchange proposes to incentivize Members to send order flow to GEMX Members that qualify for MARS and, in turn, attract higher volumes of equity and ETF options volume to the Exchange. This additional $0.05 per contract rebate, in addition to the Tier 1 Maker Rebates, will benefit all market participants who will have an opportunity to interact with this order flow.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [14] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[15] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [16]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [17] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Proposal—MARS Payment

The Exchange's proposal to increase the MARS Payments, which are currently paid based on certain average daily volumes for Eligible Contracts which add liquidity, is reasonable because the Exchange believes that the

[8] Price Improvement Mechanism (''PIM'') is the Exchange's price improvement mechanism for crossing transactions. *See* Options 3, Section 13.

[9] As noted herein, Eligible Contracts do not include QCC Orders or PIM Orders. Options overlying NDX are not considered Eligible Contracts. *See* Options 7, Section 4B.

[10] As noted herein, to qualify for MARS, a GEMX Member's System would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including GEMX; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with GEMX's API to access current GEMX match engine functionality. Further, the Member's System would also need to cause GEMX to be the one of the top four default destination exchanges for (a) individually executed marketable orders if GEMX is at the national best bid or offer (''NBBO''), regardless of size or time or (b) orders that establish a new NBBO on GEMX's Order Book, but allow any user to manually override GEMX as a default destination on an order-by-order basis. *See* Options 7, Section 4B.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[14] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[15] *See NetCoalition,* at 534–535.

[16] *Id.* at 537.

[17] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

MARS program will continue to attract liquidity to GEMX in the form of order flow, which will be beneficial for all GEMX Members, in that it would generate greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The increased MARS Payments should enhance the competitiveness of the Exchange. Further, as is the case today, the proposed tier structure would continue to allow GEMX Members to price their services at a level that will enable them to attract order flow from market participants who would otherwise utilize an existing front-end order entry mechanism instead of incurring the cost in time and money to develop their own internal systems to be able to deliver orders directly to the Exchange's System. The Exchange continues to seek to reward market participants that bring a greater amount of order flow to the Exchange by paying higher rebates [18] based on the average daily volume that qualified as Eligible Contracts. The Exchange believes that the tiers are reasonable because the Exchange is incentivizing GEMX Members to transact a greater amount of qualifying volume to earn the rebate. The additional order flow will benefit all market participants.

The Exchange's proposal to increase the MARS Payments, which are currently paid based on certain average daily volumes for Eligible Contracts which add liquidity, is equitable and not unfairly discriminatory because the Exchange will uniformly pay all qualifying GEMX Members, that offer market access and connectivity to the Exchange and/or utilize such functionality themselves, the proposed rebates specified in the proposed MARS Payment tiers, provided the GEMX Member has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange are equitable and not unfairly discriminatory because any qualifying GEMX Member that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payments for all Eligible Contracts.

Proposal—Rebate

The Exchange's proposal to pay an additional $0.05 per contract rebate, in addition to the Tier 1 Maker Rebates in Options 7, Section 3 for Penny Symbols and SPY,[19] for Non-Nasdaq GEMX Market Maker (FARMM), Firm Proprietary/Broker-Dealer and Professional Customer orders that qualify as MARS Eligible Contracts,[20] pursuant to Options 7, Section 4B, and were routed through a qualifying GEMX Member's System [21] is reasonable. The Exchange believes that its proposal will incentivize Members to send order flow to GEMX Members that qualify for MARS and, in turn, attract higher volumes of equity and ETF options volume to the Exchange. The rebate will benefit all market participants who will have an opportunity to interact with this order flow.

The Exchange's proposal to pay an additional $0.05 per contract rebate, in addition to the Tier 1 Maker Rebate in Options 7, Section 3 for Penny Symbols and SPY, for Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders that qualify as MARS Eligible Contracts, pursuant to Options 7, Section 4B, and were routed through a qualifying GEMX Member's routing system is equitable and not unfairly discriminatory. While MARS is only being offered to qualifying GEMX Members for Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer equity option orders, and would not pay an additional rebate for Priority Customer or Market Maker [22] orders, the Exchange believes this is equitable and not unfairly discriminatory for the reasons below. With respect to Priority Customer orders, the Exchange notes that, today, Priority Customer Orders may earn the highest Maker Rebates available on GEMX.[23] The Exchange believes that the availability of these aforementioned rebates for Priority Customer Orders does not warrant the Exchange paying an additional rebate on Priority Customer orders for MARS. With respect to Market Maker orders, today the Exchange offers certain Maker Rebates on Market Maker orders.[24] The Exchange believes that these rebates provide ample incentive for attracting Market Maker orders to the Exchange and that no further subsidy is warranted at this time.[25] To offer the proposed subsidy on Priority Customer or Market Maker orders would require funding from some other source, such as raising fees for other participants. As a result, the Exchange believes it is appropriate to only count Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders toward the Eligible Contracts, which unlike Priority Customer and Market Maker orders, are not eligible for Maker Rebates today beyond $0.20 per contract on GEMX. The Exchange notes that it is commonplace within the options industry for exchanges to charge different rates and/or offer different rebates depending upon the capacity in which a participant is trading. For these reasons, the Exchange believes that the proposal to only count certain order flow as Eligible Contracts is equitable and not unfairly discriminatory for the reasons mentioned herein.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The proposal does not impose an undue burden on intermarket competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The

[18] Currently, the Exchange pays a $0.07 per contract rebate to qualifying GEMX Members who transact 10,000 ADV; a rebate of $0.10 per contract to qualifying GEMX Members who transact 15,000 ADV and a $0.13 per contact rebate to qualifying GEMX Members who transact 20,000 ADV. The qualifying ADV is not being amended with this proposal. This proposal would increase each of the 3 rebate tiers by $0.01 per contract.

[19] Today, the Exchange pays a Tier 1 Maker Rebate of $0.20 per contract for Market Makers, Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders. Priority Customers are paid a $0.25 per contract Tier 1 Maker Rebate.

[20] As noted herein, Eligible Contracts do not include QCC Orders or PIM Orders. Options overlying NDX are not considered Eligible Contracts. *See* Options 7, Section 4B.

[21] As noted herein, to qualify for MARS, a GEMX Member's System would be required to: (1) Enable the electronic routing of orders to all of the U.S. options exchanges, including GEMX; (2) provide current consolidated market data from the U.S. options exchanges; and (3) be capable of interfacing with GEMX's API to access current GEMX match engine functionality. Further, the Member's System would also need to cause GEMX to be the one of the top four default destination exchanges for (a) individually executed marketable orders if GEMX is at the national best bid or offer (''NBBO''), regardless of size or time or (b) orders that establish a new NBBO on GEMX's Order Book, but allow any user to manually override GEMX as a default destination on an order-by-order basis. *See* Options 7, Section 4B.

[22] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[23] *See* Options 7, Section 3.

[24] *Id.*

[25] Market Maker and Priority Customer orders are eligible for higher Maker Rebates based on achieving certain volume requirements specified in the Table 1 Qualifying Tier Thresholds. *See* Options 7, Section 3.

Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intramarket Competition

The proposed amendments do not impose an undue burden on intramarket competition.

Proposal—MARS Payment

The Exchange's proposal to increase the MARS Payments, which are currently paid based on certain average daily volumes for Eligible Contracts which add liquidity, does not impose an undue burden on competition because the Exchange will uniformly pay all qualifying GEMX Members, that offer market access and connectivity to the Exchange and/or utilize such functionality themselves, the proposed rebates specified in the proposed MARS Payment tiers, provided the GEMX Member has executed the requisite number of Eligible Contracts. Moreover, the Exchange believes that the proposed MARS Payments offered by the Exchange do not impose an undue burden on competition because any qualifying GEMX Member that offers market access and connectivity to the Exchange and/or utilizes such functionality themselves may earn the MARS Payments for all Eligible Contracts.

Proposal—Rebate

The Exchange's proposal to pay an additional $0.05 per contract rebate, in addition to the Tier 1 Maker Rebate in Options 7, Section 3 for Penny Symbols and SPY,[26] for Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders that qualify as MARS Eligible Contracts, pursuant to Options 7, Section 4B, and were routed through a qualifying GEMX Member's routing system, does not impose an undue burden on competition. While MARS is only being offered to qualifying GEMX Members for Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer equity option orders, and would not pay an additional rebate for Priority Customer or Market Maker orders, the Exchange believes this does not impose an undue burden on competition. With respect to Priority Customer orders, the Exchange notes that, today, Priority Customer orders may earn the highest Maker Rebates available on GEMX.[27] The Exchange believes that the availability of these rebates for Priority Customer orders does not warrant paying an additional subsidy on Priority Customer orders for MARS. With respect to Market Maker orders, today the Exchange offers certain Maker Rebates on Market Maker orders.[28] To offer the proposed subsidy on Priority Customer or Market Maker orders would require funding from some other source, such as raising fees for other participants. As a result, the Exchange believes it is appropriate to only count Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders toward the Eligible Contracts, which unlike Priority Customer and Market Maker orders, are not eligible for Maker Rebates today beyond $0.20 per contract on GEMX. The Exchange notes that it is commonplace within the options industry for exchanges to charge different rates and/or offer different rebates depending upon the capacity in which a participant is trading. For these reasons, the Exchange believes that the proposal to only count certain order flow as Eligible Contracts does not impose an undue burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[29] and Rule 19b–4(f)(2)[30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2020–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2020–14. 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

[26] Today, the Exchange pays a Tier 1 Maker Rebate of $0.20 per contract for Market Makers, Non-Nasdaq GEMX Market Maker (FarMM), Firm Proprietary/Broker-Dealer and Professional Customer orders. Priority Customers are paid a $0.25 per contract Tier 1 Maker Rebate.

[27] *See* Options 7, Section 3.

[28] *Id.*

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 240.19b–4(f)(2).

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2020–14 and should be submitted on or before July 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12987 Filed 6–16–20; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Rule 30b1–10, Form N–LIQUID
SEC File No. 270–803, OMB Control No. 3235–0754

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

17 CFR 270.30b1–10 (Rule 30b1–10) and 17 CFR 274.223 (Form N–LIQUID) require open-end investment companies, including exchange-traded funds that redeem in kind (''In-Kind ETFs'') but not including money market funds, to file a current report on Form N–LIQUID on a non-public basis when certain events related to their liquidity occur. The information reported on Form N–LIQUID concerns events under which more than 15% of a fund's or In-Kind ETF's net assets are, or become, illiquid investments that are assets as defined in 17 CFR 270.22e–4 (rule 22e–4) and when holdings in illiquid investments are assets that previously exceeded 15% of a fund's net assets have changed to be less than or equal to 15% of the fund's net assets.[1] The information reported on Form N–LIQUID also regards events under which a fund's holdings in assets that are highly liquid investments fall below the fund's highly liquid investment minimum for more than 7 consecutive calendar days. A report on Form N–LIQUID is required to be filed, as applicable, within one business day of the occurrence of one or more of these events.[2]

Based on staff analysis, we estimate that the Commission receives an average of 30 reports per year on Form N–LIQUID.[3] When filing a report on Form N–LIQUID, staff estimates that a fund will spend on average approximately 4 hours of an in-house attorney's time and 1 hour of an in-house accountant's time to prepare, review, and submit Form N–LIQUID, at a total time cost of $1,894.[4] Accordingly, in the aggregate, staff estimates that compliance with rule 30b1–10 and Form N–LIQUID will result in a total annual burden of approximately 150 burden hours and total annual time costs of approximately $56,820.[5]

Compliance with rule 30b1–10 is mandatory for all open-end investment companies, other than money market funds. Responses to the disclosure requirements will be kept confidential. The estimate of average burden hours is made solely for the purposes of the PRA. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to enable the Commission to receive information on fund liquidity events more uniformly and efficiently, and to enhance the Commission's oversight of funds when significant liquidity events occur and its ability to respond to market events. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 12, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13065 Filed 6–16–20; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Item C.1 and Item C.2 of Part A of Form N–LIQUID.

[2] *See* General Instruction A.2 of Form N–LIQUID.

[3] The estimated number of annual filings is based on the number of filings in 2019, adjusted because certain of these filings would no longer be necessary going forward and a subset of funds were not subject to the filing requirement for all of 2019.

[4] This estimate is based on the following calculations: (4 hours × $419/hour for an attorney = $1,676), plus (1 hour × $218/hour for a senior accountant = $218), for a combined total of 5 hours at total time costs of $1,894. The estimates concerning the wage rates for attorney and senior accountant time are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for in-house attorneys and senior accountants, modified to account for a 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013.

[5] This estimate is based on the following calculations: 30 reports filed per year × 5 hours per report = approximately 150 total annual burden hours. 30 reports filed per year × $1,894 in costs per report = $56,820 total annual costs.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2019–0040]

Surface Transportation Project Delivery Program; Florida DOT Audit #3 Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Surface Transportation Project Delivery Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for the responsibilities it has assumed, in lieu of FHWA. This program

mandates annual audits during each of the first four years to ensure the State's compliance with program requirements. This notice makes available the final report of the Florida Department of Transportation's (FDOT) third audit under the program.

FOR FURTHER INFORMATION CONTACT: Ms. Marisel Lopez Cruz, Office of Project Development and Environmental Review, (407) 867–6402, *marisel.lopez-cruz@dot.gov,* or Mr. David Sett, Office of the Chief Counsel, (404) 562–3676, *david.sett@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's responsibilities for environmental review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. Effective December 14, 2016, FDOT assumed FHWA's responsibilities for environmental review and the responsibilities for reviews under other Federal environmental requirements.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the memorandum of understanding during each of the first four years of State participation and, after the fourth year, monitor compliance. The results of each audit must be made available for public comment. This notice finalizes the findings of the third audit report on FDOT participation in the program. A draft version of this report was published in the **Federal Register** on February 21, 2020, at 85 FR 10212, and was available for public review and comments. The FHWA received no responses to the **Federal Register** Notice during the public comment period for the draft report.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

Nicole R. Nason,

Administrator, Federal Highway Administration.

Final: Surface Transportation Project Delivery Program, FHWA Audit #3 of the Florida Department of Transportation, May 2018 to April 2019

Executive Summary

This is the third audit of the Florida Department of Transportation's (FDOT) assumption of the National Environmental Policy Act (NEPA) responsibilities under the Surface Transportation Project Delivery Program. Under the authority of 23 U.S.C. 327, FDOT and the Federal Highway Administration (FHWA) executed a memorandum of understanding (MOU) on December 14, 2016, whereby FHWA assigned, and FDOT assumed, FHWA's NEPA responsibilities and liabilities for Federal-aid highway projects and other related environmental reviews for transportation projects in Florida.

The FHWA formed a team in January 2019 to conduct an audit of FDOT's performance according to the terms of the MOU. The team held internal meetings to prepare for an on-site visit to the Florida Division and FDOT offices. Prior to the on-site visit, the team reviewed FDOT's 2019 Project Development & Environment (PD&E) Manual and NEPA project files, FDOT's response to FHWA's pre-audit information request (PAIR), and FDOT's NEPA Assignment Self Assessment Summary Report. The team presented initial project file observations to FDOT Office of Environmental Management (OEM) on August 1, 2019. The team conducted interviews with FDOT and prepared preliminary audit results from September 23–26, 2019. The team presented these preliminary observations to FDOT OEM leadership on September 27, 2019.

The FDOT continues to develop, revise, and implement procedures and processes required to carry out the NEPA Assignment Program. Overall, the team found that FDOT is committed to delivering a successful NEPA Program. This report describes numerous successful practices and one non-compliance observation. The FDOT has carried out the responsibilities it has assumed in keeping with the intent of the MOU and FDOT's application. Through this report, FHWA is notifying FDOT of the one non-compliance observation that requires FDOT to take corrective action. By addressing the observation in this report, FDOT will continue to assure a successful program. The report concludes with the status of FHWA's non-compliance observations from the first and second audit reviews, including any FDOT self-imposed corrective actions.

Background

The purpose of the audits performed under the authority of 23 U.S.C. 327 is to assess a State's compliance with the provisions of the MOU as well as all applicable Federal statutes, regulations, policies, and guidance. The FHWA's review and oversight obligation entails the need to collect information to evaluate the success of the NEPA Assignment Program; to evaluate a State's progress toward achieving its performance measures as specified in the MOU; and to collect information for the administration of the NEPA Assignment Program. This report summarizes the results of the third audit in Florida and includes a summary discussion that describes progress since the last audit. Following this audit, FHWA will conduct one more annual NEPA Assignment Program audit.

Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). An audit generally is defined as an official and careful examination and verification of accounts and records, especially of financial accounts, by an independent unbiased body. With regard to accounts or financial records, audits may follow a prescribed process or methodology and be conducted by ''auditors'' who have special training in those processes or methods. The FHWA considers this review to meet the definition of an audit because it is an unbiased, independent, official, and careful examination and verification of records and information about FDOT's assumption of environmental responsibilities.

The team consisted of NEPA subject matter experts (SME) from FHWA offices in Texas, Georgia, and Headquarters, as well as staff from FHWA's Florida Division. The diverse composition of the team, as well as the process of developing the review report and publishing it in the **Federal Register**, are intended to make this audit an unbiased official action taken by FHWA.

The team conducted a careful examination of FDOT policies, guidance, and manuals pertaining to NEPA responsibilities, as well as a representative sample of FDOT's project files. Other documents, such as the August 2019 PAIR responses and

FDOT's August 2019 Self Assessment Summary Report, also informed this review. In addition, the team interviewed FDOT staff in person and via video conference. This review is organized around the six NEPA Assignment Program elements: Program management; documentation and records management; quality assurance/quality control (QA/QC); legal sufficiency; performance measurement; and training program. In addition, the team considered three cross-cutting focus areas: (1) Interchange Access Requests (IAR); (2) project authorizations; and (3) permanent Emergency Repair (ER) projects.

The team defined the timeframe for highway project environmental approvals subject to this third audit to be between May 2018 and April 2019, when 616 projects were approved. The team drew judgmental samples totaling 23 projects from data in FDOT's online file system, Statewide Environmental Project Tracker (SWEPT). In the context of this report, descriptions of environmental documents are consistent with FDOT's PD&E Manual. The FHWA judgmentally selected all Type 2 Categorical Exclusions (CEs) (21 projects) and all Environmental Assessments (EA) with Findings of No Significant Impacts (2 projects). The audit team selected all IARs that were pending for approval during the audit period (five projects) to determine if FDOT was following protocols for environmental review. The team reviewed all project authorization files in the audit period (252 project files) downloaded from FHWA Fiscal Management Information System (FMIS) to determine if the NEPA certification was completed for these projects prior to the authorization. For permanent ER projects, FHWA judgmentally sampled 41 projects in SWEPT and FMIS and identified those with construction contracts to determine if the NEPA was completed prior to authorization and if the NEPA scope was consistent with the contract.

The team submitted a PAIR to FDOT that contained 20 questions covering all 6 NEPA Assignment Program elements. The FDOT responses to the PAIR were used to develop specific follow-up questions for the on-site interviews with FDOT staff.

The team conducted a total of 18 interviews. Interview participants included staff from five FDOT District offices, Districts 3 through 7, and the FDOT Central Office. The team interviewed FDOT legal, financial, planning, and environmental staff.

The team compared FDOT policies and procedures (including the published 2019 PD&E Manual) for the audit focus areas to the information obtained during interviews and project file reviews to determine if FDOT's performance of its MOU responsibilities are in accordance with FDOT policies and procedures and Federal requirements. Individual observations were documented during interviews and reviews and combined under the six NEPA Assignment Program elements. The audit results are described below by program element.

Overall Audit Opinion

The team recognizes that FDOT's efforts have included implementing the requirements of the MOU by: Processing and approving projects; refining policies, procedures, and guidance documents; refining the SWEPT tracking system for ''official project files''; training staff; implementing a QA/QC Plan; and conducting a self assessment for monitoring compliance with the assumed responsibilities. The team found evidence of FDOT's continuing efforts to train staff in clarifying the roles and responsibilities of FDOT staff, and in educating staff in an effort to assure compliance with all of the assigned responsibilities.

During the third audit, the team identified numerous successful practices and one non-compliance observation that FDOT will need to address through corrective actions. These results came from a review of FDOT procedures, Self Assessment, PAIR responses, project files, and interviews with FDOT personnel.

The FDOT has carried out the responsibilities it has assumed consistent with the intent of the MOU and FDOT's application. The team finds that FDOT is in substantial compliance with the terms of the MOU. By addressing the observations in this report, FDOT will continue to assure a successful program.

Successful Practices and Observations

Successful practices are practices that the team believes are positive, and encourages FDOT to consider continuing or expanding those programs in the future. The team identified numerous successful practices in this report. Observations are items the team would like to draw FDOT's attention to, which may improve processes, procedures, and/or outcomes. The team identified no observations in this report.

A non-compliance observation is an instance where the team finds the State is not in compliance or is deficient with regard to a Federal regulation, statute, guidance, policy, State procedure, or the MOU. Non-compliance may also include instances where the State has failed to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities they have assumed. The FHWA expects the State to develop and implement corrective actions to address all non-compliance observations. The team identified one non-compliance observation during this third audit.

The team acknowledges that sharing initial results during the site visit closeout and sharing the draft audit report with FDOT provided them the opportunity to clarify any observation, as needed, and/or begin implementing corrective actions to improve the program. The FHWA will also consider actions taken by FDOT to address these observations as part of the scope of Audit #4.

The Audit Report addresses all six MOU program elements as separate discussions.

Program Management

Successful Practices

The team learned through interviews that FDOT has a strong process for addressing its Self Assessment corrective actions. The process includes creating an action plan, dedicating staff to the plan, and identifying timeframes for follow up. The FHWA confirmed in FDOT's Self Assessment documentation that FDOT provides a status regarding its ''opportunities for improvement'' which includes a strong process for corrective actions and a corrective action status update section.

As FDOT's NEPA Assignment Program matures, communication continues to improve between FDOT's SMEs, consultants, and FDOT's District staff. Through interviews the team confirmed the improved communication. For example, some districts invite environmental staff to the District Interchange Review Committee meetings to discuss IAR projects early in the process. The team encourages FDOT to implement this practice statewide. Another example of good communication is the process that OEM uses to implement new FHWA guidance. When new guidance is issued and FDOT changes its process, it communicates with the districts through changes in the manuals, periodic meetings, and training. During the audit, the team confirmed broad awareness of how FDOT chose to implement the FHWA June 12, 2018, *Additional Flexibilities in CEs* memorandum.

The team learned that the enhancements to the SWEPT system continue to create efficiencies for the NEPA Assignment Program

implementation and FDOT continues to dedicate resources to improve SWEPT. Interviewees stated that these investments have resulted in more consistent documentation from the districts. Additional enhancements to SWEPT include cross references to FDOT's PD&E manual and updates to the Type 1 CE, Type 2 CE, and reevaluation forms. The FDOT OEM now has direct responsibility and control for SWEPT updates, which allows for quicker revisions to SWEPT to adapt to its changing needs. For example, when FDOT implemented its process for documenting legal sufficiency determinations, modifications to SWEPT were needed to allow users to specify the type of legal sufficiency review being performed, such as for an Environmental Impact Statement or a Section 4(f) evaluation. The FDOT expeditiously addressed this need and now SWEPT permits users to distinguish type of document being reviewed for legal sufficiency.

The SWEPT is considered by FDOT staff to be a significant program level QA/QC tool as it requires input of needed information prior to allowing the project to advance further. For example, a project cannot advance to FDOT OEM for QA/QC review until the QA/QC review is completed at the district level by the Environmental Administrator and the Engineering Administrator. Another example of SWEPT's QA/QC control is the environmental certification process. The environmental certification document is used to document NEPA completion to authorize Federal funding in subsequent project phases. The SWEPT will generate the environmental certification only after NEPA has been approved.

Quality Assurance/Quality Control

Successful Practice

During interviews, FDOT staff presented the Electronic Review Comments internal review platform as a tool that allows continuous engagement among environmental staff and SMEs. This tool allows continuous QC as the environmental project is developed.

Legal Sufficiency

The team's review of FDOT's legal sufficiency program found that FDOT has continued to structure the legal sufficiency process for the NEPA Assignment Program by having in-house counsel, as well as outside counsel with NEPA experience, available. The FDOT has made one legal sufficiency Section 4(f) determination during the audit time frame, implementing the internal procedures that were previously developed. The FDOT's Office of General Counsel (OGC) continues to participate in monthly coordination meetings and topic-specific meetings with OEM and the districts. It also reviews other environmental documents when requested for legal input. There remains close collaboration throughout the process amongst and between OGC, OEM, and the district attorneys.

Successful Practice

The SWEPT has a form that has the capability to document the legal sufficiency finding within the system. This tool ensures that proper documentation is captured in the project file without the need for additional supporting documentation.

Training Program

The FDOT's training program continues to be exemplary. The FDOT has continued to focus resources ensuring staff, other agencies, and consultants are adequately trained. In the last year, FDOT again trained over 2,000 people in their NEPA process, endangered species, traffic analysis, cultural resources, and noise technical areas. Through information presented in the FDOT Self Assessment and through interviews of FDOT staff, the review team learned of the variety in and growth of FDOT's environmental training program.

The FDOT OEM promotes staff awareness of its Self Assessments through multiple notices to districts, a statewide Self Assessment kick-off Webinar, and the use of Self Assessment computer-based training courses. Through information presented in the FDOT Self Assessment and through interviews of FDOT staff, the team learned that FDOT is one of the few NEPA assignment States to internally promote its self assessments.

Successful Practice

The team learned through interviews of OEM staff that FDOT has increased its environmental training outreach to multiple disciplines. The Transportation Symposium has included environmental review training on a wide spectrum of topics. This year, the number of environmental training courses at the symposium increased by about 50 percent and were targeted to individuals from a broad range of disciplines.

The team also learned that FDOT's YouTube channel includes a variety of environmental training Webinars and videos. The FDOT has migrated its Web trainings to YouTube so that trainings are available and accessible to staff and the public through the MyFDOT channel.

Performance Measures

Based on information reported in FDOT's 2019 Self Assessment Summary Report, FDOT is meeting or exceeding all performance measures.

Documentation and Records Management

The team reviewed the environmental documentation for 41 permanent repair projects to determine if the NEPA was completed prior to authorization and if the NEPA scope was consistent with the contract. All 41 permanent ER projects were determined compliant.

The team reviewed all IAR projects (five projects) to determine if FDOT was following protocols for environmental review. The projects selected for the IAR file review had NEPA documents that were still under development; therefore, no conclusions could be drawn from the project file review.

Successful Practice

The FDOT Central Office has procedures that ensure IAR projects receive NEPA review as part of the FHWA IAR approval. Systems planning staff have been trained in SWEPT and verify that the NEPA documentation supports FHWA's NEPA review expectations for IAR projects.

Non-Compliance Observation #1: Some FDOT project files contain insufficient documentation to support the project authorization, environmental analysis, or decision.

The team reviewed environmental documentation for 21 Type 2 CEs and 2 EAs to determine if the environmental review met Federal requirements. The team found CEs missing U.S. Coast Guard permits and Endangered Species Act consultation documentation (two projects). Finally, at the time FDOT prepared a Finding of No Significant Impact, the review team determined the scope of the EA was inconsistent with the State Transportation Improvement Program.

The team also reviewed 252 Project Authorization files to determine if the NEPA certification was completed for these projects prior to the authorization. The team found that some Project Authorizations did not have documentation verifying that NEPA was completed (18 projects).

The team's observations on the environmental documentation and on the Project Authorization files were shared with FDOT for its consideration and initial responses. The team received responses from FDOT either resolving the observation or verifying missing

documentation and/or procedural deficiencies. While these projects were found non-compliant at the time of the review, the missing documents have subsequently been uploaded by FDOT or FDOT committed to implementing a process improvement to address these concerns.

Update from 2017 Audit #1, Non-Compliance Observation #1 and 2018 Audit #2, Non-Compliance Observation #1: Some FDOT project files contain insufficient documentation to support the environmental analysis or decision.

The FHWA reported a non-compliance observation related to some FDOT project files that lacked documentation to support the environmental analysis or decision as part of Audit #1 and Audit #2. The FDOT and FHWA have productively worked together to resolve documentation issues from these previous audits. The FDOT continues to implement process improvements to address noted procedural deficiencies. These improvements will be considered during the next audit.

The FHWA and FDOT have also been working together through previous audits to mutually understand FDOT's implementation of reasonable assurance that the project impacts would not be significant when full compliance for a project is not possible by the time the NEPA decision has been prepared. Through the interviews and project file reviews, the team received clarification from FDOT regarding the differences in the applicability of standard specifications and special provisions when addressing endangered species impacts and consultation, and how these tools support reasonable assurances of no significant impacts to support the NEPA decision. In addition, the team learned that FDOT provided training and clarifications internally to ensure reasonable assurance is appropriately applied during NEPA document development.

Finalizing This Report

The FHWA received no responses to the **Federal Register** Notice during the public comment period for the draft report. This report is a finalized version of the draft report without substantive changes.

The FHWA will consider the results of this audit in preparing the scope of the next annual audit. The next audit report will include a summary that describes the status of FDOT's corrective and other actions taken in response to this audit's conclusions.

[FR Doc. 2020–13005 Filed 6–16–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2020–0008]

Surface Transportation Project Delivery Program; Ohio Department of Transportation Audit Report

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first four years of State participation to ensure compliance with program requirements. This notice announces and solicits comments on the fourth and final audit report for the Ohio Department of Transportation (ODOT).

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

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. You may also submit comments electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notifications of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Megan Cogburn, Office of Project Development and Environmental Review, (202) 366–2056, *megan.cogburn@dot.gov;* or Mr. David Sett, Office of the Chief Counsel, (404) 562–3676, *david.sett@dot.gov;* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 United States Code (U.S.C.) 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's responsibilities for environmental review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of the FHWA. The ODOT published its application for assumption under the NEPA Assignment Program on April 12, 2015, and made it available for public comment for 30 days. After considering public comments, ODOT submitted its application to FHWA on May 27, 2015. The application served as the basis for developing the memorandum of understanding (MOU) that identifies the responsibilities and obligations that ODOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on October 15, 2015, at 80 FR 62153, with a 30-day comment period to solicit the views of the public and Federal agencies. After the comment period closed, FHWA and ODOT considered comments and executed the MOU. The FHWA and ODOT amended the MOU on June 6, 2018, to update recent national program guidance and objectives for consistency with other States under the NEPA Assignment Program.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first four years of State participation and, after the fourth year, monitor compliance. The results of each audit must be made

available for public comment. The first audit report of ODOT compliance was finalized on July 7, 2017. The second audit report of ODOT compliance was finalized on October 3, 2018. The third audit report was finalized on November 13, 2019. This notice announces the availability of the fourth and final audit report for ODOT and solicits public comment on the same.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

Nicole R. Nason,

Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program; Draft FHWA Audit #4 of the Ohio Department of Transportation; July 29, 2019 to August 2, 2019

Executive Summary

This is a report of the Federal Highway Administration's (FHWA) fourth and final audit of the Ohio Department of Transportation's (ODOT) assumption of National Environmental Policy Act (NEPA) responsibilities. A team of FHWA staff (the team) conducted the audit. The ODOT made the effective date of the project-level NEPA and environmental review responsibilities it assumed from FHWA on December 28, 2015, as specified in a memorandum of understanding (MOU) signed on December 11, 2015, and amended on June 6, 2018. Within ODOT, the Division of Planning Office of Environmental Services (OES) is responsible to deliver the environmental program. This audit examined ODOT's performance under the MOU regarding responsibilities and obligations assigned therein.

Prior to the on-site visit, the team performed reviews of ODOT's project NEPA approval documentation in EnviroNet (ODOT's official environmental document filing system). This audit consisted of a review of a statistically valid random sample of 72 project files out of 1,113 approved documents for Federal-aid projects in ODOT's EnviroNet system with an environmental approval date between April 1, 2018, and March 31, 2019. The team conducted 100 percent sampling of the two Environmental Impact Statement (EIS) re-evaluations, five Environmental Assessment (EA) re-evaluations, and one new EA approved by ODOT as part of the sample. The team also reviewed ODOT's response to the pre-audit information request (PAIR) and ODOT's Self-Assessment report. In addition, the team reviewed ODOT's environmental processes, manuals, and guidance; ODOT NEPA Quality Control and Quality Assurance Processes and Procedures; and the ODOT NEPA Assignment Training Plan (collectively, ''ODOT procedures''). The team conducted an on-site review during the week of July 29 to August 2, 2019. The team conducted interviews with ODOT's Central Office staff on July 29, 2019, and with staff from three District Offices on July 30, 2019. The team also interviewed staff with the U.S. Fish and Wildlife Service (USFWS) on August 9, 2019, as part of the review.

Overall, the team found ODOT to be in substantial compliance with the terms of the MOU. The ODOT continues to make reasonable progress in implementing the NEPA Assignment Program based on the results of four audits, which demonstrates commitment to the success of the program. For Audit #4, the team found zero non-compliance observations, but did note one successful practice and four general observations.

Background

The Surface Transportation Project Delivery Program (NEPA Assignment Program) allows a State to assume FHWA's responsibilities for review, consultation, and compliance with environmental laws for Federal-aid highway projects. When a State assumes these responsibilities, it becomes solely responsible and liable for carrying out the responsibilities assumed, in lieu of FHWA.

The State of Ohio, represented by ODOT, completed the application process and entered an MOU with FHWA on December 28, 2015, which was amended on June 6, 2018. With this MOU, ODOT assumed FHWA's project approval responsibilities under NEPA and NEPA-related Federal environmental laws.

The FHWA must conduct four annual compliance audits of ODOT's compliance with the provisions of the MOU. Audits serve as FHWA's primary mechanism of determining ODOT's compliance with the MOU, applicable Federal laws and policies, evaluating ODOT's progress toward achieving the performance measures identified in the MOU, and collecting information needed for the Secretary's annual report to Congress.

The team provided a draft of this report to ODOT for its review and the team considered their comments in preparing this draft, which will be available for public review and comment. The FHWA will consider any public comments on this draft in finalizing the report.

Scope and Methodology

The team conducted a careful examination of the ODOT NEPA Assignment Program through a review of ODOT procedures and project documentation, ODOT's PAIR response, and the Self-Assessment summary report, as well as interviews with ODOT Central Office and District environmental staff and resource agency staff. This review focuses on the following six NEPA Assignment Program elements: (1) Program management; (2) documentation and records management; (3) quality assurance/quality control (QA/QC); (4) legal sufficiency; (5) performance measurement; and, (6) training.

The PAIR consisted of 18 questions based on the responsibilities assigned to ODOT in the MOU. The team reviewed ODOT's PAIR response and compared the responses to ODOT's written procedures. The team utilized ODOT's responses to draft interview questions to clarify information in ODOT's PAIR response.

The ODOT provided its NEPA Assignment Self-Assessment summary report 30 days prior to the team's on-site review. The team considered this summary report both in focusing on issues during the project file reviews and in drafting interview questions. The team compared the report against the previous year's Self-Assessment report and the requirements in the MOU to identify any trends.

Between April 1 and May 31, 2019, the team conducted a review using a statistically valid random sample of 72 project files out of 1,113 approved documents for Federal-aid projects in ODOT's EnviroNet system with an environmental approval date between April 1, 2018, and March 31, 2019. The team conducted a 100 percent sampling of the two EIS re-evaluations, five EA re-evaluations, and one new EA approved by ODOT as part of the audit. The projects reviewed represented all NEPA classes of action available, with coverage of 11 out of 12 of the ODOT Districts and the Ohio Rail Development Commission (ORDC) within those Districts.

In addition, the team reviewed ODOT's project file review associated with its self-assessment to determine if ODOT evaluated its projects in a similar fashion and using similar standards to that of the Federal portion of this review. The ODOT reviewed projects within the same sampling period as FHWA. The ODOT reviewed a statistically valid random sample of 199 projects, including 154 categorically excluded (CE) c-listed projects, 38 CE d-

listed projects, 5 EAs, and 2 EISs. The ODOT's review included projects in all Districts including ORDC and included representatives of all classes of action.

During the on-site review week, the team conducted interviews with 20 ODOT staff members at the Central Office and three Districts: District 2 (Bowling Green), District 3 (Ashland), and District 8 (Lebanon). Interviewees included ODOT OES management and subject matter experts, District Environmental Coordinators (DEC), and environmental staff, representing a diverse range of expertise and experience. These interviews focused on NEPA Assignment with an emphasis on items where additional information was necessary to complete the review.

The team conducted a phone interview with USFWS on August 9, 2019, to determine if the resource agency had any potential concerns regarding ODOT's performance and relationships with partner resource agencies. The USFWS reported that ODOT continues to perform well and offered no concern at the program-level. The ODOT staff continues to partner with Agency staff in the delivery of projects and for the protection of threatened and endangered species.

The team identified gaps between the information from the desktop review of ODOT procedures, PAIR, Self-Assessment, project file review, and interviews. The team documented the results of its reviews and interviews and consolidated the results into related topics or themes. From these topics or themes, the team developed successful practices and review observations.

Overall, the team found ODOT to be in substantial compliance with the terms of the MOU. The ODOT continues to make reasonable progress in management of the NEPA Assignment Program based on the results of four audits, which demonstrates commitment to the success of the program. For Audit #4, the team found zero non-compliance observations, but did note one successful practice and four general observations.

The FHWA team urges ODOT to monitor and make additional improvements to the program for continued success moving forward.

Successful Practices and General Observations

This section summarizes ODOT's practices that the team believes are successful, as well as observations on issues that ODOT may want to consider as areas to improve. Further information on these successful practices and observations are in the following subsections that address the six MOU program elements: Program management; document and records management; QA/QC; legal sufficiency; performance measures; and training.

Program Management

Successful Practice 1: ODOT developed improvements to EnviroNet to provide access to the federally recognized American Indian Tribes with ties to Ohio.

The ODOT has developed an enhancement to EnviroNet, which allows Tribal representatives to customize a Tribal profile and receive notifications and project information based on their preferences. This notification system allows Tribes to tailor the types of projects, locations of projects, and the point in the project development process for which they want to be notified (via email) and become involved. These upgrades also provide the Tribes the opportunity to enter comments and receive responses for each project. It is important to note that this system does not replace personal relationships with Tribal representatives as this is an important part of Tribal consultation. The ODOT and FHWA will continue to host on-site meetings for the Tribes and agencies to consult on the Federal-aid highway program, projects, concerns, and processes in Ohio.

Observation 1: There are opportunities for ODOT to continue to improve upon the identification and engagement of Environmental Justice (EJ) populations to ensure full and fair participation in the transportation decisionmaking process.

During each of the previous audits, both FHWA and ODOT identified project-level compliance issues for EJ and public involvement (PI). The team notes and appreciates ongoing efforts by ODOT to improve its processes, documentation, and training in the areas of EJ and PI in response to previous audits and self-assessments. While substantial progress has been made in these areas, there are opportunities for ODOT to continue to improve upon the identification and engagement of EJ populations to ensure full and fair participation in the transportation decisionmaking process.

During this year's audit, the team found that ODOT tends to use general PI activities in lieu of targeted EJ outreach and engagement activities. As a result, ODOT's CE documentation does not always include a discussion of the steps taken to provide meaningful opportunities for PI by members of minority and/or low-income populations in the decisionmaking process, including the identification of potential effects, alternatives, and mitigation measures.

Identification of EJ populations, soliciting and understanding their issues or concerns, and actively engaging them throughout project development is a continuing concern for FHWA. The team encourages ODOT to continue to improve its EJ identification and outreach practices to ensure full and fair participation in the transportation decisionmaking process.

Documentation and Records Management

Observation 2: Opportunities exist to improve documentation by the ODOT Districts and LPAs in response to ODOT's File Management Plan and other guidance.

Over the course of NEPA assignment, ODOT has developed many procedures relating to the NEPA process to improve its processes and meet Federal requirements. The updates included changes to ODOT's internal documentation and filing guidelines and updates to EnviroNet. These changes appear to have positively impacted the program and we continue to support ODOT's use of these procedures.

The team heard throughout the Audit #4 process that some Districts had concerns about the requirements in the ODOT NEPA File Management and Documentation Guidance and other applicable guidance that did not allow the CE to include what they viewed as decision documents.

The Districts' concerns and resulting levels of understanding of ODOT guidance appear to support the findings of both the team and ODOT's OES. The team and ODOT's Self-Assessment both noted during the project file reviews that the Districts and local public agencies (LPAs) exhibit documentation inconsistencies pursuant to ODOT's File Management Plan and related guidance. Between the FHWA and ODOT data, approximately 31 percent of projects exhibited these types of inconsistencies.

The team met with ODOT to discuss individual inconsistencies noted by both FHWA and ODOT OES during this audit. The ODOT evaluated these findings and then communicated them individually with the Districts. The ODOT remains committed to improvements in documentation, with plans to continue updates to EnviroNet and guidance as needed and with the training required to deliver effective results.

Observation 3: Opportunities exist for ODOT to develop written procedures and guidance for the re-evaluation of EAs and EISs.

The team found that ODOT has robust guidance for documentation expectations for CEs and specific resource areas. However, during the project file review, the team and ODOT both noted inconsistencies regarding the preparation of re-evaluations for EAs and EISs. While there is no required format for written re-evaluations, a written re-evaluation should briefly document any changes in the project, applicable laws or regulations, the project study area, and any resulting impacts (beneficial and/or adverse). The re-evaluation should succinctly acknowledge areas where there are few or no changes, and document any public or Agency consultation, if appropriate and undertaken. A conclusion or finding as to whether the previous NEPA document remains valid, should be plainly evident.

During the audit, the team found one of the two EIS re-evaluations and three of the five EA re-evaluations had inconsistencies related to FHWA regulation, policy, and guidance on re-evaluation requirements discussed above. During the onsite interviews, several ODOT staff members agreed that it could be beneficial to develop a written procedure to establish expectations and memorialize ODOT's re-evaluation process in compliance with Federal requirements. The team also made note that in ODOT's Self-Assessment, several ODOT Districts requested development of re-evaluation guidance. Based on these concerns, the team supports consideration of the development of written procedures and guidance for the re-evaluation of EAs and EISs to reduce risk to ODOT's program.

Quality Assurance/Quality Control (QA/QC)

Observation 4: Opportunities exist to improve QA/QC procedures relevant to c-listed CE documentation.

The ODOT NEPA Quality Control and Quality Assurance Processes and Procedures, dated April 6, 2017, indicates d-listed CEs (D2 and D3 actions per ODOT's CE guidance), EAs, and EISs will be peer reviewed by OES staff and c-listed and d-listed CEs (D1 actions per ODOT's guidance) will be reviewed by District environmental staff prior to review and approval by the DEC. The team learned through all four audits that District staff have their own methods of conducting reviews which may lead to inconsistencies across the Districts in the review of c-listed projects. EnviroNet provides some programmed QA/QC. The system itself does not identify missing support documentation under the project file tab, or mistakes in data entry into the system, which comprise most of the errors found by both FHWA and ODOT's Self-Assessment. A more robust QA/QC process for c-level projects could reduce risk and improve efficiency in ODOT's program. In addition, there is no stand-alone QA/QC training to train ODOT personnel per ODOT's expectations and guidance.

Legal Sufficiency Review

The ODOT did not have any documents that required legal sufficiency reviews during the Audit #4 timeframe; therefore, the team had no observations related to legal sufficiency.

Performance Measures

The MOU Section 10.2 requires the development of performance measures. The ODOT has refined its performance measures to provide a better overall indication of ODOT's execution of its responsibilities as assigned by the MOU. The team found evidence that the results obtained through the performance measures are allowing ODOT to make appropriate changes as it manages its environmental program. The team had no observations related to performance measures.

Training Program

Previous audits noted that ODOT had a robust environmental training program and provided adequate budget and time for staff to access a variety of internal and external training. The ODOT continues to enhance its traditional training program and plan with the development of additional online courses. The ODOT currently offers 28 online trainings for free to ODOT staff, consultants, LPAs, partner agencies, and anyone else who desires to take them. The ODOT utilizes the Ohio's Local Technical Assistance Program to manage the courses. This free online training makes training more accessible to a greater number of staff and consultants and allows consistent, self-paced, and individualized training. Also, the previous audit noted ODOT's training plan required environmental consultants to take the pre-qualification training courses and all ODOT environmental staff (both central and District offices) take all environmental courses.

The team encourages ODOT to broaden its training program and training collaboration with other Federal agencies and environmental organizations. The team commends ODOT for its efforts in taking external ecological and cultural resource courses, but feels there is room for improvement exploring external human environment training. During the interviews, ODOT staff noted they are reluctant to take National Highway Institute training courses because of their broad perspective; however, they did express interest in taking specialized FHWA training that focus on specific topics such as the recently offered FHWA Resource Center Air Quality Workshop. The ODOT also expressed interest in getting assistance from FHWA to develop training case studies that were relevant to its transportation program, which the audit team supports. The team had no observations related to training.

Next Steps

The FHWA provided a draft of this audit report to ODOT for a 14-day review and comment period and considered ODOT's comments in developing this draft report. In addition, FHWA will consider comments on the draft report received from the public within the 30-day comment period after publication in the **Federal Register**, pursuant to 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FHWA will respond to all comments submitted, pursuant to 23 U.S.C. 327(g)(2)(B). Once finalized, FHWA will publish the final audit report in the **Federal Register**.

[FR Doc. 2020–13006 Filed 6–16–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of amendment to system of records—Department of Veterans Affairs Federal Docket Management System Commenter Information (VAFDMS—Commenter info)—(140VA00REG).

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled, ''Department of Veterans Affairs Federal Docket Management System (VAFDMS—Commenter info)—(140VA02REG)'' as set forth in the **Federal Register** on August 1, 2017. VA is amending how the public can access comments received for VA rulemakings and notices and the methods in which a comment can be submitted. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than July 17, 2020. If no public comment is received, the new system will become effective July 17, 2020.

ADDRESSES: Written comments concerning the modified system of records may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420. Comments should indicate that they are submitted in response to the amendment of ''Department of Veterans Affairs Federal Docket Management System (VAFDMS)—(140VA00REG).'' Copies of comments received will be available for public inspection and may be viewed online *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Martin, Privacy Officer, Office of Regulation Policy and Management (00REG), Office of the General Counsel, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–4918.

SUPPLEMENTARY INFORMATION: A Notice of Establishment of New System of Records was published in the **Federal Register** on February 9, 2007 (72 FR 6315), and amended on March 25, 2008 (73 FR 15856), amended on March 3, 2015 (80 FR 11525), and further amended on August 1, 2017 (82 FR 35872).

I. Description of the System of Records

The Department of Veterans Affairs Federal Docket Management System (VAFDMS) serves as a central, electronic repository for VA rulemaking and non-rulemaking dockets including **Federal Register** rules, notices, supporting materials such as scientific and economic analyses, and public comments. The portion of VAFDMS information that comes under the Privacy Act is personal identifying information (name and contact address/email address). This information permits VA to identify individuals who have submitted comments in response to VA rulemaking documents or notices so that communications or other actions, as appropriate and necessary, can be effected, such as clarification of the comment, direct response to a comment, and other activities associated with the rulemaking or notice process. Identification is possible only if the individual voluntarily provides identifying information when submitting a comment. If such information is not furnished, the submitted comments and/or supporting documentation cannot be linked to an individual.

00REG's Management will review each incoming public submission and determine whether it is a public comment under the Administrative Procedure Act (APA) or a non-comment (which may include comments relating only to personal issues outside the scope of the rulemaking, comments from VA employees in accordance with the guidance below, and comments that were received by VA after the due date stated in the proposed rule (late comments).

The Office of Regulation Policy and Management's longstanding policy provides in part that it will not consider comments from VA employees as public comments unless they were submitted on their off-duty time in a private (vs employment) capacity. Thus, comments that include a VA email and/or mailing address as part of the contact information are not treated as public comments. In addition, comments that indicate that they are made in a VA employee's official capacity are not treated as public comments. Even though these comments will not be treated as public comments, they will be provided to the VA program office for consideration.

On the other hand, a comment from a VA employee that does not purport to be a comment given in an official VA capacity or to provide an official VA view, and that does not give a VA email or mailing address as part of the contact information, will be treated as a public comment, although it provides factual information relating to the commenter's VA employment.

VAFDMS permits members of the public to search posted public comments received by name of the individual submitting the comment on the *www.Regulations.gov* website. All the contents of posted comments are searchable. Unless the individual submits the comment anonymously, a name search will result in the comment being displayed for view. If the comment is submitted electronically using *www.Regulations.gov,* the viewed comment will not include the name of the submitter or any other identifying information about the individual except the information that the submitter has opted to include as part of his or her general comment. If a comment is submitted in writing, the information scanned and uploaded into VAFDMS will contain the submitter's name, unless the individual submits the comment anonymously. All comments received will become a matter of public record and will be posted without change to *www.Regulations.gov* including any personal information provided. Comments submitted on behalf of organizations in writing that have to be scanned and uploaded into VAFDMS will not be redacted.

I. Amendment to Access of Public Submitted Comments

VA is removing the ability for the public to visit the Office of Regulation Policy and Management office to view publicly submitted comments. All publicly submitted comments have been and will continue to remain available to the public anytime at *www.Regulations.gov.*

II. Amendment to How Comments Can Be Submitted

VA is amending how comments can be submitted to the following: Written comments may be submitted through *www.Regulations.gov.* This is the preferred and highly encouraged method. Alternatively, comments may also be submitted by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420.

The notice of intent to publish an advance copy of the system notice has been sent to the appropriate Congressional Committees and to the Director of the Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) (Privacy Act), as amended, and guidelines issued by OMB published at 65 FR 77677 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 June 11, 2020 for publication.

Dated: June 12, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Department of Veterans Affairs Federal Docket Management System Commenter Information (VAFDMS—Commenter Info) (140VA00REG).

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary location: Electronic records are kept at the U.S. Environmental Protection Agency, Research Triangle Park, NC 27711–0001.

SYSTEM MANAGER(S) AND ADDRESSES:

Jeffrey M. Martin, Privacy Officer, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420; telephone (202) 461–4918.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3501, Note; Sec. 206(d), Public Law 107–347; 5 U.S.C. 301, 552, 552a, and 553.

PURPOSE:

To permit the Department of Veterans Affairs (VA) to identify individuals who have submitted comments in response to VA rulemaking documents or notices, so that communications or other actions, as appropriate and necessary, can be effected, such as to seek clarification of the comment, to directly respond to a comment, and for other activities associated with the rulemaking or notice process.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who voluntarily provide personal contact information when submitting a public comment and/or supporting materials in response to a Department of Veterans Affairs rulemaking document or notice.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, postal address, email address, phone and fax numbers of the individual submitting comments, the name of the organization or individual that the individual represents (if any), and the comments, as well as other supporting documentation, furnished by the individual. Comments may include personal information about the commenter.

RECORD SOURCE CATEGORIES:

Individuals; public or private organizations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PUROSES OF SUCH USES:

1. Congress: 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. Data breach response and remedial efforts: 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. Data breach response and remedial efforts with another Federal agency: VA may disclose information from this system t*o* 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.

4. Law Enforcement: 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. 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 information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. 5701(a) and (f), VA may 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).

5. Litigation: 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 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 DoJ is limited to circumstances where relevant and necessary to the litigation.

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update,'' currently posted at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/inforeg/guidance1985.pdf.*

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, 78–85 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

6. Contractors: 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 OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

7. Equal Employment Opportunity Commission (EEOC): 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.

8. Federal Labor Relations Authority (FLRA): 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 Service 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.

9. Merit Systems Protection Board (MSPB): 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.

10. National Archives and Records Administration (NARA) and General Services Administration (GSA): 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 in order to determine the proper disposition of such records.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained electronically. See System Location.

POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:

Records are retrieved by various data elements and key word searches, among which are by: Name, Agency, Docket Type, Docket Sub-Type, Agency Docket ID, Docket Title, Docket Category, Document Type, CFR Part, Date Comment Received, and **Federal Register** Published Date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be maintained and disposed of, in accordance with records disposition authority, approved by the Archivist of the United States.

PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:

Electronic records are maintained in a secure, password protected, electronic system that utilizes security hardware and software to include: multiple firewalls, active intruder detection, and role-based access controls. Access to electronic records is limited to those officials who require the records to perform their official duties consistent with the purpose for which the information was collected. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

RECORD ACCESS PROCEDURE:

Individuals seeking to access or contest the contents of records, about themselves, contained in this System of Records should address a written request, including full name, address and telephone number to the Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420.

CONTESTING RECORD PROCEDURE:

(See Record Access Procedure above.)

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this System of Records contains information about them should address written inquiries to the Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420. Requests should contain the full name, address and telephone number of the individual making the inquiry.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

There are no exemptions being claimed for this system.

HISTORY:

A Notice of Establishment of New System of Records was published in the **Federal Register** on February 9, 2007 (72 FR 6315), amended on March 25, 2008 (73 FR 15856), amended on March 3, 2015 (80 FR 11525), and further amended on August 1, 2017 (82 FR 35872).

[FR Doc. 2020–13002 Filed 6–16–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Wednesday,

No. 117 June 17, 2020

Part II

Department of Agriculture

Federal Crop Insurance Corporation
Farm Service Agency
Commodity Credit Corporation
Farm Service Agency
Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Parts 3, 400, 761, et al.
Debt Management; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

Federal Crop Insurance Corporation

7 CFR Part 400

Farm Service Agency

7 CFR Parts 761, 765, 766, 772, and 792

Commodity Credit Corporation

7 CFR Part 1403

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 1951 and 1956

[Docket ID USDA–2019–0007]

RIN 0560–AA16

Debt Management

AGENCY: Office of the Secretary, Commodity Credit Corporation, Farm Service Agency, Federal Crop Insurance Corporation, Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The general debt management regulations of the Department of Agriculture (USDA) provide that individual USDA agencies may issue regulations for their own specific debt collection activities principally in recognition that the agencies conducted debt collection activities prior to the enactment of the Debt Collection Improvement Act of 1996 (DCIA). Many of the provisions of individual agencies are redundant to part 3. This rule will eliminate the debt collection regulations of the following USDA agencies, and part 3 will be revised to include specific provisions used by these agencies: the Commodity Credit Corporation (CCC); the Federal Crop Insurance Corporation (FCIC), and the Farm Service Agency (FSA). In addition, as required by the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 (the 2015 Civil Penalties Act), this rule updates the size of civil monetary penalties to reflect inflationary adjustments for 2020.

DATES: Effective: June 17, 2020.

FOR FURTHER INFORMATION CONTACT: For information, contact Iris Roseboro; telephone: (202) 720–6257; email: *Iris.Roseboro@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 3 (part 3) specify the general regulations applicable to debt collection activities of USDA agencies and specify the amount of civil penalties that USDA agencies levy as authorized by law. Federal agencies are required by several laws to collect debts owed to the United States, principally DCIA. Several USDA agencies issued debt collection regulations prior to the enactment of DCIA and the provisions of 7 CFR 3.1(b) allow individual USDA agencies to issue regulations to supplement part 3.

The Office of the Chief Financial Officer (OCFO), USDA, is reviewing the individual agency regulations and procedures in order to ensure that all agencies' individual debt collection policies align with government-wide policies, as well as the specific policies of the Secretary. For purposes of this review, a ''debt'' is a delinquent amount owed to the United States and does not include the entire outstanding amount of a loan made by an agency when the borrower is making scheduled loan payments as required by the loan agreement. If a USDA agency determines that a borrower is delinquent on a loan payment, the delinquent amount will be considered to be a ''debt'' for purposes of part 3 and the agency will be required to give all due process notices prior to proceeding with debt collection actions, including administrative offset or salary offset and referral to the Department of Treasury for centralized offset. The intent of this review is to consolidate the debt collection and settlement regulations of USDA in one location to ensure consistency and uniformity in operations of USDA agencies. This action is not intended to make any substantive changes in USDA policy or procedure or to impose any additional burden on a person who is indebted to the United States.

The amendments made by this final rule incorporate the results of this review by CCC, FSA, the Foreign Agricultural Service (FAS), FCIC, the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA).

FSA's principal debt settlement regulations that supplement part 3 have been in 7 CFR part 792. In addition, regulations in 7 CFR parts 1951 and 1956 have been used by FSA in the settlement and adjustments of FSA farm loans made under the Consolidated Farm and Rural Development Act (ConAct) and debts related to those loans. This rule removes 7 CFR part 792 and 7 CFR part 1951, subpart C. Since 7 CFR part 1956 is also used by the Rural Development of USDA (RD), those regulations are not deleted but are amended to state affirmatively that they do not apply to loans made by FSA and debts relating to such loans. In those limited instances where provisions of 7 CFR parts 792, 1951, and 1956 will continue to be used because of their specific application to FSA debts, the provision has been included in part 3; for the provisions that will continue to only be used for Farm Loan Programs, the provisions have been included in 7 CFR part 761 as subpart F.

RD also has debt settlement authority under the ConAct and The Housing Act of 1949 (Housing Act). The following list of RD's implementing debt settlement regulations authorized by the ConAct and the Housing Act that are excepted from part 3 are:

- 7 CFR part 1717, subpart Y;
- 7 CFR part 1752;
- 7 CFR 1782.20;
- 7 CFR 1951.213;
- 7 CFR part 1956;
- 7 CFR part 3550, subpart F;
- 7 CFR 3560.457; and
- 7 CFR 3565.56.

Additionally, 7 CFR part 1951, subpart C, RD regulations that previously implemented the Debt Collection Improvement Act are being replaced by part 3 and therefore are being removed, as stated above.

Exceptions are included in the regulation for CCC and FCIC. CCC and FCIC are wholly-owned government corporations and each have independent settlement authority under their respective authorizing laws. Accordingly, while the debt collection regulations for these entities have been deleted, provisions have been included in part 3 to recognize the ability of these corporations to settle and adjust claims without referral to the Department of Justice. In addition, this rule revises part 3 to make clear that, in those instances where a debt has been incurred by a foreign obligor and is potentially susceptible to the bankruptcy or insolvency laws of a foreign jurisdiction, the provisions of part 3 are not applicable. Principally, these instances of foreign debt collection arise under CCC programs which authorize CCC to make payments to entities who have financed exports of US agricultural

products and the foreign obligor does not make full payment to the exporter or the exporter's assignee. In these programs, CCC retains the right to pursue collection from the obligor, and often these matters fall within the jurisdiction of a foreign court.

NRCS, FAS, and RMA do not have agency specific debt collection regulations and currently follow part 3. Accordingly, no action was necessary to delete existing regulations or revise part 3.

This rule also revises subpart I of part 3 to update the amount of civil monetary penalties that may be levied by USDA agencies to reflect inflationary adjustments for 2020 as required by the 2015 Civil Penalties Act. As required by the 2015 Civil Penalties Act, the annual adjustment was made for inflation based on the Consumer Price Index for the month of October 2019 and rounded to the nearest dollar after an initial adjustment. The civil monetary penalties are listed according to the applicable administering agency.

Effective Date and Notice and Comment

The action taken by this rule: Consolidates at 7 CFR part 3 existing debt collection regulations used by certain USDA agencies; eliminates obsolete debt collection regulations; and adjusts USDA civil monetary penalties as required by the 2015 Civil Penalties Act.

Because the action to update existing regulations is ministerial and the adjustment to civil monetary penalties is required by the 2015 Civil Penalties Act, USDA finds that there is good cause under 5 U.S.C. 553(b)(3)(B) that opportunity for prior comment is unnecessary and contrary to the public interest and USDA is issuing this revised regulation as a final rule.

The Office of Management and Budget (OMB) designated this rule as not major under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Accordingly, this rule is effective upon publication in the **Federal Register**.

Executive Orders 12866, 13563, 13771, and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, and therefore, OMB has not reviewed this rule and an analysis of costs and benefits is not required under either Executives Orders 12866 or 13563.

Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' requires that, in order to manage the private costs required to comply with Federal regulations, for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated not significant, it is not subject to Executive Order 13771. In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. USDA reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever the Administrative Procedure Act or any other law requires an agency to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because USDA is not required by Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

Environmental Review

The action taken by this rule is ministerial in nature in that the purpose of the rule is to eliminate obsolete regulations and to consolidate current debt collection regulations of three UDSA agencies at one USDA-wide regulation. Accordingly, this action does not require an analysis under the National Environmental Policy Act (NEPA).

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions identified in 7 CFR part 3 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on

policies that have Tribal implications, including regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not have Tribal implications that require Tribal consultation under Executive Order 13175. If a Tribe requests consultation, OCFO will work with USDA's Office of Tribal Relations to ensure meaningful consultation is provided when changes, additions, and modifications identified in this rule are not expressly mandated by legislation.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. The UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E-Government Act Compliance

USDA is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Federal Assistance Programs

This rule does not provide any new Federal Domestic Assistance Program nor change any of the USDA programs that are in the Catalog of Federal Domestic Assistance. This rule prescribes standards and procedures for use by USDA agencies in the collection, compromise, suspension, or termination of debts owed to the United States.

Paperwork Reduction Act

This rule does not create any new information collection requirements as the agencies affected by this rule will continue to conduct debt collection activities in the same manner as before this rule. Due to the nature of this rule, the information collection is exempted from the Paperwork Reduction Act as specified in 5 CFR 1320.4(a)(2) because the nature of the information collection activities is that the USDA agency is conducting administrative action against the individuals or debtors.

List of Subjects

7 CFR Part 3

Administrative practice and procedure, Claims, Government employees, Income taxes, Loan programs-agriculture, Penalties, Reporting and recordkeeping requirements, Wages.

7 CFR Part 400

Acreage allotments, Administrative practice and procedure, Claims, Crop insurance, Fraud, Government employees, Income taxes, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Wages.

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs-agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs-agriculture.

7 CFR Part 772

Agriculture, Loan programs-agriculture, Rural areas.

7 CFR Part 792

Claims, Income taxes.

7 CFR Part 1403

Claims, Income taxes, Loan programs-agriculture.

7 CFR Part 1951

Accounting, Agriculture, Claims, Community facilities, Credit, Disaster assistance, Government employees, Grant programs-housing and community development, Housing, Income taxes, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas, Wages.

7 CFR Part 1956

Accounting, Business and industry, Claims, Loan programs-agriculture, Loan programs-business, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

Under the authority of 5 U.S.C. 301, 7 U.S.C. 1506, and 15 U.S.C. 714b and as discussed in the preamble, USDA amends Title 7 of the Code of Federal Regulations as follows:

■ 1. Revise part 3 to read as follows:

PART 3—DEBT MANAGEMENT

Subpart A—General

Sec.
3.1 Purpose and scope.
3.2 Authority.
3.3 Definitions.
3.4 Delegations of authority.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

3.10 Aggressive agency collection activity.
3.11 Demand for payment.
3.12 Reporting debts to Credit Reporting Agencies.
3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.
3.15 Liquidation of collateral.
3.16 Collection in installments.
3.17 Interest, penalties, and administrative costs.
3.18 Use and disclosure of mailing addresses.
3.19 Standards for the compromise of claims and debt settlement.
3.20 Standards for suspending or terminating collection activities.
3.21 Referrals of debts to Justice.
3.22 CCC withholding of payment.
3.23 CCC assignment of payment.

Subpart C—Referral of Debts to Treasury

3.30 General requirements.
3.31 Mandatory referral for cross-servicing.
3.32 Discretionary referral for cross-servicing.
3.33 Required certification.
3.34 Fees.

Subpart D—Administrative Offset

3.40 Scope.
3.41 Procedures for notification of intent to collect by administrative offset.
3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.
3.43 Non-centralized administrative offset.
3.44 Centralized administrative offset.
3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.
3.46 Offset against tax refunds.
3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart E—Administrative Wage Garnishment

3.50 Purpose.
3.51 Scope.
3.52 Definitions.
3.53 Procedures.

Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies

3.60 Applicability.
3.61 Presiding employee.
3.62 Procedures.

Subpart G—Federal Salary Offset

3.70 Scope.
3.71 Definitions.
3.72 Coordinating offset with another Federal agency.
3.73 Determination of indebtedness.
3.74 Notice requirements before offset.
3.75 Request for a hearing.
3.76 Result if employee fails to meet deadlines.
3.77 Hearing.
3.78 Written decision following a hearing.
3.79 Review of USDA records related to the debt.
3.80 Written agreement to repay debts as alternative to salary offset.
3.81 Procedures for salary offset: when deductions may begin.
3.82 Procedures for salary offset: types of collection.
3.83 Procedures for salary offset: methods of collection.
3.84 Procedures for salary offset: imposition of interest, penalties, and administrative costs.
3.85 Non-waiver of rights.
3.86 Refunds.
3.87 Agency regulations.

Subpart H—Cooperation with the Internal Revenue Service

3.90 Reporting discharged debts to the Internal Revenue Service.

Subpart I—Adjusted Civil Monetary Penalties

3.91 Adjusted civil monetary penalties.

Authority: 5 U.S.C. 301; 7 U.S.C. 1506, 1981, 1981a, 1981d, and 2008h; 15 U.S.C. 714b; 31 U.S.C. 3701, 3711, 3716–18, and 3720B; and 31 CFR parts 285 and 901–904.

Subpart A—General

§ 3.1 Purpose and scope.

(a)(1) The regulations in this part prescribe standards and procedures for use by USDA agencies in the collection, compromise, suspension, or termination of debts owed to the United States.

(2) The regulations in this part apply to all debts of the United States subject to collection by USDA agencies, except as otherwise specified in this part or by statute.

(3) The regulations in this part do not preclude the Secretary from collection, compromise, suspension, or termination of debts as otherwise authorized by law. In such cases the laws and implementing regulations that are specifically applicable to claims collection activities of a particular agency generally will take precedence over this part.

(b) USDA agencies may issue regulations to supplement this part in order to meet the specific requirements of individual programs.

(c) The regulations of this part will not apply to:

(1) Collection of debts owed government travel card contractors by USDA employees;

(2) Collection of debts owed by individual Food Stamp Program recipients for whom debt collection procedures are provided under § 273.18 of this title.

(3) Collection of debts owed by foreign governments and, sovereign institutions of foreign governments.

(4) Actions pursuant to the FSA FLP Debt Settlement regulations in part 761, subpart F, of this title are authorized under the Consolidated Farm and Rural Development Act (ConAct), which are independent of the DCIA are excepted from this part.

(5) Actions pursuant to the following RD Debt Settlement regulations authorized under the ConAct and the Housing Act, which are independent of the DCIA are excepted from this part:

(i) 7 CFR part 1717, subpart Y;
(ii) 2 CFR part 175;
(iii) 7 CFR 1782.20;
(iv) 7 CFR 1951.213;
(v) 7 CFR part 1956;
(vi) 7 CFR part 3550, subpart F;
(vii) 7 CFR 3560.457; and
(viii) 7 CFR 3565.56.

§ 3.2 Authority.

(a) Generally, the regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701, 3711–3720) and the Federal Claims Collection Standards (FCCS) issued pursuant to the DCIA by Treasury and Justice (31 CFR parts 901–904) that prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to Justice for litigation to collect debts owed the government. The regulations under this part also are issued under Treasury regulations implementing DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512 and 5514; 5 CFR part 550, subpart K) and administrative offset of tax refunds (31 U.S.C. 3720A).

(b) With respect to agency specific provisions of this part, the following authorities are applicable:

(1) The Commodity Credit Corporation (CCC): section 4 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b).

(2) The Farm Service Agency (FSA): sections 331, 331A, 331D, and 373 of the Consolidated Farm and Rural Development Act (ConAct) (7 U.S.C. 1981, 1981a, 1981d, and 2008h).

(3) The Federal Crop Insurance Corporation (FCIC): section 506(j) of the Federal Crop Insurance Act (7 U.S.C. 1506(j)).

§ 3.3 Definitions.

For the purpose of this part, except as where otherwise specifically provided, the term or terms:

Account means a record of transactions involving the debt, claim, or loan for a particular person or entity, including the name, address, taxpayer identification number, other information necessary to establish the person's or entity's identity, the balance, status, history of the debt, and program under which the debt or claim arose.

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, and costs of selling collateral or property to satisfy the debt.

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt. This definition is consistent with 31 U.S.C. 3701(a)(1).

Agency means an agency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

Borrower and *debtor* have the same meaning and refer to a person who owes a delinquent, nontax debt to the United States.

Carrier means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or inter-modal marketing companies, that provide transportation or other transportation-related services for compensation.

CCC means Commodity Credit Corporation.

Centralized administrative offset means referral of a debt to the Treasury Offset Program (TOP) to collect debts that creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a), and applicable regulations for offset of payments made to a debtor by Federal agencies other than USDA. Centralized offset also includes offset of payments made by States pursuant to 31 U.S.C. 3716(h) and 31 CFR 285.6.

CFO means Chief Financial Officer.

Civil monetary penalties are assessed for violations and failures to comply with various program requirements. The management and settlement of these debts are specified in this part, and the applicable laws and program specific regulations.

Claim and debt have the same meaning and refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Compromise means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards specified in FCCS and applicable federal law.

Contracting officer has the same meaning as in 41 U.S.C. 7101.

Credit reporting agencies (also known as credit bureaus) means major credit reporting agencies that have signed agreements with agencies to receive and integrate credit information (data) from voluntary subscribers (Federal agencies and private sector entities) into their respective databases for the purpose of generating credit reports for sale to purchasers of credit data.

Creditor agency means a Federal agency or USDA agency to which a debtor owes a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to collection of the debt.

Cross-servicing means the centralized collection of Federal debt and the various collection actions taken by Treasury on behalf of a Federal agency in accordance with the provisions of 31 U.S.C. 3711, 31 U.S.C. 3720D, 31 CFR part 285, and other Treasury regulations. Cross-servicing includes, but is not limited to, the use of debt collection centers and private collection contractors.

Day means calendar day unless otherwise specified.

DCIA means the Debt Collection Improvement Act of 1996.

Debt means an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Debt collection center means the Treasury or other government agency or division, designated by the Secretary of the Treasury with authority to collect debt on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debt record means the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to any Federal agency with respect to which collection action is being pursued.

Debtor means a person who owes a delinquent, nontax debt to the United States.

Delinquent means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made, or as otherwise defined by program specific statutes or regulations.

Discharged debt means any debt, or part thereof, that an agency has determined is uncollectible and has closed out or, in the case of FSA FLP, means the amount of debt that was discharged through bankruptcy proceedings where no further collection actions may be taken on that debt.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld including social security taxes and other withholding taxes, but not including any amount withheld pursuant to a court order.

Federal agency means any department or entity within the Executive branch of the government that is not a USDA agency.

Financial statement means a statement of financial condition at a given date that accurately reflects the debtor's assets, liabilities, income, and expenses.

Fiscal Service means the United States Department of the Treasury's Bureau of the Fiscal Service.

Foreign debt means debt owed by a sovereign or non-sovereign entity, when the debt is subject to adjudication in a non-U.S. jurisdiction.

FSA FLP means the Farm Loan Programs of FSA.

Government or Federal government means the government of the United States, unless otherwise specified.

Justice means the United States Department of Justice.

Late payment interest rate means the amount of interest charged on delinquent debts and claims in cases where the annual rate of interest is not established by a promissory note. Unless otherwise provided by the law, regulation, contract, or agreement that established the debt, the late payment interest rate will be equal to the higher of the Prompt Payment Act interest rate or the standard late payment rate prescribed by 31 U.S.C. 3717, as of the date the debt became delinquent. Interest on delinquent debts will accrue on a daily basis.

NAD means the USDA National Appeals Division.

Non-centralized administrative offset means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. The creditor agency and paying agency can be the same.

Offset means withholding funds payable by the United States to or held by the United States for a person to satisfy a debt owed by the payee.

OGC means the USDA Office of the General Counsel.

Payee means a person who is due a payment from a payment authorizing agency and includes a person who is entitled to all or part of a payment.

Payment authorizing agency means a Federal agency or USDA agency that is authorized to disburse payments to a recipient.

Penalty charge or penalty interest means the additional penalty amount charged on delinquent debts as specified in 31 U.S.C. 3717(e)(2) and § 3.17(d).

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of public or private entity other than a Federal agency.

Private Collection Agency means any organization or corporation that specializes in debt collection is known as a collection agency or debt collector.

Recoupment means a special method for adjusting debts arising under the same transaction or occurrence, such as obligations arising under the same contract.

Reviewing officer means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

Salary offset means the deduction of money from the current pay account of a present or former Government employee as specified in 5 U.S.C. 5514

to satisfy a debt that person owes the Government.

Secretary means the Secretary of Agriculture, unless otherwise specified.

Settlement or debt settlement means, for the purposes of this part only, the final disposition or resolution of a debt or claim that results in cancellation of any remaining balance owed and reporting of the canceled amount to the IRS as specified in § 3.90, and applicable IRS requirements.

Tax Identification Number or TIN means the identification number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security number (SSN) or employer identification number (EIN).

TOP means Treasury Offset Program, which is a centralized offset program that collects delinquent debts owed to Federal agencies and states.

Treasury means the United States Department of the Treasury.

USDA means the United States Department of Agriculture.

Withholding of payment means the action taken to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 3.4 Delegations of authority.

The head of an agency is authorized to exercise any or all of the functions provided by this part with respect to programs for which the head of the agency has delegated responsibility and may delegate and authorize the redelegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

§ 3.10 Aggressive agency collection activity.

An agency will aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities will be undertaken promptly with follow-up action taken as necessary.

§ 3.11 Demand for payment.

(a) Generally, debt collection is initiated with a written demand for payment to the debtor unless an applicable agreement or instrument (including a post-delinquency payment agreement) provides otherwise (such as providing USDA an immediate right to collect upon delinquency). Written demand as described in paragraph (b) of this section will be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters will depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Where statutes or agency regulations are specific as to the requirements for demand letters, an agency will follow its own procedures in formulating demand letters. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), an agency will give due regard to the need to refer debts promptly to Justice for litigation, in accordance with 31 CFR 904.1. When necessary to protect the government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) In demand letters, the USDA creditor agency will inform the debtor:

(1) The nature and amount of the debt; and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with § 3.17;

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (b)(6) of this section;

(4) Of any willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (see § 3.16);

(5) The name, address, telephone number and email address (optional) of a contact person or office;

(6) The intent to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) Offset the debtor's USDA payments and refer the debtor's debt to TOP for offset against other Federal payments, including income tax refunds, in accordance with subpart D of this part;

(ii) Refer the debt to a private collection agency.

(iii) Report the debt to a credit reporting agency in accordance with § 3.12;

(iv) Refer the debt to Treasury in accordance with subpart E of this part for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) Refer the debt to Justice in accordance with § 3.21 to initiate litigation to collect the debt;

(vi) Refer the debt to Treasury for collection in accordance with subpart C of this part;

(7) How the debtor may inspect and copy records related to the debt;

(8) How the debtor may request an administrative review of the determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (see subpart F of this part);

(9) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (see subpart G of this part);

(10) How a debtor may request a waiver of the debt, if applicable;

(11) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (see *http://www.irs.gov*);

(12) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(13) That certain debtors may be ineligible for government loans, guarantees, and insurance (see § 3.14);

(14) If applicable, the intention to suspend or revoke licenses, permits, or privileges (see § 3.14); and

(15) That the debtor must advise the creditor agency of the filing of any bankruptcy proceedings of the debtor or of another person liable for the debt being collected.

(16) The debtor's right to appeal the determination in accordance with applicable appeal procedures;

(17) The debtor's right to present evidence that all or part of the debt is not past-due or not legally enforceable.

(c) A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (17) of this section if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt. In the case of foreign debt that is subject to insolvency or bankruptcy proceedings outside the United States, a USDA creditor agency may, in lieu of a demand letter, submit such documentation necessary to establish its claim as a creditor.

(d) Agencies will exercise care to ensure that demand letters are mailed or delivered (as applicable for the program) on the same day that they are dated. There is no prescribed format for demand letters. Agencies will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can

be resolved administratively or must be referred for litigation.

(e) Agencies will respond promptly to communications from debtors, within 30 days of receipt whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, administrative offset, the procedures applicable to offset must be followed (see subpart D of this part). The availability of funds or money for debt satisfaction by administrative offset, and the agency's determination to pursue collection by administrative offset, will release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies will advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification complies with Executive Order 12988 (58 FR 51735, October 4, 1993) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the government will be advised that this notice has been given. In general, only one agency should service a debt at a time; that is, agencies should not simultaneously refer a debt to both Treasury and Justice for collection.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency will immediately request legal advice from OGC concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the agency is advised that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor must stop immediately. The agency should take the following steps:

(1) After requesting legal advice, a proof of claim must be filed in most cases with the bankruptcy court or the Trustee. Agencies will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may request relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies may request legal advice from OGC to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also may request legal advice from OGC to determine whether recoupment is available.

§ 3.12 Reporting of debts to Credit Reporting Agencies.

(a) In demand letters to debtors sent in accordance with § 3.11, agencies will inform debtors:

(1) The intent of the agency to report the delinquent debt to credit reporting agencies after 60 days;

(2) The specific information to be transmitted (that is, name, address, and taxpayer identification number, information about the debt);

(3) The actions which may be taken by the debtor to prevent the reporting (that is, repayment in full or a repayment agreement); and

(4) The rights of the debtor to request review of the existence of the debt in accordance with subpart F of this part.

(b) Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(e), the Privacy Act of 1974 (5 U.S.C. 552a), the Bankruptcy Code, and 31 CFR 901.4.

(c) When an agency has given a debtor any of the notices required by this part and an opportunity for administrative review under subpart F of this part, the agency need not duplicate such notice and review opportunities before reporting the delinquent debt to credit reporting agencies.

(d) Agencies will not disclose a delinquent debt to a credit reporting agency if a debtor requests review under subpart F of this part until a final determination is made by a reviewing official that upholds the agency intent to disclose.

§ 3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.

(a) Agencies are not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency, except as otherwise authorized by law or upon waiver of application of this section by the USDA Chief Financial Officer (CFO) or Deputy CFO. This prohibition does not apply to disaster loans. Agencies may extend credit after the delinquency has been resolved. The Secretary of the Treasury may exempt classes of debts from this prohibition and has prescribed standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition. See 31 CFR 285.13 (Barring Delinquent Debtors from Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) Similarly, agencies also are not permitted to extend financial assistance (either directly or indirectly) in the form of grants, loans, or loan guarantees to judgment debtors who have a judgment lien placed against their property until the judgment is satisfied, unless the agency grants a waiver in accordance with agency regulations. See 31 U.S.C. 3720B.

(c) In non-bankruptcy cases, agencies pursuing the collection of statutory penalties, forfeitures, or other types of claims must consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures. The debtor will be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges.

(d) Any agency making, guaranteeing, insuring, acquiring, or participating in, loans must consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by USDA or another Federal agency. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overrun payments, but not including sums owed to the government under the Internal Revenue Code or as specified in the appropriations provisions regarding outstanding tax debt in sections 745 and 746 of Division E of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) and successor provisions of law) owed to any Federal agency or instrumentality is grounds for non-procurement suspension or debarment if the debt is uncontested and the debtor's legal administrative remedies for review of the debt are exhausted. See 2 CFR 180.800(c)(3).

(e) The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 will be reported to Treasury. Treasury will forward to all interested agencies notification that a surety's certificate of authority to do

business with the government has been revoked.

(f) The suspension or revocation of licenses, permits, or privileges also may extend to USDA programs or activities that are administered by the States on behalf of the government, to the extent that they affect the government's ability to collect money or funds owed by debtors. Therefore, States that manage USDA activities, pursuant to approval from the agencies, will ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the government.

(g) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies may request legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 3.15 Liquidation of collateral.

(a) In accordance with applicable laws and regulations, agencies may liquidate security or collateral through a sale or a nonjudicial foreclosure and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency may request legal advice from OGC concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 3.16 Collection in installments.

(a) Whenever feasible, agencies will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies will obtain financial statements from debtors (or a similar statement from foreign debtors) who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see 31 CFR 902.2(g) for methods of verification). Agencies that agree to accept payments in regular installments will obtain a legally enforceable written agreement from the debtor that specifies all terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in 3 years or less.

(c) Security for deferred payments will be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

§ 3.17 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g) and (h) of this section, agencies will charge interest, penalties, and administrative costs on debts owed to the United States as specified in 31 U.S.C. 3717. If not included in the agency's demand notice, an agency will mail or deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges will continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) Agencies will charge interest on debts owed the United States except as otherwise required by law and as provided in paragraph (i) of this section for debts owed to CCC and FSA. In charging such interest, agencies will apply the following provisions:

(1) Interest will accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by law, the rate of interest charged will be the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency must document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, will remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and requests to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be compounded, that is, interest will not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement will be added to the principal under the new repayment agreement.

(c) Agencies will assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs will be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by law, agencies will charge a penalty, as specified in 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge will accrue from the date of delinquency.

(e) Agencies may increase an ''administrative debt'' by the cost of living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of government credit, such as those arising from loans and loan guarantees. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts will be computed annually. Agencies may use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency will be applied first to outstanding penalties, second to administrative charges (when applicable), third to interest, and last to principal, except as otherwise required by law.

(g) Agencies will waive the collection of interest and administrative charges imposed pursuant to this section (that is, this does not apply to interest or administrative penalties determined by

an applicable agreement or instrument such as a loan contract) on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria specified in the Federal standards for the compromise of debts (31 CFR part 902), or if the agency determines that collection of these charges is against equity and good conscience or is not in the interest of the United States.

(h) Agencies are authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law. Agencies will consult OGC before imposing interest and related charges under common law for any debt.

(i)(1) For debts resulting from CCC loans made in accordance with chapter XIV of this title:

(i) Late payment interest will begin to accrue from the date on which a claim is established. In addition, an additional charge of 3 percent per year will be assessed on a portion of a debt that remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed retroactively from the date of claim establishment and apply on a daily basis and will continue to be used until the delinquent debt has been paid.

(ii) Penalty charges, administrative costs and interest will continue to accrue if a debtor makes a request for appeal as provided by any agency or USDA-wide appeal regulation Collection by offset will continue during the appeal process unless prohibited by statute. If the debtor ultimately wins an appeal and the debt is found to be incorrect, CCC will credit the debtor's debt for the amount of penalty charges, administrative costs, and interest that has accrued from the date such charges were initiated on the portion determined in the appeal to not be due.

(2) Late payment interest provisions of this section do not apply to FSA and CCC debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities will be assessed at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent.

(3) Late payment interest, penalty charges, and administrative costs may be waived by FSA or CCC in full or in part, if it is determined by the agency that such action is in the Government's interest.

(4) The provisions of this section do not apply to CCC foreign debt.

§ 3.18 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or 31 CFR parts 902 through 904 or other authority, agencies may send a request to Treasury to obtain a debtor's mailing address from the records of the Internal Revenue Service (IRS).

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 3.19 Standards for the compromise of claims and debt settlement.

(a) An agency will follow the standards specified in 31 CFR part 902 for the compromise of debts pursuant to 31 U.S.C. 3711 arising out of the activities of, or referred or transferred for collection services to, that agency, except where otherwise authorized or required by law.

(b) For FSA FLP debts, the first instance of debt cancellation is exempt from the monetary limits established in 31 CFR 902.1.

(c) For CCC debts, CCC will, in exercising its authority pursuant to section 4 of the CCC Charter Act (15 U.S.C. 714b) to make final and conclusive settlement and adjustment of any CCC claims, follow the standards specified in 31 CFR 902.2, 902.3, 902.4, 902.6, and 902.7, for the compromise of debts owed to CCC, to the maximum extent practicable. In addition to the bases for the compromise of debts specified in 31 CFR 902.2, CCC may compromise a debt when the approving official with the authority to compromise the debt has determined that such action is in the interest of CCC.

§ 3.20 Standards for suspending or terminating collection activities.

(a) An agency will follow the standards specified in 31 CFR part 903 for the suspension or termination of collection activity pursuant to 31 U.S.C. 3711, except where otherwise authorized or required by law.

(b) CCC will, in exercising its authority pursuant to section 4 of the CCC Charter Act (15 U.S.C. 714b) to make final and conclusive settlement and adjustment of any CCC claims, follow the standards specified in 31 CFR 903.2, 903.3, 903.4, and 903.5(c) and (d), for the suspension or termination of collection activities with regard to debts owed to CCC, to the maximum extent practicable. In addition to the bases for the termination of collection activities specified in 31 CFR 903.3, CCC may terminate collection activities when the approving official with the authority to terminate collection activities with regard to the debt has determined that such action is in the interest of CCC.

§ 3.21 Referrals of debts to Justice.

An agency will promptly refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies will follow the procedures specified in 31 CFR part 904 in making such referrals. Agencies will consult with OGC on all debts which are to be collected in foreign jurisdictions to determine how and if a referral to Justice will take place.

§ 3.22 CCC withholding of payment.

(a) CCC may temporarily withhold issuance of payment of some or all amounts to a debtor under one or more contracts or programs. Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil fraud laws and criminal prosecution or civil fraud action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgement on a claim of CCC has been obtained; or

(7) Such action has been requested by Justice.

§ 3.23 CCC assignment of payment.

(a) No amounts payable to a debtor by CCC will be paid to an assignee of the

debt until amounts owed by the debtor have been collected and applied to the debt.

(b) A payment that is assigned as specified in part 1404 of this title by execution of any CCC assignment form will be subject to offset for any debt owed to CCC, or any USDA agency, or any other Federal agency, any IRS notice of levy, or any judgment in favor of the United States, without regard to the date notice of assignment was accepted by CCC.

(c) Except as provided in 7 CFR 1404.6(b), any indebtedness owed by the assignor to CCC will be offset from any payment which is owed by CCC if such indebtedness was entered on the debt record of the applicable USDA office prior to the date of the filing Forms CCC–251 (Notice of Assignment) and CCC–252 (Instrument of Assignment).

Subpart C—Referral of Debts to Treasury

§ 3.30 General requirements.

(a) Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset with the exception of foreign debt that is exempt from cross-servicing per the Debt Collection Improvement Act of 1996. Additionally, USDA will transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized administrative offset so simultaneous referrals are not always the norm. This subpart specifies the rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized administrative offset are specified in subpart D of this part, and for administrative wage garnishment in subpart E of this part.

(b) When debts are referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), Treasury will service, collect, or compromise the debts, or Treasury will suspend or terminate the collection action, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) In cases where a debtor has more than one FSA FLP loan that has been referred to cross-servicing and Treasury accepts an agreement to compromise or adjust one loan, or several loans, but not all of the debt, cancellation of any loan balances remaining on the compromised or adjusted debt will not be processed for the debtor until:

(1) All payments have been received as agreed; and

(2) All loans referred to the cross-servicing program for that debtor have been returned to FSA, with or without payment agreements.

§ 3.31 Mandatory referral for cross-servicing.

(a) Agencies will transfer to Treasury any legally enforceable nontax debt in excess of $25, or combination of debts less than $25 that exceeds $25 (in the case of a debtor whose taxpayer identification number (TIN) is unknown the applicable threshold is $100), that has or have been delinquent for a period of 180 days in accordance with 31 CFR 285.12 so that Treasury may take appropriate action on behalf of the creditor agency to collect or compromise, or to suspend or terminate collection, of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action. Agencies that transfer delinquent debts to Fiscal Service for the purposes of debt collection and that rely on Fiscal Service to submit the transferred debts for administrative offset on the agency's behalf must transfer the debts to Fiscal Service no later than 120 days after the debts become delinquent in order to satisfy the 120–day notice requirement for purposes of administrative offset in accordance with 31 CFR 285.12(c)(1). For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

(b) The requirement of paragraph (a) of this section does not apply to any debt that:

(1) Is in litigation or foreclosure (see 31 CFR 285.12 (d)(2) for definition);

(2) Will be disposed of under an approved asset sale program (see 31 CFR 285.12(d)(3)(i) for definition);

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under administrative offset procedures within 3 years after the debt first became delinquent;

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the interest of the United States. Federal agencies may request that the Secretary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the Treasury by the USDA CFO.

(7) Is foreign debt; or

(8) Is FSA FLP debt in which case the delinquent loan servicing procedures and appeals process required by the ConAct will apply, including the deferral for cross-servicing until all security has been liquidated, and FSA concludes its review of any pending debt settlement application from the debtor.

(c) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by law or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to Treasury and is not to be transferred even if the debt is more than 180 days past due. When a final agency determination is made after an administrative appeal or review process (including administrative review under subpart F of this part), the creditor agency must transfer such debt to Treasury, if more than 180 days delinquent, within 30 days after the date of the final decision.

§ 3.32 Discretionary referral for cross-servicing.

Agencies will consider referring legally enforceable nontax debts that are less than 180 days delinquent to Treasury or to Treasury-designated ''debt collection centers'' in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection if no USDA payments will be available to collect the debt through administrative offset under § 3.43.

§ 3.33 Required certification.

Agencies referring delinquent debts to Treasury for collection via cross-servicing must certify, in writing, that:

(a) The debts being transferred are valid and legally enforceable;

(b) There are no legal bars to collection; and

(c) The agency has complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency, unless the agency and Treasury agree that Treasury will do so on behalf of the agency.

§ 3.34 Fees.

Federal agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

Subpart D—Administrative Offset

§ 3.40 Scope.

(a) This subpart specifies the procedures to be used by agencies in collecting debts by administrative offset.

(b) This subpart does not apply to:

(1) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(2) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(3) Debts arising under, or payments made under, the Internal Revenue Code (except for offset of tax refunds) or the tariff laws of the United States;

(4) Offsets against Federal salaries (such offsets are covered by subpart F of this part);

(5) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(6) Offsets or recoupments under common law, State law, or Federal laws specifically prohibiting offsets or recoupments of particular types of debts;

(7) Offsets in the course of judicial proceedings, including bankruptcy;

(8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contract Disputes Act, 41 U.S.C. 7101–7109; or

(9) Foreign Debt.

(c) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(d) In bankruptcy cases, agencies may request legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553 on pending or contemplated collections by offset.

§ 3.41 Procedures for notification of intent to collect by administrative offset.

(a) Prior to initiation of collection by administrative offset, a creditor agency must:

(1) Send the debtor a written Notice of Intent to Collect by Administrative Offset, by mail or hand-delivery, of the type and amount of the debt, the intention of the agency to use non-centralized administrative offset (which includes a USDA administrative offset) to collect the debt 30 days after the date of the Notice, the name of the Federal agency or USDA agency from which the creditor agency wishes to collect in the case of a non-centralized administrative offset, the intent to refer the debt to Treasury for collection through centralized administrative offset (including possible offset of tax refunds) 60 days after the date of the Notice if the debt is not satisfied by offset within USDA or by agreement with another Federal agency, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(2) Give the debtor the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) For a review within the agency of the determination of indebtedness in accordance with subpart F of this part; and

(iii) To make a written agreement to repay the debt.

(b) The procedures specified in paragraph (a) of this section are not required when:

(1) The offset is in the nature of a recoupment;

(2) The debt arises under a contract subject to the Contracts Disputes Act;

(3) In the case of a non-centralized administrative offset, the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the agency will give the debtor such notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed to the government; or

(4) The agency previously has given a debtor any of the notice and review opportunities required under this part, with respect to a particular debt (see, for example, § 3.11). With respect to loans paid on an installment basis, notice and opportunity to review under this part may only be provided once for the life of the loan upon the occurrence of the first delinquent installment. Subsequently, if an agency elects this option, credit reporting agencies may be furnished periodically with updates as to the current or delinquent status of the loan account and the borrower may receive notice of referral to TOP for delinquent installments without further opportunity for review. Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review.

(c) The Notice of Intent to Collect by Administrative Offset will be included as part of a demand letter issued under § 3.11 to advise the debtor of all debt collection possibilities that the agency may employ.

§ 3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.

(a) A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 30 days of the date of the Notice of Intent to Collect by Administrative Offset. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A, of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses. A decision by the agency under this paragraph will not be subject to review under subpart F of this part or by NAD under part 11 of this title.

(b) The debtor may, in response to the Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 30 days of the date of the Notice of Intent to Collect by Administrative Offset or 15 days after the date of a decision adverse to the debtor under subpart F of this part. In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the government's interest in collecting the debt against fairness to the debtor. A decision by the agency under this paragraph will not be subject to review under subpart F of this part or by NAD under part 11 of this title. For proposed agreements to pay delinquent amounts owed on FSA FLP

loans, the proposed payments in the agreement must cure the delinquency before the next loan installment is due, or within 90 days, whichever is sooner.

(c) A debtor must request an administrative review of the debt under subpart F of this part within 30 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by non-centralized administrative offset and within 60 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by referral to Treasury for centralized offset against other Federal payments that would include tax refunds.

§ 3.43 Non-centralized administrative offset.

(a) In cooperation with the Federal agency certifying or authorizing payments to the debtor, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt from, for example, a Federal employee's lump sum payment upon leaving government service in order to pay an unpaid advance. Unless prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset.

(b) A non-centralized administrative offset may start 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F of this part upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under § 3.42(b) is not acceptable if the 30-day period for the debtor to request review of the Notice has expired, unless the creditor agency makes a determination under § 3.41(b)(3) that immediate action to effectuate the offset is necessary.

(c) A payment authorizing agency may conduct a non-centralized administrative offset only after certification by a creditor agency that:

(1) The debtor has been provided notice and opportunity for review as specified in § 3.41; and

(2) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully complied with its regulations concerning administrative offset.

(d) Payment authorizing agencies will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the interest of the United States with respect to the program of the payment authorizing agency or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(e) When collecting multiple debts by non-centralized administrative offset, agencies will apply the recovered amounts to those debts in accordance with the interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(f) Debts arising from the shipment of commodities procured by CCC are subject to the following:

(1) Debts due CCC from a carrier for overcharges will be offset against amounts due to the carrier under freight bills involving shipments if:

(i) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(ii) The periods of limitation as specified in 49 U.S.C. 11705(f) or 49 U.S.C. 14705(f) have not expired;

(2) Debts due to CCC from a carrier for loss or damage will be offset against amounts due to the carrier under freight bills involving shipments if:

(i) Timely demand for payment was made on the carrier;

(ii) The carrier has declined payment of the debt without reasonable justification or has ignored the debt; and

(iii) The periods of limitation as specified in 49 U.S.C. 11706(e) or 49 U.S.C. 14706(e) have not expired; and

(3) Any overcharge, loss, or damage debt due to CCC on which the applicable period of limitation has expired may be offset against any amounts owed by CCC to the carrier which are subject to limitation.

§ 3.44 Centralized administrative offset.

(a)(1) Except as provided in paragraph (a)(2) of this section, after the notice and review opportunity requirements of § 3.41 are met, an agency will refer debts which are over 120 days delinquent to Fiscal Service for collection through centralized administrative TOP 61 days after the date of the Notice of Intent to Collect by Administrative Offset provided in accordance with § 3.41. If the debtor requests review under subpart F of this part, referral of the debt must occur within 30 days of the final decision upholding the agency decision to offset the debt if the debt is more than 120 days delinquent.

(2) For FSA FLP and Rural Development debt:

(i) The delinquent loan servicing procedures and timeframes required by the ConAct will be followed; and.

(ii) Offsets will not occur during any moratorium required by the ConAct.

(b) After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F of this part is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 120 days delinquent.

(c) Agencies will refer debts to Treasury for collection in accordance with Treasury procedures specified in 31 CFR 285.5.

(d) The agencies will ensure that:

(1) The names and TINs of debtors who owe debts referred to Treasury under this section will be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment authorizing agency must offset a payment to satisfy the debt.

(2) Any USDA official serving as a Federal disbursing official for purposes of effecting centralized administrative offset under this section, or Fiscal Service on behalf of the disbursing official, must notify a debtor or payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice must include the information specified in paragraph (d)(4) of this section.

(3) As described in 31 CFR 285.5(g)(1) and (2), any USDA official serving as a Federal disbursing official for purposes of centralized administrative offset under this section, or Fiscal Service on behalf of the disbursing official, will furnish a warning notice to a payee or debtor prior to beginning offset of recurring payments. Such warning notice will include the information specified in paragraph (d)(4) of this section.

(4) The notice will include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point

within the creditor agency who will respond to questions regarding the offset.

(5) The priorities for collecting multiple payments owed by a payee or debtor will be those specified in 31 CFR 285.5(f)(3).

§ 3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.

(a) A USDA payment authorizing agency, to satisfy either a non-centralized or centralized administrative offset under §§ 3.43 and 3.44, may offset:

(1) A debtor's pro rata share of USDA payments due any entity in which the debtor participates, either directly or indirectly, as determined by the creditor agency or the payment authorizing agency or:

(2) USDA payments due any entity that the debtor has established, or reorganized, transferred ownership of, or changed in some other manner the operation of, for the purpose of avoiding payment on the claim or debt, as determined by the creditor agency or the payment authorizing agency.

(b) Prior to exercising the authority of this section to offset any portion of a payment due an entity, the creditor agency must have provided notice to that entity in accordance with § 3.41 of its intent to offset payments to the entity in satisfaction of the debt of an individual debtor participating in that entity.

§ 3.46 Offset against tax refunds.

USDA will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402 in accordance with the provisions of 31 U.S.C. 3720A through referral for centralized administrative offset under § 3.44.

§ 3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Upon providing the Office of Personnel Management (OPM) written certification that a debtor has been afforded the procedures provided in § 3.41, creditor agencies may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund.

Subpart E—Administrative Wage Garnishment

§ 3.50 Purpose.

This subpart provides USDA procedures for use of administrative wage garnishment to garnish a debtor's disposable pay to satisfy delinquent nontax debt owed to USDA creditor agencies.

§ 3.51 Scope.

(a) This subpart applies to any agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(b) This subpart will apply notwithstanding any provision of State law.

(c) Nothing in this subpart precludes the compromise of a debt or the suspension or termination of collection action in accordance with the provisions of this part or other applicable law.

(d) The receipt of payments pursuant to this subpart does not preclude an agency from pursuing other debt collection remedies under this part. An agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the salary offset procedures of subpart G of this part.

(f) Nothing in this subpart requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations, or other provisions of this part.

(g) This subpart does not apply to foreign debt.

§ 3.52 Definitions.

As used in this subpart the following definitions will apply:

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local governments, but does not include an agency of the Federal government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

§ 3.53 Procedures.

(a) USDA has determined to pursue administrative wage garnishment of USDA debtors by referral of nontax legally enforceable debts to Treasury for issuance of garnishment orders by Treasury or its contractors.

(b) As specified in § 3.11, agencies must notify debtors of their intent to pursue garnishment of their disposable pay through referral of the debt to Treasury for issuance of an administrative wage garnishment order and provide debtors with the opportunity for review of the existence of the debt under subpart F of this part within 60 days of the date of the demand letter.

(c) Upon expiration of the 60-day period for review, or upon completion of a review under subpart F of this part that upholds the agency's determination of the debt, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized administrative offset.

(d) If Treasury elects to pursue collection through administrative wage garnishment, Treasury, or its contractor, will notify the debtor of its intent to initiate garnishment proceedings and provide the debtor with the opportunity to inspect and copy agency records related to the debt, enter into a repayment agreement, or request a hearing as to the existence or amount of the debt or the terms of the proposed repayment schedule under the proposed garnishment order, in accordance with 31 CFR 285.11.

(e) If the debtor requests a hearing at any time, Treasury will forward the request to the USDA creditor agency to which the debt is owed, and the creditor agency will contact the Office of the CFO (OCFO) for selection of a hearing official. The issuance of proposed garnishment orders by Treasury will not be subject to appeal to NAD under part 11 of this title. Hearings will be conducted in accordance with 31 CFR 285.11(f).

(f) OCFO will provide a copy of the hearing official's final decision to Treasury for implementation with respect to the subject garnishment order.

Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies

§ 3.60 Applicability.

(a) This section establishes consolidated administrative review procedures for debts subject to administrative offset, administrative wage garnishment, and disclosure to credit reporting agencies, under subparts D and E of this part. A hearing or review under this section will satisfy the required opportunity for administrative review by the agency of the determination of a debt for both administrative offset and administrative wage garnishment that is required before transfer to Treasury for collection or collection by the agency through non-centralized administrative offset.

(b) For debt collection proceedings initiated by FSA, CCC, FCIC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901–950cc–2), part 11 of this title will be applicable and not the provisions of this subpart.

§ 3.61 Presiding employee.

An agency reviewing officer may be an agency employee, or the agency may provide for reviews to be done by another agency through an interagency agreement. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

§ 3.62 Procedures.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset, Notice of Disclosure to Credit Reporting Agencies, or Notice of Intent to Collect by Administrative Wage Garnishment, or more than one of the above simultaneously, may request administrative review of the agency's determination that the debt exists and the amount of the debt. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and requests review. The request must be received by the creditor agency within 60 days of the date of the notice in the case of a Notice of Intent to Collect by Administrative Offset that includes referral to Treasury for offset against other Federal payments including tax refunds and 30 days in the case of all other notices.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. An oral hearing is not necessary with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. The agency will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

(c) An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(d) After the debtor requests a hearing, the hearing official will notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a documentary review.

(e) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, any documentary review or hearing will be conducted not less than 10 days and no more than 45 days after receipt of the request for review.

(f) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, a documentary review or hearing will be based on agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 days after the request for review is received.

(g) The hearing procedure will consist of:

(1) Hearings will be as informal as possible and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer need not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be admitted, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least 5 days before the hearing.

(2) The agency will have the burden of going forward to prove the existence or amount of the debt.

(i) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect.

(ii) In addition, the debtor may present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law.

(3) Witnesses must testify under oath or affirmation.

(4) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(5) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(h) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (d) of this section will be deemed as not having timely filed a request for a hearing.

(i) The determination will be made:

(1) Within no more than 30 days after the hearing or receipt of documentation for the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 days.

(2) The written decision will include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) Resolution of any significant procedural matter which was in dispute before or during the hearing or documentary review.

(j) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701–703) as to the following issues:

(1) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been afforded due process; and

(2) The existence of the debt and the propriety of administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(k) The reviewing officer will promptly distribute copies of the decision to the USDA CFO, the agency CFO (if any), the agency debt management officer, the debtor, and the debtor's representative, if any.

Subpart G—Federal Salary Offset

Authority: 5 U.S.C. 5514; and 5 CFR part 550, subpart K.

§ 3.70 Scope.

(a) The provisions of this subpart specify USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) This subpart applies to:

(1) Current USDA employees and employees of other agencies who owe debts to USDA; and

(2) Current USDA employees who owe debts to other agencies.

(c) This subpart does not apply to debts owed by FSA county executive directors or non-Federal county office employees. For debts owed by FSA county executive directors or non-Federal county office employees to CCC or FSA, the salaries of these employees are subject to administrative offset not to exceed 15 percent of the employee's disposable pay. CCC and FSA will follow the notification requirements and procedures for collection by administrative offset as specified in 31 CFR part 285 and 31 U.S.C. 3716.

(d) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. 1–8023); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another law (for example travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

(e) This subpart identifies the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written notice before deductions begin and the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(f) These regulations do not preclude an employee from:

(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by law; or

(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.

(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.

§ 3.71 Definitions.

As used in this subpart the following definitions will apply:

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f).

Salary offset means a reduction of a debt by offset(s) from the disposable pay of an employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 3.72 Coordinating offset with another Federal agency.

(a) When USDA is owed a debt by an employee of another agency, the other agency will not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.

(b) USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by;

(1) A certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment).

(2) That the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(c) Debts may be referred to Treasury under § 3.44 for collection through salary offset in accordance with 31 CFR 285.7.

§ 3.73 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 31 CFR parts 900 through 904 have been satisfied and that salary offset is appropriate, USDA will review the debt to make sure that it is valid and past due.

(b) If USDA determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness will be made and salary offset will not proceed until USDA is assured that the requirements have been met.

§ 3.74 Notice requirements before offset.

Except as provided in paragraph (b) of this section, salary offset will not be made unless USDA first provides the employee with a minimum of 30 days written notice. This Notice of Intent to Offset Salary will state:

(a) That USDA has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) USDA's intention to collect the debt by means of deduction from the

employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The approximate beginning date, frequency, and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay), and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(d) An explanation of USDA requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.17;

(e) The employee's right to inspect and copy USDA records relating to the debt;

(f) The employee's right to enter into a written agreement with USDA for a repayment schedule differing from that proposed by USDA, so long as the terms of the repayment schedule proposed by the employee are agreeable to USDA;

(g) The employee's right to a hearing conducted by a hearing official on USDA's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by USDA;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable laws or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under laws or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications must be directed.

§ 3.75 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition to request a hearing that is received by USDA not later than 30 days from the date of the USDA notice described in § 3.74, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) USDA's proposed salary offset schedule (including percentage).

(b) The petition must be signed by the employee and must identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition must state the objection and the reasons for it.

(c) If the employee files a petition for a hearing later than the 30 days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 3.76 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his or her disposable pay offset as specified in USDA's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 3.75; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 3.77 Hearing.

(a) If an employee timely files a petition for a hearing under § 3.75, USDA will select the time, date, and location for the hearing.

(b) A hearing will not be held and Federal salary offset will not be pursued if the cost of the hearing is greater than the delinquent debt.

(c)(1) Hearings will be conducted by the hearing official designated in accordance with 5 CFR 550.1107; and

(2) Rules of evidence will not be adhered to, but the hearing official will consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(d) USDA will have the burden of going forward to prove the existence of the debt.

(e) The employee requesting the hearing will bear the ultimate burden of proof.

(f) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§ 3.78 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing;

(d) The payment schedule (including percentage of disposable pay), if applicable;

(e) The determination that the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still pursue collection of the debt by other means authorized by this part; and

(f) Notice that the final determination by the hearing official regarding the existence and amount of a debt is subject to referral to Treasury under § 3.33 in the same manner as any other delinquent debt.

§ 3.79 Review of USDA records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy USDA records related to the debt must send a letter to USDA stating his or her intention. The letter must be received by USDA within 30 days of the date of the Notice of Intent to Offset Salary.

(b) *USDA response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, USDA will notify the employee of the location and time when the employee may inspect and copy USDA records related to the debt.

§ 3.80 Written agreement to repay debts as alternative to salary offset.

(a)(1) The employee may propose, in response to a Notice of Intent to Offset Salary, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 days of the date of the Notice of Intent to Offset Salary or 15 days after the date of a hearing decision issued under § 3.78.

(2) For FSA FLP debt, an alternative repayment agreement submitted after a hearing decision must include a payment schedule similar to the payment schedule in the hearing decision and include payment amounts that are at least equal to the payment amounts in the hearing decision.

(b) USDA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. USDA may accept a repayment agreement instead of proceeding by offset. In making this determination, USDA will balance the USDA interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, USDA will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience. For FSA FLP debt, a decision by USDA under this paragraph is not subject to review by NAD under part 11 of this title.

§ 3.81 Procedures for salary offset: when deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in USDA's Notice of Intent to Offset Salary to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with USDA before the expiration of the period provided for in § 3.75, then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of USDA.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see subpart D of this part).

§ 3.82 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as specified in § 3.83.

§ 3.83 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and USDA agree to alternative arrangements for repayment under § 3.80.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than 3 years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* USDA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 3.84 Procedures for salary offset: imposition of interest, penalties, and administrative costs.

Interest, penalties and administrative costs will be charged in accordance with § 3.17.

§ 3.85 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 3.86 Refunds.

USDA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owed to the United States (unless expressly prohibited by law or regulation); or

(b) USDA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 3.87 Agency regulations.

USDA agencies may issue regulations or policies not inconsistent with OPM regulations (5 CFR part 550, subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

Subpart H—Cooperation With the Internal Revenue Service

Authority: 26 U.S.C. 61; 31 U.S.C. 3720A.

§ 3.90 Reporting discharged debts to the Internal Revenue Service.

When USDA discharges a debt, whether for the full value or less, it will report the discharge to the Internal Revenue Service (IRS) in accordance with current IRS instructions.

Subpart I—Adjusted Civil Monetary Penalties

Authority: 28 U.S.C. 2461 note.

§ 3.91 Adjusted civil monetary penalties.

(a) *In general*—(1) *Adjustments.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b) of this section, to take account of inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended.

(2) *Timing.* Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after June 17, 2020.

(3) *Illustrative purposes.* The descriptions of the civil monetary penalties listed in paragraph (b) of this section are for illustrative purposes only. This section does not amend, interpret, implement, or alter in any way the statutory provisions in which the civil monetary penalties listed in paragraph (b) of this section are set. Moreover, the descriptions of the civil monetary penalties listed in paragraph (b) of this section do not necessarily contain a complete description of the circumstances (for example, requirements regarding the ''state of mind'' of the violator(s), requirements regarding the type of law or issuance violated, etc.) under which the penalties are assessed. Persons should consult the statutory text in which the civil monetary penalties are set and any implementing regulations to make applicability determinations.

(b) *Penalties*—(1) *Agricultural Marketing Service.* (i) Civil penalty for improper record keeping codified at 7 U.S.C. 136i–1(d), has: A maximum of $964 in the case of the first offense, and a minimum of $1,872 in the case of subsequent offenses, except that the penalty will be less than $1,872 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of $5,246.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of $1,675 for each such offense and not more than $418 for each day it continues, or a maximum of $418 for each offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum penalty of $3,348 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of $151 and a maximum of $15,300.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $293 and a maximum of $29,276.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $2,928. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of $293.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $100 and a maximum of $1,996.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $2,928.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $1,312 and a maximum of $12,104.

(xii) Civil penalty for failure to obey a cease and desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of $1,312. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $1,517 and a maximum of $15,174.

(xiv) Civil penalty for failure to obey a cease and desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $1,517. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of $11,837.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $2,928.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of $1,378 and a maximum of $13,777.

(xviii) Civil penalty for failure to obey a cease and desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of $1,378. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $2,547.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of $765 and a maximum of $7,846.

(xxi) Civil penalty for failure to obey a cease and desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of $785. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $2,368.

(xxiii) Civil penalty for failure to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $1,184. Each day the violation continues is a separate violation.

(xxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $1,184 and a maximum of $11,837.

(xxv) Civil penalty for failure to obey a cease and desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $1,184. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of $1,928 and a maximum of $19,268.

(xxvii) Civil penalty for failure to obey a cease and desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of $1,926.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of $937 and a maximum of $9,365.

(xxix) Civil penalty for failure to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of $937. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of $937 and a maximum of $9,365.

(xxxi) Civil penalty for failure to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of $937. Each day the violation continues is a separate violation.

(xxxii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified a 7 U.S.C. 6307(c)(1)(A), has a maximum of $1,928.

(xxxiii) Civil penalty for failure to obey a cease and desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of $9,593. Each day the violation continues is a separate violation.

(xxxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $937 and a maximum of $9,365, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of $18,405 and a maximum of $187,296.

(xxxv) Civil penalty for failure to obey a cease and desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $9,639. Each day the violation continues is a separate violation.

(xxxvi) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(c), has a maximum of $18,730.

(xxxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of $883 and a maximum of $8,831.

(xxxviii) Civil penalty for failure to obey a cease and desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of $8,831. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of $1,722.

(xl) Civil penalty for failure to obey a cease and desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of $860. Each day the violation continues is a separate violation.

(xli) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of $1,625 and a maximum of $16,257 for each violation.

(xlii) Civil penalty for failure to obey a cease and desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,625 and a maximum of $16,257. Each day the violation continues is a separate violation.

(xliii) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of $1,625 for each violation.

(xliv) Civil penalty for failure to obey a cease and desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $8,128. Each day the violation continues is a separate violation.

(xlv) Civil penalty for violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of $813 and a maximum of $8,128 for each violation.

(xlvi) Civil penalty for failure to obey a cease and desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $813. Each day the violation continues is a separate violation.

(xlvii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of $1,625 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $9,365 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of $1,478 and a maximum of $14,790 for each violation.

(l) Civil penalty for failure to obey a cease and desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of $14,790 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(a)(1), has a maximum of $15,300 for each violation.

(lii) Civil penalty for failure to obey a cease and desist order under the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(g)(3), has a maximum of $15,300 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of $14,790 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of $1,188 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 and 4510(b), has a maximum of $2,547 for each violation.

(lvi) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of $29,270.

(lvii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of $1,995 and not more than $100 for each day the violation continues.

(lviii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of $1,996 and not more than $100 for each day the violation continues.

(lix) Civil penalty for a stockyard owner, livestock market agency, or dealer, who engages in or uses any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock, codified at 7 U.S.C. 213(b), has a maximum of $29,270.

(lx) Civil penalty for a stockyard owner, livestock market agency, or dealer, who knowingly fails to obey any order made under the provisions of 7 U.S.C. 211, 212, or 213, codified at 7 U.S.C. 215(a), has a maximum of $1,996.

(lxi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b–2(b), has a maximum of $85,150.

(lxii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of $286,049.

(lxiii) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of $36,975 per violation if an agricultural product is not involved in the violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $100 and a maximum of $1,996.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $11,883, and knowing failure to obey a cease and desist order has a civil penalty of $1,782.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by USDA, codified at 7 U.S.C. 2279e(a), has a maximum of $14,790.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $29,726.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified a 7 U.S.C. 7734(b)(1), has a maximum of the greater of: $73,950 in the case of any individual (except that the civil penalty may not exceed $1,479 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), $369,749 in the case of any other person for each violation, $594,129 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,188,259 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized us, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: $70,972 in the case of any individual, except that the civil penalty may not exceed $1,420 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, $354,860 in the case of any other person for each violation, $594,129 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,188,259 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of $354,860 in the case of an individual and $709,721 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $5,856.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $11,444.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to record keeping or filing reports), (f), or (g), as specified at 16 U.S.C. 1540(a)(1), has a maximum of $53,525 for each violation.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as specified at 16 U.S.C. 1540(a)(1), has a maximum of $25,632 for each violation.

(xii) Civil penalty for violating, with respect to terrestrial plants, the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as specified at 16 U.S.C. 1540(a)(1), has a maximum of $1,351 for each violation.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of $168 and a maximum of $860.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as specified in 9 CFR 88.6, has a maximum of $812. Each horse transported in violation of 9 CFR part 88 is a separate violation.

(xv) Civil penalty for knowingly violating section 3(d) or 3(f) of the Lacey Act Amendments of 1981, or for violating any other provision provided that, in the exercise of due care, the violator should have known that the plant was taken, possessed, transported, or sold in violation of any underlying law, treaty, or regulation, has a maximum of $26,615 for each violation, as specified in 16 U.S.C. 3373(a)(1) (but if the plant has a market value of less than $356, and involves only the transportation, acquisition, or receipt of a plant taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty will not exceed the maximum provided for violation of said law, treaty, or regulation, or $26,615, whichever is less).

(xvi) Civil penalty for violating section 3(f) of the Lacey Act Amendments of 1981, as specified in 16 U.S.C. 3373(a)(2), has a maximum of $665.

(3) *Food and Nutrition Service.* (i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of $118,826 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $42,819 for each violation, except that the maximum penalty for violations occurring during a single investigation is $77,106.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $38,553 for each violation, except that the maximum penalty for violations occurring during a single investigation is $77,106.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate, or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $181,484,308.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $15,692 for each violation, except that the maximum penalty for violations occurring during a single investigation is $62,767.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $15,306 for each violation, except that the maximum penalty for violations occurring during a single investigation is $62,767.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $9,365 for each violation.

(ii) [Reserved]

(5) *Forest Service.* (i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of $963,837 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of $144,576 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of $96,384 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of $963,837.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S. C. 4307(a)(2), has a maximum of $21,065.

(6) [Reserved]

(7) *Federal Crop Insurance Corporation.* (i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified in 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or $12,502.

(ii) [Reserved]

(8) *Rural Housing Service.* (i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified in 42 U.S.C. 1490p(e)(2), has a maximum of $204,891 in the case of an individual, and a maximum of $2,048,915 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified in 42 U.S.C. 1490s(a)(2), has a maximum of $36,975.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights laws and regulations, codified in 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages USDA, guaranteed lender, or project that is secured for a loan under Title V, suffered or would have suffered as a result of the violation; or $73,950 per violation.

(9) [Reserved]

(10) *Commodity Credit Corporation.* (i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $16,257 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $16,257 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $16,257 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of $11,883 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect eradication under section 104(d) of the Agricultural Act of 1949, codified at 7 U.S.C. 1444a(d), has a maximum of $14,638 for each offense.

(11) *Office of the Secretary.* (i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of $11,666.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of $11,666.

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 2. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C.1506(l), 1506(o).

Subpart K [Removed and Reserved]

■ 3. Remove and reserve subpart K, consisting of §§ 400.115 through 400.142.

PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

■ 4. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—General Provisions

■ 5. Amend § 761.1 by adding paragraphs (e), (f), and (g) to read as follows:

§ 761.1 Introduction.

* * * * *

(e) Part 3 of this title and 31 CFR part 285 describe the policies and procedures the Agency will follow for non-centralized offset (including administrative offset) and referral to Treasury for centralized offset (TOP), Federal salary offset, Administrative Wage Garnishment, and collection through Treasury's private collection agencies (cross-servicing). Supplemental provisions for FLP purposes are described in part 761, subpart F of this title.

(f) Part 3 of this title and 31 CFR parts 900–904 describe the policies and procedures the Agency will follow for debt settlement authorities pursuant to the Federal Claims Collection Standards. Supplemental provisions for FLP purposes are described in part 761, subpart F of this title.

(g) Part 761, subpart F of this title describes the debt settlement policies and procedures for FLP debt pursuant to the Act.

■ 6. Amend § 761.2 as follows:

■ a. In paragraph (a), add in alphabetical order abbreviations for ''ARA'', ''FCCS'', and ''OIG''; and

■ b. In paragraph (b):

■ i. Revise the definition for ''Adjustment'';

■ ii. Add in alphabetical order a definition for ''Alternative repayment agreement'';

■ iii. Revise the definitions of ''Cancellation'' and ''Debt forgiveness''; and

■ iv. Add in alphabetical order a definition for ''Hearing official''.

The additions and revisions read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(a) * * *

ARA Alternative Repayment Agreement.

* * * * *

FCCS Federal Claims Collection Standards.

* * * * *

OIG Office of the Inspector General, USDA.

* * * * *

(b) * * *

Adjustment means the settlement of an FLP debt for less than the total amount owed. The adjusted amount is collected through a series of payments that are scheduled over time. An adjustment is not a final settlement until all scheduled payments have been made. After applying all payments pursuant to the adjustment agreement, any remaining balance is canceled. The amount canceled is reported to the IRS pursuant to § 3.90 of this title and applicable IRS requirements.

* * * * *

Alternative repayment agreement is a written repayment agreement accepted by both the borrower and the Agency as specified in §§ 3.42(b) and 3.80 of this title. The agreement may allow for payments to be made from the borrower to the Agency as an alternative to collecting the payment amounts through administrative offset, or Federal salary offset.

* * * * *

Cancellation means the final resolution of an FLP debt without receiving payment in full. Any amounts still owed, after applying payments in accordance with approved adjustment and compromise agreements, is canceled. The amount canceled is reported to the IRS pursuant to § 3.90 of this title and applicable IRS requirements.

* * * * *

Debt forgiveness means the reduction or termination of a debt under the Act in a manner that results in a loss to the Agency, through:

(i)(A) Writing down or writing off a debt pursuant to 7 U.S.C. 2001;

(B) Cancellation of remaining amounts owed after compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981;

(C) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency;

(D) Discharging a debt as a result of bankruptcy; or

(E) Releases of liability which result in a loss to the Agency.

(ii) Debt forgiveness does not include:

(A) Debt reduction through a conservation contract;

(B) Any writedown provided as part of the resolution of a discrimination complaint against the Agency;

(C) Prior debt forgiveness that has been repaid in its entirety;

(D) Consolidation, rescheduling, reamortization, or deferral of a loan; and

(E) Forgiveness of a YL debt due to circumstances beyond the borrower's control.

* * * * *

Hearing official. For the purposes of salary offset, the hearing official is an Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA. For the purposes of administrative wage garnishment, the hearing official is selected pursuant to part 3, subpart E of this title.

* * * * *

■ 7. Add Subpart F to read as follows:

Subpart F—Farm Loan Programs Debt Settlement

Sec.
761.401 Purpose.
761.402 Abbreviations and definitions.
761.403 General.
761.404 Eligibility.
761.405 Application.
761.406 Types of debt settlement.
761.407 Failure to pay.
761.408 Administrator authority.

§ 761.401 Purpose.

(a) This subpart describes the Agency's policies for debt settlement as authorized by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921, 7 U.S.C. 1981, 1981a, 1981d, and 2008h).

(b) FLP debts that cannot be debt settled using CONACT debt settlement authority such as when a borrower has received previous debt forgiveness on another direct loan made under the CONACT, will be processed as specified in 31 U.S.C. chapter 37 and 31 CFR parts 900 through 904.

§ 761.402 Abbreviations and definitions.

(a) Abbreviations and definitions for terms used in this subpart are provided in 7 CFR part 3 and § 761.2.

(b) Definitions used only in this subpart include:

(1) *Third party converter* means an individual or entity who:

(i) Is in possession of agency security property, or money from the sale of security, in relation to a loan or other debt that the individual or entity was not liable for; or

(ii) Assists, or participates knowingly or unknowingly, in the transportation or sale of agency security, in relation to a loan or other debt that the individual or entity was not liable for; or

(iii) Assists, or participates knowingly or unknowingly, in temporarily or permanently relocating or concealing the location of agency security property, or money from the sale of agency security, in relation to a loan or other debt that the individual or entity was not liable for.

(2) [Reserved]

§ 761.403 General.

(a) The Agency will settle debts that result from, except as otherwise specified in this section:

(1)(i) Farm Ownership loans (part 764, subpart D of this chapter), including down payment loans (764, subpart E of this chapter);

(ii) Operating loans (part 764, subpart G of this chapter), including microloans part 764 of this chapter), and youth loans (part 764, subpart H of this chapter);

(iii) Emergency loans (part 764, subpart I of this chapter);

(iv) Conservation loans (part 764, subpart F of this chapter);

(v) Economic Emergency loans (serviced under parts 761 through 767 of this chapter); softwood timber loans; Soil and Water loans; Individual Recreation Loans; Irrigation and Drainage loans; and Shift-in-land-use (Grazing Association) loans;

(2) Costs associated with servicing a borrower's account including, but not limited to, Uniform Commercial Code filing fees, surveys, appraisals, protective advances, and liquidation expenses;

(3) Debts reduced to judgment;

(4) Non-Program Loans;

(5) Amounts the Agency is authorized to recapture through agreements such as the Shared Appreciation Agreement (part 766, subpart E of this chapter);

(6) Loss claims paid on guaranteed loans (part 762 of this chapter);

(7) Unauthorized assistance;

(8) Amounts the Agency may collect from third party converters, or other individuals or entities having possession of security for FLP loans or monies obtained through the sale of FLP loan security; and

(9) Debt returned to the Agency from the Treasury cross-servicing program.

(b) The debtor's signature is not required to process some debt settlement actions. These cases include, but are not limited to, debts discharged in bankruptcy and debts returned from Treasury's cross-servicing program with amounts still owing when no further collection can be taken.

(c) FSA will not engage in settlement of a debt if:

(1) Foreclosure of security has been initiated and is pending with Justice, unless Justice has advised FSA that it does not object to the settlement; or

(2) Debts that have been referred to Justice for a judgment, or a judgement has been obtained by the United States Attorney or Justice, unless Justice closes its file and releases the judgement back to FSA for continued servicing; or

(3) The debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested; or

(d) The Agency will consider settlement of a debt only when:

(1) All security has been liquidated and the proceeds, less any prior lien amounts, have been applied to the debt; or the Agency received a lump sum payment equal to the security's current market value, less any prior lien amounts, and

(2) Payment is received based on the Agency's determination of the amount the borrower can pay to resolve the remaining balance owed on the unsecured debt.

(3) The lump sum payment made under paragraph (d)(1) of this section for the security's market value may be submitted by the borrower, an individual authorized to act for the borrower pursuant to a power of attorney document or court order, or an individual who is not an obligor on the debt but who has an ownership interest in the security.

(e) If an FLP loan has been accelerated and all security has been liquidated, and the agency has approved an adjustment debt settlement offer in accordance with this subpart, voluntary payments and involuntary payments (such as offsets) will be applied in the following order, as applicable:

(1) Recoverable costs and protective advances plus interest;

(2) Loan principal;

(3) Deferred non-capitalized interest;

(4) Accrued deferred interest; and

(5) Interest accrual to date of payment.

(f) Settlement of FLP debt referred to Treasury's cross-servicing program and returned to the Agency as uncollectible will not be processed for the borrower until all FLP debts referred to the cross-servicing program for that borrower have been returned, with or without payment agreements.

§ 761.404 Eligibility.

(a) A borrower is eligible for debt settlement if the borrower:

(1) Meets the requirements for the particular type of debt settlement under this part; and

(2) Submits a complete application for debt settlement as specified in § 761.405.

(b) All parties liable for the debt must submit a complete application with the following exceptions:

(1) The applicable information required in § 761.405 can be provided by the administrator or executor of the Estate, heir, or other authorized person who can sign the debt settlement application; or compiled by FSA staff when a signature cannot be obtained.

(2) The debt may be settled when the borrower has no known assets or income from which collection can be made, has disappeared and cannot be located without undue expense, and there is no security remaining for the debt.

(3) In cases where the full amount of the unsecured debt cannot be collected in a reasonable time by legal action or through enforced collection proceedings, the Agency may consider a debt settlement offer submitted by a borrower without requiring a complete application. When evaluating these offers, the Agency will consider the likelihood of the debtor obtaining a larger income or additional assets, including inheritance prospects within 5 years, from which legal or enforced collection could be made.

(c) A borrower is not eligible for debt settlement if:

(1) The borrower is indebted on another active FLP loan that the borrower cannot or will not debt settle; or

(2) The debt has been referred to the OIG, OGC, or Justice because of suspected civil or criminal violation, unless investigation was declined or advice was provided that the debt can be canceled, compromised, or adjusted.

§ 761.405 Application.

(a) A borrower requesting debt settlement must submit complete and accurate information from which the Agency can make a full determination of the borrower's financial circumstances and repayment ability. Except for the situations listed in § 761.404(b), each liable party, must submit the following:

(1) One completed original debt settlement application on the applicable Agency form signed by all parties liable for the debt;

(2) A current financial statement;

(3) A cash flow projection for the next production or earnings period;

(4) Verification of employment or other earned income, including verification of a nondebtor spouse's income which will be included as available to pay family living expenses;

(5) Verification of assets including, but not limited to, cash, checking accounts, savings accounts, certificates of deposit, individual retirement accounts, retirement and pension funds, mutual funds, stocks, bonds, and accounts receivable;

(6) Verification of debts greater than $1,000;

(7) Copies of complete Federal income tax returns for the previous 3 years; and

(8) Any other items requested by the Agency to evaluate the debtor's financial condition.

(b) [Reserved]

§ 761.406 Types of debt settlement.

(a) *Compromise.* The Agency may compromise a debt owed to the Agency if the requirements of this subpart are met and:

(1) The borrower pays a lump sum as a compromise for the remaining unsecured debt; and

(2) The amount is reasonable based on the Agency's determination of what the borrower can pay to settle the debt.

(b) *Adjustment.* The Agency may settle a debt owed to the Agency through an adjustment agreement if the requirements of this subpart are met and:

(1) The borrower agrees to pay the adjustment amount for a period of time not to exceed 5 years; and

(2) The amount is reasonable based on the Agency's determination of what the borrower can pay to settle the debt; and

(3) The borrower provides documentation that funds are, or will be, available to pay the adjustment offer through its term.

(c) *Cancellation.* The Agency may cancel a debt owed to the Agency if the requirements of this subpart are met and the application and supporting documents indicate that the borrower is unable to pay a compromise or adjustment offer.

§ 761.407 Failure to pay.

(a) Failure to pay any compromise amount approved by FSA by the date agreed will result in cancellation of the compromise agreement.

(b) Failure to pay debt adjustment amounts approved by FSA by the dates agreed will result in cancellation of the adjustment agreement.

(c) A debtor who has entered into an agreement under this subpart may request that FSA extend a repayment date for 90 days. The debtor must provide information that supports the basis for the request at the time the request is made.

(d) If a debtor is delinquent under the terms of an adjustment agreement and FSA determines the debtor is likely to be financially unable to meet the terms of the agreement, the existing agreement may be cancelled and the debtor may be allowed to apply for a different type of settlement more consistent with the debtor's repayment ability.

(e) If an agreement is cancelled, any payments received will be retained as payments on the debt owed.

§ 761.408 Administrator authority.

On an individual case basis, the Agency may consider granting an exception to any requirement of this part if:

(a) The exception is not inconsistent with the authorizing statute or other applicable law; and

(b) The Agency's financial interest would be adversely affected by acting in accordance with this part and granting an exception would resolve or eliminate the adverse effect upon its financial interest.

PART 765—FARM LOAN PROGRAMS, DIRECT LOAN SERVICING—REGULAR

■ 8. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart D—Borrower Payments

§ 765.155 [Amended]

■ 9. Amend § 765.155 in paragraph (d) by removing the words ''attempt to settle the debt in accordance with subpart B of 7 CFR part 1956'' and adding the words ''service the debt in accordance with part 761, subpart F of this chapter'' in their place.

Subpart I—Transfer of Security and Assumption of Debt

■ 10. Amend § 765.406 by revising paragraph (b)(3) to read as follows:

§ 765.406 Release of transferor from liability.

* * * * *

(b) * * *

(3) If an outstanding balance will remain and all of the transferor's security has been transferred, the transferor may pay the remaining balance or request debt settlement in accordance with part 761 subpart F of this chapter. If the transferor does not resolve the debt by paying the remaining balance or submitting a debt settlement offer that is acceptable to the Agency, the Agency will service the debt in accordance with part 3 of this title using all applicable collection tools including, but not limited to, administrative offset, AWG, cross-servicing, Federal salary offset, and TOP.

* * * * *

PART 766—FARM LOAN PROGRAMS, DIRECT LOAN SERVICING—SPECIAL

■ 11. The authority citation for part 766 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart C—Loan Servicing Programs

§ 766.101 [Amended]

■ 12. Amend § 766.101 as follows:

■ a. In paragraph (b)(1), remove the words ''(Appendix A to this subpart)'';

■ b. In paragraph (b)(2), remove the phrase ''FSA–2510'' and add the phrase ''FSA–2510 (Appendix A to this subpart) or FSA–2510–IA'' in its place;

■ c. In paragraph (b)(3), remove the words ''(Appendix C to this subpart)''; and

■ d. In paragraph (d)(2), remove the phrase ''FSA–2510'' and add the phrase ''FSA–2510 or FSA–2510–IA'' in its place.

§ 766.102 [Amended]

■ 13. Amend § 766.102 in paragraph (c) by removing the words ''subpart B of 7 CFR part 1956'' and adding the words ''part 761, subpart F of this chapter'' in their place.

§ 766.103 [Amended]

■ 14. Revise § 766.103 in paragraph (b) introductory text by removing the phrase ''FSA–2510'' and adding the phrase ''FSA–2510 or FSA–2510–IA'' in its place.

■ 15. Revise appendix A to subpart C to read as follows:

Appendix A to Subpart C of Part 766—FSA–2510, Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due

This appendix contains the notification (form letter) that the Farm Service Agency will send to borrowers who are at least 90 days past due on their loan payments. It provides information about the loan servicing that is available to the borrower. As stated below on the notification, the borrower is to respond within 60 days from receiving the notification (see § 766.101(b)(2) and (d)(2) for the requirements). The notification is provided here as required by 7 U.S.C. 1981d.

BILLING CODE 3410–KS–P

This form is available electronically.

FSA-2510
(April 2020)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE 90 DAYS PAST DUE

Date

[Borrower's Name]
[Borrower Name/Address]
[Borrower Address]
[City, State, Zip Code]

[MAILING INSTRUCTIONS]

This notice informs you that you are seriously delinquent with your Farm Loan Programs (FLP) loan payment and notifies you of options that may be available to you. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you repay your loan or retain your farm property and settle your FLP debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U.S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

The Agency will accelerate your loans if you do not bring your account current or timely apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or Incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at {202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202} 690-7442; or (3) email: program.intake@usda.gov. USDA Is an equal opportunity provider, employer, and lender.

***Paperwork Reduction Act**: This information collection is exempted from the Paperwork Reduction Act as specified in 5 CFR 1320.4(a)(2) because the form is used when FSA conducts administrative action against individuals or debtors.*

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of Agency handbooks and forms;
(h) Reconsideration, mediation, and appeal to NAD;
(i) Challenging the Agency appraisal;
(j) Acceleration and foreclosure;
(k) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You cannot repay your FLP debt due to one of the following circumstances beyond your control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;
(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
(iii) Widespread economic conditions such as low commodity prices;
(iv) Damage or destruction of property essential to the farming operation; or
(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.
(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.
(4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized, accrued interest becomes principal and interest is charged on the new principal balance. The interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms. This means that operating loans, including carry over annual operating and family living expenses may have repayment terms of up to 15 years.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;
(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cashier's check or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 10 acres of land. If you cannot pay cashier's check or U.S. Treasury check or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.
(4) You cannot sublease the property.
(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, any FLP loan account balance remaining after liquidation of loan collateral will be forwarded to the Department of Treasury for cross-servicing and administrative wage garnishment.

Settlement alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) Forms, documentation, and information needed to apply

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2511, "Borrower Response to Notice of the Availability of Loan Servicing-For Borrowers who Received FSA-2510," signed by all borrowers.
(2) FSA-2001, "Request for Direct Loan Assistance."
(3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.
(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.
(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.
(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.
(7) FSA-2037, "Farm Business Plan Worksheet - Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.
(8) FSA-2038, "Farm Business Plan Worksheet -Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.
(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.
(11) FSA-2732, "Debt Settlement Application." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.
(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;
(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and
(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) How to get copies of Agency handbooks and forms

Copies of the forms for requirements (f)(l) through (f)(8) and (f)(l l) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) Reconsideration, mediation, and appeal to NAD

Reconsideration, mediation, and appeal rights pursuant to 7 CFR parts 780 and 11, respectively, will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration – according to FSA's appeal procedures in 7 CFR part 780.

Mediation – according to FSA's appeal procedures in 7 CFR part 780.

Appeal to NAD – according to the NAD appeal procedures in 7 CFR part 11.

(i) Challenging the Agency appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your request, you may 1.) obtain a USPAP compliant technical appraisal review by a State Certified General Appraiser of the Agency appraisal and submit it to the Agency prior to reconsideration or an appeal hearing, 2.) obtain an independent appraisal, and 3.) possibly negotiate the appraised value based on the specifics of the two appraisals.

If this applies to you, the Agency will provide additional information in the notification letter advising you of the Agency's decision concerning your loan servicing application.

(j) Acceleration and foreclosure

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral if, with prior Agency approval, you:

(1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.
(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;
(2) Pay your FLP loan accounts in full;
(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

(k) <u>The right not to be discriminated against</u>

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

For more information or if you have any questions, please contact [this office or the specific office name]at [County Office Address] or telephone [phone number].

1A. Authorized Agency Official Name	1B. Signature	1C. Title

■ 16. Revise appendix B to subpart C to read as follows:

Appendix B to Subpart C of Part 766—FSA–2510–IA, Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due (For Use in Iowa Only)

This appendix contains the notification (form letter) that the Farm Service Agency will send to borrowers with loans in Iowa who are at least 90 days past due on their loan payments. It provides information about the loan servicing that is available to the borrower. As stated below on the notification, the borrower is to respond within 60 days from receiving the notification (see § 766.101(b)(2) and (d)(2) for the requirements). The notification is provided here as required by 7 U.S.C. 1981d.

This form is available electronically.

FSA-2510-IA
(April 2020)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Position 4

NOTICE OF AVAILABILITY OF LOAN SERVICING TO BORROWERS WHO ARE 90 DAYS PAST DUE (For Use in Iowa Only)

Date

[Borrower's Name]
[Borrower Name/Address]
[Borrower Address]
[City, State, Zip Code]

[MAILING INSTRUCTIONS]

This notice informs you that you are seriously delinquent with your Farm Loan Programs (FLP) loan payment and notifies you of options that may be available to you. The Agency's primary loan servicing programs, Conservation Contract Program, current market value buyout, Homestead Protection Program, and debt settlement programs may help you repay your loan or retain your farm property and settle your FLP debt.

How to apply

To apply, you must complete, where applicable, and provide all items required in paragraph (f), within 60 days of the date you receive this notice.

Help in responding to this notice

The servicing options available to you may become complicated. You may need help to understand them and their impact on your operation. You may want to ask an attorney to help you or there are organizations that give free or low-cost advice to farmers. You may contact your State Department of Agriculture or the U.S. Department of Agriculture (USDA) Extension Service for available services in your State.

Note: Agency employees cannot recommend a particular attorney or organization.

Who will decide if you qualify?

After you submit a complete application, the Agency will determine if you meet all eligibility requirements and can develop a farm operating plan that shows that you can pay all debts and expenses.

What happens if you do not bring the account current or apply within 60 days?

The Agency will accelerate your loans if you do not bring your account current or timely apply for loan servicing. This means the Agency will take legal action to collect all the money you owe to the Agency under FLP. After acceleration of your loan accounts, the Agency will start foreclosure proceedings. The Agency will repossess or take legal action to sell your real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also obtain and file judgments against you and your property or refer your account to the Department of the Treasury for collection.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. USDA Is an equal opportunity provider, employer, and lender.

***Paperwork Reduction Act**: This information collection is exempted from the Paperwork Reduction Act as specified in 5 CFR 1320.4(a)(2) because the form is used when FSA conducts administrative action against individuals or debtors.*

Included with this notice you will find information on:

(a) Primary loan servicing programs;
(b) Conservation Contract Program;
(c) Current market value buyout;
(d) Homestead Protection Program;
(e) Debt settlement programs;
(f) Forms, documentation, and information needed to apply;
(g) How to get copies of Agency handbooks and forms;
(h) Reconsideration, mediation, and appeal to NAD;
(i) Challenging the Agency appraisal;
(j) Acceleration and foreclosure;
(k) The right not to be discriminated against.

(a) Primary Loan Servicing Programs

Eligibility

You must meet the following eligibility requirements to obtain primary loan servicing:

(1) You cannot repay your FLP debt due to one of the following circumstances beyond your control:

(i) Illness, injury, or death of a borrower or other individual who operates the farm;
(ii) Natural disaster, adverse weather, disease, or insect damage which caused severe loss of agricultural production;
(iii) Widespread economic conditions such as low commodity prices;
(iv) Damage or destruction of property essential to the farming operation; or
(v) Loss of, or reduction in, your or your spouse's essential non-farm income.

(2) You do not have non-essential assets for which the net recovery value is sufficient to pay the delinquent portion of the loan. The Agency cannot write down or write off debt that you could pay with the value of your equity in these assets.
(3) If you are in non-monetary default as a result of non-compliance with the Agency's loan agreements, you must resolve the non-monetary default prior to closing the servicing action.
(4) You must have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

Time limits

If the Agency determines that you can develop a feasible plan and are eligible for primary loan servicing, you will have 45 days from the date you receive the Agency's offer to accept loan servicing.

Lien requirements

If you are offered loan servicing and accept the offer, you must agree to give the Agency a lien on your other assets and you must provide this lien at closing.

Youth Loans

If you have a Youth Loan, it is not eligible for debt writedown, current market value buyout, or limited resource interest rates, but can be rescheduled or deferred. This has no effect on any other loans you may have with the Agency.

Loan consolidation, rescheduling, and reamortization

In loan consolidation, the unpaid principal and interest of two or more operating loans can be combined into one larger operating loan.

In loan rescheduling, the repayment schedule may be changed to cure the delinquency and give you new terms to repay loans made for equipment, livestock, or annual operating purposes.

In loan reamortization, the repayment schedule may be changed to cure the delinquency and give you a new schedule of repayment on loans made for real estate purposes.

When loans are consolidated, rescheduled or reamortized, accrued interest becomes principal and interest is charged on the new principal balance. The interest rate will be the lesser of:

(1) The interest rate for that type of loan on the date a complete servicing application was received;
(2) The interest rate for that type of loan on the date of restructure; or
(3) The lowest original loan note rate on any of the original notes being restructured.

In addition, the Agency will consider the maximum loan terms. This means that operating loans, including carry over annual operating and family living expenses may have repayment terms of up to 15 years.

Limited resource interest rate

Limited resource interest rates are available for certain types of loans. If you have existing loans which are not at the limited resource rate, and a limited resource rate is available, the Agency will consider reducing the rate of the loans. The limited resource interest rate can be as low as five percent, however, this rate may change depending on what it costs the Government to borrow money.

For information about current interest rates, contact this office.

Loan deferral

Partial or full payments of principal and interest may be temporarily delayed for up to 5 years. You will only be considered for loan deferral if the loan servicing programs discussed above will not allow you to pay all essential family living and farm operating expenses, maintain your property, and pay your debts.

You must be able to show through a farm operating plan that you are unable to pay all essential family living and farm operating expenses, maintain your property, and pay your debts. The farm operating plan must also show that you will be able to pay your full installment at the end of the deferral period.

The interest that accrues during the deferral period must be paid in yearly payments for the rest of the loan term after the deferral period ends.

Debt writedown

Debt writedown can reduce the principal and interest on your loan. The Agency offers a writedown only when the loan servicing programs discussed above and the Conservation Contract Program, if requested, will not result in a feasible plan. To receive debt writedown, the value of your restructured loan must be equal to or greater than the recovery value to the Agency from foreclosure and repossession of your security property.

The recovery value is the market value of:

(1) The collateral pledged as security for FLP loans minus expenses (such as the sale costs, attorneys' fees, management costs, taxes, and payment of prior liens) on the collateral that the Agency would have to pay if it foreclosed, or repossessed, and sold the collateral;
(2) Any collateral that is not in your possession and has not been released for sale by the Agency in writing; and
(3) Any other non-essential assets you may own.

A qualified appraiser determines the value of the collateral and any other assets you own. You may receive a writedown only if you have not previously received any form of debt forgiveness on any other FLP direct loan. The maximum amount of debt that can be written down on all direct loans is $300,000.

Shared Appreciation Agreement

If you own real estate and receive a debt writedown, you must sign a Shared Appreciation Agreement. The term of the agreement is 5 years. Under the terms of the agreement you must repay all or a part of the amount written down at the maturity of your Shared Appreciation Agreement if your real estate collateral increased in value. Payment of shared appreciation will be required prior to the maturity of your Shared Appreciation Agreement if you:

(1) Sell or convey the real estate;
(2) Stop farming;
(3) Pay off your entire FLP debt; or
(4) Have your FLP accounts accelerated by the Agency.

If any of these events occur within the first 4 years of the agreement, you will have to pay 75 percent of the increase in value of the real estate. If any of these events occur after the fourth anniversary of the agreement, or if the Shared Appreciation Agreement matures without having previously been fully triggered, you will have to pay only 50 percent of the increase in value. You will not have to pay more than the amount of the debt written down.

Time limits

To buyout your FLP debt at the current market value, you must pay the Agency within 90 days of the date you receive the offer.

Method of payment

To buyout your FLP debt at the current market value, you must pay by cashier's check or U.S. Treasury check. The Agency will not make or guarantee a loan for this purpose.

(b) Conservation Contract Program

You may request a Conservation Contract to protect highly erodible land, wetlands, or wildlife habitats located on your real estate property that serves as security for your FLP debt. In exchange for such contract, the Agency would reduce your FLP debt. The amount of land left after the contract must be sufficient to continue your farming operation.

(c) Current Market Value Buyout

If the analysis of your debt shows that you cannot achieve a feasible plan even if the present value of your FLP debt is reduced to the value of the security, the Agency may offer you buyout of your FLP debt. You would pay the market value of all FLP security and non-essential assets, minus any prior liens. The market value is determined by a current appraisal completed by a qualified appraiser. In exchange, your loans would be satisfied.

Limits

To receive a current market value buyout offer:

(1) You must not have previously received any form of debt forgiveness from the Agency on any other direct FLP loan;
(2) The maximum debt to be written off with buyout does not exceed $300,000; and
(3) You must not have non-essential assets with a net recovery value sufficient to pay your account current.

Eligibility

To qualify, you must prove that:

(1) You cannot repay your delinquent FLP debt due to circumstances beyond your control; and
(2) You have acted in good faith in all past dealings with the Agency and in accordance with your loan agreements.

(d) Homestead Protection Program

Under the Homestead Protection Program, you may repurchase your primary residence, certain outbuildings, and up to 40 acres of land. If you cannot pay cashier's check or U.S. Treasury check or Agency financing is not available, you may lease your primary residence. The lease will include an option for you to purchase the property you lease.

This program may apply when primary loan servicing, the Conservation Contract Program, or current market value buyout is not available or not accepted.

You must agree to give the Agency title to your land at the time the Agency signs the Homestead Protection Agreement with you. The Agency will compute the costs of taking title including the cost of paying other creditors with outstanding liens on the property. The Agency will take title only if it can obtain a positive recovery.

Eligibility requirements

(1) Your gross annual income from the farming operation must have been similar to other comparable operations in your area in at least two of the last 6 years.
(2) Sixty percent (60%) of your gross annual income in at least two of the last 6 years must have come from the farming operation.
(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you may still qualify.
(4) You must be the owner of the property immediately prior to the Agency obtaining title.

Property restrictions and easements

The Agency may place restrictions or easements on your property which restrict your use if the property is located in a special area or has special characteristics. These restrictions and easements will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible lands.

Leasing the homestead property

(1) You must pay rent to the Agency to lease the property determined eligible for homestead protection. The rent the Agency charges will be similar to comparable property in your area.
(2) You must maintain the property in good condition during the term of the lease.
(3) You may lease the property for up to 5 years but no less than 3 years.
(4) You cannot sublease the property.
(5) If you do not make the rental payments to the Agency, the Agency will cancel the lease and take legal action to force you to leave.
(6) Lease payments are not applied toward the final purchase price of the property.

Purchasing the homestead protection property

You can repurchase your homestead property at market value at any time during the lease. The market value of the property will be decided by a qualified appraiser and will reflect the value of the land after any placement of a restriction or easement such as a wetland conservation easement.

(e) Debt Settlement Programs

You can apply for debt settlement at any time; however, these programs are usually used only after it has been determined that primary loan servicing programs and the Conservation Contract Program cannot help you. Under the debt settlement programs, the debt you owe the Agency under FLP may be settled for less than the amount you owe. These programs are subject to the discretion of the Agency and are not a matter of entitlement or right. If you do not have any Agency security, you may apply for debt settlement only. If you do not apply, or do not receive approval of a debt settlement request, any FLP loan account balance remaining after liquidation of loan collateral will be forwarded to the Department of Treasury for cross-servicing and administrative wage garnishment.

Settlement alternatives

Settlement alternatives include:

(1) Compromise: A lump-sum payment of less than the total FLP debt owed;
(2) Adjustment: Two or more payments of less than the total amount owed to the Agency. Payments can be spread out over a maximum of 5 years if the Agency determines you will be able to make the payments as they become due; and
(3) Cancellation: Satisfaction of Agency debt without payment.

Note: The Agency will not finance these alternatives.

Processing and requirements

If you sell loan collateral, you must apply the proceeds from the sale to your FLP loans before you can be considered for debt settlement. In the case of compromise or adjustment you may keep your collateral, if you pay the Agency the market value of your collateral along with any additional amount the Agency determines you are able to pay.

Debt amounts which are collectible through administrative offset, judgment, or by the Department of the Treasury will not be settled through debt settlement procedures. You must certify that you do not have assets or income in addition to what you stated in your application. If you qualify, your application must also be approved by the State Executive Director or the Administrator, depending on the amount of the debt to be settled.

(f) Forms, documentation, and information needed to apply

A complete application for primary loan servicing must include items (1) through (10). Additional information is required as noted if you want to be considered for the Conservation Contract Program or debt settlement programs. If you need help to complete the required forms, you may request an Agency official to assist you. The forms for requirements (1) through (8) and (11) are included with this package.

(1) FSA-2511, "Borrower Response to Notice of the Availability of Loan Servicing-For Borrowers who Received FSA-2510-IA," signed by all borrowers.
(2) FSA-2001, "Request for Direct Loan Assistance."
(3) FSA-2002, "Three Year Financial History," or other financial records, including copies of your income tax returns and any supporting documents, for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. If your copies of tax returns are not readily available, you can obtain copies from the Internal Revenue Service.
(4) FSA-2003, "Three Year Production History," or any other format that provides production and expense history for crops, livestock, livestock products, etc., for each of the 3 years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the Agency case file. You must be able to support this information with farm records.
(5) FSA-2004, "Authorization to Release Information." The Agency will use this form to verify your debts and assets, as well as your non-farm income.
(6) FSA-2005, "Creditor List." The Agency will use this form to verify your debts. Any debts less than $1,000 can be verified by a credit report. If debts of $1,000 or more appear on your credit report and the creditor is not listed on FSA 2005, the application cannot be considered complete.
(7) FSA-2037, "Farm Business Plan Worksheet - Balance Sheet." In the case of an entity, the entity and all entity members must provide current financial statements.
(8) FSA-2038, "Farm Business Plan Worksheet -Projected/Actual Income and Expenses," or other acceptable farm operating plan.

(9) AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification." You will be required to complete this form if the one you have on file does not reflect all the land you own and lease.
(10) SCS-CPA-026, "Highly Erodible Land and Wetland Conservation Determination." This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with the Agency.
(11) FSA-2732, "Debt Settlement Application." Complete this form only if you wish to apply for debt settlement. You must also comply with any Agency request for additional information needed to process a debt settlement request.
(12) If you are applying for a Conservation Contract, a map or aerial photo of your farm identifying the portion of the land and approximate number of acres to be considered.

Divorced spouses

If you are an FLP borrower who has left the farming operation due to divorce, you may request release of liability. To be released of liability after a divorce, you must present the Agency with the following within 60 days of receiving this notice:

(1) A divorce decree or property settlement document which states the remaining party will be responsible for all repayment to the Agency;
(2) Evidence that you have conveyed your ownership interest in FLP security to the remaining party; and
(3) Evidence that you do not have any repayment ability for the FLP loan through cash, income, or other non-essential assets.

The Agency will make a determination on your request and will inform you of the decision within 60 days of receiving your request.

If you are not released of liability, you will need to include all of your relevant financial information if applying for primary loan servicing, homestead protection, or debt settlement programs.

(g) How to get copies of Agency handbooks and forms

Copies of the forms for requirements (f)(1) through (f)(8) and (f)(11) have been included in this package. You may obtain copies of Agency handbooks, which include the pertinent regulations, describing available programs or additional copies of forms from this office.

(h) Reconsideration, mediation, and appeal to NAD

Reconsideration, mediation, and appeal rights pursuant to 7 CFR parts 780 and 11, respectively, will be provided to you if the Agency makes an adverse decision on your request for loan servicing or prior to acceleration of your account.

Reconsideration – according to FSA's appeal procedures in 7 CFR part 780.

Mediation – according to FSA's appeal procedures in 7 CFR part 780.

Appeal to NAD – according to the NAD appeal procedures in 7 CFR part 11.

(i) Challenging the Agency appraisal

If you timely submit a complete application for primary loan servicing, but disagree with the appraisal used by the Agency for processing your request, you may 1.) obtain a USPAP compliant technical appraisal review by a State Certified General Appraiser of the Agency appraisal and submit it to the Agency prior to reconsideration or an appeal hearing, 2.) obtain an independent appraisal, and 3.) possibly negotiate the appraised value based on the specifics of the two appraisals.

If this applies to you, the Agency will provide additional information in the notification letter advising you of the Agency's decision concerning your loan servicing application.

(j) Acceleration and foreclosure

If you do not appeal an adverse determination, if you appeal, but are denied relief on appeal, or if you do not otherwise resolve your delinquency, the Agency will accelerate your loan accounts and demand payment of the entire debt. You may prevent Agency foreclosure on the loan collateral if, with prior Agency approval, you:

(1) Sell all loan collateral for not less than its market value and apply all proceeds to your creditors in order of lien priority.
(2) Transfer the collateral to someone else and have that person assume all or part of your FLP debt.
(3) Transfer the collateral to the Agency.

If any of these options result in payment of less than you owe, you may apply for debt settlement, even if you applied before and were denied. However, applications for debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, administrative offset, and foreclosure.

If the Agency determines that you cannot qualify for debt settlement, you can:

(1) Pay your FLP loan accounts current;
(2) Pay your FLP loan accounts in full;
(3) Request reconsideration, mediation or appeal.

If your real estate security contains your primary residence and becomes inventory property of the Agency, homestead protection rights will be provided.

(k) The right not to be discriminated against

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The servicing programs described by this Notice are subject to applicable Agency regulations published at 7 CFR Part 766.

For more information or if you have any questions, please contact [this office or the specific office name]at [County Office Address] or telephone [phone number].

1A. Authorized Agency Official Name	1B. Signature	1C. Title

BILLING CODE 3410–KS–C

Appendix C to Subpart C of Part 766 [Removed]

■ 17. Remove appendix C to subpart C.

Subpart H—Loan Liquidation

§ 766.352 [Amended]

■ 18. Amend § 766.352 in paragraph (a)(5) by removing the words ''subpart B of 7 CFR part 1956'' and adding the words ''part 761, subpart F of this chapter and part 3 of this title'' in their place.

§ 766.353 [Amended]

■ 19. Amend § 766.353 in paragraph (a)(8) by removing the words ''subpart B of 7 CFR part 1956 before or in conjunction with the'' and adding the words ''part 761, subpart F of this chapter before, or in conjunction with, the'' in their place.

■ 20. Amend § 766.354 by revising paragraph (a)(6) to read as follows:

§ 766.354 Voluntary conveyance of chattel.

(a) * * *

(6) Complete debt settlement application in accordance with part 761, subpart F of this chapter before, or in conjunction with, the voluntary conveyance offer if the value of the property to be conveyed is less than the FLP debt.

* * * * *

■ 21. Amend § 766.357 by revising paragraphs (b)(5) and (c)(3) to read as follows:

§ 766.357 Involuntary liquidation of real property and chattel.

* * * * *

(b) * * *

(5) If an unpaid balance on the FLP loan remains after the foreclosure sale of the property, the Agency will service the account in accordance with part 761, subpart F of this chapter and part 3 of this title.

(c) * * *

(3) If an unpaid balance on the FLP loan remains after the sale of the repossessed property, the Agency will service the account in accordance with part 761, subpart F of this chapter and part 3 of this title.

PART 772—FARM LOAN PROGRAMS, SERVICING MINOR PROGRAM LOANS

■ 22. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

■ 23. Amend § 772.9 by revising paragraph (c) to read as follows:

§ 772.9 Releases.

* * * * *

(c) *Servicing of debt not satisfied through liquidation.* Balances remaining after the sale or liquidation of the security will be serviced in accordance with part 761, subpart F of this chapter and part 3 of this title.

■ 24. Revise § 772.13 to read as follows:

§ 772.13 Delinquent account servicing.

(a) *AMP loans.* If the borrower does not make arrangements to cure the default after notice by the Agency and is not eligible for reamortization in accordance with § 772.14, the Agency will liquidate the account in accordance with § 772.16. Delinquent AMP loans will be serviced in accordance with part 761, subpart F of this chapter and part 3 of this title.

(b) *IMP loans.* Delinquent IMP loans will be serviced in accordance with part 761, subpart F of this chapter and part 3 of this title.

PART 792—[REMOVED]

■ 25. Under the authority of 31 U.S.C. 3717, remove part 792.

PART 1403—[REMOVED]

■ 26. Under the authority of 15 U.S.C. 714b, remove part 1403.

PART 1951—SERVICING AND COLLECTIONS

■ 27. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart C [Removed and Reserved]

■ 28. Remove and reserve subpart C, consisting of §§ 1951.101 through 1951.150.

PART 1956—DEBT SETTLEMENT

■ 29. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; and 7 U.S.C. 1989.

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

■ 30. Amend § 1956.51 in the first sentence by removing the words ''the Farm Credit loan programs of the Farm Service Agency (FSA) and'' and adding a sentence at the end of the section.

The addition reads as follows.

§ 1956.51 Purpose.

* * * The provisions of this subpart do not apply to any program administered by the Farm Service Agency as of June 17, 2020.

Subpart C—Debt Settlement—Community and Business Programs

■ 31. Amend § 1956.101 by adding a sentence at the end of the section to read as follows.

§ 1956.101 Purpose.

* * * The provisions of this subpart do not apply to any program administered by the Farm Service Agency as of June 17, 2020.

Robert Johansson,

Chairman, Federal Crop Insurance Corporation Board.

Stephen L. Censky,

Vice Chairman, Commodity Credit Corporation, and Deputy Secretary of Agriculture.

[FR Doc. 2020–09447 Filed 6–16–20; 8:45 am]

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Federal Register

Vol. 85, No. 117

Wednesday, June 17, 2020

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

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FEDERAL REGISTER PAGES AND DATE, JUNE

32977–33526 1
33527–34084 2
34085–34352 3
34353–34492 4
34493–34956 5
34957–35164 8
35165–35372 9
35373–35544 10
35545–35796 11
35797–36138 12
36139–36306 15
36307–36466 16
36467–36714 17

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

910 32977

3 CFR

Proclamations:
9496 (amended by Proc. 10049) 35793
10043 34353
10044 34941
10045 34943
10046 34945
10047 34947
10048 34949
10049 35793
10050 36467
Executive Orders:
13925 34079
13926 34951
13927 35165
13928 36139
Administrative Orders:
Memorandums:
Memorandum of April 14, 2020 35797
Memorandum of June 2, 2020 34955
Memorandum of June 4, 2020 35171
Notices:
Notice of June 11, 2020 36137

6 CFR

27 36469

7 CFR

1 34085
3 36670
9 35799
400 36670
761 36670
765 36670
766 36670
772 36670
792 36670
985 35545
1403 36670
1951 36670
1956 36670
Proposed Rules:
205 34651
301 34537
966 35222

8 CFR

270 36469
274a 36469
280 36469
Proposed Rules:
208 36264
235 36264
1003 36264
1208 36264
1235 36264

9 CFR

Proposed Rules:
7 35812
310 33031
352 33034

10 CFR

9 33527
34 36307
35 33527
36 36307
39 36307
50 34087
72 36307
Proposed Rules:
9 33581
35 33581
72 33582
170 34370
429 35700
430 ..... 35382, 35700, 36512
431 ..... 33036, 34111, 34541, 35382, 35383, 35394, 36517

12 CFR

3 32980
6 32980
7 ..... 33530, 35373
25 34734
30 32991
160 33530
195 34734
208 ..... 32980, 32991
217 32980
324 32980
364 32991
741 32991
1005 34870
Proposed Rules:
745 34545

13 CFR

120 ..... 33004, 33010, 35550, 36308
121 35550

14 CFR

29 34493
39 ..... 34088, 34090, 34597, 34599, 35175, 35177, 35553, 35555, 36143, 36145, 36312, 36318
71 ..... 33536, 34602, 34604, 36320
97 ..... 35800, 35803
Proposed Rules:
25 36351
39 ..... 33043, 33046, 33583, 34118, 34121, 34136, 34139,

34141, 34371, 34375, 34655, 34656, 34658, 34661, 34664, 35227, 35602, 35604, 35812, 35814, 35816, 36352, 36519
71 .....33587, 33589, 33590, 34144, 34146, 34148, 34666, 35229, 35231, 35818, 36172, 36174, 36355

15 CFR

4a.....35374
744.....34495, 34503
748.....36483
774.....34306, 36483

16 CFR

1253.....33015
Proposed Rules:
317.....34548

17 CFR

39.....35805
229.....33290
230.....33290
232.....33290
239.....33290
240.....33020, 33290
243.....33290
249.....33290
270.....33290
274.....33290
Proposed Rules:
1.....36000
3.....35820
4.....36000
41.....36000
190.....36000

18 CFR

Ch. 1.....36321

19 CFR

4.....36469
Proposed Rules:
24.....34549, 34836
111.....34549, 34836

21 CFR

112.....34508
573.....33538
1308.....34607, 36148

22 CFR

42.34.....36323
120.....35376
122.....35376
123.....35376
124.....35376
129.....35376
531.....36150

26 CFR

1.....35557
Proposed Rules:
1 .....34050, 35233, 35398, 35606, 35746, 35835
53.....35746

27 CFR

9.....34095
18.....33539
19.....33539
24.....33539
25.....33539
26.....33539
27.....33539
28.....33539
30.....33539
70.....33539

29 CFR

541.....34609
778.....34610
1614.....35558
4022.....36153
4044.....36153
Proposed Rules:
1614.....33049

30 CFR

550.....34912

31 CFR

569.....34510

32 CFR

104.....34518
199.....34101
Proposed Rules:
507.....35846

33 CFR

27.....36469
100 .....33543, 33547, 34633, 34634
117.....33550
165 .....33553, 33561, 33566, 33568, 33570, 34104, 34519, 34520, 34639, 34641, 35806, 36328, 36492
207.....34643
326.....34643
Proposed Rules:
100.....33592, 35404
165.....34668

34 CFR

361.....33021
668.....36494
Ch. III.....36329
Proposed Rules:
Ch. III.....34554

36 CFR

13.....35181
Proposed Rules:
251.....34378

37 CFR

1.....36335
Proposed Rules:
201.....34150

38 CFR

9.....35562
71.....34522

39 CFR

3030.....35807
Proposed Rules:
551.....35404

40 CFR

9.....35191
52 .....33021, 33023, 33571, 34106, 34108, 34357, 34524, 35198, 35377, 35809, 36154, 36161, 36342, 36343, 36504
63.....34326
70.....33023
81.....35377
174.....34646
180.....34359
228.....35564
271.....33026
282.....34361
721.....35191
Proposed Rules:
52 .....33049, 33052, 34379, 34381, 34559, 34671, 34673, 34675, 34677, 34681, 34686, 35607, 35852, 36359
80.....34688
81.....34381
82.....35874
83.....35612
180.....33059
282.....34395
300.....36368
721.....36175

41 CFR

Proposed Rules:
102–35.....35236
102–36.....35236
102–37.....35236
102–38.....35236
102–39.....35236
102–40.....35236

42 CFR

417.....33796
422.....33796
423.....33796
Proposed Rules:
136.....36182

43 CFR

Proposed Rules:
5000.....34689
5400.....34689
5410.....34689
5420.....34689
5430.....34689
5440.....34689
5450.....34689
5460.....34689
5470.....34689
5500.....34689

44 CFR

64.....36507
67.....34648

45 CFR

302.....35201
303.....35201
305.....35201
307.....35201
309.....35201
1168.....35566
Proposed Rules:
153.....33595

47 CFR

0.....34525
1.....33578
2.....33578
11.....35567
51.....35208
54.....33578, 34525
73.....35567
74.....35567
Proposed Rules:
1.....35405, 36522
2.....35405
18.....35405
54.....35627, 36522
64.....35406

48 CFR

201.....34527
206.....34528
208.....34530
210.....34530
212.....34530
215.....34530, 34532
218.....34527
219.....34528
225.....34533
234.....34530
249.....34535
252.....34535, 34536
804.....36348
805.....36348
849.....36348
852.....36348
Proposed Rules:
2.....34561
9.....34561
15.....34561
19.....34155, 34561
42.....34155
52.....34155, 34561
204.....34569
212.....34569
239.....34576
252.....34569, 34576
825.....35238

49 CFR

29.....33494
385.....33396
395.....33396
1503.....36469
Proposed Rules:
191.....35240
192.....35240
572.....33617

50 CFR

17.....35574
216.....35379
300.....35379
622 .....36164, 36165, 36166
648 .....33027, 33579, 35209
660.....35210, 35594
679.....35381, 36509
Proposed Rules:
17.....33060, 35510
21.....34578
36.....35628
218.....33914

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 9, 2020

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