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Presidential Documents

Title 3—

The President

Executive Order 13931 of June 26, 2020

Continuing the President's National Council for the American Worker and the American Workforce Policy Advisory Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Continuing the President's National Council for the American Worker*. To continue the President's National Council for the American Worker established by Executive Order 13845 of July 19, 2018, as amended, that Executive Order is further amended by revising section 10 to read as follows: ''*Termination of Council.* The Council shall terminate on September 30, 2021, unless extended by the President.''.

Sec. 2. *Continuing the American Workforce Policy Advisory Board*. The American Workforce Policy Advisory Board established by Executive Order 13845, as amended, is continued until September 30, 2021.

Sec. 3. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
June 26, 2020.

[FR Doc. 2020–14328
Filed 6–30–20; 8:45 am]
Billing code 3295–F0–P

Presidential Documents

Executive Order 13932 of June 26, 2020

Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Purpose*. The foundation of our professional merit-based civil service is the principle that employment and advancement rest on the ability of individuals to fulfill their responsibilities in service to the American public. Accordingly, Federal Government employment opportunities should be filled based on merit. Policies or practices that undermine public confidence in the hiring process undermine confidence in both the civil service and the Government.

America's private employers have modernized their recruitment practices to better identify and secure talent through skills- and competency-based hiring. As the modern workforce evolves, the Federal Government requires a more efficient approach to hiring. Employers adopting skills- and competency-based hiring recognize that an overreliance on college degrees excludes capable candidates and undermines labor-market efficiencies. Degree-based hiring is especially likely to exclude qualified candidates for jobs related to emerging technologies and those with weak connections between educational attainment and the skills or competencies required to perform them. Moreover, unnecessary obstacles to opportunity disproportionately burden low-income Americans and decrease economic mobility.

The Office of Personnel Management (OPM) oversees most aspects of the civilian Federal workforce, including creating and maintaining the General Schedule classification system and determining the duties, responsibilities, and qualification requirements for Federal jobs. Executive departments and agencies (agencies), however, are responsible for vetting and selecting specific candidates to fill particular job openings consistent with statutory requirements and OPM rules and guidance, including applicable minimum educational requirements. Currently, for most Federal jobs, traditional education—high school, college, or graduate-level—rather than experiential learning is either an absolute requirement or the only path to consideration for candidates without many years of experience. As a result, Federal hiring practices currently lag behind those of private sector leaders in securing talent based on skills and competency.

My Administration is committed to modernizing and reforming civil service hiring through improved identification of skills requirements and effective assessments of the skills job seekers possess. We encourage these same practices in the private sector. Modernizing our country's processes for identifying and hiring talent will provide America a more inclusive and demand-driven labor force.

Through the work of the National Council for the American Worker and the American Workforce Policy Advisory Board, my Administration is fulfilling its commitment to expand employment opportunities for workers. The increased adoption of apprenticeship programs by American employers, the creation of Industry-Recognized Apprenticeship Programs, and the implementation of Federal hiring reforms, including those in this order, represent important steps toward providing more Americans with pathways to family-

sustaining careers. In addition, the Principles on Workforce Freedom and Mobility announced by my Administration in January 2020 detail reforms that will expand opportunities and eliminate unnecessary education costs for job seekers. This order builds on the broader work of my Administration to expand opportunity and create a more inclusive 21st-century economy.

This order directs important, merit-based reforms that will replace degree-based hiring with skills- and competency-based hiring and will hold the civil service to a higher standard—ensuring that the individuals most capable of performing the roles and responsibilities required of a specific position are those hired for that position—that is more in line with the principles on which the merit system rests.

Sec. 2. *Revision of Job Classification and Qualification Standards*. (a) The Director of OPM, in consultation with the Director of the Office of Management and Budget, the Assistant to the President for Domestic Policy, and the heads of agencies, shall review and revise all job classification and qualification standards for positions within the competitive service, as necessary and consistent with subsections (a)(i) and (a)(ii) of this section. All changes to job classification and qualification standards shall be made available to the public within 120 days of the date of this order and go into effect within 180 days of the date of this order.

(i) An agency may prescribe a minimum educational requirement for employment in the Federal competitive service only when a minimum educational qualification is legally required to perform the duties of the position in the State or locality where those duties are to be performed.

(ii) Unless an agency is determining a candidate's satisfaction of a legally required minimum educational requirement, an agency may consider education in determining a candidate's satisfaction of some other minimum qualification only if the candidate's education directly reflects the competencies necessary to satisfy that qualification and perform the duties of the position.

(b) Position descriptions and job postings published by agencies for positions within the competitive service should be based on the specific skills and competencies required to perform those jobs.

Sec. 3. *Improving the Use of Assessments in the Federal Hiring Process*. (a) In addition to the other requirements of this order, the Director of OPM shall work with the heads of all agencies to ensure that, within 180 days of the date of this order, for positions within the competitive service, agencies assess candidates in a manner that does not rely solely on educational attainment to determine the extent to which candidates possess relevant knowledge, skills, competencies, and abilities. The heads of all agencies shall develop or identify such assessment practices.

(b) In assessing candidates, agencies shall not rely solely on candidates' self-evaluations of their stated abilities. Applicants must clear other assessment hurdles in order to be certified for consideration.

(c) Agencies shall continually evaluate the effectiveness of different assessment strategies to promote and protect the quality and integrity of their hiring processes.

Sec. 4. *Definitions*. For purposes of this order:

(a) the term ''assessment'' refers to any valid and reliable method of collecting information on an individual for the purposes of making a decision about qualification, hiring, placement, promotion, referral, or entry into programs leading to advancement;

(b) the term ''competitive service'' has the meaning specified by section 2102 of title 5, United States Code;

(c) the term ''education'' refers to Post High-School Education as that term is defined in the OPM General Schedule Qualification Policies; and

(d) the term ''qualification'' means the minimum requirements necessary to perform work of a particular position or occupation successfully and safely.

Sec. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
June 26, 2020.

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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[Document No. AMS–LP–19–0012]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in domestic cattle inventories as well as changes in levels of imported cattle, beef, and beef products that have occurred since the Board was last reapportioned in July 2017. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in an increase in Board membership from 99 to 101, effective with the Secretary of Agriculture's (Secretary) appointments for terms beginning early in the year 2021.

DATE: Effective July 31, 2020.

FOR FURTHER INFORMATION CONTACT: Kahl Sesker, Agricultural Marketing Specialist; Research and Promotion Division; Livestock and Poultry Program, AMS, USDA; Room 2610–S, STOP 0251, 1400 Independence Avenue SW, Washington, DC 20250–0251; via telephone at (202) 253–8253; or by email at *Kahl.Sesker@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and therefore, the Office of Management and Budget (OMB) has waived review of this action. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

Section 11 of the Act (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct efforts on Tribal governments or significant Tribal implications.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. part 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581–0093.

Background

The Board was initially appointed on August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901–2911), and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, while importer representation is based on the conversion of the volume of imported cattle, beef, and beef products into live animal equivalencies.

Reapportionment

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the State or unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years, but not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications to the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which has a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit is entitled to an additional Board member for each additional 1 million head of cattle within the unit, as provided in § 1260.141(e)(4). Further, as provided in § 1260.141(e)(3), importers

are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The producer representation is based on an average of the inventory of cattle in the various States on January 1 in 2017, 2018, and 2019 as reported by U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS). The importer representation is based on a combined total average of the 2016, 2017, and 2018 live cattle imports as published by USDA's Economic Research Service (ERS) and the average of the 2016, 2017, and 2018 live animal equivalents for imported beef and beef products.

In considering reapportionment, the Board reviewed cattle inventories as of January 1 in 2017, 2018, and 2019, as well as cattle, beef, and beef product import data for the period of January 1, 2016, to December 31, 2018. The Board determined that an average of the inventory of cattle on January 1 in 2017, 2018, and 2019 best reflect the number of cattle in each State or unit since publication of the last reapportionment rule in 2017 (82 FR 27611). The Board reviewed data published by ERS to determine proper importer representation. The Board recommended the use of the average of a combined total of the 2016, 2017, and 2018 cattle import data and the average of the 2016, 2017, and 2018 live animal equivalents for imported beef products. The method used to calculate the total number of live animal equivalents was the same as that used in the previous reapportionment of the Board. The live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds (71 FR 47074).

The Board's reapportionment plan increases the number of representatives on the Board from 99 to 101. From the Board's analysis of USDA cattle inventories and import equivalencies, Nebraska gains one Board seat, Texas gains one Board seat, and Wisconsin gains one Board seat. Geographic changes shall include dissolving the Southeast Unit so that Alabama and Georgia shall be stand-alone States that have enough inventory to each qualify for a position on the Board. South Carolina will be added to the Mid-Atlantic Unit. Maryland will move from the Mid-Atlantic Unit to the Northeast Unit, leaving South Carolina and West Virginia to make up the new Mid-Atlantic Unit, which will qualify for one member. The new Northeast Unit will qualify for one member and be composed of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont. Importer representation will remain at seven.

Representation of States and units affected by this final rule is as follows:

State/unit	Increase/decrease	Current representation	Revised representation
Alabama	+1 (moved from Southeast Unit)	0	1
Georgia	+1 (moved from Southeast Unit)	0	1
Nebraska	+1	6	7
Texas	+1	12	13
Wisconsin	+1	3	4
Mid-Atlantic Unit	No change	1	1
Northeast Unit	No change	1	1
Southeast Unit	−3	3	0
Net Change	+2		

Note: The Southeast Unit shall dissolve. Alabama and Georgia, formerly of SE Unit will each have one member on the Board. South Carolina, formerly of SE Unit, moves to Mid-Atlantic Unit. Maryland moves from the Mid-Atlantic Unit and to the Northeast Unit leaving South Carolina and West Virginia to make up the new Mid-Atlantic Unit and qualify for one member. The new Northeast Unit continues to qualify for one member. In summary, the Board will be composed of 101 members (99 − 3 + 5 = 101).

The Board reapportionment by this rulemaking will take effect with the Secretary's appointments to fill positions early in the year 2021.

Summary of Comments

AMS published the notice of proposed rulemaking in the **Federal Register** on December 30, 2019 (84 FR 71829). The comment period closed on February 28, 2020. AMS received three timely comments. Two of the three comments were outside the scope of the rule. One commenter supported the 12 to 13 representative increase in Texas.

Final Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS considered the economic effect of this action on small entities and determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Effective August 19, 2019, the Small Business Administration (SBA) published an interim final rule (84 FR 64013) that adjusts the monetary-based size standards for inflation. As a result of this rule, the size classification for small beef, veal, and cattle importing firms changed from sales of $750,000 or less to sales of $1,000,000 or less.

According to the NASS 2017 Census of Agriculture, the number of operations in the United States with cattle totaled 882,692.[1] The most recent (2017) Census of Agriculture data show that roughly 4 percent of producers with cattle, or 31,601 operations, have annual receipts of $1,000,000 or more.[2] Therefore, the vast majority of cattle producers, 96 percent, would be considered small businesses with the new SBA guidance. It should be noted that producers are only indirectly impacted by the final rule.

Cattle, beef, and veal importers are directly impacted by the final rule. The original number of importing firms was determined in consultation with the Meat Import Council of America. AMS estimates that approximately 270 firms import beef or beef products, and veal and veal products into the United States, and about 198 firms import live cattle into the United States. The 2012 Economic Census, produced by the U.S. Commerce Department, and accessible through the American Fact Finder website, provides the most recent data on firm size by sales revenue.[3] However, data on the firm size of beef, veal, and cattle importers are not available in this or other economic databases, as there is no NAICS code specific enough for this industry segment.

[1] *https://www.nass.usda.gov/AgCensus/index.php.*

[2] *https://quickstats.nass.usda.gov/results/EC7DF8E2-6791-347F-BC4F-3F81988D7DDB.*

[3] *https://factfinder.census.gov.*

The 2012 Economic Census does have information on the broader marketing chain, specifically the size distribution of meat and meat product wholesalers (NAICS 42447).[4] These data show that 18 percent of firms in the industry classification of meat and meat product wholesalers are considered small businesses.

Recent import trade data was also considered for understanding the overall dynamics of this industry segment. USDA's Foreign Agricultural Service reports monthly trade data for traded agricultural products by product type. An analysis of these data over a 5-year period show only minor changes in the annual import values for both beef and veal importers and cattle importers, suggesting little change in the sector overall.

The final rule imposes no new burden on the industry, as it only adjusts representation on the Board to reflect changes in domestic cattle inventory, as well as in cattle and beef imports. The adjustments are required by the Order and will result in an increase in Board membership from 99 to 101.

AMS is committed to complying with the E-Government Act of 2002 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 2. Amend § 1260.141 by revising paragraph (a) to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2020 Board nominations and the associated appointments effective early in the year 2021, the United States shall be divided into 38 geographical units and 1 unit representing importers, for a total of 39 units. The number of Board members from each unit shall be as follows:

TABLE 1 TO PARAGRAPH (a)—CATTLE AND CALVES [1]

State/unit	(1,000 Head)	Directors
1. Alabama	1,313	1
2. Arizona	1,003	1
3. Arkansas	1,763	2
4. Colorado	2,850	3
5. Florida	1,670	2
6. Georgia	1,080	1
7. Idaho	2,430	2
8. Illinois	1,190	1
9. Indiana	877	1
10. Iowa	3,950	4
11. Kansas	6,350	6
12. Kentucky	2,153	2
13. Louisiana	800	1
14. Michigan	1,163	1
15. Minnesota	2,360	2
16. Mississippi	907	1
17. Missouri	4,317	4
18. Montana	2,567	3
19. Nebraska	6,683	7
20. New Mexico	1,473	1
21. New York	1,477	1
22. North Carolina	810	1
23. North Dakota	1,837	2
24. Ohio	1,303	1
25. Oklahoma	5,133	5
26. Oregon	1,303	1
27. Pennsylvania	1,613	2
28. South Dakota	3,967	4
29. Tennessee	1,820	2
30. Texas	12,600	13
31. Utah	807	1
32. Virginia	1,480	1
33. Wisconsin	3,500	4
34. Wyoming	1,317	1
35. Northwest Unit:		
• Alaska	15	
• Hawaii	143	
• Washington	1,163	
Total	1,321	1
36. Northeast Unit:		
• Connecticut	48	

[4] *Source:* U.S. Census Bureau, 2012 Economic Census, Search code EC1242SSSZ1_with_ann.

TABLE 1 TO PARAGRAPH (a)—CATTLE AND CALVES [1]—Continued

State/unit	(1,000 Head)	Directors
• Delaware	16	
• Maine	81	
• Maryland	192	
• Massachusetts	38	
• New Hampshire	35	
• New Jersey	29	
• Rhode Island	5	
• Vermont	260	
Total	702	1
37. Mid-Atlantic Unit:		
• South Carolina	342	
• West Virginia	397	
Total	738	1
38. Southwest Unit:		
• California	5,167	
• Nevada	460	
Total	5,627	6
39. Importers Unit [2]	6,874	7

[1] 2017, 2018, and 2019 average of January 1 cattle inventory data.
[2] 2016, 2017, and 2018 average of annual import data.

* * * * *

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–12813 Filed 6–30–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2020–0027]

RIN 1557–AE98

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1721]

RIN 7100–AF92

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AF55

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AD34

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AB03

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Interim final rule and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (each an Agency and, collectively, the Agencies) are adopting and inviting comment on an interim final rule amending the Agencies' regulations that require swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants under the Agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (non-cleared swaps) (Swap Margin Rule). Under the Swap Margin Rule, as amended, initial margin requirements will take effect under a phased compliance schedule spanning from 2016 through 2020, and in a final rule published elsewhere in today's issue of the **Federal Register**, the Agencies have extended the phase-in period to 2021. Due to the COVID–19 pandemic, the Agencies are extending by one year the phases 5 and 6 implementation deadlines for initial margin requirements from September 1, 2020, to September 1, 2021 (for phase 5) and from September 1, 2021, to September 1, 2022 (for phase 6). The Agencies' objective is to give covered swap entities additional time to meet their initial margin requirements under the rule so as not to hamper any efforts

underway to address exigent circumstances caused by COVID–19.

DATES: The interim final rule is effective September 1, 2020. Comments should be received on or before August 31, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of comments among the Agencies.

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2020–0027'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0027'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2020–0027'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1721 and RIN No. 7100–AF92, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number and RIN number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN **, by any of the following methods:

- *Agency Website: https://www.FDIC.gov/regulations/laws/federal.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Email: Comments@FDIC.gov.* Comments submitted must include ''FDIC'' and ''RIN 3064–AF55—Margin and Capital Requirements for Covered Swap Entities.'' Comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FCA: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Website: http://www.fca.gov.* Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.
- *Mail:* David P. Grahn, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our website at *http://www.fca.gov.* Once you are on the website, click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FHFA: You may submit your written comments on the interim final rulemaking, identified by regulatory information number: RIN 2590–AB03, by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If

you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include ''RIN 2590–AB03'' in the subject line of the message.

• *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB03, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB03, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW, Washington, DC 20219.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name, address, email address and telephone number on the FHFA website at *http://www.fhfa.gov.* Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10 a.m. and 3 p.m. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT:

OCC: Chris McBride, Director for Market Risk, Treasury and Market Risk Policy, (202) 649–6402, or Allison Hester-Haddad, Counsel, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance Horsley, Deputy Associate Director, (202) 452–5239, Lesley Chao, Lead Financial Institution Policy Analyst, (202) 974–7063, or John Feid, Principal Economist, (202) 452–2385, Division of Supervision and Regulation; Patricia Yeh, Senior Counsel, (202) 452–3089 or Jason Shafer, Senior Counsel, (202) 728–5811, Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Irina Leonova, Senior Policy Analyst, *ileonova@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–3843; Thomas F. Hearn, Counsel, *thohearn@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

FCA: Jeremy R. Edelstein, Associate Director, Timothy T. Nerdahl, Senior Policy Analyst, Clayton D. Milburn, Senior Financial Analyst, Finance and Capital Markets Team, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FHFA: Christopher Vincent, Senior Financial Analyst, Office of Financial Analysis, Modeling & Simulations, (202) 649–3685, *Christopher.Vincent@fhfa.gov,* or James P. Jordan, Associate General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th St. SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

In November 2015, the Agencies jointly adopted a final rule establishing initial margin and variation margin requirements for dealers and major participants in non-cleared swaps and non-cleared security-based swaps, such entities defined in the joint final rule as ''covered swap entities.'' The implementation of both initial and variation margin requirements started on September 1, 2016. With respect to initial margin requirements, the requirements in the Swap Margin Rule were implemented in six phases from September 1, 2016, through September 1, 2020, depending on the size of the covered swap entity's portfolio of non-cleared swaps and the counterparty's portfolio of non-cleared swaps. Variation margin requirements for all covered swap entities and counterparties were completely phased in by March 1, 2017. This schedule was consistent with BCBS/IOSCO framework when the Swap Margin Rule was adopted in 2015.

By joint final rule, the Agencies, among other things, amended the compliance schedule to add a sixth phase of compliance for certain smaller entities that were previously subject to the ''phase five'' compliance deadline.

II. Description of the Interim Final Rule and Request for Comment

The containment measures adopted in response to recent COVID–19 public health concerns have slowed economic activity in many countries, including the United States. Financial conditions have tightened markedly, with extreme volatility in financial markets. Businesses in all fields of operation, including the financial sector, have experienced a reduction in the capacity of their operations, as local governments have issued stay-at-home orders, requiring businesses to shift to remote operations, with employees having to conduct many critical functions from their homes. Under these circumstances and taking account of the high market volatility resulting from the pandemic, market participants have diverted resources to ongoing business continuity.

The Basel Committee on Banking Supervision and International Organization of Securities Commissions (BCBS/IOSCO) extended the implementation schedule for the initial margin requirements for non-cleared derivatives for an additional year.[1] BCBS/IOSCO stated that the extension would provide additional operational capacity for firms to respond to the immediate impact of COVID–19, allowing firms to diligently comply with upcoming initial margin deadlines by the revised deadlines.

The agencies are issuing this interim final rule to provide covered swap entities additional time to comply with the Swap Margin Rule's phases 5 and 6 initial margin implementation deadlines. The interim final rule delays the effective date for phase 5 from September 1, 2020 to September 1, 2021 and, for phase 6, from September 1, 2021 to September 1, 2022. In issuing this interim final rule, the Agencies' objective is to give covered swap entities additional time to meet the requirements under the rule so as not to divert resources from ongoing efforts to address exigent circumstances caused by COVID–19. In addition, the Agencies believe that an extension of one year for both phase 5 and phase 6 is necessary

[1] BSBS/IOSCO extended the deadline for completing the final two implementation phases of the margin requirements for non-centrally cleared derivatives, by one year. The final implementation phase will take place on September 1, 2022, at which point covered entities with an aggregate average notional amount (AANA) of non-centrally cleared derivatives greater than €8 billion will be subject to the requirements. As an intermediate step, from September 1, 2021 covered entities with an AANA of non-centrally cleared derivatives greater than €50 billion will be subject to the requirements. See, *https://www.bis.org/press/p200403a.htm.*

to give covered swap entities sufficient time to address both deadlines. As explained in Agencies' most recent notice of proposed rulemaking addressing the Swap Margin Rule, the industry faced operational and other difficulties in preparing for the exchange of initial margin with a large number of relatively small counterparties by September 1, 2020;[2] therefore, the Agencies amended the compliance schedule to add a sixth phase for certain smaller entities. Consistent with the policy goals explained in the recent proposed rule, a one year extension for both phases will allow covered swap entities to prioritize certain larger counterparties and avoid operational challenges they would encounter if it was necessary to prepare for the exchange of initial margin with a large number of relatively small counterparties on the same compliance date in 2021.

While this interim final rule provides covered swap entities additional time to comply with the Swap Margin Rule's phases 5 and 6 initial margin implementation deadlines by delaying the effective date for phase 5 from September 1, 2020 to September 1, 2021 and, for Phase 6, from September 1, 2021 to September 1, 2022, covered swap entities and their counterparties may voluntarily start the compliance with the Swap Margin Rule prior to the new mandatory compliance dates in accordance with the original schedule or other mutually agreed date.

The Agencies request comment on all aspects of the interim final rule.

III. Administrative Law Matters

A. Administrative Procedure Act

The Agencies are issuing the interim final rule without prior notice and the opportunity for public comment. Pursuant to section 553(b)(B) of the Administrative Procedure Act (APA), general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[3]

As discussed above, the interim final rule provides covered swap entities additional time to meet their obligations under the swap margin rule in light of the exigent circumstances caused by COVID–19. The Agencies believe that the public interest is best served by making the interim final rule effective as soon as possible given the scale, scope, and pace of the pandemic's disruptive nature. The Agencies believe that issuing the interim final rule will facilitate the industry's efforts to respond to COVID–19's impact. In addition, the Agencies believe that providing a notice and comment period prior to issuance of the interim final rule is impracticable given the need for relief immediately. For these reasons, the Agencies find there is good cause consistent with the public interest to issue the interim final rule without advance notice and comment.

As noted above, the Interim Final Rule is amending provisions that are being adopted by the Final Rule that also published in today's edition of the **Federal Register**. The Final Rule will take effect August 31, 2020. So that this Interim Final Rule takes effect in its proper sequence for purposes of allowing the **Federal Register** to accurately update the applicable sections of the Code of Federal Regulations being affected by the Final Rule and this Interim Final Rule, the Interim Final Rule an effective date of one day later than the effective date of the Final Rule, *i.e.,* September 1, 2020.

The agencies have found good cause that, despite such a delayed effective date, general notice and an opportunity for public comment are impracticable, unnecessary, or contrary to the public interest. Compliance with the new regulatory regime for phase 5 on September 1, 2020 and phase 6 on September 1, 2021 involves significant planning by industry participants for months, and in some cases years, prior to the requirements taking effect. The agencies believe that, in this instance, publication of the Interim Final Rule in the **Federal Register** will provide industry participants critical information that will allow them to revise their implementation schedules immediately in light of the issuance of an interim final rule from the agencies that the phase 5 and phase 6 compliance dates will be delayed for an additional year. But for the need to properly sequence the Final Rule's and Interim Final Rule's effective dates and the 60-day delay in the Final Rule's effective date in order to comply with the Congressional Review Act, the agencies would have set the effective date for this Interim Final Rule upon publication in the **Federal Register**. Nevertheless, the agencies have requested comment on the Interim Final Rule and will carefully consider any comments that are received.

In the event that **Federal Register** publication takes place after July 2, 2020, the effective date of the Interim Final Rule will be after September 1, 2020. In this instance, the agencies do not expect that covered swap entities would comply with the phase 5 compliance date, as amended by the Final Rule, for the few days before the Interim Final Rule's effective date occurs.

B. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking Agencies to use plain language in all proposed and final rules published after January 1, 2000. The Agencies have sought to present the interim final rule in a simple and straightforward manner. The Agencies invite comments on whether there are additional steps they could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995[4] (PRA), the Agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have reviewed this interim final rule and determined that it would not introduce any new or revise any collection of information pursuant to the PRA. Therefore, no submissions will be made to OMB for review.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[5] requires an agency to consider whether the rules it proposes will have a significant economic impact on a

[2] 84 FR 59976 (November 7, 2019).

[3] 5 U.S.C. 553(b)(B).

[4] 44 U.S.C. 3501–3521.

[5] 5 U.S.C. 601 *et seq.*

substantial number of small entities.[6] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the Agencies have determined for good cause that general notice and opportunity for public comment is unnecessary, and therefore the Agencies are not issuing a notice of proposed rulemaking. Accordingly, the Agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the agencies seek comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined for good cause that the publication of a general notice of proposed rulemaking is impracticable and contrary to the public interest. Accordingly, this interim final rule is not subject to section 202 of the Unfunded Mandates Act.

F. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[7] Each Federal banking agency has determined that the interim final rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply.

G. Congressional Review Act

For purposes of Congressional Review Act (CRA), OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[8] If a rule is deemed a ''major rule'' by the OMB, the CRA generally provides that the rule may not take effect until at least 60 days following its publication.[9]

The CRA defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[10]

As required by the CRA, the Agencies will submit the interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin requirements, National Banks, Federal Savings Associations, Reporting and recordkeeping requirements, Risk.

12 CFR Part 237

Administrative practice and procedure, Banks, Banking, Foreign banking, Holding companies, Reporting and recordkeeping requirements, Swaps.

12 CFR Part 349

Administrative practice and procedure, Banks, Banking, Holding companies, Capital, Margin requirements, Reporting and recordkeeping requirements, Savings associations, Risk, Swaps.

12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency amends chapter I of Title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

■ 2. Section 45.1 is amended by revising paragraphs (e)(6) and (7) to read as follows:

§ 45.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2021 with respect to requirements in § 45.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2021 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only

[6] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. See 13 CFR 121.201.

[7] 12 U.S.C. 4802.

[8] 5 U.S.C. 801 *et seq.*

[9] 5 U.S.C. 801(a)(3).

[10] 5 U.S.C. 804(2).

one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2022 with respect to requirements in § 45.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends 12 CFR part 237 to read as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH-OUT (REGULATION KK)

■ 3. The authority citation for part 237 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 15 U.S.C. 8305, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 343–350, 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.,* and 12 U.S.C. 1461 *et seq.*

■ 4. Revise the heading to part 237 to read as set forth above.

Subpart A—Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

■ 5. Section 237.1 is amended by revising paragraphs (e)(6) and (7) to read as follows:

§ 237.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2021 with respect to requirements in § 237.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2021 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2022 with respect to requirements in § 237.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION** section, the Federal Deposit Insurance Corporation amends 12 CFR Chapter III as follows:

PART 349—DERIVATIVES

■ 6. The authority citation for subpart A of part 349 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1813(q), 1818, 1819, and 3108.

■ 7. Section 349.1 is amended by revising paragraphs (e)(6) and (7) to read as follows:

§ 349.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2021 with respect to requirements in § 349.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2021 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2022 with respect to requirements in § 349.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

Authority and Issuance

For the reasons set forth in the preamble, the Farm Credit Administration amends chapter VI of title 12, Code of Federal Regulations, as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 8. The authority citation for part 624 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, 12 U.S.C. 2279bb–1.

■ 9. Section 624.1 is amended by revising paragraphs (e)(6) and (7) to read as follows:

§ 624.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2021 with respect to requirements in § 624.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2021 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2022 with respect to requirements in § 624.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Chapter XII

Authority and Issuance

For the reasons set forth in the preamble, the Federal Housing Finance Agency amends chapter XII of title 12, Code of Federal Regulations, as follows:

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 10. The authority citation for part 1221 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513, and 12 U.S.C. 4526(a).

■ 11. Section 1221.1 is amended by revising paragraphs (e)(6) and (7) to read as follows:

§ 1221.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2021 with respect to requirements in § 1221.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April, and May 2021 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2022 with respect to requirements in § 1221.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about June 25, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

Dated: June 24, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2020–14094 Filed 6–30–20; 8:45 am]

BILLING CODE 6210–01–P; 4810–33–P; 6714–01–P; 7535–01–P; 6705–01–P; 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0990; Product Identifier 2019–NM–122–AD; Amendment 39–21156; AD 2020–14–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. As published, the AD number and Amendment number specified in the preamble and regulatory text are incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This correction is effective July 28, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 28, 2020 (85 FR 37547, June 23, 2020).

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this referenced service information 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 on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0990.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The address for Docket Operations is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov.*

SUPPLEMENTARY INFORMATION: This AD requires repetitive detailed inspections and open hole high frequency eddy current (HFEC) inspections of the upper splice fittings for cracks and applicable on-condition actions for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.

Need for the Correction

As published on June 23, 2020 (85 FR 37547), the AD and Amendment numbers for this AD specified in the preamble and regulatory text are incorrect. The incorrectly specified AD number was AD 2020–12–10 and the incorrectly specified Amendment number was 39–19919; AD number AD 2020–12–10 is assigned to another AD addressing a Bell Textron Inc. helicopter unsafe condition, Amendment 39–21145 (85 FR 35555, June 11, 2020). The correct AD number for this AD is AD 2020–14–02 and the correct Amendment number is 39–21156.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2899 RB, Revision 1, dated April 7, 2020. This service information describes procedures for repetitive detailed inspections and open hole HFEC inspections of the left and right upper splice fittings for cracks and applicable on-condition actions. On-condition actions include repair. This service information is reasonably available because the interested parties have

access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Correction of Publication

This document corrects an error and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register.**

The effective date of this AD remains July 28, 2020.

Since this action only corrects the AD number and amendment number, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public comment procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Corrected]

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

2020–14–02 The Boeing Company: Amendment 39–21156; Docket No. FAA–2019–0990; Product Identifier 2019–NM–122–AD.

(a) Effective Date

This AD is effective July 28, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracking in particular areas of the bulkhead structure at body station (BS) 2598. The FAA is issuing this AD to address fatigue cracking of the BS 2598 bulkhead structure, which could adversely affect the structural integrity of the bulkhead and the horizontal stabilizer support structure, and result in loss of controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2899 RB, Revision 1, dated April 7, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2899 RB, Revision 1, dated April 7, 2020.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2899, Revision 1, dated April 7, 2020, which is referred to in Boeing Alert Requirements Bulletin 747–53A2899 RB, Revision 1, dated April 7, 2020.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 747–53A2899 RB, Revision 1, dated April 7, 2020, uses the phrase ''the original issue date of Requirements Bulletin 747–53A2899 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–53A2899 RB, Revision 1, dated April 7, 2020, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 747–53A2899 RB, dated April 5, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3523; email: *eric.lin@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(4) and (5) of this AD.

(l) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on July 28, 2020 (85 FR 37547, June 23, 2020).

(i) Boeing Alert Requirements Bulletin 747–53A2899 RB, Revision 1, dated April 7, 2020.

(ii) [Reserved]

(4) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.*

(5) You may view this service information 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.

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

Issued on June 24, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–13982 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0296; Airspace Docket No. 18–ANM–1]

RIN 2120–AA66

Amendment of Class E Airspace; Durango, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace, designated as a surface area, at Durango-La Plata County Airport, CO. This action also modifies the Class E airspace extending upward from 700 feet above the surface. Additionally, this action revokes the Class E airspace extending upward from 1,200 feet above the surface. Further, this action removes the Durango VOR/DME from the airspace legal descriptions. Lastly, this action makes several administrative amendments to the airspace legal descriptions.

DATES: Effective 0901 UTC, September 10, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Durango-La Plata County Airport, CO, to ensure the safety and management of Instrument Flight Rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 20450; April 13, 2020) for Docket No. FAA–2020–0296 to amend Class E airspace at Durango-La Plata County Airport, CO. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received, the comment was not germane to the proposed airspace modification.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies the Class E airspace, designated as a surface area, at Durango-La Plata County Airport, CO. To properly contain arriving IFR aircraft descending below 1,000 feet above the surface, an extension has been added northeast of the airport. The extension southwest of the airport has been reduced. The airspace is described as follows: That airspace extending upward from the surface within a 4.3-mile radius of the airport, and within 1 mile each side of the 040° bearing from the airport, extending from the 4.3-mile radius to 6.3 miles northeast of the airport, and within 1 mile each side of the 217° bearing from the airport, extending from the 4.3-mile radius to 4.7 miles southwest of the Durango-La Plata County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

This action also modifies Class E airspace, extending upward from 700 feet above the surface, to properly contain arriving IFR aircraft descending below 1,500 feet above the surface and departing IFR aircraft until reaching 1,200 feet above the surface. The area is described as follows: That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the airport, and within 1.6 miles each side of the 044° bearing from the airport, extending from the 6.1-mile radius to 12.4 miles northeast of the airport, and within 1 mile each side of the 217° bearing from the airport, extending from the 6.1-mile radius to 6.7 miles southwest of Durango-La Plata County Airport.

Additionally, this action revokes the Class E airspace extending upward from 1,200 feet above the surface, this airspace is wholly contained within the Denver en route airspace and duplication is not necessary.

Further, this action removed the Durango VOR/DME and associated extensions from the airspace legal descriptions. The Navigational Aid is not required to define the airspace.

Lastly, this action makes several administrative amendments to the airspace legal descriptions. The geographic coordinates are updated to lat. 37°09′06″ N, long. 107°45′14″ W. The term ''Airport/Facility Directory'' in the Class E airspace, designated as a surface area, is outdated and has been replaced with ''Chart Supplement''.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative

comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM CO E2 Durango, CO [Amended]

Durango-La Plata County Airport, CO
(Lat. 37°09′06″ N, long. 107°45′14″ W)

Within a 4.3-mile radius of the airport, and within 1 mile each side of the 040° bearing from the airport, extending from the 4.3-mile radius to 6.3 miles northeast of the airport, and within 1 mile each side of the 217° bearing from the airport, extending from the 4.3-mile radius to 4.7 miles southwest of the Durango-La Plata County Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ANM CO E5 Durango, CO [Amended]

Durango-La Plata County Airport, CO
(Lat. 37°09′06″ N, long. 107°45′14″ W)

That airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the airport, and within 1.6 miles each side of the 044° bearing from the airport, extending from the 6.1-mile radius to 12.4 miles northeast of the airport, and within 1 mile each side of the 217° bearing from the airport, extending from the 6.1-mile radius to 6.7 miles southwest of the Durango-La Plata County Airport.

Issued in Seattle, Washington, on June 25, 2020.

Shawn M. Kozica,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–14089 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–1022; Airspace Docket No. 19–ANM–81]

RIN 2120–AA66

Amendment of Class E Airspace and Establishment of Class E Airspace Extension; Port Angeles, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E surface area, Class E airspace extending upward from 700 feet above the surface and creates Class E airspace as an extension to the Class E surface area at William R Fairchild International Airport, Port Angeles, WA. Following a review of the airspace, the FAA found it necessary to modify the existing airspace for William R Fairchild Airport for the safety and management of Instrument Flight Rules (IFR) operations at the Airport.

DATES: Effective 0901 UTC, September 10, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the existing Class E airspace and establishes new Class E airspace as an extension to the Class E surface area at William R Fairchild International Airport, Port Angeles, WA, in support of IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 8779; February 18, 2020) for Docket No. FAA–2019–1022 to modify the existing Class E airspace and establish new Class E airspace as an extension to the Class E surface area at William R Fairchild International Airport, Port Angeles, WA. Interested parties were invited to participate in this rulemaking effort by submitting

written comments on the proposal to the FAA. Four comments were received. Two comments were in favor of the proposal and two were related to a proposal related to unmanned aircraft (UAV). The comments related to UAVs are not considered substantive to this proposal.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace description for William R Fairchild International Airport, Port Angeles, WA. This action is being submitted coincidental with an FAA proposal, Docket No. FAA–2019–1023; 19–ANM–94 to establish Class E airspace for Port Angeles CGAS, Port Angeles, WA. That action will provide the airspace needed for independent operations at Port Angeles CGAS to facilitate training and mission accomplishment. This action will modify the airspace at William R Fairchild International Airport, Port Angeles, WA, to only that airspace needed for their operations. The Class E surface area will be modified to include the airspace within 4.1 miles of the airport from the 235° bearing clockwise to the 120° bearing and exclude the airspace within 1.5 miles of the Port Angeles CGAS. This exclusion will allow independent air traffic operations at the Port Angeles CGAS when weather conditions at this location varies from those at the William R Fairchild International Airport.

A Class E extension to the surface area will be established 2 miles both sides of the 284° bearing extending from the 4.1-mile radius to 8 miles west of the airport. This will provide the airspace required for the RNAV approach to runway 8, as aircraft descend through 1000 feet AGL.

The Class E airspace extending upward from 700 feet AGL will be modified to within 4.1 miles of William R Fairchild International Airport and that area 3.1 miles on both sides of the 284° bearing from the airport to 11 miles west. This area will provide airspace for the RNAV and the ILS Approach to runway 8, as aircraft descend through 1500 feet. To the southeast, the airspace extending upward from 700 feet AGL will be modified to 1-mile north and 4 miles south of the 105° bearing from the 4.1-mile radius to 7 miles from the airport.

This action will remove the Class E surface airspace 3 miles north and 2.2 miles south of the William R Fairchild international Airport 079° bearing extending from the 4.1-mile radius to 11.4 miles east of the airport, as it is not needed for operations at William R. Fairchild airport. This airspace will support IFR operations at William R Fairchild Airport, Port Angeles, WA.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Port Angeles, WA [Amended]

William R. Fairchild International Airport, WA
(Lat. 48°07′13″ N, long. 123°29′59″ W)
Port Angeles CGAS
(Lat. 48°08′29″ N, long. 123°24′50″ W)

That airspace within a 4.1-mile radius of the William R. Fairchild International Airport from the 235° bearing clockwise to the 120° bearing excluding the airspace within 1.5 miles of the Port Angeles CGAS.

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

* * * * *

ANM WA E4 Port Angeles, WA [New]

William R. Fairchild International Airport, WA
(Lat. 48°07′13″ N, long. 123°29′59″ W)

That airspace extending upward from the surface within 2 miles both sides of the 284° bearing extending from the 4.1 mile radius to 8 miles west of the airport.

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

* * * * *

ANM WA E5 Port Angeles, WA [Amended]

William R. Fairchild International Airport, WA
(Lat. 48°07′13″ N, long. 123°29′59″ W)

That airspace extending upward from 700 feet above the surface within a 4.1-mile radius of the William R. Fairchild International Airport, and within 1 mile north and 4 miles south of the William R. Fairchild International Airport 105° bearing

extending from the 4.1-mile radius to 7 miles east of the airport and that airspace 3.1 miles each side of the 284° bearing from the 4.1-mile radius to 11 miles west of the airport.

Issued in Seattle, Washington, on June 15, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–13210 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–1023; Airspace Docket No. 19–ANM–94]

RIN 2120–AA66

Establishment of Class E Airspace; Port Angeles, WA; Port Angeles, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E surface area, Class E airspace as an extension to the surface area and Class E airspace extending upward from 700 feet above the surface at Port Angeles CGAS, Port Angeles, WA. Following a review of the airspace serving Port Angeles CGAS and William R Fairchild International Airport, the FAA found it necessary to provide Port Angeles CGAS with airspace independent of the airspace for William R Fairchild Airport. A microclimate at Port Angeles CGAS causes weather patterns to vary from the weather at William R Fairchild Airport. The difference in weather between the two locations can negatively impact operations at Port Angeles CGAS, impeding training and mission accomplishment. This action will establish new airspace for the safety and management of Instrument Flight Rules (IFR) operations at Port Angeles CGAS, Port Angeles, WA.

DATES: Effective 0901 UTC, September 10, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes new Class E surface airspace, Class E airspace as an extension to the Class E surface area and Class E airspace extending upward from 700 feet at Port Angeles CGAS, Port Angeles, WA, in support of IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 10626; February 25, 2020) for Docket No. FAA–2019–1023 to establish Class E airspace at Port Angeles CGAS, Port Angeles, WA, in support of IFR operations at the airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

After publication of the NPRM, the FAA realized that it had inadvertently used AWP in the description headings instead of ANM. This is corrected in the final rule.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing a Class E surface area, Class E airspace as an extension to the surface area and Class E airspace extending upward from 700 feet above ground level at Port Angeles CGAS, Port Angeles, WA.

This action is being submitted coincidental with FAA proposal, Docket No. FAA–2019–1022; 19–ANM–81 to modify Class E airspace for William R Fairchild International Airport, Port Angeles, WA. That action will modify the airspace at William R Fairchild International Airport, Port Angeles, WA, to only that needed for their operations and remove the airspace that was previously used to support operations at Port Angeles CGAS. This action will provide the airspace needed for Port Angeles CGAS operations to facilitate training and mission accomplishment.

The Class E surface area will be established to within 1.5 miles of the airport. A Class E extension to the surface area will be established 2.1 miles both sides of the 80° bearing from the Port Angeles CGAS, extending from William R Fairchild surface area 4.1-mile radius to 5.6 miles east of the Port Angeles CGAS. This area will provide airspace for the Copter NDB 242 approach, as aircraft descend through 1000 feet AGL.

The Class E airspace extending upward from 700 feet AGL will be established to 3 miles south and 7.5 miles north of the 80° bearing from the Port Angeles CGAS Airport to 11 miles east, excluding that portion in Canadian airspace. This area will provide airspace for the Copter 242 approach, as aircraft descend through 1,500 feet. This airspace will support IFR operations at Port Angeles CGAS, Port Angeles, WA.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Port Angeles, WA [NEW]

Port Angeles CGAS
(Lat. 48°08′29″ N, long. 123°24′50″ W)

That airspace extending upward from the surface to and including 2500 feet within a 1.5-mile radius of Port Angeles CGAS, Port Angeles, WA.

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

* * * * *

ANM WA E4 Port Angeles, WA [NEW]

Port Angeles CGAS, WA
(Lat. 48°08′29″ N, long. 123°24′50″ W)

That airspace extending upward from the surface within 2.1 miles both sides of the Port Angeles CGAS 80° bearing extending from William R Fairchild surface area 4.1-mile radius to 5.6 miles east of the Port Angeles CGAS airport.

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

* * * * *

ANM WA E5 Port Angeles, WA [NEW]

Port Angeles CGAS, WA
(Lat. 48°08′29″ N, long. 123°24′50″ W)

The Class E airspace extending upward from 700 feet above the surface 3 miles south and 7.5 miles north of the Port Angeles CGAS Airport 80° bearing extending from the William R Fairchild 4.1-mile radius to 11 miles east, excluding that portion in Canadian airspace.

Issued in Seattle, Washington, on June 25, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–14056 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232 and 239

[Release Nos. 33–10765A; 34–88358A; IC–33814A; File No. S7–23–18]

RIN 3235–AK60

Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: This document makes technical corrections to amendments to disclosure requirements and summary prospectus for variable annuity and variable life insurance contracts adopted in Release No. 33–10765 (March 11, 2020), which was published in the **Federal Register** on May 1, 2020.

DATES: Effective July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis (Senior Counsel) Investment Company Regulation Office, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: We are making technical amendments to correct instructions related to §§ 232.405 and 239.23. Specifically, this document amends Instructions 15(d) and 18(b) published in the Adopting Release. Instruction 15(d) is amended to redesignate Note 2 to rule 405 of Regulation S–T as Note 1 to rule 405 of Regulation S–T, and Instruction 18(b) is amended to replace the reference to Item 3 of Form N–14 with a reference to Item 5(c) of Form N–14.

In 85 FR 25964 appearing in the **Federal Register** on Monday, May 1, 2020, the following corrections are made:

§ 232.405 [Corrected]

■ 1. On page 26099, in the first column, in amendatory instruction 15.d., ''Note 2'' is corrected to read ''Note 1''.

■ 2. On page 26099, in the second column, in § 232.405, in the introductory text, ''the note'' is corrected to read ''Note 1''.

■ 3. On page 26100, in the first column, in § 232.405, ''Note 2 to § 232.405'' is corrected to read ''Note 1 to § 232.405.''

■ 4. On page 26100, in the third column, in § 239.15, amendment 18b., ''In Item 3, replacing the phrase ''Items 2, 4(a) through (c), and 5 through 14 of Form N–3'' with ''Items 2 through 3, 5 through 16, and 18 of Form N–3'' '' is corrected to read ''b. In Item 5(c), removing the phrase ''Items 2, 4(a) through (c), and 5 through 14 of Form N–3'' and adding in its place ''Items 2 through 3, 5 through 16, and 18 of Form N–3''.

Dated: June 10, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–12902 Filed 6–30–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. FDA–2017–D–6841]

Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Availability of guidance.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff.'' This guidance revises the guidance by the same title issued November 5, 2018, and describes FDA's intention with respect to the enforcement of unique device identification (UDI) requirements for class I and unclassified devices, other than implantable, life-sustaining, or life-supporting (I/LS/LS) devices. In this revised guidance, FDA clarifies that, at this time, in light of the considerations described in the guidance, it does not intend to enforce standard date formatting, labeling, and Global Unique Device Identification Database (GUDID) data submission requirements for these devices before September 24, 2022. The guidance is immediately in effect, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on July 1, 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–2017–D–6841 for ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff.'' 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or the Center for Biologics Evaluation and Research, Office of Communication, Outreach, and Development, 10903 New Hampshire Ave., Bldg. 71, Room 3128, Silver Spring, MD 20903. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT:

For Center for Devices and Radiological Health-regulated devices: Christina Savisaar, UDI Regulatory Policy Support, 10903 New Hampshire

Ave., Bldg. 32, Rm. 3255, 301–796–5995, email: *GUDIDSupport@fda.hhs.gov.*

For Center for Biologics Evaluation and Research-regulated devices: Stephen Ripley, Office of Communication, Outreach, and Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, or call 1–800–835–4709 or 240–402–8010.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance entitled ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff.'' On September 24, 2013, FDA published a final rule establishing a unique device identification system designed to adequately identify devices through distribution and use (the UDI Rule). Phased implementation of the regulatory requirements set forth in that final rule is based on a series of established compliance dates based primarily on device classification, which range from September 24, 2014, to September 24, 2020.

The UDI Rule requires a device to bear a UDI on its label and packages unless an exception or alternative applies (see 21 CFR 801.20), and special labeling requirements apply to stand-alone software regulated as a device (21 CFR 801.50). The UDI Rule also requires that data pertaining to the key characteristics of each device required to bear a UDI be submitted to FDA's GUDID (21 CFR 830.300). In addition, the UDI Rule added 21 CFR 801.18, which requires certain dates on device labels to be in a standard format. For devices that: (1) Must bear UDIs on their labels and (2) are intended to be used more than once and reprocessed between uses, 21 CFR 801.45 requires the devices to be directly marked with a UDI. Compliance dates for these labeling, GUDID data submission, standard date format, and direct marking requirements can be found in the preamble to the UDI Rule, 78 FR 58786 at 58815 to 58816.

This guidance describes FDA's intention with regard to enforcement of these requirements for class I and unclassified devices, other than I/LS/LS devices. This revised guidance supersedes the November 2018 guidance of the same title, ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff.'' In this revised guidance, FDA states that, at this time, in light of the considerations described in the guidance, it does not intend to enforce the requirements under 21 CFR 801.18, 801.20, 801.50, and 830.300 for class I and unclassified devices, other than I/LS/LS devices, prior to September 24, 2022, regardless of the date they are manufactured and labeled. The guidance explains that FDA believes it is important to continue focusing its resources on addressing UDI implementation issues and data quality for higher risk devices and, at this time, concludes that continuing its existing policy with regard to enforcement of these requirements for class I and unclassified devices, other than I/LS/LS devices, is consistent with the public health. In addition, while some editorial changes were made to improve clarity, other policies described in the November 2018 guidance remain the same in the revised guidance.

FDA considered comments received on the guidance that appeared in the **Federal Register** on November 5, 2018 (83 FR 55372) as the Agency revised the guidance.

This guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)) and 21 CFR 10.115(g)(2)). FDA has determined that this guidance presents a less burdensome policy that is consistent with public health. Although this guidance is immediately in effect, FDA will consider all comments received and revise the guidance document as appropriate.

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 ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking.'' 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. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances.* Persons unable to download an electronic copy of ''Unique Device Identification: Policy Regarding Compliance Dates for Class I and Unclassified Devices and Certain Devices Requiring Direct Marking; Immediately in Effect Guidance for Industry and Food and Drug Administration Staff'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 17029 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
801 subpart B and 830	Unique Device Identification	0910–0720
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: June 25, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–14082 Filed 6–30–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 76

[Docket ID ED–2020–OESE–0091]

RIN 1810–AB59

CARES Act Programs; Equitable Services to Students and Teachers in Non-Public Schools

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Interim final rule with request for comments.

SUMMARY: The U.S. Department of Education (Department) issues this interim final rule to clarify the requirement in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that local educational agencies (LEAs) provide equitable services to students and teachers in non-public schools under the Governor's Emergency Education Relief Fund (GEER Fund) and the Elementary and Secondary School Emergency Relief Fund (ESSER Fund) (collectively, the CARES Act programs).

DATES:

Effective Date: This interim final rule is effective July 1, 2020.

Comment Due Date: We must receive your comments on or before July 31, 2020.

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

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov*.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this interim final rule, address them to Amy Huber, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W219, Washington, DC 20202.

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

FOR FURTHER INFORMATION CONTACT: Amy Huber, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W219, Washington, DC 20202. Telephone: (202) 453–6132. Email: *EquitableServices.CaresAct@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments on this interim final rule. We will consider these comments in determining whether to take any future action. See **ADDRESSES** for instructions on how to submit comments.

During and after the comment period, you may inspect all public comments about this interim final rule by accessing *Regulations.gov*. Once the LBJ building reopens to the public, you may also inspect the comments in person in Room 3W219, 400 Maryland Avenue SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the 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 record for this interim final rule. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background: This rulemaking resolves a critical ambiguity in section 18005(a) of Division B of the CARES Act, Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020) with respect to the equitable services obligation owed by LEAs that receive CARES Act funds to students and teachers in non-public schools. Section 18005(a) of the CARES Act, titled ''Assistance to Non-public Schools,'' requires an LEA to ''provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 [Elementary and Secondary Education Act of 1965 (ESEA)] to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.'' Section 18005(b) lodges control of funds for the services and assistance mandated in section 18005(a) in a ''public agency.''

The Department must construe the CARES Act based on plain meaning, context, and coherence within the overall statutory structure. We are obliged to interpret the CARES Act coherently, and fit, if possible, all its parts into a harmonious whole. Finally, we must give meaning to each element of the statute so that no language is surplus.

The CARES Act is a special appropriation to combat the effects of the novel Coronavirus Disease 2019 (COVID–19). The pandemic has harmed *all* our Nation's students by disrupting their education. Nothing in the CARES Act suggests Congress intended to differentiate between students based upon the public or non-public nature of their school with respect to eligibility for relief.

Construing the phrase ''provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965'' as if Congress simply incorporated the entirety of section 1117 by reference requires a wholly inappropriate disregard for statutory text and for controlling legal authorities requiring us to harmonize all relevant statutory provisions. It would create significant and unnecessary interpretative conflicts and ambiguity. Finally, a mechanistic application of section 1117 detached from the relevant CARES Act text would disadvantage some students based simply on where they live. Therefore, exercising our interpretative authority under *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 844 (1984), and relying on statutory language and context to develop a harmonious construction faithful to all relevant CARES Act text and to the entire statutory structure, *see Food and Drug Admin.* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 132–33 (2000), we have concluded the phrase ''in the same manner as provided under section 1117'' does not simply mean ''as provided under section 1117'' and that we must implement section 1117 in a fashion fully consistent with *all* relevant CARES Act text, purposes, and requirements.

On April 30, 2020, the Department issued guidance titled *Providing Equitable Services to Students and Teachers in Non-Public Schools under the CARES Act Programs* (Equitable Services guidance), available at *https://oese.ed.gov/files/2020/04/FAQs-Equitable-Services.pdf.* Specifically, the Department concluded that the provision of equitable services under the CARES Act ''in the same manner as provided under section 1117'' of Title I requires the application of, among other provisions, section 1117(a)(3)(A) as outlined in Question #7 of the Equitable Services guidance. Because services under the CARES Act programs can be available for all students—public and non-public—without regard to poverty, low achievement, or residence in a participating Title I public school attendance area, the Department instructed LEAs to use enrollment data in non-public schools that will participate under the CARES Act programs compared to the total enrollment in all public schools and participating non-public schools in the LEA to determine the proportional share of CARES Act funds available to provide equitable services.

A number of States took issue with the Department's guidance with respect to using total non-public school enrollment to determine the proportional share of CARES Act funds for equitable services.[1] The Council of Chief State School Officers (CCSSO), in particular, expressed concern on behalf of its members. According to CCSSO, Congress ''intended to concentrate ESSER funds in areas of the most need, where the educational and social impacts of the COVID crisis will be most extreme and difficult to overcome with limited local funds.''

The text of the CARES Act is inconsistent with CCSSO's assertion that Congress intended a rigid application of section 1117. Rather, the CARES Act affords LEAs more flexibility. In light of concerns expressed, as discussed below, we are affording flexibility to an LEA that helps poor children by spending its CARES Act funds *only* in its Title I schools to use the proportional share it calculated under section 1117(a)(4)(A) for the 2019–2020 school year or to use the number of children, ages 5 through 17, who attend a non-public school in the LEA that will participate under a CARES Act program and who are from low-income families compared to the total number of children, ages 5 through 17, who are from low-income families in both Title I schools and participating non-public schools in the LEA. However, if an LEA spends *any* funds from a CARES Act program on students and teachers in non-Title I public schools, then the law requires equity for students and teachers in participating non-public schools, achieved by using enrollment to determine the proportional share.

Discussion:

I. Legal Framework

It is a ''fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'' *Davis* v. *Michigan Dept. of Treasury,* 489 U.S. 803, 809 (1989). We must interpret the CARES Act ''as a symmetrical and coherent regulatory scheme,'' *Gustafson* v. *Alloyd Co.,* 513 U.S. 561, 569 (1995), and ''fit, if possible, all parts into an harmonious whole.'' *FTC* v. *Mandel Brothers, Inc.,* 359 U.S. 385, 389 (1959). When Congress has not supplied a definition, a statutory term generally has its ordinary meaning. *See, e.g., Schindler Elevator Corp.* v. *United States ex rel. Kirk,* 563 U.S. 401, 407 (2011). The plainness or ambiguity of statutory language is determined not only by reference to the language itself, but also by the specific context in which that language is used, and the broader context of the statute as a whole. *Yates* v. *United States,* 135 S.Ct. 1074, 1081 (2015). Constructions creating surplus language are disfavored as the Department is ''obliged to give effect, if possible, to every word Congress used.'' *Reiter* v. *Sonotone Corp.,* 442 U.S. 330, 339 (1979); *see also Nat'l Ass'n of Mfgs* v. *Dep't of Defense,* 138 S.Ct. 617, 632 (2018).

II. Analysis

A. The CARES Act

The CARES Act authorizes new Federal education programs to ''prevent, prepare for, and respond to'' COVID–19. Three of those programs—the GEER Fund (section 18002(c)(1), (3)), the ESSER Fund formula grants to LEAs (section 18003(c)), and the ESSER State educational agency (SEA) Reserve (section 18003(e))—make funds potentially available to LEAs.

GEER funds are available to, among other eligible entities, LEAs that the SEA deems have been ''most significantly impacted'' by COVID–19 to continue to provide educational services and to support the on-going functionality of the LEA (section 18002(c)(1)) or to LEAs that the Governor ''deems essential'' for carrying out emergency educational services authorized under section 18003(d)(1) of the ESSER Fund; provision of child care and early childhood education; social and emotional support; and the protection of education-related jobs (section 18003(c)(3)).[2]

Ninety percent or more of ESSER funds are awarded by formula to LEAs (including charter schools that are LEAs) in proportion to the amount of funds such LEAs ''received under part A of title I of the ESEA of 1965 in the most recent fiscal year'' (section 18003(c)). An LEA may allocate the ESSER funds it receives without restriction and use them for ''any'' activity in a long list, including any activity authorized under the ESEA, the Individuals with Disabilities Education Act, the Adult Education and Family Literacy Act, the Carl D. Perkins Career and Technical Education Act, and the McKinney-Vento Homeless Assistance Act (section 18003(d)(1)).

From the SEA Reserve under the ESSER Fund, an SEA may allocate those funds to LEAs, among other entities, for emergency needs determined by the SEA to address issues responding to COVID–19 (section 18003(e)).[3]

The CARES Act programs do not favor students based on public or non-public school attendance. *Any* student attending a public or non-public school may receive a broad array of services irrespective of where the student resides or whether he or she is low achieving or from a low-income family.

Section 18005(a) of the CARES Act requires an LEA receiving funds under sections 18002 or 18003 of the CARES Act to ''provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.''

Section 1117 is a provision of Title I, Part A (Title I) of the ESEA, a program whose purpose is to improve the

[1] *See, e.g.,* letter from Carissa Moffat Miller, Executive Director, Council of Chief State School Officers, to Betsy DeVos, U.S. Secretary of Education (May 5, 2020), available at *https://ccsso.org/sites/default/files/2020-05/DeVosESLetter050520.pdf*; letter from Pedro A. Rivera, Secretary of Education, Pennsylvania Department of Education, to Frank T. Brogan, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education (May 7, 2020), available at *https://www.education.pa.gov/Documents/K-12/Safe%20Schools/COVID/CARESAct/Letter%20to%20Secretary%20Brogan.pdf.*

[2] A Governor may target GEER funds for a specific purpose or population of students, in which case an LEA would need to use the funds accordingly.

[3] An SEA may target ESSER SEA Reserve funds for a specific purpose or population of students, in which case an LEA would need to use the funds accordingly.

academic achievement of low-achieving students who reside in public school attendance areas with a high concentration of poverty (Title I schools) (20 U.S.C. 6301 *et seq.*). Section 1117 requires an LEA that receives Title I funds to provide equitable services to non-public school students (20 U.S.C. 6320; 34 CFR 200.62–200.68). Under Title I, funds for equitable services are generated by students from low-income families who reside in a participating Title I public school attendance area and attend a non-public school (20 U.S.C. 6320(a)(4)(A)(i); 34 CFR 200.64(a)). Using these funds, the LEA provides services to low-achieving students who reside in a participating Title I public school attendance area and attend a non-public school, regardless of the location of the non-public school (*i.e.,* inside or outside the public school attendance area or the LEA in which the student resides) (20 U.S.C. 6320(a)(1); 34 CFR 200.62(b)(1)).

The same framework applies for public school students under Title I. An LEA must identify eligible public school attendance areas and rank them on the basis of concentration of poverty (20 U.S.C. 6313(a)(2), (b); 34 CFR 200.78(a)). The LEA then selects areas to participate in Title I services in rank order of poverty, either for the LEA as a whole or within a grade span—*e.g.,* all elementary schools (20 U.S.C. 6313(a)(3)–(4); 34 CFR 200.78(a)). Eligible public school students must live in a school attendance area selected to participate under Title I and be low achieving (20 U.S.C. 6314(b)(6), 6315(c)). Thus, for both public and non-public school students, generation of Title I funds and eligibility for Title I services depend on residence in a participating Title I public school attendance area; that is, similarly situated students receive the same benefits under Title I (*i.e.,* are treated ''equitably'') whether they attend a public Title I school or a non-public school.

B. Resolving Ambiguity in Section 18005(a)

Section 18005(a) of the CARES Act is facially ambiguous. To begin with, Congress did not need to add the words ''in the same manner'' if it simply intended to incorporate ''section 1117 of the ESEA of 1965'' by reference in the CARES Act. The unqualified phrase ''as provided in'' alone would have been sufficient.

Furthermore, Congress included a separate consultation requirement in section 18005(a) of the CARES Act, and a public control of funds provision in section 18005(b), notwithstanding the fact that section 1117 contains precisely parallel provisions. *Compare* section 18005(a) and (b) of the CARES Act *with* section 1117(b) and (d) of Title I, respectively. If Congress intended to incorporate ''section 1117 of the ESEA of 1965'' wholesale into the CARES Act, and to have the Department mechanistically apply it, then these provisions in sections 18005(a) and (b) must be deemed superfluous and other key CARES Act text ignored. *Compare, e.g.,* section 1117(a)(1) (meeting the needs of non-public school students who are low-achieving and reside in a participating Title I public school attendance area) *with* sections 18002(c)(1) (emergency support for LEAs significantly impacted by COVID–19 to continue education services to their students and to support on-going functionality of the LEAs) and 18003(d) (support any activity from a broad array of permissible purposes for any student and staff without limitation on income, residence, or school attendance).

Finally, the CARES Act is a separate appropriation allowing separate permissible uses of taxpayer funds. By definition, the provisions in section 1117 relating to funding and eligibility for services, *e.g.,* section 1117(a)(1) and (4) and (b)(1)(E) and (J)(ii), are inapposite in a CARES Act frame. However, the provisions in section 1117 relating to the ''manner'' in which services are delivered, *e.g.,* section 1117(a)(2), (3), and (b)(1)(A)–(D), (F)–(I), and (K), arguably do fit within and can be applied under the CARES Act.

These facts must be acknowledged and should drive construction of section 18005(a)'s operative phrase ''in the same manner as provided under section 1117'' of Title I. Accordingly, in the exercise of our interpretative discretion, the Department has resolved the ambiguity by permitting LEAs flexibility to provide equitable services, particularly with respect to determining the proportional share, based on the services it provides to public school students. An LEA that spends funds from a CARES Act program *only* on students and teachers in Title I schools may determine the proportional share on the basis of enrollment or by either using the LEA's Title I proportional share for the 2019–2020 school year or by using the number of students from low-income families in participating non-public schools compared to the total number of students from low-income families in Title I and participating non-public schools in the LEA. All other LEAs must determine the proportional share based on enrollment in public and participating non-public schools.

We believe this flexibility is a reasoned and consistent construction giving effect to all relevant statutory text. Any other construction requires the words of section 18005(a) ''in the same manner'' to be denuded of meaning, the consultation and public use of funds provisions of section 18005(a) and (b) to be discarded as surplus language, and, paradoxically, the equity mandate of section 1117(a)(3) to be ignored.

Significant Regulations

To carry out functions vested in the Secretary by law, she is ''authorized to make, promulgate, issue, rescind, and amend rules and regulations . . . governing the applicable programs administered by, the Department.'' 20 U.S.C. 1221e–3; *see also* 20 U.S.C. 3474 (Secretary is ''authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department''). A ''rule'' is defined broadly to include ''statement[s] of general or particular applicability and future effect'' that are designed to ''implement, interpret, or prescribe law or policy.'' 5 U.S.C. 551(4).

We discuss substantive issues under the sections of the interim final rule to which they pertain. There are no current regulations.

In General

Statute: Section 18005(a) of the CARES Act requires an LEA that receives funds under the GEER Fund or the ESSER Fund to provide equitable services in the same manner as provided under section 1117 of the ESEA to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.

New Regulations: Section 76.665(a)(1) incorporates the statute. Section 76.665(a)(2) identifies the CARES Act programs to which this section applies: The GEER Fund, the ESSER Fund formula grants to LEAs, and the ESSER SEA Reserve.

Reasons: It is necessary to include the statutory requirement that an LEA provide equitable services ''in the same manner'' as provided under section 1117 of the ESEA to students and teachers in non-public schools to provide context and authorization for the remaining provisions.

Consultation

Statute: Section 18005(a) of the CARES Act requires an LEA to provide equitable services ''as determined in consultation with representatives of non-public schools.''

New Regulations: Consultation must be ''in the same manner'' as conducted under section 1117 of the ESEA. Section 76.665(b)(1) incorporates section 1117's requirement that consultation must occur during the design and development of the LEA's plans to spend CARES Act funds and before the LEA makes any decision affecting the opportunities of students and teachers in non-public schools to benefit from those funds. As provided in section 1117(b)(1) of the ESEA, the LEA and private school officials shall both have the goal of reaching timely agreement on how to provide equitable and effective programs for private school students and teachers.

Section 76.665(b)(2) makes clear that the requirements for consultation in section 1117(b) of the ESEA apply to the CARES Act programs unless they are inconsistent with the CARES Act statutory provisions. For example, sections 1117(b)(1)(E) and (J)(ii), which deal with calculating the proportional share in accordance with section 1117(a)(4)(A) of the ESEA, would not apply if an LEA chooses the measure in § 76.665(c)(1)(i)(B) or (ii).

Reasons: Consultation is the foundation on which equitable services are provided and is mandated by section 18005(a). The regulations clarify that section 1117(b) of the ESEA, including the due process safeguards it contains, applies to the CARES Act programs, unless certain provisions are inconsistent with the CARES Act. We have identified two provisions that, on their face, are inconsistent with two of the measures these regulations permit for determining the proportional share because they refer to the proportional share as calculated under Title I. The CARES Act is an emergency appropriation to address exigent circumstances caused by responses to the pandemic. Although section 18005(a) does not specify how consultation is to occur, the Department believes using the section 1117(b) framework (to the extent consistent with the CARES Act itself), which is very familiar to schools and families, is a highly effective approach for the speedy provision of equitable services.

Determining Proportional Share

Statute: Section 18005(a) of the CARES Act requires an LEA to provide equitable services ''in the same manner as provided under section 1117 of the ESEA'' to students and teachers in non-public schools.

New Regulations: Section 76.665(c) sets out measures that an LEA may use to determine the proportional share of funds available under each CARES Act program to provide equitable services to students and teachers in non-public schools. An LEA need not use the same measure for each CARES Act program; however, it must use only one measure for a single program.

Section 76.665(c)(1)(i) addresses an LEA that allocates *all* its funds under a CARES Act program *only* to students and teachers in Title I schools. In that case, the LEA has two options in addition to using enrollment to determine the proportional share: (1) By using the proportional share it calculated under section 1117(a)(4)(A) for the 2019–2020 school year; or (2) by using the number of children, ages 5 through 17, who attend a non-public school in the LEA that will participate under a CARES Act program and who are from low-income families compared to the total number of children, ages 5 through 17, who are from low-income families in both Title I schools and participating non-public schools in the LEA. If an LEA uses one of these options, then the LEA must take care to ensure that it does not violate the supplement not supplant requirement in section 1118(b)(2) of the ESEA by allocating CARES Act funds to Title I schools and redirecting State and local funds from those schools to non-Title I schools. See § 76.665(c)(3).

For all other LEAs, § 76.665(c)(1)(ii) applies. This requires the LEA to calculate the proportional share based on enrollment in participating non-public elementary and secondary schools in the LEA compared to the total enrollment in both public and participating non-public elementary and secondary schools in the LEA.

Section 76.665(c)(2) requires an LEA to calculate the proportional share of CARES Act funds off the top of the LEA's total CARES Act allocation for each program under which it receives funds prior to any expenditures or transfers by the LEA in accordance with section 1117(a)(4)(A)(ii) of the ESEA.

Reasons: Under § 76.665(c)(1)(i), an LEA spending *all* its funds under a CARES Act program *only* in its Title I schools may determine the proportional share for equitable services based on enrollment or in two additional ways based on the share of students from low-income families attending participating non-public schools within the LEA. One path permits an LEA to use the proportional share it calculated for Title I purposes in the 2019–2020 school year. This approach has the obvious advantage of simplicity because it is a known proportion. Alternatively, if an LEA believes an actual poverty count would better meet respective needs, then it may count students, ages 5 through 17, from low-income families in Title I and participating non-public schools using one of the poverty measures in section 1117(c)(1) of the ESEA.

Given that the purpose of the CARES Act is to ''prevent, prepare for, and respond to'' the effects of COVID–19, timely provision of services to both public and non-public students and teachers is critical. To the extent collecting poverty data from non-public school families under § 76.665(c)(1)(i)(B) would delay services, we encourage an LEA to use proportionality, wherein the LEA would apply the poverty percentage of its Title I schools as a whole to the enrollment in non-public schools that will participate in a CARES Act program. Whichever path an LEA chooses, it achieves the equity required under section 1117(a)(3) of the ESEA—that is, educational services and other benefits for students in non-public schools must be equitable in comparison to those for public school students.

For all other LEAs, equity requires comparable treatment for non-public school students and teachers, which is achieved by basing the proportional share on enrollment in both public and participating non-public schools in the LEA.

Congress has already taken poverty into consideration in allocating CARES Act funds to LEAs. An LEA receives ESSER funds based on its proportionate share of Title I funds (section 18003(c) of the CARES Act). The Department allocates Title I funds to LEAs through four statutory formulas, all of which are based on poverty counts that include both public and non-public school children.[4] An LEA's Title I allocation is generally the sum it receives through each formula less any required or authorized reservations by the State. Similarly, 40 percent of the GEER funds a Governor receives is based on the State's share of Title I formula children (section 18002(b)(2) of the CARES Act). Thus, Congress targeted both ESSER and GEER funds to high-poverty areas to reflect their need.

However, once this allocation is made, the CARES Act authorizes an LEA to serve all students—public and non-public—who have been affected by COVID–19. If the CARES Act does not limit services based on residence and

[4] Title I's four formulas direct funds to LEAs based primarily on an LEA's relative share of formula children, 97 percent of whom are children ages 5 through 17 in poverty in public and non-public schools as determined annually by the Census Bureau. In varying degrees, the formulas address concentrations of poverty. 20 U.S.C. 6333–6337.

poverty, then it stands to reason that an LEA should not use residence and poverty to determine the proportional share of available funds for equitable services to non-public school students. In this context, only the use of enrollment data ensures that sufficient CARES Act funds are reserved to provide services to non-public school students and teachers that are equitable in comparison to their public school counterparts.[5] In fact, this is the only way to give meaning to the phrase ''in the same manner'' consistent with section 1117(a)(3) of the ESEA, which requires that benefits for ''private school children shall be equitable in comparison to services and other benefits for public school children.'' In other words, if an LEA elects to use CARES Act funds to serve all its students, then only a calculation of proportional share based on all students—*i.e.,* enrollment—satisfies the requirements of section 1117(a)(3).

To best meet its needs, an LEA may choose to use funds from one CARES Act program (*e.g.,* ESSER formula-grant funds) to serve students and teachers only in its Title I schools and funds from another CARES Act program (*e.g.,* GEER funds) to serve students and teachers in any school. In this case, the LEA would use the appropriate measure in § 76.665(c)(1) to determine the proportional share under each program.

In sum, the measures in § 76.665(c)(1)ensure the equitable treatment of non-public school students and teachers compared to their public school counterparts. The measures are also reasonable from the standpoint of administrative efficiency, minimizing LEA and parent burden, and carrying out the CARES Act's mandate to provide funds in response to the COVID–19 pandemic promptly and to do so in a way providing for equitable treatment of all students and teachers.

Equity

Statute: Section 18005(a) of the CARES Act requires an LEA to provide equitable services ''in the same manner as provided under section 1117 of the ESEA'' to students and teachers in non-public schools.

New Regulations: Section 76.665(d)(1) implements section 1117(a)(3) of the ESEA, which requires educational services and other benefits for students and teachers in non-public schools be equitable in comparison to services and other benefits for public school students and teachers. Section 76.665(d)(2) makes clear that, irrespective of the measure an LEA uses to determine the proportional share under paragraph (c)(1), the LEA still has the obligation to afford students and teachers in any non-public school in the LEA the opportunity to receive CARES Act services.

Reasons: As explained above, section 1117(a)(3) of the ESEA mandates *equity* in equitable services. Only if services and other benefits to students and teachers in non-public schools are comparable to those provided to public school students and teachers can they be equitable.

Under § 76.665(d)(2), each non-public school in an LEA may request CARES Act services for its students and teachers. A non-public school, however, is not required to accept equitable services. In fact, the Department particularly discourages the small number of financially well-resourced non-public K–12 schools from accepting CARES Act-funded equitable services. Such schools include non-public boarding and day schools with tuition and fees comparable to those charged by the most highly selective postsecondary institutions. These schools tend to serve families from the highest income brackets, although they sometimes offer a limited number of scholarships to low- and middle-income students each year. The Department believes such non-public schools have ample resources to serve their students and teachers during the COVID–19 national emergency and should not rely on taxpayer funds to do so.

Secular, Neutral, and Nonideological

Statute: Section 18005(a) of the CARES Act requires an LEA to provide equitable services ''in the same manner as provided under section 1117 of the ESEA'' to students and teachers in non-public schools. Section 1117(a)(2) of the ESEA requires educational services or other benefits, including materials and equipment, be secular, neutral, and nonideological.

New Regulations: Section 76.665(e) implements section 1117(a)(2) of the ESEA.

Reasons: Section 76.665(e) makes clear that the services and benefits an LEA provides under the CARES Act programs must be secular, neutral, and nonideological.

Public Control of Funds

Statute: Section 18005(b) of the CARES Act requires the control of CARES Act funds for services and assistance to students and teachers in non-public schools and title to materials, equipment, and property must be in a public agency and a public agency must administer those funds, materials, equipment, and property. An LEA must provide services directly or contract for the provision of services with a public or private entity.

New Regulations: Section 76.665(f) implements section 18005(b) of the CARES Act.

Reasons: Section 76.665(f) emphasizes the importance of the statutory requirements that control of CARES Act funds and title to materials, equipment, and property for equitable services to students and teachers in non-public schools be in a public agency and that the LEA or public agency continuously administers the funds, materials, equipment, and property.

Waiver of Proposed Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on a proposed rule. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). There is good cause here for waiving rulemaking. The CARES Act programs were enacted to address the immediate effects of COVID–19. The statute requires an LEA to provide services for students and teachers in non-public schools that are equitable in comparison to services provided to public school students and teachers. Before an LEA makes any decision that affects the opportunity of non-public school students and teachers to participate, it must consult with appropriate non-public school representatives. Thus, an LEA cannot begin services for public or non-public school students and teachers without consulting on determining the amount of funds available for those services. Therefore, in light of the current national emergency, its disruption on education in both public and non-public schools, and the immediate need for certainty regarding applicable requirements, the normal rulemaking process would be

[5] About 4.9 million students or 9.1 percent of all elementary and secondary school students in the Nation are enrolled in non-public schools. Broughman, S.P., Kincel, B., and Peterson, J. (2019). Characteristics of Private Schools in the United States: Results From the 2017–18 Private School Universe Survey First Look (NCES 2019–071), U.S. Department of Education. Using enrollment to determine the share of CARES Act funds for equitable services and assuming that every private elementary and secondary school chose to participate in the CARES Act programs, less than 10 percent of the CARES Act funding nationwide would be provided for equitable services for non-public school students and teachers, with more than 90 percent of the funding directed to public school students and teachers nationwide.

impracticable and contrary to the public interest because time is of the essence. However, the Department is providing a 30-day comment period and invites interested persons to participate in this rulemaking by submitting written comments. The Department will consider the comments received and may conduct additional rulemaking based on the comments.

The APA also generally requires that a final or interim final rule be published at least 30 days before its effective date, unless the agency has good cause to implement its regulations sooner (5 U.S.C. 553(d)(3)). Again, this interim final rule is necessary immediately to address the effects of COVID–19 on both public and non-public school students and teachers. In response to the pressing need for States and LEAs to have clear guidance on the use of funds under the CARES Act programs so that they can help all schools address the disruption created by COVID–19 and ensure that learning continues for all students, consistent with the purposes of the CARES Act, it is impracticable and contrary to the public interest to delay the effective date. Accordingly, we make this rule effective on the day it is published.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

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

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

(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.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

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. The designation of this rule under Executive Order 13771 will be informed by public comments.

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 providing 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.''

The Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and we are issuing this interim final rule only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, the Department believes that this interim final rule is consistent with the principles in Executive Order 13563.

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

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

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

1. Need for Regulatory Action and Analysis of Benefits

The Department is issuing this interim final rule to clarify the provision of equitable services under section 18005 of the CARES Act. More specifically, this interim final rule specifies the measures that LEAs may use to determine the proportional share of CARES Act funds available for equitable services to students and teachers in non-public schools. This interim final rule is meant to provide flexibility and clarify administration for SEAs and LEAs so that the equitable services provisions are implemented consistent with the requirements of the CARES Act and that funds may be used to provide services to both public and non-public students and teachers in a timely manner while imposing as little burden and costs on program participants as possible. In doing so, it reconciles applicable equitable services provisions of the CARES Act in a manner that is reasonable, offers appropriate flexibility, and ensures that CARES Act programs serve public and non-public school students equitably. In particular, the rule expands the options available for determining the proportional share of CARES Act funds that must be made available for equitable services by allowing an LEA to

select a measure based on the students and schools it will serve with CARES Act funds. The Department believes that these benefits outweigh any associated costs.

As discussed elsewhere in this preamble, in light of the current national emergency and the importance of ensuring that LEAs provide services immediately under the CARES Act to students and teachers in schools—both public and non-public—consistent with the requirements of law, the normal rulemaking process would be impracticable and contrary to the public interest. Moreover, in light of clear evidence that a significant number of SEAs have indicated their intention to implement the equitable services provisions of the CARES Act in a manner that the Department deems contrary to statutory requirements, which means that thousands of LEAs in these States may be in the process of violating the CARES Act as it pertains to equitable services, it is essential to clarify those requirements as soon as possible.

2. Analysis of Costs

Section 18005 of the CARES Act is intended to ensure that LEAs receiving funds under the GEER Fund or ESSER Fund provide equitable services to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools. In accordance with OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), we are evaluating the costs and benefits of this interim final rule compared to a pre-statutory baseline. This rule defines the measures that may be used to determine the proportional share of funds that LEAs must reserve for equitable services but does not interpret or otherwise alter other statutory requirements related to equitable services. Affected LEAs will likely face some administrative costs to implement these statutory requirements, but the Department largely lacks data to quantify these costs. However, the Department expects that these entities will largely experience benefits exceeding these administrative costs. Because an LEA has flexibility in the manner in which it provides equitable services under the CARES Act programs, including the extent to which it relies on processes and procedures previously established to consult with non-public school officials and provide services under ESEA programs, and because the Department lacks data on the extent to which non-public schools may choose to participate in equitable services under the CARES Act, the Department does not know the exact costs attributable to the statutory requirements. Moreover, LEAs are permitted to reserve funds, from the proportional share determined in accordance with this interim final rule, to pay the reasonable and necessary costs of administering equitable services under the CARES Act.

In the following paragraphs, we estimate the costs of determining the proportional share in accordance with the interim final rule, while recognizing that those costs may be financed using CARES Act program funds.[6]

Implementation Costs for SEAs, LEAs, Affected Schools, and the Government

Costs of Determining the Proportional Share for LEAs Serving Students and Teachers in Both Title I and Non-Title I Schools

For LEAs using CARES Act funds to serve students and teachers in both Title I and non-Title I schools, the interim final rule requires the use of enrollment data to determine the proportional share. For the majority of these LEAs, enrollment data should already be available for non-public schools that participate in equitable services under ESEA programs other than Title I. Equitable services under those programs are governed by section 8501 of the ESEA, which requires in determining expenditures for equitable services that an LEA take into account the number of non-public school students to be served. In complying with this requirement, an LEA customarily obtains enrollment data from participating non-public schools. For such LEAs, complying with the interim final rule accordingly imposes no additional burden with respect to those schools.

If an LEA does not already obtain enrollment data in this manner from a non-public school that will participate in equitable services under the CARES Act programs, we expect that, in a majority of States, the LEA can obtain the data immediately from the SEA, particularly the approximately 35 SEAs that collect enrollment data from their non-public schools on an annual basis.[7] For LEAs in this circumstance, the interim final rule similarly imposes no burden, and it imposes a negligible burden on affected SEAs, which would merely need to share previously collected enrollment data through long-established means of communication with their LEAs.

For LEAs that do not already have enrollment data for one or more participating non-public schools and that cannot obtain such data from the SEA, complying with the interim final rule entails obtaining the data directly from those schools through the consultation process. The Department believes this will be minimally burdensome on these LEAs, which we estimate to include 20 percent of affected LEAs. Specifically, we estimate that an LEA will have on average two non-public schools for which enrollment data are needed and that it will take on average 0.5 total hours to obtain the data from those schools. At $35 per hour for LEA staff, the average cost is an estimated $18 per LEA. Assuming that 10,125 LEAs (or 75 percent of an estimated 13,500 LEAs with attendance areas) are subject to the equitable services provisions of the CARES Act and that 7,595 (or 75 percent) of these LEAs will choose to serve students and teachers in both Title I and non-Title I schools, approximately 1,520 LEAs (20 percent of 7,595 affected LEAs) would bear this cost, for a total estimated cost of $27,360.

Costs of Determining the Proportional Share for LEAs Serving Title I Schools Only

For LEAs using CARES Act funds to serve students and teachers only in Title I schools, the interim final rule provides the option to determine the proportional share using one of two poverty alternatives. The first is simply to use as the proportional share for CARES Act purposes the proportional share of Title I funds available for equitable services under section 1117(a)(4)(A) of the ESEA, which is determined based on residence of students from low-income families in participating Title I public school attendance areas. Using this pre-existing alternative would of course impose no additional burden on LEAs.

The second alternative is to determine the proportional share for equitable services using data on the number of students from low-income families who attend participating Title I schools and participating non-public elementary and secondary schools in the LEA. Under this alternative, an LEA may choose to obtain poverty counts for students in non-public schools that wish to participate. We estimate that 12.5 percent of affected LEAs will implement this alternative by obtaining poverty counts and that it will take an LEA on average 240 hours to obtain those counts. At $35 per hour for LEA staff, the average cost is an estimated $8,400

[6] For the purpose of this analysis, we assume that an LEA receiving funds under the GEER Fund and ESSER Fund will use the same measure to determine the proportional share for each program.

[7] *See https://www2.ed.gov/about/inits/ed/non-public-education/regulation-map/index.html.*

per LEA. Assuming that 2,530 LEAs (or 25 percent of the estimated 10,125 LEAs subject to the equitable services provisions of the CARES Act) will choose to serve students and teachers in Title I schools only, approximately 315 LEAs (12.5 percent of 2,530 affected LEAs) would bear this cost, for a total estimated cost of $2,646,000.

As discussed elsewhere in this document, LEAs may also implement this poverty alternative using a proportionality method, wherein the LEA applies the average poverty rate of its Title I schools to the enrollment in non-public schools that will participate in a CARES Act program to generate poverty estimates for those schools. LEAs that choose to implement this alternative using a proportionality method would accordingly need to have enrollment data from participating non-public schools, but not poverty data—that is, the same enrollment data required of LEAs serving students and teachers in both Title I and non-Title I schools to determine the proportional share. As discussed elsewhere in this analysis with respect to those LEAs, enrollment data are generally already available. We estimate that only 20 percent of affected LEAs would need to obtain those data from one or more participating non-public schools, and that it would take on average 0.5 hours to obtain the data. At $35 per hour for LEA staff, the average cost is an estimated $18 per LEA. Assuming that 315 LEAs (or 12.5 percent of the estimated 2,530 LEAs that will choose to serve students and teachers in Title I schools only) will choose to implement this poverty alternative using a proportionality method or, as permitted, use enrollment data to determine the proportional share, approximately 65 LEAs (20 percent of 315 affected LEAs) would bear this cost, for a total estimated cost of $1,170.

3. Net Budget Impacts

We estimate that the discretionary elements of this interim final rule will not have an impact on the Federal budget. This rule specifies the measures that LEAs may use to determine the proportional share of funds for equitable services under the CARES Act programs but does not change the amount of funding available for such programs. We anticipate that $16.2 billion in CARES Act funds will be disbursed in 2020, and therefore estimate $16.2 billion in transfers in 2020 relative to a pre-statutory baseline.

4. Accounting Statement

As required by OMB Circular A–4, in the following table we have prepared an accounting statement showing the classification of the impacts associated with the provisions of these regulations in 2020. Impacts classified as transfers are from the Federal Government to LEAs.

ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED IMPACTS

[In millions]

Category	Benefits
Clarity and flexibility in administration of equitable services	Not Quantified.
	Costs
Determining proportional share for equitable services	$2.7.
	Transfers
Providing educational services in preparation for and response to COVID–19, including for students and teachers in non-public schools.	$16,182.

5. Regulatory Alternatives Considered

As an alternative to the options for determining the proportional share provided in this interim final rule, the Department considered requiring all LEAs subject to equitable services requirements in the CARES Act to determine the proportional share using enrollment data. Ultimately, we determined that such a requirement could be inequitable if an LEA chooses to serve only its Title I schools and therefore uses its Title I proportional share as the proportional share for CARES Act purposes.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 76.665.)
- Could the description of the regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the regulations easier to understand? If so, how?
- What else could we do to make the regulations easier to understand?

To send any comments that concern how the Department could make these regulations easier to understand, see the instructions in the **ADDRESSES** section.

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 5 U.S.C. 553.

The Secretary certifies that these interim final requirements would not have a significant economic impact on a substantial number of small entities. Under the U.S. Small Business Administration's Size Standards, small entities include small governmental jurisdictions such as cities, towns, or school districts (LEAs) with a population of less than 50,000. Although the majority of LEAs that receive CARES Act funds and are subject to CARES Act equitable services requirements would qualify as small entities under this definition, this rule will benefit small entities by providing multiple options for determining the proportional share of funds that must be reserved for equitable services and clarifying that such entities have discretion to select the option that

minimizes costs and burdens. As discussed in the Regulatory Impact Analysis, unless an LEA seeks to serve only Title I schools and determine the proportional share for equitable services by obtaining poverty counts based on student enrollment, the costs associated with the interim final rule are minimal. We estimate that the vast majority of LEAs (9,810 LEAs out of an estimated 10,125 LEAs subject to equitable services requirements) will choose to employ a minimally burdensome option in determining the proportional share. Moreover, for any small-entity LEA that chooses to serve only Title I schools and determine the proportional share for equitable services by obtaining poverty counts based on student enrollment, we presume the benefit of obtaining accurate poverty counts outweighs any associated costs. Finally, we note that all costs entailed in administering the equitable services provisions of the CARES Act may be paid for with funds received under the respective CARES Act programs; consequently, neither the statutory CARES Act equitable services requirements nor the provisions of this interim final rule impose any uncompensated costs on 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 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.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Information collections related to the CARES Act programs are included in paperwork clearances OMB control numbers 1810–0741 and 1810–0743. The Department is currently requesting public comment on these clearances. Those clearances do not address the information collection applicable to this rule. Accordingly, the Department is requesting a separate emergency paperwork clearance from OMB on the data collections associated with this interim final rule and will add the burden to the clearances currently out for public comment.

As discussed in the Analysis of Costs and Benefits section of the Regulatory Impact Statement in these interim final regulations, for LEAs that do not already have enrollment data for one or more participating non-public schools and that cannot obtain such data from the SEA, complying with the interim final regulations entails obtaining the data directly from those schools through the consultation process. The Department believes this will be minimally burdensome on these LEAs, which we estimate to include 20 percent of affected LEAs. Specifically, we estimate that an LEA will have on average two non-public schools for which enrollment data are needed and that it will take on average 0.5 total hours to obtain the data from those schools. At $35 per hour for LEA staff, the average cost is an estimated $18 per LEA. Assuming that 10,125 LEAs (or 75 percent of an estimated 13,500 LEAs with attendance areas) are subject to the equitable services provisions of the CARES Act and that 7,595 (or 75 percent) of these LEAs will choose to serve students and teachers in both Title I and non-Title I schools, approximately 1,520 LEAs (20 percent of 7,595 affected LEAs) would bear this cost, for a total estimated cost of $27,360.

For LEAs using CARES Act funds to serve students and teachers only in Title I schools, the interim final regulations provide the option to determine the proportional share using one of two poverty alternatives; however, only one of these alternatives would impose additional burden. For the alternative that imposes additional burden, LEAs would determine the proportional share for equitable services using data on the number of students from low-income families who attend participating Title I schools, which are already available, and participating non-public elementary and secondary schools in the LEA. Under this alternative, an LEA may choose to obtain poverty counts for students in non-public schools that wish to participate. We estimate that 12.5 percent of affected LEAs will implement this alternative by obtaining poverty counts and that it will take an LEA on average 240 hours to obtain those counts. At $35 per hour for LEA staff, the average cost is an estimated $8,400 per LEA. Assuming that 2,530 LEAs (or 25 percent of the estimated 10,125 LEAs subject to the equitable services provisions of the CARES Act) will choose to serve students and teachers in Title I schools only, approximately 315 LEAs (12.5 percent of 2,530 affected LEAs) would bear this cost, for a total estimated cost of $2,646,000.

As discussed elsewhere in this document, LEAs may also implement this poverty alternative using a proportionality method, wherein the LEA applies the average poverty rate of its Title I schools to the enrollment in non-public schools that will participate in a CARES Act program to generate poverty estimates for those schools. LEAs that choose to implement this alternative using a proportionality method would accordingly need to have enrollment data from participating non-public schools, but not poverty data—that is, the same enrollment data required of LEAs serving students and teachers in both Title I and non-Title I schools to determine the proportional share. With respect to those LEAs, enrollment data are generally already available. We estimate that only 20 percent of affected LEAs would need to obtain those data from one or more participating non-public schools, and that it would take on average 0.5 hours to obtain the data. At $35 per hour for LEA staff, the average cost is an estimated $18 per LEA. Assuming that 315 LEAs (or 12.5 percent of the estimated 2,530 LEAs that will choose to serve students and teachers in Title I schools only) will choose to implement this poverty alternative using a proportionality method or, as permitted, use enrollment data to determine the proportional share, approximately 65 LEAs (20 percent of 315 affected LEAs) would bear this cost, for a total estimated cost of $1,170.

Intergovernmental Review

The CARES Act programs covered by the interim final rule are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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view this document, as well as all other documents of this Department published in the **Federal Register**, in text or portable document format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs—education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory,Prisons, Private schools, Reporting and recordkeeping requirements, Virgin Islands, Youth organizations.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising part 76 to read as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

§§ 76.663 and 76.664 [Reserved]

■ 2. Add reserved §§ 76.663 and 76.664.

■ 3. Add an undesignated center heading after reserved § 76.664 to read as follows:

Equitable Services Under the CARES Act

■ 4. Section 76.665 is added to read as follows:

§ 76.665 Providing equitable services to students and teachers in non-public schools.

(a) *In general.* (1) A local educational agency (LEA) receiving funds under a CARES Act program must provide equitable services to students and teachers in non-public elementary and secondary schools in the LEA ''in the same manner'' as provided under section 1117 of the Elementary and Secondary Education Act of 1965 (ESEA), as determined in consultation with representatives of non-public schools.

(2) For purposes of this section, the CARES Act programs are the Governor's Emergency Education Relief (GEER) Fund (Section 18002), formula grants to LEAs under the Elementary and Secondary School Emergency Relief (ESSER) Fund (Section 18003(c)), and ESSER SEA Reserve (Section 18003(e)).

(b) *Consultation.* (1) An LEA must promptly consult with representatives of non-public elementary and secondary schools during the design and development of the LEA's plans to spend funds from a CARES Act program and before the LEA makes any decision affecting the opportunities of students and teachers in non-public schools to benefit from those funds. As provided in section 1117(b)(1) of the ESEA, the LEA and non-public school officials shall both have the goal of reaching timely agreement on how to provide equitable and effective programs for non-public school students and teachers.

(2) Consultation must occur in accordance with section 1117(b) of the ESEA, except to the extent inconsistent with the CARES Act and this section, such as section 1117(b)(1)(E) and (J)(ii).

(c) *Determining proportional share.* (1) To determine the proportional share of funds for equitable services to students and teachers in non-public elementary and secondary schools for each CARES Act program, an LEA must use one of the following measures. The LEA need not use the same measure for each CARES Act program.

(i) An LEA using *all* its funds under a CARES Act program to serve *only* students and teachers in public schools participating under Title I, Part A of the ESEA may calculate the proportional share in accordance with paragraph (c)(1)(ii) of this section or by using—

(A) The proportional share of Title I, Part A funds it calculated under section 1117(a)(4)(A) of the ESEA for the 2019–2020 school year; or

(B) The number of children, ages 5 through 17, who attend each non-public school in the LEA that will participate under a CARES Act program and are from low-income families compared to the total number of children, ages 5 through 17, who are from low-income families in both Title I schools and participating non-public elementary and secondary schools in the LEA.

(ii) Any other LEA must calculate the proportional share based on enrollment in participating non-public elementary and secondary schools in the LEA compared to the total enrollment in both public and participating non-public elementary and secondary schools in the LEA.

(2) An LEA must determine the proportional share of funds available for services for students and teachers in non-public elementary and secondary schools based on the total amount of CARES Act funds received by the LEA under a CARES Act program prior to any allowable expenditures or transfers by the LEA.

(3) An LEA using funds from a CARES Act program in Title I schools under paragraph (c)(1)(i) of this section must comply with the supplement not supplant requirement in section 1118(b) of the ESEA, which would prohibit the LEA from allocating CARES Act funds to Title I schools and then redirecting State or local funds to non-Title I schools, among other things.

(d) *Equity.* (1) Educational services and other benefits for students and teachers in non-public elementary and secondary schools must be equitable in comparison to services and other benefits for public school students and teachers participating in CARES Act programs, and must be provided in a timely manner.

(2) The measure an LEA uses to determine the proportional share under paragraph (c)(1) of this section does not limit the obligation of the LEA to provide the opportunity to receive services to students and teachers in any non-public elementary or secondary school in the LEA.

(e) *Secular, neutral, and nonideological.* Educational services and benefits, including materials and equipment, an LEA provides to students and teachers in non-public elementary and secondary schools under the CARES Act programs must be secular, neutral, and nonideological.

(f) *Public control of funds.* An LEA must—

(1) Maintain control of CARES Act funds;

(2) Keep title to and exercise continuing administrative control of all materials, equipment, and property purchased with CARES Act funds; and

(3) Provide services with CARES Act funds directly or through a contract with a public or private entity.

(*Authority:* 20 U.S.C. 6320, 6321(b); section 18005 of the CARES Act)

§§ 76.666 through 76.669 [Reserved]

■ 5. Add reserved §§ 76.666 through 76.669.

[FR Doc. 2020–14224 Filed 6–30–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0029; FRL–10010–90–Region 1]

Air Plan Approval; New Hampshire; Single Source Order for PSI Molded Plastics

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. The revision consists of a single source Order that New Hampshire issued to PSI Molded Plastics defining reasonably available control technology (RACT) requirements for the facility. This action is being taken under the Clean Air Act.

DATES: This rule is effective on July 31, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2020–0029. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air and Radiation Division (Mail Code 05–2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1046.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose
II. Response to Comment
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I. Background and Purpose

On February 14, 2020, EPA published a Notice of Proposed Rulemaking (NPRM) (see 85 FR 8520) with an associated Direct Final Rule (DFR) (see 85 FR 8408) for the State of New Hampshire. The DFR approved a single source RACT Order for PSI Molded Plastics in Wolfeboro, identified as RACT Order RO–0005. We received one, relevant adverse comment on that action, and so withdrew the DFR via a Withdrawal Notice published on April 10, 2020. See 85 FR 20165. Other specific requirements of the State's submittals and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. Our response to the adverse comment on the NPRM is summarized and responded to in section II below.

II. Response to Comment

We received one relevant, adverse comment on the NPRM. A summary of the comment, and our response, follows.

Comment: EPA must explain how this RACT bubble order complies with past EPA guidance. Particularly how allowing this bubble with a month long compliance time frame complies with guidance for VOCs that prescribes no longer than 24 hour averages. The attached guidance identifies four principles that must be honored and identifies a list of five items that, as the guidance specifically states, must be included in detail in the SIP submission. It does not appear EPA is following its own guidance in this case, please explain how the SIP submission identified, in detail, the list of five items to ensure compliance with this guidance.

Response: First, we note that the commenter does not specify specific changes that should be made to the Order. The EPA guidance referenced by the commenter was issued on January 20, 1984, and is entitled, ''Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy,'' herein referred to as the January 1984 guidance. A copy of this guidance is included within the Docket for this action. EPA created the January 1984 guidance to assist states that had nonattainment areas for the 1979 one-hour ozone standard with the development of VOC control requirements to help meet that standard. We note that New Hampshire's current obligation to implement RACT stems not from its status as a nonattainment area,[1] but rather from its inclusion within the Ozone Transport Region established by section 184 of the CAA. Although the January 1984 guidance was issued under a prior ozone standard, its general concepts are still applicable to the control of VOCs, and RACT Order RO–0005 issued by New Hampshire to PSI Molded Plastics adheres to the concepts espoused by that guidance. Put another way, EPA has determined that the SIP revision that we are approving with this final action comports with the guidance document cited by commenter.

The January 1984 guidance articulates a preference for short term, 24-hour or less averaging times for VOC regulations, but acknowledges the use of longer time frames may be appropriate if certain conditions are met such as a demonstration that the application of RACT on each emission point, line, machine, etc, is not economically or technically feasible. The facility submitted documentation, which is included within the Docket, to New Hampshire that traditional VOC control options, such as the installation of capture and control systems, was not economically feasible. Therefore, RACT Order RO–0005 allows the facility to use a bubbling methodology with monthly averaging times[2] and is consistent with the conditions outlined within EPA's January 1984 guidance for when longer term averaging times should be considered. The commenter points to ''the list of five items to ensure compliance with the guidance.'' Presumably, this is a reference to the five items listed on page 3 of the January 1984 guidance. The Order for PSI Molded Plastics, which is included in the Docket for this action, is consistent with these 5 items in that it:

1. Contains VOC emission limits in an enforceable form (section D1 of the order contains limits in units of lbs. of VOC per gallon of coating, as applied, excluding water and exempt compounds) with an appropriate compliance date (the Order was effective upon its issuance on 11/20/2019);

2. Contains a description of affected processes (section C1 of the Order describes the affected metal and plastic parts coating process at the facility) and historical production and operating

[1] EPA designated all portions of New Hampshire as attainment of the 2015 and 2008 ozone standards (see 82 FR 54232, and 77 FR 30088, respectively).

[2] Although monthly averaging periods would for some months be 31 days, EPA finds this is a minor acceptable accommodation since the Order comports with our guidance.

rates (contained within support material submitted with the Order, which have been added the Docket);

3. Contains a description of control techniques (sections D1–5 of the Order describe the applicable emission limits and compliance calculation methodologies the source is to follow);

4. Contains a description of the nature of the control program (sections D1–5 provides that emissions be controlled by VOC content limits for coatings used by the facility), and;

5. Outlines recordkeeping and reporting requirements that will be used to demonstrate compliance (Part 6 of the Order contains recordkeeping and reporting requirements).[3] Therefore, as noted within our February 14, 2020 Direct Final Rule referenced above, we believe that New Hampshire's allowance for the facility to demonstrate compliance using a weighted averaging technique (bubble calculation) described within RACT Order RO–0005, on a monthly basis, is an acceptable, enforceable approach, and we are therefore approving the Order into the New Hampshire SIP. In conclusion, we note that the 1984 guidance referenced by the commenter references 4 principles from which the 5 criteria mentioned above are derived. Since the SIP submittal addresses all 5 items, it therefore meets the 4 principles and thus comports with the guidance.

III. Final Action

We are approving a RACT Order RO–0005 for PSI Molded Plastics in Wolfeboro, into the New Hampshire SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of New Hampshire RACT Order RO–0005, dated November 20, 2019, described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[4]

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 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 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 31, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

[3] Item 5 also references a showing that the emission limits are consistent with the reasonable further progress plan and attainment demonstration, but as an attainment area, New Hampshire is not required to prepare those plans.

[4] 62 FR 27968 (May 22, 1997).

Dated: June 10, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart EE—New Hampshire

■ 2. In § 52.1520, amend paragraph (d) by adding an entry in the table for ''PSI Molded Plastics'' at the end of the table, to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED NEW HAMPSHIRE SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date [2]	Additional explanations/§ 52.1535 citation
*	*	*	*	*
PSI Molded Plastics	RO–0005	11/20/2019	7/1/2020 [Insert **Federal Register** citation].	VOC RACT Order.

[2] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2020–12957 Filed 6–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0046; FRL–10009–25]

Cyflumetofen; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyflumetofen in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 1, 2020. Objections and requests for hearings must be received on or before August 31, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0046, 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 review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0046 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before August 31, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential

pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0046, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 19, 2019 (84 FR 16430) (FRL–9991–14), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E8724) by IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide cyflumetofen, 2-methoxyethyl a-cyano-a-[4-(1,1-dimethylethyl)phenyl]-b-oxo-2-(trifluoromethyl)benzenepropanoate, including its metabolites and degradates, to be determined by measuring only cyflumetofen, in or on the agricultural commodities: Cucumber at 0.15 parts per million (ppm); fruit, stone, group 12–12 at 2.0 ppm; plum, prune, dried at 0.41 ppm; strawberry at 0.80 ppm; and vegetable, fruiting, group 8–10 at 2.0 ppm. The petition also requested that upon approval of the above tolerances that 40 CFR 180.677 be amended by revising or removing the existing tolerances for residues of the insecticide cyflumetofen, in or on the agricultural commodities strawberry at 0.60 ppm and tomato at 0.40 ppm. That document referenced a summary of the petition prepared by BASF, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is establishing some tolerances at different levels than requested and in some cases is establishing tolerances for different commodities than requested. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cyflumetofen including exposure resulting from the tolerances established by this action.

On May 8, 2019, EPA published in the **Federal Register** a final rule establishing a tolerance for residues of the insecticide cyflumetofen in or on tea, dried. See 84 FR 20037 (FRL–9990–60). That document contains a summary of the toxicological profile, assumptions for dietary exposure assessment, cumulative risk, and the safety factor for children, which have not changed. Further information about EPA's risk assessment and determination of safety supporting the tolerances established in the May 8, 2019 **Federal Register** action can be found at *http://www.regulations.gov* in the document titled, ''Cyflumetofen. Human Health Risk Assessment to Support New Uses on Imported Tea'' dated March 4, 2019. The document can be found in docket ID EPA–HQ–OPP–2017–0532.

The Agency conducted a revised risk assessment to incorporate exposure to residues of cyflumetofen from use on the cucumber, the stone fruit group 12–12, strawberries, and the fruiting vegetable group 8–10. EPA's aggregate exposure assessment incorporated this additional dietary exposure, as well as exposure in drinking water, although drinking water exposures are not impacted by the new uses. In addition, the aggregate exposure assessment no longer includes residential handler exposures; no post-application exposures were assessed due to a lack of residential post-application exposures and lack of dermal hazard.

As indicated in the supporting documents, no acute dietary exposure and risk analysis was performed for cyflumetofen since there were no appropriate studies identified in the toxicology database that demonstrated evidence of toxicity attributable to a single dose. Chronic dietary (food and water) risks are below the Agency's level of concern of 100% of the chronic population adjusted dose (cPAD); they are 3% of the cPAD for children 1–2 years old, the group with the highest exposure level. Because EPA has determined there are no residential exposures, the chronic dietary risk is the same as the overall aggregate risk for cyflumetofen.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyflumetofen residues.

More detailed information on the subject action to establish a tolerance in or on cucumber, the stone fruit group 12–12, prunes, strawberries, and the fruiting vegetable group 8–10 can be found in the document titled, ''Cyflumetofen. Human Health Risk Assessment for the Section 3 Registration Action for New Uses on Fruiting Vegetable (Crop Group 8–10), Stone Fruits (Crop Group 12–12), and Greenhouse Uses on Fruiting Vegetable, Cucumber, and Strawberry'', dated April 29, 2020, by going to *http://www.regulations.gov.* The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2019–0046.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate analytical method is available to enforce the Agency-recommended tolerances for

cyflumetofen in plant commodities. The high-performance liquid chromatography with tandem mass spectrometry (HPLC–MS/MS) method, BASF D1003, has been adequately validated, has undergone a successful ILV (independent laboratory validation), is considered adequately radio-validated and has been reviewed by the Agency for appropriateness as an enforcement method. Cyflumetofen has also been subjected to analysis by the Food and Drug Administration (FDA) multi-residue method (MRM) protocols. Cyflumetofen is not adequately recovered through any of the FDA multi-residue protocols.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are Codex MRLs established for cyflumetofen residues in/on strawberry (0.6 ppm) and tomato (0.3 ppm). The strawberry tolerance is harmonized with Codex. The tolerance for tomato is not harmonized with Codex; harmonization is not possible at this time since lowering the newly established U.S. tolerance may result in over-tolerance residues in the United States.

C. Revisions to Petitioned-For Tolerances

EPA is establishing the tolerance for cucumber at 0.3 ppm rather than the petitioned-for tolerance level of 0.15 ppm to fully account for residue loss from the field trial samples during freezer storage from the time of harvest to the time of analysis.

EPA is establishing tolerances for the subgroups in the stone fruit crop group 12–12 rather than the whole crop group based on the highest maximum residue limit (MRL) calculated for each of the representative crops: Cherry (1.5 ppm), peaches (0.4 ppm), and plums (0.3 ppm) to harmonize with Canada's MRLs.

A tolerance is not required for dried plums (prune) because this commodity is covered under the plum subgroup 12–12C tolerance.

For strawberry, the Agency is maintaining the existing tolerance to remain harmonized with Codex. Although the Organization for Economic Cooperation and Development (OECD) MRL calculator produces a tolerance of 0.8 ppm for (greenhouse) strawberry, the currently established tolerance level for strawberry (0.60 ppm) is adequate for foliar and greenhouse uses. EPA is revising the strawberry tolerance to 0.6 ppm based on OECD rounding classes.

EPA is establishing tolerances for the tomato subgroup 8–10A at 0.7 ppm and pepper/eggplant subgroup 8–10B at 2 ppm rather than the full crop group vegetable, fruiting, group 8–10 in order to harmonize with the Canadian tolerances on tomato and pepper.

V. Conclusion

Therefore, tolerances are established for residues of cyflumetofen, (2-methoxyethyl α-cyano-α-[4-(1,1-dimethylethyl)phenyl]-β-oxo-2-(trifluoromethyl)benzenepropanoate), in or on cherry subgroup 12–12A at 1.5 ppm; cucumber at 0.3 ppm; peach subgroup 12–12B at 0.4 ppm; pepper/eggplant subgroup 8–10B at 2 ppm; plum subgroup 12–12C at 0.3 ppm; and tomato subgroup 8–10A at 0.7 ppm.

Additionally, the existing tolerance on tomato is removed as unnecessary due to the establishment of the above tolerances. Also, the existing tolerance for strawberry is modified to 0.6 ppm.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S.

Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.677amend the table in paragraph (a) by:

■ i. Adding alphabetically the commodities ''Cherry subgroup 12–12A''; ''Cucumber''; ''Peach subgroup 12–12B''; ''Pepper/eggplant subgroup 8–10B''; ''Plum subgroup 12–12C''; and ''Tomato subgroup 8–10A'';

■ ii. Revise the tolerance entry for ''Strawberry''; and

■ iii. Remove the commodity ''Tomato'' from the table in paragraph (a).

The additions and revisions read as follows:

§ 180.677 Cyflumetofen; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cherry subgroup 12–12A	1.5
* * * * *	
Cucumber	0.3
* * * * *	
Peach subgroup 12–12B	0.4
Pepper/eggplant subgroup 8–10B	2
Plum subgroup 12–12C	0.3
Strawberry	0.6
* * * * *	
Tomato subgroup 8–10A	0.7

* * * * *

[FR Doc. 2020–13048 Filed 6–30–20; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 85, No. 127
Wednesday, July 1, 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 1061

RIN 1990–AA50

Procedures for the Issuance of Guidance Documents

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and request for comment.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish procedures for the issuance of DOE guidance documents in accordance with Executive Order 13891. The proposed rule would establish internal agency requirements for the contents of guidance documents, and procedures for providing notice of, and soliciting public comment on, certain guidance documents. The proposed rule would also establish procedures for the public to petition DOE to modify or withdraw guidance documents. This NOPR also resolves a petition for rulemaking submitted by the New Civil Liberties Alliance (NCLA) and responds to comments submitted on that petition.

DATES: DOE will accept comments regarding this NOPR on or before July 31, 2020. See the section entitled ''Public Participation'' for details.

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 RIN 1990–AA50, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: Guidance@hq.doe.gov.* Include the RIN 1990–AA50 in the subject line of the message.
3. *Postal Mail:* U.S. Department of Energy, Office of the General Counsel (GC–33), 6A–179, 1000 Independence Avenue SW, Washington, DC 20585. 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:* U.S. Department of Energy, 6A–179, 1000 Independence Avenue SW, Washington, DC 20585. 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 the rulemaking process, see the section on Public Participation for details.

Docket: The docket, 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 the *http://www.regulations.gov/* web page associated with RIN 1990–AA50. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See the section on Public Participation for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–33, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2555, Email: *Guidance@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE issues this proposed rule to incorporate into the Code of Federal Regulations a new 10 CFR part 1061, which would implement the requirements of Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents.'' 84 FR 55235 (October 9, 2019). Executive Order 13891 requires agencies to provide more transparency in the issuance and use of guidance documents, including by promulgating procedures to allow the public to comment on significant guidance documents before their issuance. As noted in the Executive Order, the Administrative Procedure Act (APA) generally requires agencies to provide public notice of proposed regulations, allow interested parties an opportunity to comment, consider and respond to significant comments, and publish final regulations in the **Federal Register**.[1] (See 5 U.S.C. 553) Such regulations, also known as legislative rules, have the force and effect of law and are legally binding upon the public.

In addition to legislative rules, agencies may clarify existing obligations of regulated entities through non-binding guidance documents, which the APA exempts from notice-and-comment requirements. (5 U.S.C. 553(b)(A))[2] Executive Order 13891 defines ''guidance document'' as ''an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation'', with a few noted exceptions listed in the Executive Order.[3] Such guidance documents do not have the force and effect of law, and are intended only to provide clarity to the public of existing statutory and regulatory obligations. However, as noted in the Executive Order, some guidance documents may impose obligations beyond those required by statute or regulation, or carry a threat of enforcement if the guidance is not followed by regulated parties. Additionally, the public may not have sufficient notice of guidance documents,

[1] The APA defines a ''rule'' as ''the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.'' (5 U.S.C. 551(4))

[2] The APA refers to these types of documents as ''interpretative rules or general statements of policy''. 5 U.S.C. 553(b)(A).

[3] The types of documents excepted form the definition of ''guidance document'' in Executive Order 13891 are: (i) Legislative rules promulgated under the APA, or similar statutory provisions; (ii) rules exempt from the rulemaking requirements of the APA; (iii) rules of agency organization, procedure, or practice; (iv) decisions of agency adjudications under the APA, or similar statutory provisions; (v) internal guidance directed to the issuing agency or other agencies that is not intended to have substantial future effect on the behavior of regulated parties; or (vi) internal executive branch legal advice or legal opinions addressed to executive branch officials. 84 FR 55235–55236.

which are not always published in the **Federal Register** or distributed to all regulated parties. See 84 FR 55235.

Accordingly, Executive Order 13891 requires agencies to provide more transparency for their guidance documents by creating a searchable online database for current guidance documents,[4] and by establishing procedures to allow the public to comment on significant guidance documents and to petition the agency to withdraw or modify guidance documents.[5] Moreover, the Executive Order requires agencies to clearly state in their guidance documents that such guidance does not have the force and effect of law and is not legally binding, except as authorized by law or as incorporated into a contract. 84 FR 55236–55237.

This proposed rule would implement the requirements of Executive Order 13891. This proposed rule would apply to all DOE guidance documents, which DOE proposes to define in the same manner as that term is defined in Executive Order 13891, including the exceptions to that definition listed in section 2 of the Executive Order. DOE proposes to also list specific types of documents and communications that fall within the broader exceptions listed in the Executive Order (*e.g.,* speeches and presentations given by DOE officials, legal positions taken in litigation or enforcement actions, etc.). (See also OMB, M–20–02, Guidance Implementing Executive Order 13891, Titled ''Promoting the Rule of Law Through Improved Agency Guidance Documents'' (October 31, 2019) available at *https://www.whitehouse.gov/wp-content/uploads/2019/10/M-20-02-Guidance-Memo.pdf.*) The proposed rule would also adopt the same definition of ''significant guidance document'' as that term is defined in section 2 of Executive Order 13891.

In accordance with Executive Order 13891, DOE proposes to require that all DOE guidance documents clearly state that they do not have the force and effect of law and are not legally binding on the public, and that they are only intended to provide clarity to the public regarding existing statutory and regulatory requirements. Moreover, DOE proposes to require DOE guidance documents to be written clearly and to refrain from using mandatory language, such as the terms ''shall'' or ''must.'' If a guidance document purports to describe, approve, or recommend specific conduct that is beyond what is required by existing statute or legislative rule, the proposed rule would require that the document include a clear and prominent statement that the guidance document will not be used as an independent basis for enforcement and that conformity with the guidance document is strictly voluntary and nonconformity will not affect the rights and obligations of regulated parties.

DOE also proposes to require that all DOE guidance documents be reviewed and cleared by the Office of the General Counsel. Additionally, the proposed rule would require that significant guidance documents be approved by the Secretary or a component agency head appointed by the President. This will ensure that the requirements and intent of Executive Order 13891 are met, and that guidance documents are issued in accordance with relevant laws and regulations.

The proposed rule would also codify procedures for providing notice in the **Federal Register** concerning significant guidance documents, soliciting public comments on such guidance documents, and responding to such comments. DOE notes that the agency generally provides notice and solicits comments on significant guidance documents. Therefore, the proposed rule would codify agency procedures that are already in use for significant guidance documents. The proposed rule also provides procedures for the public to petition the agency to modify or withdraw guidance documents. DOE notes that the procedures in the proposed rule for petitions to modify or withdraw guidance documents are similar to the procedures that DOE uses for petitions for rulemaking.

With this proposed rule, DOE would effectuate the requirements of Executive Order 13891 and ensure that the agency's process for the issuance of guidance documents is transparent and accessible to the public. The proposed rule also assures regulated parties that such guidance is not legally binding and does not affect the rights and obligations of regulated parties.

NCLA Petition for Rulemaking

On August 2, 2019, prior to the issuance of Executive Order 13891, DOE received a petition from the New Civil Liberties Alliance (NCLA) asking DOE to initiate a rulemaking to prohibit any DOE component from issuing, relying on, or defending improper agency guidance.[6] In its petition, NCLA argued that federal agencies often issue informal interpretations, advice, statements of policy, and other forms of guidance that make law by declaring views about what the public should do even though the U.S. Constitution and the APA prohibit doing so. NCLA asserted that such practices evade legal requirements and are used for the purpose of coercing persons or entities outside the Federal Government into taking or not taking action beyond what is required by an applicable statute or regulation. NCLA further stated that despite being prohibited by law, improper guidance is typically outside of judicial review because of procedural limits. (Petition at 6–8) More specifically, NCLA stated that binding legislative rules will be invalidated for failure to conform to the notice-and-comment process under the APA only after they are determined to be legislative in the first place, which, NCLA argues, is neither a simple nor quick task. NCLA also stated that an initial or interim rule, even one that binds regulated parties, may not be reviewable by courts because the rule may not constitute final agency action under the APA, which is required for judicial review. As a result, NCLA stated, courts rarely consider the genuinely coercive effects of guidance documents as sufficiently binding to permit review. (Petition at 8–9)

NCLA concluded that to solve these underlying problems, DOE should issue a binding and final rule prohibiting any DOE component from issuing, relying on, or defending improper agency guidance, and stating that only a new rule binding DOE can assure regulated parties that DOE will refrain from future improper use of guidance. (Petition at 20) NCLA discussed a number of authorities in favor of its petition, including the U.S. Constitution, the APA, an OMB Bulletin (Final Bulletin for Agency Good Guidance Practices, issued in 2007 and available at *https://www.govinfo.gov/content/pkg/FR-2007-01-25/pdf/E7-1066.pdf*), and an OMB Memorandum (OMB Memorandum M–

[4] DOE's online database may be found at *energy.gov/guidance.*

[5] Executive Order 13891 defines ''significant guidance document'' as ''a guidance document that may reasonably be anticipated to: (i) Lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (ii) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (iii) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (iv) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.'' 84 FR 55236.

[6] NCLA's petition, the notice soliciting comment, and comments received on the petition may be found on *http://www.regulaitons.gov* under docket number DOE–HQ–2020–0002, document number 2019–20540.

19–14, issued in 2019 and available at *https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-14.pdf*). (Petition at 4–17) NCLA also provided proposed regulatory text that would require internal DOE procedures for the issuance and use of legislative rules and guidance documents, procedures for compliance with the Congressional Review Act (CRA), and procedures for the public to petition DOE to determine whether a rule is legislative or non-binding guidance and for such determinations to be reviewable by the courts. (Petition at 23–28) DOE published the notice of the petition in the **Federal Register** and sought comment on whether to grant the petition and proceed with a rulemaking. See 84 FR 50791. DOE received three relevant comments on the petition, which are summarized below along with DOE's responses.[7]

Due to the intervening issuance of Executive Orders 13891 after the submission of NCLA's petition, DOE grants in part, and denies in part, NCLA's requests in its petition. This proposed rule addresses NCLA's concerns by proposing regulations that would ensure that the agency's process for the issuance and modification of guidance documents is transparent and accessible to the public. The proposed rule also assures regulated parties that such guidance documents are not legally binding and do not affect the rights and obligations of regulated parties. The proposed rule would implement, and be consistent with, the requirements of Executive Orders 13891, and would ensure that DOE guidance is not used to coerce regulated parties into compliance with non-binding guidance, or used as the sole basis for an enforcement action against such parties. The proposed rule also provides procedures for regulated parties to petition DOE to rescind or modify DOE guidance documents. After receiving comments from the public on this proposed rule, and making any necessary amendments to the proposed rule to reflect meaningful comments, DOE intends to publish a final rule implementing the requirements of Executive Order 13891 and establishing procedures for the issuance and use of DOE guidance documents. However, DOE declines to include provisions in this proposed rule that would establish procedures for compliance with the CRA and for the issuance and use of legislative rules. Such procedures were not addressed by Executive Orders 13891, and the provisions of the CRA and APA, as well as current DOE internal procedures, adequately govern CRA compliance and the issuance and use of legislative rules. Moreover, DOE notes that the greater concerns highlighted in NCLA's petition and proposed regulatory text pertain to DOE's issuance and use of guidance documents, which, as described above, are directly addressed by this proposed rule. Additionally, DOE declines to include procedures for determining legislative versus non-legislative rules, the finality of such determinations, or judicial review of such determinations in the proposed rule. The courts have the authority, and are best positioned, to determine what agency actions are reviewable by a court under the APA or other relevant laws and regulations.

Comments of NCLA

NCLA supported its petition and reiterated its request for DOE to propose and finalize regulations regarding DOE's issuance and use of guidance. NCLA commented that the regulatory text proposed in its petition is compatible with Executive Order 13891 and its counterpart, Executive Order 13892 (''Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication,'' 84 FR 55239 (October 9, 2019)). (NCLA at 2–3) NCLA also referred to the Department of Transportation's (DOT) final rule regarding DOT procedures for issuing regulations and guidance, and DOT enforcement actions. (See 84 FR 71714) NCLA commented that the DOT rule addressed several of NCLA's concerns regarding agency issuance and use of guidance documents and that NCLA's proposed regulatory text for DOE was similar to the DOT rule. NCLA commented that the DOT rule addressed other considerations that NCLA did not raise in its petition to DOE, but that NCLA nonetheless believes DOE should consider. (NCLA at 4–7) NCLA commented that the judicial review provisions in NCLA's proposed regulatory text would allow an interested party to seek redress from the courts when an agency's improper guidance review process falls short. NCLA stated that its proposed regulatory text also resolves the finality question by identifying agency action or inaction that would constitute final agency action reviewable under the APA. (NCLA at 7–8)

DOE Response

Consistent with NCLA's comments, this proposed rule would establish procedures to ensure that the agency's process for the issuance and modification of guidance documents is transparent and accessible to the public. The proposed rule also assures regulated parties that such guidance is not legally binding, and does not affect the rights and obligations of regulated parties. The proposed rule would implement, and be consistent with, the requirements of Executive Order 13891. DOE is not addressing the specific requirements of Executive Order 13892 in this proposed rule. This proposed rule is consistent with the goals of Executive Order 13892 in requiring that guidance documents contain clear language that they are not legally binding and will not be used by DOE as an independent basis for an enforcement action or other administrative penalty. DOE will implement the requirements of Executive Order 13892 in separate administrative actions, as appropriate.

Further, the proposed rule is very similar to the DOT final rule. However, as noted previously, DOE declines to include specific provisions regarding judicial review or finality of DOE actions in the proposed rule. The courts have the authority, and are best positioned, to determine what agency actions are reviewable by a court under the APA or other relevant laws and regulations. In addition, DOE is not persuaded that provisions concerning finality or judicial review would be as useful to regulated parties as the provisions proposed in the proposed rule. These provisions should eliminate, or lessen, the perceived need for judicial review in a significant range of circumstances by further confirming that guidance documents do not bind regulated parties.

Comments of the Antonin Scalia Law School Administrative Law Clinic

The Antonin Scalia School of Law Administrative Law Clinic (the Clinic) expressed support for NCLA's petition for DOE to undertake a rulemaking relating to DOE's practice of using guidance documents. The Clinic noted the importance of guidance documents, but stated that agencies too often use guidance as a means of setting agency policy without providing the public notice and opportunity to comment, thereby limiting meaningful and intelligent public participation. The Clinic noted the lack of transparency surrounding agencies' issuance and use of many guidance documents. (Clinic at

[7] DOE received nine additional comments on the petition. However, DOE believes that these 9 comments were submitted to the incorrect docket, as these comments concerned the regulation of hemp. Accordingly, DOE will not publish or respond to these comments as they are irrelevant to the NCLA petition and this rulemaking.

2–6) The Clinic stated that DOE should propose and finalize regulations through the notice-and-comment process to ensure that formalized procedures are in place for the development, approval, and issuance of guidance documents. (Clinic at 10–12)

DOE Response

Consistent with the Clinic's comments, this proposed rule would establish procedures to ensure that the agency's process for the issuance and modification of guidance documents is transparent and accessible to the public. Moreover, the proposed rule assures regulated parties that such guidance is not legally binding, and that regulated parties' statutory and regulatory rights and obligations are not affected by such guidance.

Comments of the Administrative Conference of the United States

The Administrative Conference of the United States (ACUS) did not take a position with respect to the NCLA petition; rather, ACUS called DOE's attention to two past ACUS recommendations regarding agency guidance. ACUS referred to ACUS Recommendation 2017–5, ''Agency Guidance Through Policy Statements,'' which provides best practices to agencies on the formulation and use of policy statements, and lists steps that agencies can take to remain flexible in their use of policy statements and to encourage public participation in the adoption or modification of policy statements. ACUS also referred to ACUS Recommendation 2019–1, ''Agency Guidance Through Interpretive Rules,'' which identifies ways in which agencies can offer the public the opportunity to propose alternatives to approaches provided in an agency's interpretive rule that advises the public on how to comply with the underlying statute or regulation. Recommendation 2019–1 also identifies ways agencies can encourage public participation in the adoption or modification of interpretive rules. (ACUS at 1) ACUS also cited to and submitted reports by ACUS in support of both Recommendations. ACUS took no position on the merits of NCLA's petition. (ACUS at 1–2)

DOE Response

Consistent with the ACUS recommendations, this proposed rule would formally establish procedures to ensure that the agency's process for the issuance and modification of guidance documents is transparent and accessible to the public. Moreover, the proposed rule assures regulated parties that such guidance is not legally binding, and that regulated parties' statutory and regulatory rights and obligations are not affected by such guidance. Additionally, this proposed rule provides procedures for DOE to allow for public participation in the issuance of significant guidance documents, and for petitioning DOE to rescind or modify any DOE guidance document.

Comments of the National Association of Manufacturers

The National Association of Manufacturers (NAM) expressed support for NCLA's petition and urged DOE to develop a rule to create procedural safeguards and to provide regulated entities with clarity as to when an agency proclamation is final and binding and when it is not. (NAM at 2). In its comments, NAM noted the usefulness of guidance in providing clarity for regulated entities; however, NAM stated that the improper use of guidance can impose burdens on society when regulated entities struggle to differentiate between binding rules and non-binding guidance. (NAM at 1) NAM described the difficulties in differentiating between binding rules and non-binding guidance, and the costs imposed on manufacturers as a result of this confusion. (NAM at 1–2). NAM also stated that agency guidance documents are seldom subject to public scrutiny and, therefore, that such guidance documents often lack notice or explanation, are difficult to locate, and fail to provide regulated entities with recourse in court. (NAM at 2) NAM urged DOE to establish, by rule, guidelines for the development of policies that may not technically bind the public but that may be coercive in practical effect, which should include a reasonable form of notice, opportunity for public participation, an easily accessible online repository of guidance documents, and procedures for regulated industries to challenge guidance that may exceed statutory or regulatory authority. (NAM at 2–3).

DOE Response

Consistent with NAM's comments, this proposed rule would establish procedures to ensure that the agency's process for the issuance and modification of guidance documents is transparent and accessible to the public. The agency has already established an online repository where its guidance documents may be easily accessed (*energy.gov/guidance*). Moreover, the proposed rule assures regulated parties that such guidance is not legally binding, and that regulated parties' statutory and regulatory rights and obligations are not affected by such guidance. Additionally, this proposed rule would establish a procedure for regulated entities to petition DOE to modify or withdraw DOE guidance documents.

Public Participation

DOE will accept comments, data, and information regarding this proposed rule on or before the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

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 General Counsel 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 the disclosure of which 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 below.

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 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'' that deletes the information believed to be confidential. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and will treat it according to its determination.

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

Regulatory Analysis

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

This proposed rule is a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). As a result, this action was reviewed by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). DOE does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a proposed rule of agency procedure and practice. The proposed rule describes DOE's internal procedures for the promulgation and processing of guidance documents, to ensure that guidance documents only clarify existing statutory and regulatory obligations and do not impose any new obligations. DOE proposes to adopt these internal procedures as part of its implementation of Executive Order 13891, and does not anticipate incurring significant additional resource costs in doing so. Moreover, it is anticipated that the public will benefit from the resulting increase in efficiency and transparency in the issuance of guidance documents, and more opportunities to comment on guidance documents.

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' See 82 FR 9339 (January 30, 2017). E.O. 13771 states that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 states that it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. More specifically, section 2 of E.O. 13771 requires, amongst other things, that the costs of any new regulation be offset by the elimination of existing costs associated with at least 2 prior regulations.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process, 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: *http://energy.gov/gc/office-general-counsel.*

The proposed rule would codify internal agency procedures regarding DOE's issuance of guidance documents. Additionally, as noted previously, guidance documents do not have the force and effect of law and are not legally binding on regulated entities. This rule would establish procedures to ensure that DOE guidance only clarifies existing statutory and regulatory obligations, rather than imposing any new obligations. DOE therefore does not anticipate any significant economic impacts from this proposed rule. For these reasons, DOE certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE did not prepare an IRFA for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act of 1995

The proposed rule would impose no new information or record keeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act of 1969

DOE has determined that the proposed rule would be covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of appendix A to subpart D, 10 CFR part

1021. That Categorical Exclusion applies to actions that are strictly procedural, such as rulemaking establishing the administration of grants. The proposed rule would codify internal agency procedures for issuing guidance documents. The action would not have direct environmental impacts. Accordingly, DOE does not intend to prepare an environmental assessment or an environmental impact statement.

F. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (See 65 FR 13735) DOE examined this proposed rule and determined that it would not preempt State law and 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. No further action is required by Executive Order 13132.

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

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations 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 proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175. Because this proposed rule would not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

H. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies its preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule would meet the relevant standards of Executive Order 12988.

I. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://energy.gov/gc/office-general-counsel*). This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so these requirements under the Unfunded Mandates Reform Act do not apply.

J. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

L. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR

62446 (October 7, 2002). DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

M. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. The proposed rule would codify internal agency procedures and does not meet any of the three criteria listed above. Accordingly, the requirements of Executive Order 13211 do not apply.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 1061

Administrative practice and procedure.

Signing Authority

This document of the Department of Energy was signed on June 17, 2020, by William S. Cooper, III, General Counsel, 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 18, 2020.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to add part 1061 to Chapter X of Title 10 of the Code of Federal Regulations as set forth below:

PART 1061—PROCEDURES FOR THE ISSUANCE OF GUIDANCE DOCUMENTS

Sec.
1061.1 Purpose.
1061.2 Definitions.
1061.3 Procedures for issuing guidance documents.
1061.4 Petitions for withdrawal or modification of guidance documents.

Authority: 42 U.S.C. 7254; 42 U.S.C. 7101 *et seq.;* E.O. 13891, 84 FR 55235.

§ 1061.1 Purpose.

This part establishes DOE procedures for the issuance and review of new or revised guidance documents, and procedures for the public to petition for the withdrawal or removal of DOE guidance documents.

§ 1061.2 Definitions.

For purposes of this part, the following terms, phrases and words are defined as follows:

Administrator means the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

DOE means the U.S. Department of Energy.

Guidance document means an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, which sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, but does not include:

(1) Rules promulgated pursuant to notice and comment under the Administrative Procedure Act, 5 U.S.C. 553, or similar statutory provisions;

(2) Rules exempt from rulemaking requirements under 5 U.S.C. 553(a);

(3) Rules of agency organization, procedure, or practice;

(4) Decisions of agency adjudications under 5 U.S.C. 554, 42 U.S.C. 6303(d)(3)(A), or similar statutory provisions;

(5) Internal executive branch legal advice or legal opinions addressed to executive branch officials;

(6) Agency statements of specific, rather than general, applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions, notices regarding particular locations or facilities, and correspondence with individual persons or entities, including notices of violation and warning letters;

(7) Briefs and other positions taken in litigation, enforcement actions, and financial assistance or contract bid protests, appeals or any other contract or financial assistance litigation;

(8) Agency statements that do not set forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including, but not limited to, speeches, presentations, editorials, media interviews, press materials, congressional testimony, and congressional correspondence;

(9) Guidance pertaining to military or foreign affairs functions;

(10) Guidance or policies pertaining to financial assistance formation, funding opportunity announcements, awards and administration of financial assistance;

(11) Guidance or policies pertaining to contract formation, solicitations, awards and administration of contracts;

(12) Guidance or policies pertaining to the administration or oversight of capital asset projects or projects treated as capital asset projects by the Department;

(13) Guidance pertaining to execution of the Department's small business programs and achievement, including compliance with the Small Business Regulatory Enforcement Fairness Act;

(14) Grant solicitations and awards;

(15) Contract solicitations and awards;

(16) Internal agency policies or guidance directed solely at DOE personnel or to other Federal agencies that is not intended to have substantial future effect on the behavior of regulated parties; or

(17) Guidance pertaining to the use, operation, or control of a government facility or property; or

(18) Policies or guidance when the release or disclosure of the document is legally prohibited.

Significant guidance document means a guidance document that may reasonably be anticipated to:

(1) Lead to an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

(3) Materially alter the budgetary impact of entitlements, 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 of Executive Order 12866.

§ 1061.3 Procedures for issuing guidance documents.

(a) *Contents of Guidance Documents.* All new or revised DOE guidance documents:

(1) Must comply with all relevant statutes and regulations;

(2) Must include a clear and prominent statement declaring that:

(i) The contents of the document do not have the force and effect of law and are not meant to bind the public in any way;

(ii) The document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies, except as authorized by law or as incorporated into a contract; and

(iii) DOE will not rely upon the document as an independent basis for an enforcement action or other administrative penalty.

(3) Must avoid using mandatory language such as ''shall,'' ''must,'' ''required,'' or ''requirement,'' unless the language is describing an established statutory or regulatory requirement, or is directed solely to DOE personnel and is not intended to have a substantial future effect on the behavior of regulated parties;

(4) Must be written in plain and understandable language; and

(5) Must include the following attributes: The term ''guidance''; a title; identify the issuing agency or office; identify activities to which and the persons to whom the document applies; the date of issuance; the relation to previous guidance (if applicable); a citation to the statutory provision or regulation to which applies; and a short summary of the subject matter.

(b) *Review and Clearance by Counsel.* All new or revised DOE guidance documents must be reviewed by the Office of the Assistant General Counsel for Legislation, Regulation and Energy Efficiency prior to issuance to:

(1) Ensure compliance with this part and Executive Order 13891;

(2) Obtain a determination from the Administrator as to whether the guidance document is significant, as defined in this part; and

(3) If the guidance document is determined to be significant, coordinate efforts with the Office of Information and Regulatory Affairs within the Office of Management and Budget as prescribed in paragraph (c) of this section.

(c) *Procedures for Significant Guidance Documents.* For any guidance document deemed to be a significant guidance document by the Administrator, DOE shall:

(1) Publish notice of the guidance document in the **Federal Register** and on DOE's guidance website, and provide a public notice and comment period of not less than 30 days prior to the issuance of the final significant guidance document;

(2) Provide publicly available responses to major and relevant concerns raised in comments;

(3) Obtain approval of the significant guidance document by the Secretary of Energy or DOE component head appointed by the President prior to issuance of the final significant guidance document;

(4) In accordance with the procedures of Executive Order 12866, obtain review of the significant guidance document by the Administrator prior to issuance of the final significant guidance document;

(5) Comply with applicable requirements of Executive Orders 12866, 13563, 13609, 13771, and 13777.

(d) *Exception to notice and comment procedures.* DOE may dispense with the requirements of paragraphs (c)(1) and (2) of this section where DOE finds for good cause that notice and public comment for a significant guidance document are impracticable, unnecessary, or contrary to the public interest. DOE shall incorporate such finding and a brief statement of the reasons for such finding into the significant guidance document.

(e) *Other Exceptions.* The procedural requirements of paragraph (c) of this section shall not apply, in whole or in part, when:

(1) DOE and the Administrator agree that exigency, safety, health, or other compelling cause warrants an exemption from the relevant requirement or requirements; or

(2) The significant guidance document is of a kind for which DOE and the Administrator have developed a categorical exception from the relevant requirement or requirements, as approved by the Administrator.

(f) *Electronic Availability of Guidance.* DOE will:

(1) Ensure that all guidance documents, as defined in this part, are available to the public on the DOE website through a single web page portal; and

(2) State clearly and prominently on its web page portal that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract.

(g) *Rescinded Guidance Documents.* All guidance documents, as defined in this part, that are not posted on DOE's website portal as described in paragraph (a) of this section shall be deemed rescinded, unless and until DOE subjects such guidance documents to the procedures of this section. Except for the purposes of establishing historical facts, DOE will not cite, use, or rely upon rescinded guidance documents unless and until DOE subjects such guidance documents to the procedures of this section.

§ 1061.4 Petitions for withdrawal or modification of guidance documents.

(a) *Filing a petition.* Any person may petition DOE to withdraw or modify a guidance document. The petition must be addressed to the Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, Attention: Petition for Modification or Withdrawal of Guidance Document, and either:

(1) Sent by mail addressed to: Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585;

(2) Sent by email to *Guidance@hq.doe.gov;* or

(3) Hand delivered to DOE at 1000 Independence Avenue SW, Washington, DC 20585.

(b) *Content of petition.* For each petition filed under this section, the petitioner must:

(1) Specify the petitioner's:

(i) Name, or if the petitioner is an organization, the name of the organization and the name and authority of the individual who signed the petition on behalf of the organizational or corporate petitioner;

(ii) Telephone number;

(iii) Mailing address; and

(iv) Email address (if available).

(2) Identify the guidance document to be withdrawn or modified; and

(3) Be signed by the petitioner or authorized representative.

(c) *Additional information.* To assist DOE in responding appropriately to the petition, a petitioner should also:

(1) Present any specific problems or issues that the petitioner believes are associated with the guidance document, including any specific circumstances in which the guidance document is incorrect, incomplete, obsolete, or inadequate;

(2) Present any proposed solution to either modify or withdraw the guidance document, including a discussion of

how the petitioner's proposed solution resolves the issues identified under paragraph (c)(1) of this section;

(3) In the case of a petition for modification of a guidance document, specify any modifications to the text of the document that petitioner seeks;

(4) Cite, enclose, or reference technical, scientific, or other data or information supporting the petitioner's assertions under paragraphs (c)(1) and (2) of this section.

(d) *Public comment.* DOE will publish a petition for modification or withdrawal of a guidance document and supporting documentation in the **Federal Register**, and provide opportunity for public comment. DOE may dispense with the notice and comment procedures in this paragraph where DOE finds for good cause that notice and public comment are impracticable, unnecessary, or contrary to the public interest, or where exigency, safety, health, or other compelling cause warrants an exemption from the notice and comment procedures in this paragraph. DOE shall incorporate such finding and a brief statement of the reasons for such finding into its decision on the petition.

(e) *Confidential business information.* In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a petition for modifying or withdrawing a guidance document, or in supporting documentation, must be accompanied by a copy of the petition or supporting documentation from which the information claimed to be confidential has been deleted. DOE will publish in the **Federal Register** the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11.

(f) *Disposition of petition.* DOE shall determine the appropriate disposition of a petition after consideration of the petition and any supporting documents received, as well as any public comment received on the petition, within 90 days of DOE's publication in the **Federal Register** of such petition, to the maximum extent practicable.

(g) *Exhaustion of administrative remedies.* Before any DOE action under this part is final, a person must exhaust his or her administrative remedies. To exhaust administrative remedies under this part, a person must:

(1) Avail himself or herself of the procedures in this section; and

(2) Receive a final disposition from DOE in accordance with paragraph (f) of this section.

[FR Doc. 2020–13458 Filed 6–30–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0576; Product Identifier 2020–NM–068–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 adopt a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and -1041 airplanes. This proposed AD was prompted by a determination 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 17, 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 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.* 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–2020–0576.

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–2020–0576; 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: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@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–2020–0576; Product Identifier 2020–NM–068–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 it receives, 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 EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD

2020–0091, dated April 22, 2020 (''EASA AD 2020–0091'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 7, 2019 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 the potential failure of certain life-limited parts, which could result in reduced structural integrity of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2020–0091 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits. 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 the bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI 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 require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2020–0091 described previously, as incorporated by reference. Any differences with EASA AD 2020–0091 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 (j)(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 2020–0091 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0091 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 2020–0091 that is required for compliance with EASA AD 2020–0091 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0576 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) and 91.409(e).

Costs of Compliance

The FAA estimates that this proposed AD affects 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours x $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 has 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 adding the following new airworthiness directive (AD):

Airbus SAS: Docket No. FAA–2020–0576; Product Identifier 2020–NM–068–AD.

(a) Comments Due Date

The FAA must receive comments by August 17, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and -1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 7, 2019.

(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 the potential failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0091, dated April 22, 2020 (''EASA AD 2020–0091'').

(h) Exceptions to EASA AD 2020–0091

(1) The requirements specified in paragraph (1) of EASA AD 2020–0091 do not apply to this AD.

(2) Paragraph (2) of EASA AD 2020–0091 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations'' specified in paragraph (2) of EASA 2020–0091 within 90 days after the effective date of this AD.

(3) The initial compliance time for complying with the limitations specified in paragraph (2) of EASA AD 2020–0091 is at the applicable ''limitations'' specified in paragraph (2) of EASA AD 2020–0091, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (3) and (4) of EASA AD 2020–0091 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0091 does not apply to this AD.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2020–0091.

(j) 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 (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain 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 2020–0091 that contains RC procedures and tests: Except as required by paragraph (j)(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.

(k) Related Information

(1) For information about EASA AD 2020–0091, 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.* 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–2020–0576.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

Issued on June 25, 2020.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–14075 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2020–0171; FRL–10010–86–Region 3]

Air Plan Approval; West Virginia; Redesignation of the Marshall Sulfur Dioxide Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a

redesignation request and state implementation plan (SIP) revisions submitted by the State of West Virginia related to the national ambient air quality standard (NAAQS or Standard) for the 2010 1-hour sulfur dioxide (SO_2) NAAQS (2010 SO_2 NAAQS). On March 18, 2020, West Virginia, through the West Virginia Department of Environmental Protection (WVDEP), submitted a redesignation request for the Marshall, West Virginia SO_2 Nonattainment Area (Marshall Area or Area). In conjunction with its request, WVDEP submitted SIP revisions comprised of a maintenance plan providing for continued attainment of the SO_2 NAAQS for a period of ten years following redesignation of the Area, SO_2 emissions limits for the Mitchell Power Plant (Mitchell), and a modeling analysis demonstrating that the Mitchell limits provide for attainment in the Area. The effect of this proposal, if finalized, would change the designation of the Marshall Area from nonattainment to attainment of the 2010 SO_2 NAAQS. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 31, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2020–0171 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2308. Ms. Powers can also be reached via electronic mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is proposing to take the following actions: (1) Approve and incorporate into the SIP the SO_2 limits and associated compliance and monitoring parameters in consent order CO–SIP–C–2019–13 for Mitchell; (2) determine that the air quality modeling submitted by the WVDEP demonstrates that the Marshall Area has attained the 2010 SO_2 NAAQS as a result of compliance with the consent order limits for Mitchell; (3) approve and incorporate into the SIP West Virginia's plan for maintaining the 2010 SO_2 NAAQS in the Marshall Area through 2030 pursuant to section 175A of the CAA; and (4) redesignate the Marshall Area to attainment for the 2010 SO_2 NAAQS.

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I. Background

On June 22, 2010 (75 FR 35520), EPA published a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. On August 5, 2013 (78 FR 47191), EPA designated 29 areas of the country as nonattainment for the 2010 SO_2 NAAQS, including the Marshall Area in West Virginia. These designations are referred to as ''round one'' SO_2 area designations which were effective on October 4, 2013. In that action, the Marshall Area was designated nonattainment for the 2010 SO_2 NAAQS based on data collected at the Moundsville, West Virginia ambient air quality monitoring station for calendar years 2009 through 2011. The Marshall Area is comprised of the Clay, Franklin, and Washington Tax Districts of Marshall County, West Virginia.

Under CAA section 191(a), attainment plan SIPs were due for areas designated nonattainment in round one 18 months after the effective date of designation, or April 4, 2015. Such SIPs were required by CAA section 192(a) to provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of nonattainment designation, or October 4, 2018. West Virginia submitted an attainment SIP on March 17, 2017 (2017 SIP).[1] The SIP addressed the required elements of an attainment SIP under CAA section 172(c), including an attainment demonstration that the State asserted showed attainment of the 2010 SO_2 Standard, SO_2 emissions limits for the Mitchell Power Plant, reasonably available control measures including reasonably available control technology (RACM/RACT), reasonable further progress (RFP), contingency measures, and certification that nonattainment new source review (NNSR) permit program requirements were being met. The 2017 SIP included a West Virginia Compliance Order on Consent (2016 consent order) that required Kentucky Power Company, the operator of American Electric Power's (AEP) Mitchell Power Plant, to comply with an SO_2 maximum emissions limit from Units 1 and 2, of 6,175 pounds per hour (lbs/hr) on a 30-day rolling average, along with associated monitoring, recordkeeping, and reporting requirements, starting on January 1, 2017. The March 18, 2020 submittal requesting redesignation included a

[1] On March 18, 2016, EPA made a finding of failure to submit nonattainment area SIPs for 19 nonattainment areas, including the Marshall Area. EPA's letter to West Virginia dated September 27, 2017 confirmed that West Virginia's March 17, 2017 submittal corrected the deficiency identified in the finding.

demonstration showing attainment, a maintenance plan, contingency measures, and a December 2, 2019 consent order (2019 consent order) with Kentucky Power for Mitchell with lower SO_2 emissions limits based on modeling with a changed stack height. Specifically, the 2019 consent order establishes an SO_2 emissions limit for Mitchell Units 1 and 2 as a maximum of 3,149 lbs/hr on a 30-day rolling average, with compliance parameters including continuous emissions monitoring, recordkeeping including a calculation of the daily 30-day average, reporting of deviations from the requirements and semi-annual compliance reporting. Compliance with the limits and other provisions in the 2019 consent order were required starting on January 1, 2020.

Under CAA section 110(k)(2) through (4), EPA was required to take action to approve or disapprove West Virginia's 2017 SIP within 12 months of determining it to be complete, but EPA did not take timely action. Subsequently, the Center for Biological Diversity and other plaintiffs (CBD) sued EPA in the U.S. District Court for the Northern District of California seeking a court order to compel EPA's action on West Virginia's 2017 SIP and several other SIPs for other areas in the nation. *Center for Biological Diversity, et al.,* v. *Wheeler,* No. 4:18–cv–03544–YGR. That lawsuit resulted in the plaintiffs and EPA agreeing to a schedule, entered by the court as an order, for EPA to take action on the covered SIPs by certain deadlines. October 30, 2020 was the court ordered deadline given for EPA to take action on West Virginia's 2017 SIP. The order also provided that if EPA issues a redesignation to attainment for any area for which the order required EPA action on a submitted SIP covered by the order, then EPA's obligation to take action on that SIP's CAA section 172(c) elements would be automatically terminated. Consequently, if EPA takes final action to redesignate the Marshall, West Virginia nonattainment area to attainment before October 30, 2020, EPA will not be required to take action on the 2017 SIP.

II. Criteria for Redesignation to Attainment

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment:

1. EPA has determined that the relevant NAAQS has been attained in the area;
2. The applicable implementation plan has been fully approved by EPA under section 110(k);
3. EPA has determined that improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the SIP, Federal regulations, and other permanent and enforceable reductions;
4. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA; and,
5. The state has met all applicable requirements for the area under section 110 and part D.

III. EPA's Analysis of West Virginia's Redesignation Request for the Marshall Area

A. The Marshall Area Has Attained the 2010 SO_2 NAAQS

EPA's 2014 Guidance [2] for areas designated nonattainment explains that there are generally two components needed to support an attainment determination, which should be considered interdependently. First, to demonstrate that it is meeting the Standard, an SO_2 nonattainment area which was designated based on air quality monitoring data would need to have three consecutive calendar years of air quality monitoring data showing that the area is meeting the Standard. The data would need to be complete and quality-assured, consistent with 40 CFR part 58 requirements, and other relevant EPA guidance, and properly submitted to the Air Quality System (AQS) database of the EPA's Aerometric Information Retrieval System (AIRS). Areas relying on monitoring data alone to support a determination of attainment are also expected to provide a demonstration (via air quality modeling) that the affected monitor(s) is or are located in the area of maximum concentration. If there are air quality monitors located in the area, but none are located in the area of predicted maximum concentration, then air quality dispersion modeling will generally be needed to estimate SO_2 concentrations in the area for purposes of determining attainment. If both monitoring and modeling evidence is available, EPA will consider all available evidence.

Under EPA regulations at 40 CFR 50.17, the SO_2 Standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of daily maximum one-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. The Standard must be met at all relevant monitoring sites in the subject area. There is only one monitor in the Marshall Area, which is located at the Moundsville National Guard Armory in Marshall County. The data from this monitor has been certified and uploaded to EPA's AQS website, through December 31, 2019, and shows an attaining design value for the most recent three-year period (2017 through 2019) of 8 ppb. The 2019 AQS design value report is included in the docket for this rulemaking action and is summarized in Table 1.

TABLE 1—MARSHALL AREA 99TH PERCENTILE OF 1-HOUR DAILY MAXIMUM SO_2 CONCENTRATIONS (ppb), AND 2017–2019 DESIGN VALUE

Monitor	Monitor ID	2017	2018	2019	2017–2019 design value
Moundsville National Guard Armory	54–051–1002	7	9	9	8

1. Attainment Demonstration and Longer Term Averaging

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. The control strategy requirements that SIPs must meet are further delineated in 40 CFR part 51 subpart G. EPA has long required that all SIPs and control strategies reflect four fundamental principles of quantification, enforceability, replicability, and accountability. General Preamble for

[2] Guidance for 1-Hour Sulfur Dioxide Nonattainment Area SIP Submissions, April 23, 2014, page 62.

Implementation of title I of the CAA. 57 FR 13498, April 16, 1992, at 13567–68. Attainment plans for the SO_2 NAAQS must consist of two components: (1) Emission limits and other control measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, appendix W, which demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

EPA's April 2014 guidance recommends that the emission limits be expressed as short-term average limits (*e.g.,* addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days, so long as the state meets various suggested criteria. See April 2014 guidance, pages 22 to 39. The April 2014 Guidance recommends that—should states and sources utilize longer averaging times—the longer term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value (CEV) shown to provide for attainment that the plan otherwise would have set.

The April 2014 guidance provides an extensive discussion of EPA's rationale for concluding that appropriately set, comparably stringent limitations based on averaging times for periods as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this option, EPA considered the nature of the Standard, conducted detailed analyses of the impact of use of 30-day average limits on the prospects for attaining the Standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pages 22 to 39. See also *Id.* at appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO_2 NAAQS, including this form of determining compliance with the Standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA, 686 F.3d 803 (D.C. Cir. 2012).* Because the Standard has this form, a single exceedance of the NAAQS's 75 ppb level does not create a violation of the Standard. Instead, at issue is whether a source operating in compliance with a properly set emission limit with a longer term average could cause exceedances of 75 ppb, and if so the resulting frequency and magnitude of such exceedances, and in particular whether EPA can have reasonable confidence that a properly set longer term average limit will provide that the 3-year average of the annual fourth highest daily maximum 1-hour average value will be at or below 75 ppb. A synopsis of how EPA judges whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in light of the NAAQS's form for determining attainment at monitoring sites, follows.

For SO_2 attainment demonstrations based on 1-hour emission limits, the standard approach is to conduct modeling using fixed emission rates. The maximum emission rate that would be modeled to result in attainment (*i.e.,* in an ''average year'' [3] shows three, not four days with maximum hourly levels exceeding 75 ppb) is labeled the ''critical emission value.'' The modeling process for identifying this CEV inherently considers the numerous variables that affect ambient concentrations of SO_2, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit at this CEV.

EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the CEV. EPA also acknowledges the concern that longer term emission limits can allow short periods with emissions above the CEV which, if coincident with meteorological conditions conducive to high SO_2 concentrations, could in turn create the possibility of an exceedance of the NAAQS level occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the CEV. However, for several reasons, EPA believes that the approach recommended in its April 2014 Guidance document suitably addresses this concern. First, from a practical perspective, EPA expects the actual emission profile of a source subject to an appropriately set longer term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. EPA expects this similarity because it has recommended that the longer term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit, reflecting a downward adjustment from the CEV that is proportionate to the anticipated variability in the source's emissions profile. As a result, EPA expects either form of emission limit to yield a comparable reduction in SO_2 emissions and comparable air quality.

Second, from a more theoretical perspective, EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer term limit, as compared to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the critical emission level, and in the longer term average limit scenario, the source is presumed occasionally to emit at levels higher than the CEV but on average, and presumably at most times, to emit well below the CEV. In an ''average year,'' compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with maximum hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer

[3] An ''average year'' is used to mean a year with average air quality. While 40 CFR part 50 appendix T provides for averaging three years of 99th percentile daily maximum 1-hour values (*e.g.,* the fourth highest daily maximum 1-hour concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' in order to simplify the illustration of relevant principles.

term limit, it is possible that additional exceedances of 75 ppb would occur that would not occur in the 1-hour limit scenario (if emissions exceed the CEV at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances of 75 ppb that would be expected in the 1-hour limit scenario would not occur in the longer term limit scenario. This result arises because the longer term limit requires lower emissions most of the time (because the limit is set well below the CEV), so a source complying with an appropriately set longer term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

As a hypothetical example to illustrate these points, suppose a source that always emits 1,000 pounds of SO_2 per hour, which results in air quality at the level of the NAAQS (*i.e.,* results in a design value of 75 ppb). Suppose further that in an ''average year,'' these emissions cause the five highest maximum daily average 1-hour concentrations to be 100 ppb, 90 ppb, 80 ppb, 75 ppb, and 70 ppb. Then suppose that the source becomes subject to a 30-day average emission limit of 700 pounds per hour. It is theoretically possible for a source meeting this limit to have emissions that occasionally exceed 1,000 pounds per hour, but with a typical emissions profile, emissions would much more commonly be between 600 and 800 pounds per hour. In this simplified example, assume a zero background concentration, which allows one to assume a linear relationship between emissions and air quality. (A nonzero background concentration would make the mathematics more difficult but would give similar results.) Air quality will depend on what emissions happen on what critical hours, but suppose that emissions at the relevant times on these 5 days are 800 pounds per hour, 1,100 pounds per hour, 500 pounds per hour, 900 pounds per hour, and 1,200 pounds per hour, respectively. (This is a conservative example because the average of these emissions, 900 pounds per hour, is well over the 30-day average emission limit.) These emissions would result in daily maximum 1-hour concentrations of 80 ppb, 99 ppb, 40 ppb, 67.5 ppb, and 84 ppb. In this example, the fifth day would have an exceedance of 75 ppb that would not otherwise have occurred, but the third day would not have exceedances that otherwise would have occurred, and the fourth day would be below rather than at 75 ppb. In this example, the fourth highest maximum daily 1-hour concentration under the 30-day average would be 67.5 ppb.

This simplified example illustrates the findings of a more complicated statistical analysis that EPA conducted using a range of scenarios using actual plant data. As described in appendix B of EPA's April 2014 Guidance, EPA found that the requirement for lower average emissions over a longer averaging period is highly likely to yield better air quality than is required with a comparably stringent 1-hour limit. Based on analyses described in appendix B of its 2014 guidance, EPA expects that an emission profile with maximum allowable emissions under an appropriately set comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of exceedances of 75 ppb and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the CEV. This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The question then becomes whether this approach—which is likely to produce a lower number of overall exceedances even though it may produce some unexpected exceedances above the CEV—meets the requirement in section 110(a)(1) and 172(c)(1) for state implementation plans to ''provide for attainment'' of the NAAQS. For SO_2, as for other pollutants, it is generally impossible to design a nonattainment area plan in the present that will guarantee that attainment will occur in the future. A variety of factors can cause a well-designed attainment plan to fail and unexpectedly not result in attainment, for example if meteorology occurs that is more conducive to poor air quality than was anticipated in the plan. Therefore, in determining whether a plan meets the requirement to provide for attainment, EPA's task is commonly to judge not whether the plan provides absolute certainty that attainment will in fact occur, but rather whether the plan provides an adequate level of confidence of prospective NAAQS attainment. From this perspective, in evaluating use of a 30-day average limit, EPA must weigh the likely net effect on air quality. Such an evaluation must consider the risk that occasions with meteorology conducive to high concentrations will have elevated emissions leading to exceedances that would not otherwise have occurred and must also weigh the likelihood that the requirement for lower emissions on average will result in days not having exceedances that would have been expected with emissions at the CEV. Additional policy considerations, such as in this case the desirability of accommodating real world emissions variability without significant risk of violations, are also appropriate factors for EPA to weigh in judging whether a plan provides a reasonable degree of confidence that the plan will lead to attainment. Based on these considerations, especially given the high likelihood that a continuously enforceable limit averaged over as long as 30 days, determined in accordance with EPA's guidance, will result in attainment, EPA believes as a general matter that such limits, if appropriately determined, can reasonably be considered to provide for attainment of the 2010 SO_2 NAAQS.

The April 2014 Guidance offers specific recommendations for determining an appropriate longer term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the CEV), and applies an adjustment factor to determine the (lower) level of the longer term average emission limit that would be estimated to have a stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation. In this recommended method, the ratio of the 99th percentile among these long term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied by the candidate 1-hour emission limit to determine a longer term average emission limit that may be considered comparably stringent.[4] The guidance provided extensive recommendations regarding the calculation of the adjustment factor, for example to derive the adjustment factor from long term average versus 1-hour emissions statistics computed in accordance with the compliance

[4] For example, if the CEV is 1,000 pounds of SO_2 per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer term average limit would be 700 pounds per hour.

determination procedures that the state is applying. These recommendations are intended to yield the most pertinent estimate of the impact of applying a longer term average limit on the stringency of the limit in the relevant context. The April 2014 Guidance also addresses a variety of related topics, such as the potential utility of setting supplemental emission limits, such as mass-based limits, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer term emission rate limit.

Preferred air quality models for use in regulatory applications are described in appendix A of EPA's *Guideline on Air Quality Models* (40 CFR part 51, appendix W).[5] In 2005, EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 Standard is provided in appendix A to the April 2014 SO_2 Guidance document referenced above. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

As stated previously, attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (See appendix W to 40 CFR part 51) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO_2 NAAQS. For a short-term (*i.e.,* 1-hour) Standard, EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. Estimated concentrations should include ambient background concentrations, should follow the form of the Standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010 clarification memo on ''Applicability of appendix W Modeling Guidance for the 1-hr SO_2 National Ambient Air Quality Standard'' (U.S. EPA, 2010a).

In the modeling analysis for Marshall, attainment was demonstrated at an hourly SO_2 emission rate of 0.31 pounds per million British thermal units (lb/MMBtu) from both generating units at the Mitchell Power Plant, which equates to a 1-hour modeled CEV of 5,222.08 lbs/hr (both units combined). West Virginia submitted an analysis of emissions from October 1, 2011 through September 30, 2016 to determine a rolling 30-day average emission rate that would be of comparable stringency to a 1-hour limit at the modeled emission rate, as suggested in the April 2014 Guidance. West Virginia followed the steps established by *Appendix C, Example Determination of Longer Term Average Emission Limits* of the April 2014 Guidance, including the evaluation of five years of historical data and the distribution of the hourly and 30-day averages. The 99th percentile value among the hourly data and the 99th percentile value among the 30 operating-day period averages were each computed. In order to calculate the 30-day average, only operating days were included in the average. An operating day is a day in which one or both of units had at least one hour of emissions data reported. The ratio of these two values was an adjustment factor of 60.3 percent. Multiplying this adjustment factor by the CEV serves to estimate the 30-day average limit that is comparably stringent to a 1-hour limit at the CEV. By this means, West Virginia calculated a 30-day average limit of 3,149 pounds of SO_2 per hour on a 30-day rolling average basis (both units combined). EPA agrees that West Virginia appropriately determined the CEV, the adjustment factor, and the resulting 30-day average limit.

2. Modeling Analysis

The Moundsville Armory monitor was sited to assess the SO_2 impacts caused by the major SO_2 sources located along the Ohio River Valley in Marshall County. These facilities have had significant contributions of SO_2 emissions to the area and impacted the Moundsville monitoring site for over three decades. During the 2009–2011 time frame upon which the nonattainment designation was based, the sources included the R.E. Burger Power Plant in Belmont County, Ohio, the Kammer Power Plant, and the Rain CII Carbon Plant, which have all permanently shut down, and the Eagle Natrium, LLC plant, which now burns natural gas, and the Mitchell Power Plant. Mitchell Power Plant is the remaining primary source of SO_2 in the Area that contributes to the Moundsville monitor, which is located approximately 11 kilometers northeast of Mitchell. However, the attainment modeling submitted in the 2017 SIP showed that the maximum SO_2 concentration within the Area is located 0.75 kilometers east-northeast of the Mitchell Power Plant.

Because the Moundsville Armory monitor is not at the location of maximum concentration, a modeling demonstration is required to show that SO_2 concentrations throughout the Area show attainment. West Virginia's March 18, 2020, SIP submittal includes a modeling analysis to show that the Area will attain the 2010 SO_2 NAAQS based on the SO_2 emission limit established for Mitchell Power Plant in a 2019 consent order with WVDEQ. EPA's analysis of the West Virginia modeling is more fully described in a Modeling Technical Support Document (TSD) that is provided in the docket for this rulemaking action and summarized below.

The modeling protocol was developed by West Virginia in September of 2016 and periodically revised throughout the development of the 2017 attainment SIP modeling demonstration. Final revisions to the protocol were made in December of 2016 and reflect the procedures that were used in the submitted 2017 attainment SIP modeling analysis. Although WVDEP did not subsequently alter the modeling protocol, WVDEP revised the attainment SIP modeling inputs in July 2019 to change the Mitchell stack height used in the modeling analysis to determine the lower limits needed to attain the SO_2 Standard. The modeling analysis was submitted as part of West Virginia's 2020 redesignation request and was conducted in accordance with appendix A of EPA's April 2014 Guidance and appendix W to 40 CFR part 51—Guideline on Air Quality Models, that

[5] EPA published revisions to the *Guideline on Air Quality Models* (40 CFR part 51, appendix W) on January 17, 2017.

was published on January 17, 2017[6] and became effective May 22, 2017.

West Virginia developed its modeling analysis for the Marshall, West Virginia SO_2 redesignation request in July 2019 using AERMOD version 18081, which was the most current version of the model available when the modeling was being performed. AERMOD is a refined, steady-state (both emissions and meteorology over a 1-hour time step), multiple source, air-dispersion model that was originally promulgated by the EPA as part of its December 2005 revision to the Guideline on Air Quality Models, and is the preferred model to use for industrial sources in this type of air quality analysis. At the time West Virginia was preparing the 2017 SO_2 attainment SIP, the available version of AERMOD was version 15181, which was made available by EPA's Support Center for Air Quality Models[7] on July 24, 2015. On April 24, 2018, EPA released AERMOD version 18081. For the March 18, 2020 redesignation request, West Virginia re-ran the model using AERMOD 18081. The most notable changes between version 18081 and version 15181 of the model was the inclusion of an alternate surface friction option (''ADJ_U*'') and the allowance for the use of prognostic meteorological data as regulatory default options according to the final modeling guideline (40 CFR part 51 appendix W), released on December 20, 2016. The ADJ_U* option was used in the latest modeling.

The AERMOD system used in the modeling demonstration is comprised of several preprocessors that are needed to develop the files necessary to run the air-dispersion model. These preprocessors include the meteorological preprocessors AERMET[8] and AERSURFACE,[9] as well as the building preprocessor, BPIPPRM, to calculate building downwash parameters and the terrain preprocessor, AERMAP,[10] to determine emission source and receptor elevations used in the final SIP modeling analysis. The primary SO_2 emitting facility remaining in operation and impacting the Marshall Area is the Mitchell Power Plant.[11] To ensure maintenance of the 2010 SO_2 NAAQS in the Marshall Area, air dispersion modeling was conducted for the SO_2 emissions from the Mitchell Plant to show that the Marshall Area will continue to attain the 2010 SO_2 NAAQS. The Mitchell Plant consists of two coal-fired electric generating units (EGU) rated at 800 megawatts (MW) net each, equipped with an electrostatic precipitator for particulate control, selective catalytic reduction (SCR) for nitrogen oxide and mercury control, and a limestone-based flue gas desulfurization system for SO_2 control. The plant is located in the Ohio River Valley in Marshall County, West Virginia, approximately 11 kilometers southwest of Moundsville, West Virginia. The units were modeled as point sources and a load analysis was performed at full load, 75% load, and 50% load.

The meteorological inputs used were developed for the period 2011 through 2015 using Version 18081 of AERMET using Wheeling Airport surface data along with one minute and five minute data from the Automated Surface Observing System (ASOS) located at the site. Upper Air Data was sourced from the Greater Pittsburgh International Airport (KPIT) site through the National Oceanic and Atmospheric Administration Earth System Research Laboratory Radiosonde Database.

The modeled design concentration is the combination of the appropriate background concentration (section 8.3 of appendix W—Guideline on Air Quality Models) and the estimated modeled impact of the Mitchell Plant and any other identified nearby sources, which in this case was none. A comparison of the modeled design concentrations for each load case to the 2010 SO_2 NAAQS is shown on Table 2.

TABLE 2—SUMMARY OF WEST VIRGINIA SO_2 MODELING DEMONSTRATION RESULTS, IN MICROGRAMS PER CUBIC METER (μg/m³)

Case	West Virginia 1-hour SO_2 concentration (μg/m³)	1-hour SO_2 NAAQS (μg/m³)
Full Load	196.2	196.4
75% Load	187.9	196.4
50% Load	175.5	196.4

The West Virginia modeling demonstration generally follows guidance included in appendix A of EPA's 2014 Guidance and EPA's revised ''Guideline on Air Quality Models'' published on January 17, 2017 (82 FR 5182). Peak model concentrations from the compliance run were 196.2 μg/m³. The modeled emission rates reflect emission rates contained in the 2019 consent order between West Virginia and Kentucky Power that are part of the SIP submittal, and which became enforceable at the state level on January 1, 2020, and which will become Federally enforceable if this proposed rulemaking is finalized. The modeling demonstration properly characterized source limits, local meteorological data, background concentrations and provided an adequate model receptor grid to capture maximum modeled concentrations. The modeling simulations show that even at the worst-case scenario, with the Mitchell facility operating at full capacity at the allowable emission limits, the design value would be below the NAAQS, demonstrating that the modeled emission limits will allow the Marshall Area to comply with the 2010 SO_2 NAAQS for the maintenance period.

EPA's April 2014 Guidance[12] explains that EPA may also make determinations of attainment based on the modeling from the attainment demonstration for the applicable SIP for the affected area, eliminating the need for separate actuals-based modeling to support a redesignation request. A demonstration that the control strategy in the SIP has been fully implemented (compliance records demonstrating that the control measures have been implemented as required by the approved SIP) would also be relevant for making this determination. An additional SIP submittal from the air agency would not be required by the CAA, and if the air agency has previously submitted a modeled attainment demonstration, using allowable emissions, no further modeling would be needed as long as the source characteristics (*e.g.,* factors affecting plume height) are still reasonably represented.

The modeling submitted by West Virginia as part of its 2020 redesignation request is based on emission limits established in the 2019 consent order. The 2019 consent order requires Kentucky Power, the operator of the Mitchell Power Plant, to comply with SO_2 limits at the Mitchell Power Plant and associated compliance parameters starting on January 1, 2020. The air quality modeling submitted with the state's request used allowable emissions

[6] *https://www3.epa.gov/ttn/scram/appendix_w/2016/AppendixW_2017.pdf.*

[7] *https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models#aermod.*

[8] American Meteorological Society/Environmental Protection Agency Regulatory Model Meteorological Processor.

[9] American Meteorological Society/Environmental Protection Agency Regulatory Model Land Cover Processor.

[10] American Meteorological Society/Environmental Protection Agency Regulatory Model Terrain Preprocessor.

[11] See Round 1 SO_2 designations TSD for West Virginia for EPA's analysis of emissions and boundaries for the Marshall Area, at *https://www.epa.gov/sites/production/files/2016-03/documents/wv-tsd.pdf.*

[12] See page 63.

(*i.e.,* the SO_2 limits effective January 1, 2020), and so long as Mitchell is meeting its allowable limits, and the source characteristics are consistent with the demonstration, such modeling is likely conservative given that the actual emissions from Mitchell are well below the emission used in the modeling. First quarter 2020 emissions data for Mitchell Power Plant shows compliance with the SO_2 emissions limit established under the 2019 consent order.[13] In addition, West Virginia's submittal includes a chart of the last ten years of Mitchell's actual emissions, as compared to the new limits in the consent order. In that chart, shown in figure 4 of the submittal, the combined actual emissions from the stacks at Mitchell are well below the 30-day average rolling limit of 3,149 pounds of SO_2 per hour that took effect on January 1, 2020.

Based upon the modeling submitted as part of the maintenance plan for the redesignation request submitted on March 18, 2020, EPA is proposing to find that West Virginia has shown that the Marshall Area is attaining the 2010 SO_2 NAAQS.

B. West Virginia Has Met All Applicable Requirements of Section 110 and Part D of the CAA for the Marshall Area and EPA Has Fully Approved the Applicable Implementation Plan Under Section 110(k) of the CAA

In accordance with section 107(d)(3)(E)(v) of the CAA, in order to redesignate the Marshall Area to attainment, West Virginia must meet all requirements applicable to the Marshall Area under CAA section 110 (general SIP requirements) and part D of title I of the CAA (SIP requirements for nonattainment areas), and in accordance with section 107(d)(3)(E)(ii) of the CAA, those requirements must be fully approved into the West Virginia SIP under CAA section 110(k).

EPA is proposing to determine that, in accordance with section 107(d)(3)(E)(v), West Virginia has met all SIP requirements under section 110 of the CAA and part D of title I of the CAA applicable for purposes of this redesignation. In making these determinations, EPA identified the requirements that are applicable to the Area for purposes of redesignation and determined that these requirements are fully approved under section 110(k) of the CAA. EPA's rationale is discussed in more detail in sections III.B.1 and III.B.1.a of the preamble for this proposed rulemaking.

a. Section 110 General Requirements for SIPs

Pursuant to CAA section 110(a)(1), whenever new or revised NAAQS are promulgated, the CAA requires states to submit a plan (*i.e.,* ''SIP'') for the implementation, maintenance and enforcement of such NAAQS. Section 110(a)(2) of title I of the CAA contains the general requirements for a SIP, also known as ''infrastructure'' requirements. The infrastructure requirements of section 110(a)(2) include the requirements in subsections 110(a)(2)(A) through (M). However, not every requirement of section 110(a)(2) is an applicable requirement for the purposes of redesignating the Marshall Area to attainment for the SO_2 NAAQS. For example, section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. When such issues have been identified, EPA has required certain states to establish programs to address transport of air pollutants. See Nitrogen Oxides (NO_X) SIP Call and amendments to the NO_X SIP Call (64 FR 26298, May 14, 1999 and 65 FR 11222, March 2, 2000), and the Cross-State Air Pollution Rule (CSAPR) Update (81 FR 74504, October 26, 2016). However, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's SO_2 designation. That is, the section 110(a)(2)(D) requirement continues to apply to a state regardless of the attainment designation (or redesignation) of an area. EPA has concluded that the SIP requirements linked to an area's SO_2 designation for a particular NAAQS are the relevant (applicable) measures when reviewing a redesignation request for an area, and therefore the general requirements of section 110(a)(2), such as section 110(a)(2)(D), are not applicable requirements for the purposes of a SO_2 redesignation.

Similarly, other section 110(a)(2) elements that are neither connected with attainment plan submissions nor linked with an area's SO_2 designation are not applicable requirements for purposes of redesignation. An area redesignated from SO_2 nonattainment to attainment will remain subject to these requirements after redesignation to attainment. This approach is consistent with EPA's existing policy on the applicability for the purpose of redesignations of conformity and oxygenated fuels requirements, as well as CAA section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996; 62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Nonetheless, EPA approved elements of West Virginia's July 1, 2013, and June 1, 2015, SO_2 infrastructure SIP submittals on November 17, 2014 (79 FR 62022) and August 11, 2016 (81 FR 53008), respectively.[14] As explained previously, the general requirements of CAA section 110(a)(2) are statewide requirements that are not linked to the nonattainment status of the Marshall Area and are therefore not ''applicable requirements'' for the purpose of reviewing West Virginia's redesignation request. Because West Virginia satisfies the general SIP elements and requirements set forth in CAA section 110(a)(2) applicable to and necessary for SO_2 redesignation, EPA proposes to conclude that West Virginia has satisfied the criterion of section 107(d)(3)(E)(v) related to section 110(a)(2) of the CAA.

b. Part D Requirements

In addition to the CAA section 110 requirements, section 107(d)(3)(E)(v) requires that the state meet all the requirements applicable to the nonattainment area ''under part D of this subchapter'' in order for the nonattainment area to be redesignated. Both section 107 and part D are within subchapter 1 of the CAA. Part D, entitled ''Plan Requirements for Nonattainment Areas,'' consists of six subparts, of which only subparts 1 and 5 are applicable to SO_2 nonattainment areas. Subpart 1 (sections 171 through 179B) contains provisions that can apply to all nonattainment areas for all criteria pollutants, while subpart 5 (sections 191 through 192) contains additional provisions for SO_2, NO_X, or lead nonattainment areas. The requirements applicable to this redesignation are discussed below.

[13] See graph entitled ''2020Q1 Historical AEP Mitchell Combined Units 1 & 2 30-Day Rolling Average Emissions of SO_2'' available in the docket for this rulemaking action. The first quarter SO_2 emissions data for Mitchell Power Plant is publicly available at EPA's Air Markets Program Data at *https://ampd.epa.gov//ampd/QueryToolie.html.*

[14] West Virginia's SO_2 infrastructure SIP submittals did not address the interstate transport element of CAA section 110(a)(2)(D)(i). As explained previously, the interstate transport element of CAA section 110(a)(2)(D)(i) is not an applicable requirement for redesignation of the Marshall Area.

i. Subpart 1 Requirements

(1) Section 172 Requirements

CAA section 172 requires states with nonattainment areas to submit plans that provide for timely attainment of the NAAQS. More specifically, CAA section 172(c) contains general requirements for nonattainment plans. A thorough discussion of these requirements is found in the General Preamble for Implementation of title I. 57 FR 13498, April 16, 1992.

As noted in the General Preamble, certain attainment-related planning requirements under section 172(c) no longer have meaning for an area that is already attaining the NAAQS, and therefore are not applicable for purposes of redesignation. For example, for an area that is already attaining the NAAQS, there would be nothing for the state to provide in order to show reasonable further progress to attainment in that area. Similarly, the CAA section 172 requirements for the attainment demonstration, implementation of reasonably available control measures, including reasonably available control technology, and contingency measures that are triggered if an area fails to meet RFP or fails to attain also are not applicable for purposes of redesignation.

With respect to the CAA section 172(c)(3) requirement to submit an actual current emissions inventory, WVDEP submitted a 2011 base year emissions inventory for the Marshall Area on May 6, 2015. On July 31, 2015 (80 FR 45613), EPA approved the base year inventory into the West Virginia SIP.

(2) Section 173

Section 173 of the CAA includes requirements for permit programs that are required in a nonattainment area for new sources as required by section 172(c)(5), known as nonattainment new source review (NNSR). However, EPA has a longstanding interpretation that because the NNSR permit program is replaced by the prevention of significant deterioration (PSD) permit program upon an area's redesignation to attainment, nonattainment areas seeking redesignation to attainment do not need a fully approved part D NNSR program in order to be redesignated. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Nevertheless, EPA notes that West Virginia has SIP-approved NNSR and PSD programs, found at 45CSR13, 45CSR19, and 45CSR14. See 40 CFR 52.2520(c). West Virginia's PSD program will become applicable for SO_2 in the Marshall Area upon redesignation to attainment.

(3) Section 175A

CAA section 175A requires that states seeking redesignation of an area to attainment submit a ''maintenance plan'' containing certain elements. West Virginia included a maintenance plan for the Marshall Area with its March 18, 2020 redesignation request, which EPA is proposing to approve in conjunction with the redesignation, and it is discussed in detail in section III.D of the preamble of this proposed rulemaking.

(4) Section 176 Requirements

Section 176(c) of the CAA requires Federal actions conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). Section 176(c) of the CAA also requires that states establish criteria and procedures to ensure that Federally-supported or funded transportation plans, transportation improvement programs (TIPs) and projects conform to the goals of the applicable SIP. This is referred to as a transportation conformity SIP. In the preamble to the January 1993 proposed transportation conformity rule, EPA stated that, ''Based on available emissions information, EPA believes highway and transit motor vehicles are not significant sources of lead or sulfur dioxide. Therefore, transportation plans, TIPs, and projects are presumed to conform to the applicable implementation plans for these pollutants.'' (See 58 FR 3776, January 11, 1993.) In November 1993, EPA finalized its transportation conformity regulations. One section of those regulations addressed the geographic applicability of the transportation conformity regulations. The regulation stated at that time that, ''The provisions of this subpart apply with respect to emissions of the following criteria pollutants: Ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).'' [15] Based on this provision, transportation conformity does not apply in nonattainment or maintenance areas for SO_2. Therefore, a transportation conformity SIP is not required for SO_2 nonattainment and maintenance areas and is not necessary in order for an SO_2 nonattainment area to be redesignated to attainment, and EPA's transportation conformity rules do not apply to SO_2 for the Marshall Area.

ii. Subpart 5 Requirements

The subpart 5 requirements, which consist of sections 191 and 192 of the CAA, are specific provisions applicable to SO_2, NO_2 or lead nonattainment areas. Section 191 of the CAA requires states with areas designated nonattainment for SO_2, NO_2 or lead after November 15, 1990, to submit within 18 months of the designation an implementation plan meeting the requirements of part D. The substance of the required plans is established by section 172(c). Section 192 sets forth attainment dates for nonattainment areas under section 191.

For SO_2, section 192(a) requires that attainment plans provide for attainment of the primary Standard as expeditiously as possible, but no later than five years from the date of the nonattainment designation. EPA designated the Marshall Area as nonattainment on August 5, 2013, with an attainment date of October 4, 2018. However, because EPA is reviewing a redesignation request under section 107(d)(3)(E), rather than a determination of attainment under section 179(c), the determination of whether the Area attained by the attainment date set forth in section 192 is not applicable to this action proposing approval of West Virginia's redesignation request.

Based on the above, EPA is proposing to find that West Virginia has satisfied the applicable requirements for the redesignation of the Marshall Area under section 110 and part D of title I of the CAA.

C. The Air Quality Improvements in the Marshall Area Are Due to Permanent and Enforceable Emission Reductions

For an area to be redesignated, the state must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable.[16] The Marshall Area was designated nonattainment on August 5, 2013 based on monitored data from 2009–2011. Since the Area was designated, several

[15] This provision has been revised to include particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). See 40 CFR 93.102(b)(1).

[16] See April 2014 Guidance, page 64.

large SO_2 emitting facilities in the Marshall Area have permanently shut down, and one facility has switched to a cleaner fuel. On June 1, 2015 and October 9, 2015, the AEP's Kammer Power Plant (Kammer) and the Rain CII Carbon facility (Rain CII), respectively, closed permanently. On November 12, 2015 and June 10, 2016, the Eagle Natrium, LLC plant implemented a fuel switch from burning coal to burning natural gas on boiler #6 and boiler #5, respectively.[17] The Mitchell Power Plant is therefore the remaining primary source of SO_2 emissions in the Marshall Area. Mitchell has significantly reduced its SO_2 emissions since the Area was designated, and these emission reductions are being made permanent and enforceable by the limits contained in West Virginia consent order CO–SIP–C–2019–13. West Virginia requested that the 2019 consent order be incorporated into the West Virginia SIP. If this action is finalized, the emission limits and associated parameters in the 2019 consent order will become permanent and Federally-enforceable. The 2019 consent order requires that combined SO_2 emissions from Mitchell Units 1 and 2 be limited to a total maximum of 3,149 lbs/hr on a 30-operating day rolling average basis, and includes monitoring, recordkeeping, and reporting provisions to show compliance with the limits. Compliance with the 2019 consent order was required starting on January 1, 2020.

At the time of the Marshall Area's nonattainment designation, the monitored SO_2 design value at the Moundsville monitor for 2009–2011 was 80 ppb. These monitored values occurred before the permanent closure of the two facilities and the switch to burning natural gas at another facility mentioned in the preceding paragraph as well as the emission reductions at Mitchell. More recent monitoring data indicate that ambient SO_2 levels have improved significantly at the monitor. The 2019 data shows the 99th percentile value at 9 ppb. The monitored design value for the Marshall Area for 2017–2019 is 8 ppb, which is well below the SO_2 NAAQS of 75 ppb. This air quality improvement is attributable to the substantial SO_2 emission reductions noted above, and therefore EPA proposes to find that the improvement in air quality in the Marshall Area can be attributed to permanent and enforceable emission reductions, and that CAA section 107(d)(3)(E)(iii) has been satisfied by West Virginia.

D. West Virginia Has a Fully Approvable Maintenance Plan for the Marshall Area

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the nonattainment area is redesignated to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must also contain contingency measures as EPA deems necessary to assure prompt correction of any future violations. Specifically, the maintenance plan should address five requirements: (1) An attainment emissions inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) the verification of continued attainment; and (5) a contingency plan.[18]

In conjunction with its request to redesignate the Marshall Area, West Virginia submitted, as a revision to its SIP, a plan to provide for maintenance of the SO_2 NAAQS through 2030 in the Area, which is 10 years after the expected effective date of the redesignation to attainment. West Virginia has committed to review the maintenance plan for the Area eight years after redesignation. The maintenance plan includes the five components noted previously in this section.

In a maintenance plan, states are required to submit an inventory used for the year of attainment, which is called the attainment year inventory. This inventory is used as the basis for future, projected emission inventories that are used to show the area will remain in attainment. West Virginia submitted a 2016 SO_2 emissions inventory as the attainment year inventory. The year 2016 was selected because it is one of the three years of monitoring data from 2016 through 2018 for which the design value showed compliance with the SO_2 NAAQS.

For the 2016 attainment year inventory for point sources, West Virginia used actual emissions reported by each facility. Eagle Natrium switched its fuel source from coal to natural gas between 2015 and 2016, resulting in lower SO_2 emissions in 2016. The Kammer Power Plant and Rain CII Carbon plant both closed in 2015 and therefore there were no emissions from these plants in 2016. The point source emissions for the Marshall Area were verified against EPA's emissions inventory system (EIS) and EPA found them to be acceptable.

Nonroad and onroad emissions for 2016 were calculated by West Virginia using EPA's Motor Vehicle Emissions Simulator (MOVES) 2014a model. NONROAD is a component of the MOVES model that is run within the model. Monthly results were summed to get the yearly emissions.

Emissions for the nonpoint or area source category for 2016 were not available at the time of the attainment plan submittal, and so emissions for these sources were calculated using projections from the Mid Atlantic Regional Air Management Association's (MARAMA) 2017 Beta Modeling Inventory[19] found in the emissions modeling framework (EMF). The EMF is a tool that supports the management and quality assurance of emissions inventories and emissions modeling-related data, and the running of the Sparse Matrix Operator Kernel Emissions Model (SMOKE) to develop air quality model inputs. West Virginia stated that 2017 is a reasonable substitution since the MARAMA model used a ''no-growth'' assumption for fuel usage, population, and employment between 2016 and 2017. The 2017 projected nonpoint emissions for Marshall County are 49.66 tpy, while the nonpoint emissions in the National Emissions Inventory (NEI) 2014 version2 for Marshall County is 30 tpy, therefore the 2017 projected nonpoint emissions is conservative compared to the 2014 version2 NEI.

Oil and gas emissions for 2016 were calculated using EPA's Oil and Gas Tool version 2.2 with local data from West Virginia's Geological and Economic Survey. These emissions represent the sum of SO_2 generated by oil and gas production and exploration activities.

Projection inventories are used to show that the area will remain in attainment. West Virginia, with the assistance of MARAMA, developed 2023 and 2030 emission projections for the interim and maintenance plan end year, respectively. The Mitchell Power Plant is the primary point source still in

[17] Appendix D of the March 18, 2020 West Virginia redesignation request includes documentation showing the permanent closure of the Kammer and Rain CII facilities, and the fuel switch at the Eagle Natrium facility, included in the docket for this rulemaking action.

[18] See Memorandum from John Calcagni, Director, Air Quality Management Division, EPA, ''Procedures for Processing Requests to Redesignate Areas to Attainment'' September 4, 1992.

[19] MARAMA emissions inventories: *https://www.marama.org/technical-center/emissions-inventory/2011-inventory-and-projections.*

operation within the nonattainment area. The projection inventory for the Mitchell Power Plant is based on actual emission trends over the last five years. Onroad and nonroad emissions were calculated using the same methodologies as the 2016 attainment year inventory. For the nonpoint emission projections, West Virginia submitted emissions from MARAMA's Emissions Inventory Development for 2011 and 2017 Beta2 Modeling Inventory, which projected emissions for 2023.[20] The emissions for 2030 were ''grown'' using the emission factors used to calculate the 2023 emissions. Oil and gas emissions for 2023 and 2030 were developed using Annual Energy Outlook (AEO) 2017 future year production projections and growth factors and following the methodologies documented in EPA's ''TSD for Additional Updates to Emissions Inventories for the Version 6.3, 2011 Emissions Modeling Platform for Year 2023.''

EPA reviewed all the files and the emission results provided by West Virginia for both the attainment year inventory and the projected inventories and found them to be acceptable. The detailed inventory information for the Marshall Area is contained in appendix B of the March 18, 2020 SIP submittal. Appendix B, as well as EPA's Emissions Inventory TSD, is included in the docket for this rulemaking action. The inventories are shown in Table 3.

TABLE 3—EMISSIONS INVENTORIES FOR THE MARSHALL NONATTAINMENT AREA, IN TONS PER YEAR (tpy)

Sector	2011 actuals (base)	2016 actuals [a] (attainment)	2023 projected (interim)	2030 projected (maintenance)
EGU	21,231	3,605	2,900	2,900
Non-EGU	12,792	2,556	12	12
Oil & Gas	6.1001	10.55	12.76	13.46
Area (non-point)	51.19	49.66	45.58	45.05
Non-Road	0.02	0.01	0.01	0.01
On-Road	2.10	2.03	0.81	0.76
Total	34,082.41	6,223.25	2,971.16	2,971.28

[a] With the exception of non-point sources as explained previously.

A state may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.[21] West Virginia's projected actual emissions for the interim year of 2023 and for the maintenance year of 2030 are both below the total attainment year inventory, which is acceptable for showing maintenance in the Marshall Area.

West Virginia has committed to continue monitoring SO_2 levels at the Moundsville monitor, and will consult with EPA prior to making changes to the existing monitoring network, should changes be needed in the future. West Virginia has committed to enter all data into AQS on a timely basis in accordance with Federal guidelines, and to continue to quality assure the monitoring data to meet the requirements of 40 CFR part 58 and all other Federal requirements.

The closures of Kammer and Rain CII, and the fuel switch to natural gas at Eagle Natrium LLC, has resulted in significant reductions of SO_2 emissions in the Marshall Area. The only significant SO_2 emitting facility remaining in the Marshall Area is the Mitchell Power Plant.

The new, permanent and enforceable SO_2 emission limits for the Mitchell Power Plant described above, which were shown to be comparably stringent to the CEV established by the March 18, 2020 modeling, ensure that the Marshall Area will continue attain the NAAQS.

For the Marshall Area and SO_2 in general, ''attainment revolves around compliance of a single source or a small set of sources with emission limits shown to provide for attainment,''[22] specifically the Mitchell Power Plant. West Virginia has committed to track the SO_2 emissions and compliance status of the Mitchell Power Plant in order to verify that the plant complies with the emission limit in the 2019 consent order, so that modeling using the corresponding 1-hour CEV may be considered to demonstrate that the Area is maintaining the Standard. To demonstrate compliance with the SO_2 emission limitations of the 2019 consent order, Kentucky Power is required to use the continuous emissions monitoring system (CEMS) installed, certified, operated, and maintained in accordance with 40 CFR part 75, and is required to calculate and record a 30-operating day rolling average SO_2 emission rate, updated after each new boiler operating day. Each 30-operating day rolling average emission rate is the average of all of the valid hourly SO_2 emission rates in the 30-operating day period. The 2019 consent order also requires the reporting of any exceedance of the 30-operating day rolling average SO_2 emission limit to WVDEP within five business days after the exceedance occurs, and must include information related to any deviations from the 30-operating day rolling average limit, if any, the duration of the deviation, and the cause of the deviation. Kentucky Power must also submit semiannual compliance reports to WVDEP on emissions from Mitchell Units 1 and 2. All major sources in West Virginia are required to submit annual emissions data, which the State uses to update its emission inventories as required by the CAA, and West Virginia has committed to provide updates to future inventories in accordance with EPA's AERR rule every three years. West Virginia has also committed to assure that existing control measures will remain in effect, that any changes to its rules or emissions applicable to SO_2 as required for maintenance of the 2010 SO_2 Standard will be submitted to EPA for approval as a SIP revision, and that it intends to continue enforcing all rules that relate to the emission of SO_2 precursors in the Marshall Area.[23]

The April 2014 Guidance, pages 65–69, states that the requirement to submit contingency measures in accordance with section 175A(d) can be adequately addressed for SO_2 by having a

[20] Mid-Atlantic Regional Air Management Association emissions inventories: *https://www.marama.org/technical-center/emissions-inventory/2011-inventory-and-projections.*

[21] See April 2014 Guidance, page 67.

[22] See April 2014 Guidance, page 69.

[23] See March 18, 2020 West Virginia redesignation request submittal, page 28.

comprehensive enforcement program which can quickly identify and address sources that might be causing exceedances of the NAAQS. To do so, West Virginia has committed to adopt and expeditiously implement necessary corrective actions as follows. A warning level response shall be triggered whenever the 99th percentile of the 1-hour daily SO_2 maximum concentration of 75.5 ppb occurs in a single calendar year within the maintenance area (*i.e.,* the Marshall Area). A warning level response will consist of a study to determine whether SO_2 values indicate a trend toward higher ambient SO_2 values or whether SO_2 source emissions appear to be increasing.

The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend, taking into consideration ease and timing for implementation as well as economic and social considerations. Implementation of necessary controls in response to a warning level response trigger will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent calendar year. If the 2-year average of the 99th percentile of the 1-hour daily SO_2 maximum concentrations is 75 ppb or greater, or a violation of the SO_2 NAAQS occurs within the maintenance area, an ''action level response'' will be triggered. If the exceedance is found to not be caused by an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, the West Virginia Division of Air Quality (DAQ), in conjunction with the metropolitan planning organization (MPO) or regional council of governments, will determine additional control measures needed to assure continued attainment of the 2010 SO_2 NAAQS. Any selected measures will be those that can be implemented within 18 months from the close of the calendar year that prompted the action level response.[24] If additional control measures are required, West Virginia commits to adopt the measures in accordance with the State's administrative process for rulemaking and submit an analysis to EPA to demonstrate the proposed measures are adequate to return the area to attainment.

Based on EPA's findings, the Agency proposes to find that West Virginia's submitted maintenance plan adequately addresses the five basic components necessary to maintain the SO_2 NAAQS in the Marshall Area. EPA is proposing to find that West Virginia's maintenance plan for the Marshall Area is approvable per the CAA, including CAA section 175A and EPA guidance, and is proposing to approve the maintenance plan as a revision to the West Virginia SIP.

IV. The Effect of EPA's Proposed Actions

The effect of this proposal, if finalized, would change the classification of the Marshall Area from nonattainment to attainment of the 2010 SO_2 NAAQS, incorporate the emissions limits contained in the 2019 consent order for Mitchell into the West Virginia SIP, and incorporate the maintenance plan into the West Virginia SIP. In addition, if finalized before October 30, 2020, the redesignation would terminate EPA's obligation to act by that date on the 2017 SIP submitted for the Marshall Area, under the terms of the court order entered in *Center for Biological Diversity* v. *Wheeler.*

V. Proposed Actions

EPA is proposing to find that the Marshall Area has attained the 2010 SO_2 NAAQS, as demonstrated by a modeling analysis reflecting a new SO_2 emission limit for the Mitchell Power Plant. EPA is also proposing that West Virginia has met the planning requirements necessary for EPA to redesignate the Marshall Area from nonattainment to attainment of the 2010 SO_2 NAAQS, including the requirements for permanent and enforceable measures, submission of an approvable maintenance plan that will assure attainment for ten years after redesignation, and that all other CAA requirements under section 110 and part D, as discussed in this rulemaking, have been met. EPA is also proposing to approve the Marshall Area redesignation request, maintenance plan, SO_2 emission limits and associated compliance parameters for Mitchell in the 2019 consent order, and the modeling demonstration showing that the limits provide for maintenance. EPA is proposing these actions under the CAA.

VI. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference West Virginia consent order CO–SIP–C–2019–13. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

[24] See March 18, 2020 West Virginia redesignation request submittal, page 29.

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking redesignating the Marshall Area, approving the Marshall Area maintenance plan, and approving other related SIP revisions, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 18, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–13585 Filed 6–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA–R04–UST–2020–0248; FRL–10009–90–Region 4]

Commonwealth of Kentucky: Tentative Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of tentative determination on application of the Commonwealth of Kentucky for final approval, public hearing opportunity, and public comment period.

SUMMARY: The Commonwealth of Kentucky (Commonwealth or State) has applied for final approval of its Underground Storage Tank (UST) Program under Subtitle I of the Resource Conservation and Recovery Act (RCRA or Act). The Environmental Protection Agency (EPA) has reviewed the Commonwealth's application and made the tentative decision that the State's UST Program application satisfies all the requirements necessary to qualify for final approval. The State's UST Program application is available for public review and comment. A public hearing will be held to solicit comments on the application if sufficient public interest is expressed. This **Federal Register** notice solicits requests for a public hearing and comments on the State's application.

DATES: Comments and/or request for a public hearing on this tentative determination must be received on or before July 31, 2020. A public hearing will be held no earlier than August 31, 2020 if sufficient public interest is expressed. The EPA will determine by August 17, 2020, whether there is sufficient interest to warrant a public hearing. The Commonwealth will be invited to participate in any public hearing held by the EPA on this action. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details.

ADDRESSES: For detailed instructions and additional information on the rulemaking process, please see **SUPPLEMENTARY INFORMATION**, Item C.

FOR FURTHER INFORMATION CONTACT: Ben Singh, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; Phone number: (404) 562–8922; email address: *singh.ben@epa.gov.* Please contact Ben Singh by phone or email for further information.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA, 42 U.S.C. 6991c, authorizes the EPA to approve state UST programs to operate in lieu of the Federal UST program. Pursuant to RCRA section 9004(b), approval may be granted if the state program: Provides for adequate enforcement of compliance with the UST standards of RCRA section 9004(a); is ''no less stringent'' than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); and includes the notification requirements of RCRA section 9004(a)(8).

B. Commonwealth of Kentucky

The Kentucky Department for Environmental Protection (KYDEP) within the Energy and Environment Cabinet is the lead implementing agency for the UST Program in the State. On October 7, 2019, in accordance with 40 CFR 281.50, the State submitted an application seeking Federal approval of the State UST Program. The application was determined complete by the EPA on March 13, 2020. Per the application, the most recent amendments to the KYDEP UST regulations became effective April 5, 2019 and include revisions which correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations. The KYDEP has broad statutory and regulatory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, pursuant to Title XVIII of the Kentucky Revised Statutes (KRS), Chapter 224, Subchapter 60, and Title 401 of the Kentucky Administrative Regulations (KAR), Chapter 42 (2019). In accordance with the requirements of 40 CFR 281.50(b), the State provided an opportunity for public notice and comment during the development of its UST regulations.

C. Public Participation

Submit comments and requests for public hearings, identified by Docket ID No. EPA–R04–UST–2020–0248, at *https://www.regulations.gov* (our preferred method). Follow the online instructions for submission. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket without change. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: *https://www.epa.gov/dockets/commenting-epa-dockets.* The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Ben Singh, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision above. Please also contact Ben Singh if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

Out of an abundance of caution for members of the public and our staff, the EPA Region 4 Offices are closed to public visitors to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov.* For further information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* All documents in the docket are available on the *https://www.regulations.gov* website.

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

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

This action merely notifies the public of the EPA's tentative determination to approve the Commonwealth's UST Program pursuant to RCRA section 9004, 42 U.S.C. 6991c, and does not impose additional requirements beyond those already imposed by State law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because UST program approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with RCRA; and
- Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- Do not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous substances, Petroleum, Reporting and recordkeeping requirements, State program approval, Underground storage tanks.

Authority: This action is issued under the authority of Sections 2002(a), 7004(b), 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991(c), 6991(d), and 6991(e).

Mary Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–13763 Filed 6–30–20; 8:45 am]

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Notices

Federal Register

Vol. 85, No. 127

Wednesday, July 1, 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

Food Safety and Inspection Service

[Docket No. FSIS–2020–0020]

Notice of Request for Revision of an Approved Information Collection (Accreditation of Laboratories, Transactions, and Exemptions)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request a revision of the approved information collection for the accreditation of laboratories; transactions with official meat and poultry establishments, egg products processing plants, and other firms; and exemptions from requirements of the Federal Meat Inspection Act and the Poultry Products Inspection Act. FSIS has reduced the burden estimate for this collection by 13 hours based on updated information. The approval for this information collection will expire on December 31, 2020.

DATES: Submit comments on or before August 31, 2020.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2020–0020. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Accreditation of Laboratories, Transactions, and Exemptions.

OMB Number: 0583–0082.

Expiration Date of Approval: 12/31/2020.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a revision of the approved information collection for the accreditation of laboratories; transactions with official meat and poultry establishments, egg products processing plants, and other firms; and exemptions from requirements of the FMIA and PPIA. FSIS has reduced the burden estimate for this collection by 13 hours based on updated information. The approval for this information collection will expire on December 31, 2020.

FSIS requires accredited non-Federal analytical laboratories to maintain certain records (9 CFR 439.20 & 590.580). The Agency uses this collected information to ensure that non-Federal laboratories act in accordance with FSIS regulations.

The FMIA (21 U.S.C. 642), the PPIA (21 U.S.C. 460(b)), and the EPIA (21 U.S.C. 1040) require establishments, brokers, wholesalers, or otherwise, to keep records that fully and correctly disclose all transactions involved in their businesses related to relevant animal carcasses and parts and egg products.

In addition, FSIS requires establishments to keep records to ensure that meat and poultry products exempted from Agency inspection are not commingled with inspected meat and poultry products (9 CFR 303.1(b)(3) & 381.175).

Finally, FSIS requires retail operations determined to have violated the requirements associated with the retail exemptions in the FMIA and PPIA to keep sales purchase and sales records to ensure future compliance (9 CFR 303.1(d)(3) & 381.10(d)(3)).

FSIS has made the following estimates based upon an information collection assessment:

Respondents: Accredited laboratories, official meat and poultry establishments, egg products processing plants and other firms.

Estimated No. of Respondents: 27,743.

Estimated No. of Annual Responses per Respondent: 122.

Estimated Total Annual Burden on Respondents: 114,326 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the

validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

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How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email: *Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; *Fax:* (202) 690–7442; *Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Paul Kiecker,

Administrator.

[FR Doc. 2020–14101 Filed 6–30–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results

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

SUMMARY: On June 15, 2020, the United States Court of International Trade (the Court) sustained the second remand redetermination pertaining to the 2014–2015 antidumping duty (AD) administrative review of crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China). The Department of Commerce (Commerce) is notifying the public that the final judgment in this litigation is not in harmony with Commerce's final results in the 2014–2015 AD administrative review of solar cells from China, and therefore, Commerce is amending those final results, as explained below.

DATES: Applicable June 25, 2020.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance—International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2017, Commerce published its *Final Results* of the 2014–2015 AD administrative review of solar cells from China.[1] On April 16, 2019, the Court directed Commerce to reconsider or further explain its surrogate value selections for Canadian Solar International Limited (Canadian Solar)[2] and Changzhou Trina Solar Energy Co., Ltd.'s (Trina)[3] module glass, its application of an adverse inference, in part, in calculating Canadian Solar's dumping margin, and its decision not to grant Ningbo Qixin Solar Electrical Appliance Co., Ltd. (Qixin) a separate rate.[4]

In the *First Remand Redetermination,* Commerce continued to calculate Canadian Solar's dumping margin using partial adverse facts available (AFA) in valuing factors of production (FOP) for which consumption quantities were not provided by certain unaffiliated suppliers.[5] With regard to Qixin, Commerce continued to find that Qixin is not eligible for a separate rate.[6] Commerce also determined, under respectful protest, to value Canadian

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[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014–2015,* 82 FR 29033 (June 27, 2017), and accompanying Issues and Decision Memorandum (*Final Results*).

[2] In this review Commerce treated the following six companies as a single entity: Canadian Solar International Limited; Canadian Solar Manufacturing (Changshu), Inc.; Canadian Solar Manufacturing (Luoyang), Inc.; CSI Cells Co., Ltd.; CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd.; and CSI Solar Power (China) Inc. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015,* 81 FR 93888 (December 22, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM) at 6–7, unchanged in *Final Results.*

[3] In this review Commerce treated the following six companies as a single entity: Changzhou Trina Solar Energy Co., Ltd.; Trina Solar (Changzhou) Science & Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; and Hubei Trina Solar Energy Co., Ltd. *See Preliminary Results* PDM at 6–7, unchanged in *Final Results.*

[4] *See Canadian Solar International Limited, et. al.* v. *United States,* 378 F. Supp. 3d 1292 (CIT 2019).

[5] *Results of Remand Redetermination, Canadian Solar International Limited, et al.* v. *United States,* Court No. 17–00173, Slip. Op. 19–47 (CIT April 16, 2019) (July 15, 2019) (*First Remand Redetermination*).

[6] *Id.*

Solar and Trina's module glass using the Bulgarian Harmonized Tariff Schedule (HTS) subheading 7007.19.80, instead of the Thailand HTS subheading 7007.19.90.[7]

On December 3, 2019, the Court sustained Commerce's selection of Bulgarian import data to value module glass, and its decision not to grant Qixin a separate rate; however, the Court remanded for further explanation or reconsideration Commerce's application of partial AFA in calculating Canadian Solar's dumping margin.[8]

In the *Second Remand Redetermination,* pursuant to the Court's holding in *Canadian Solar II,* Commerce determined, under respectful protest, to base Canadian Solar's unreported FOP consumption on partial facts available rather than partial AFA.[9] Specifically, Commerce based the unreported consumption on the average of the consumption that was reported for certain of Canadian Solar's FOPs.[10] Commerce assigned the margin calculated for Canadian Solar to those respondents eligible for a separate rate and which participated in the litigation.[11] On June 15, 2020, the Court sustained the *Second Remand Redetermination.*[12]

Timken Notice

In its decision in *Timken,*[13] as clarified by *Diamond Sawblades,*[14] the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's June 15, 2020, final judgment sustaining Commerce's Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce's *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court decision, Commerce is amending its *Final Results.* The amended weighted-average dumping margin for the respondents is below:

Exporter	Weighted-average dumping margin (percent)
Canadian Solar International Limited/Canadian Solar Manufacturing (Changshu), Inc./Canadian Solar Manufacturing (Luoyang)Inc./CSI Cells Co., Ltd./CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd./CSI Solar Power (China) Inc	3.19
Changzhou Trina Solar Energy Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Solar Energy Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd	0.00
Chint Solar (Zhejiang) Co., Ltd	3.19
ERA Solar Co., Ltd	3.19
ET Solar Energy Limited	3.19
Hangzhou Sunny Energy Science and Technology Co., Ltd	3.19
Hengdian Group DMEGC Magnetics Co. Ltd	3.19
JA Solar Technology Yangzhou Co., Ltd	3.19
Jiawei Solarchina (Shenzhen) Co., Ltd	3.19
Jiawei Solarchina Co. Ltd	3.19
JingAo Solar Co., Ltd	3.19
Lightway Green New Energy Co., Ltd	3.19
Ningbo ETDZ Holdings, Ltd	3.19
Risen Energy Co., Ltd	3.19
Shanghai BYD Co., Ltd	3.19
Shanghai JA Solar Technology Co., Ltd	3.19
Shenzhen Sungold Solar Co., Ltd	3.19
Shenzhen Topray Solar Co., Ltd	3.19
Star Power International Limited	3.19
Systemes Versilis, Inc	3.19
Taizhou BD Trade Co., Ltd	3.19
tenKsolar (Shanghai) Co., Ltd	3.19
Toenergy Technology Hangzhou Co., Ltd	3.19
Wuxi Tianran Photovoltaic Co., Ltd	3.19
Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd	3.19
Zhejiang ERA Solar Technology Co., Ltd	3.19
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	3.19

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event

[7] *See First Remand Redetermination.*

[8] *See Canadian Solar International Limited, et al.* v. *United States,* 415 F. Supp. 3d 1326 (CIT 2019) (*Canadian Solar II*).

[9] *See Final Results of Second Redetermination Pursuant to Court Order, Canadian Solar International Limited, et al.* v. *United States,* Court No. 17–00173, Slip. Op. 19–47 (CIT December 3, 2019) (February 10, 2020).

[10] *Id.*

[11] *Id.*

[12] *See Canadian Solar International Limited, et al.* v. *United States,* Consol. Court No. 17–00173, Slip Op. 20–83.

[13] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990).

[14] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010).

the Court's ruling is not appealed or, if appealed, upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by the respondents using assessment rates based on these amended final results of review.

Cash Deposit Requirements

Because the cash deposit rate for all of the respondents listed above, with the exception of Jiawei Solarchina Co. Ltd., Ningbo ETDZ Holdings, Ltd., Star Power International Limited, and Toenergy Technology Hangzhou Co., Ltd., have been superseded by cash deposit rates calculated in intervening administrative reviews of the AD order on solar cells from China, we will not alter the cash deposit rate currently in effect for these respondents based on these amended final results. Effective June 25, 2020, the cash deposit rate applicable to entries of subject merchandise exported by Jiawei Solarchina Co. Ltd., Ningbo ETDZ Holdings, Ltd., Star Power International Limited, and Toenergy Technology Hangzhou Co., Ltd. is 3.19 percent.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: June 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14202 Filed 6–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–843]

Prestressed Concrete Steel Wire Strand From the Republic of Turkey: Postponement of Preliminary Determination of Countervailing Duty Investigation

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

DATES: Applicable July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2020, the Department of Commerce (Commerce) initiated a countervailing duty (CVD) investigation on imports of prestressed concrete steel wire strand (PC strand) from the Republic of Turkey (Turkey).[1] Currently, the preliminary determination is due no later than July 10, 2020.

Postponement of Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a CVD investigation within 65 days after the date on which Commerce initiated the investigation. However, section 703(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 130 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.[2]

On June 12, 2020, the petitioners[3] submitted a timely request that Commerce postpone the preliminary CVD determination.[4] The petitioners request postponement to allow the petitioners and other interested parties additional time to analyze the initial questionnaire responses submitted by respondents and the Government of Turkey, and for Commerce to request additional or clarifying information, if necessary.[5]

In accordance with 19 CFR 351.205(e), the petitioners have stated the reasons for requesting a postponement of the preliminary determination, and Commerce finds no compelling reason to deny the request. Therefore, pursuant with section 703(c)(1)(A) of the Act, Commerce is postponing the deadline for the preliminary determination to no later than 130 days after the day on which these investigations were initiated, *i.e.,* September 14, 2020.[6] Pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

Notification to Interested Parties

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: June 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14199 Filed 6–30–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Initiation of Countervailing Duty Investigation,* 85 FR 28610 (May 13, 2020).

[2] *See* 19 CFR 351.205(e).

[3] The petitioners consist of Insteel Wire Products Company, Sumiden Wire Products Corporation, and Wire Mesh Corporation.

[4] *See* Petitioners' Letter, ''Prestressed Concrete Steel Wire Strand from the Republic of Turkey—Petitioners' Request to Postpone Preliminary Determination,'' dated June 12, 2020.

[5] *Id.* at 2.

[6] The 130th day falls on Sunday, September 13, 2020. It is Commerce's practice that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–008, C–570–009]

Calcium Hypochlorite From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order and countervailing duty (CVD) orders on calcium hypochlorite from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD and CVD orders.

DATES: Applicable July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, Office V, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2015, Commerce published its AD order and CVD order on calcium hypochlorite from China.[1] On December 2, 2019, the ITC instituted,[2] and Commerce initiated,[3] the first sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and countervailing subsidies and, therefore, notified the ITC of the magnitude of the margins and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.[4]

On June 23, 2020, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The product covered by the *Orders* is calcium hypochlorite, regardless of form (*e.g.,* powder, tablet (compressed), crystalline (granular), or in liquid solution), whether or not blended with other materials, containing at least 10 percent available chlorine measured by actual weight. The scope also includes bleaching powder and hemibasic calcium hypochlorite.

Calcium hypochlorite has the general chemical formulation Ca(OCl)2, but may also be sold in a more dilute form as bleaching powder with the chemical formulation, Ca(OCl)2.CaCl2.Ca(OH)2.2H2O or hemibasic calcium hypochlorite with the chemical formula of 2Ca(OCl)2.Ca(OH)2 or Ca(OCl)2.0.5Ca(OH)2. Calcium hypochlorite has a Chemical Abstract Service (CAS) registry number of 7778–54–3, and a U.S. Environmental Protection Agency (EPA) Pesticide Code (PC) Number of 014701. The subject calcium hypochlorite has an International Maritime Dangerous Goods (IMDG) code of Class 5.1 UN 1748, 2880, or 2208 or Class 5.1/8 UN 3485, 3486, or 3487.

Calcium hypochlorite is currently classifiable under the subheading 2828.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The subheading covers commercial calcium hypochlorite and other calcium hypochlorite. When tableted or blended with other materials, calcium hypochlorite may be entered under other tariff classifications, such as 3808.94.5000 and 3808.99.9500, which cover disinfectants and similar products. While the HTSUS subheadings, the CAS registry number, the U.S. EPA PC number, and the IMDG codes are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and countervailable subsidies, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.*

U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 24, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14194 Filed 6–30–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Calcium Hypochlorite from the People's Republic of China: Antidumping Duty Order,* 80 FR 5085 (January 30, 2015); and *Calcium Hypochlorite from the People's Republic of China: Countervailing Duty Order,* 80 FR 5082 (January 30, 2015) (collectively, *Orders*).

[2] *See Calcium Hypochlorite from China: Institution of Five-Year Reviews,* 84 FR 66002 (December 2, 2019).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 65968 (December 2, 2019).

[4] *See Calcium Hypochlorite from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order,* 85 FR 19439 (April 7, 2020), and accompanying Issues and Decision Memorandum; *see also Calcium Hypochlorite from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 85 FR 19443 (April 7, 2020), and accompanying Issues and Decision Memorandum.

[5] *See Calcium Hypochlorite from China,* 85 FR 37690 (June 23, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964]

Seamless Refined Copper Pipe and Tube From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on seamless refined copper pipe and tube (copper pipe and tube) from the People's Republic of China (China) for the period November 1, 2018 through October 31, 2019.

DATES: Applicable June 30, 2020.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on copper pipe and tube from China[1] for the period of review (POR) November 1, 2018 through October 31, 2019.[2]

On November 29, 2019, Golden Dragon Precise Copper Tube Group, Inc.; Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd. (collectively, Golden Dragon), Chinese producers and exporters of copper pipe and tube, timely requested an administrative review of the *Order* with respect to their entries of subject merchandise during

[1] *See Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico,* 75 FR 71070 (November 22, 2010) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 58690, 58691 (November 1, 2019).

the POR.[3] No other party requested an administrative review of the *Order.* On January 17, 2020, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), Commerce published in the **Federal Register** a notice of initiation of an administrative review.[4] On March 5, 2020, Commerce issued its initial antidumping questionnaire to Golden Dragon.[5] On April 8, 2020, Golden Dragon timely withdrew its request for an administrative review.[6] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, due to COVID–19.[7]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. In this case, Golden Dragon withdrew its request by the 90-day deadline, and no other party requested an administrative review of the *Order* with respect to Golden Dragon. Therefore, we are rescinding the administrative review of the *Order* for the period November 1, 2018 through October 31, 2019, in its entirety.

Assessment

Commerce intends to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of copper pipe and tube from China during the POR at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification To Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: June 25, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–14190 Filed 6–30–20; 8:45 am]

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[3] *See* Golden Dragon's Letter, ''Seamless Refined Copper Pipe and Tube from China: Request for Antidumping Duty Administrative Review,'' dated November 29, 2019.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 3014, 3021 (January 17, 2020).

[5] *See* Commerce's Letter, ''2018–2019 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China,'' dated March 5, 2020.

[6] *See* Golden Dragon's Letter, ''Withdrawal of Request for Review, Seamless Refined Copper Pipe and Tube from China'' dated April 8, 2020.

[7] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–803]

Uncovered Innerspring Units From the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the sole company subject to this administrative review is part of the Vietnam-wide entity because it did not file a separate rate application (SRA). The period of review (POR) is December 1, 2018 through November 31, 2019. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 1, 2020.

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

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on uncovered innerspring units from the Socialist Republic of Vietnam (Vietnam).[1] In response, on December 31, 2019, Leggett & Platt, Incorporated (the petitioner) requested a review of one company, Angkor Spring Co., Ltd. (Angkor Spring).[2] Commerce initiated a review of this company on February 6, 2020.[3] The deadline for interested parties to submit an SRA or separate rate certification (SRC) was March 9, 2020.[4] No party submitted an SRA or an SRC. On March 26, 2020, Commerce placed U.S. Customs and Border Protection (CBP) data on the record of this review demonstrating that there were no entries of subject merchandise during the POR.[5] We asked interested parties to file comments on this data by April 2, 2020. The petitioner submitted comments on the CBP data on April 2, 2020.[6]

Scope of the Order

The merchandise subject to this order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king and

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 66880 (December 6, 2019).

[2] *See* Petitioner's Letter, ''Uncovered Innerspring Units from the Socialist Republic of Vietnam: Request for Antidumping Duty Administrative Review,'' dated December 31, 2019.

[3] *See Initiation of Antidumping Duty and Countervailing Duty Administrative Reviews,* 85 FR 6896 (February 6, 2020) (*Initiation Notice*).

[4] SRAs and SRCs were due thirty days from the publication of Commerce's *Initiation Notice.* In this administrative review, the deadline was March 7, 2020, a Saturday. Because the deadline fell on a weekend, according to Commerce's ''Next Business Day'' rule, the deadline was moved forward to the next business day, Monday, March 9, 2020. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[5] *See* Memorandum, ''2018–2019 Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the Socialist Republic of Vietnam,'' dated March 26, 2020.

[6] *See* Petitioner's Letter, ''Uncovered Innerspring Units from the Socialist Republic of Vietnam: Comments on CBP Data,'' dated April 2, 2020.

king) and units used in small constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Including within this definition are innersprings typically raining from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innerspring for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 9404.29.9005, 9404.29.9011, 7326.20.0070, 7326.20.0090, 7320.20.5010, 7320.90.5010, or 7326.20.0071 of the Harmonized Tariff Schedule of the United States (HTSUS).[7] The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213.

Preliminary Results of Review

Angkor Spring, the sole company subject to this review, did not file an SRA. Thus, Commerce preliminarily determines that this company has not demonstrated its eligibility for separate rate status. As such, Commerce preliminarily determines that the company subject to this review is part of the Vietnam-wide entity. In addition, Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative review.[8] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity. In this administrative review, no party requested a review of the Vietnam-wide entity. Moreover, we have not self-initiated a review of the Vietnam-wide entity. Because no review of the Vietnam-wide entity is being conducted, the Vietnam-wide entity's entries are not subject to the review, and the rate applicable to the NME entity is not subject to change as a result of this review. The Vietnam-wide entity rate is 116.31 percent.[9]

Public Comment

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments, filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), within 30 days after the date of publication of these preliminary results of review.[10] ACCESS is available to registered users at *https://access.trade.gov.* Rebuttal briefs, limited to issues raised in the case briefs, must be filed within seven days after the time limit for filing case briefs.[11] Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities.[12] Note that Commerce has temporarily modified certain portions of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[13]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to Commerce within 30 days of the date of publication of this notice.[14] Requests should contain: (1) The party's name, address, the telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held.[15] Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and CBP will shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[16] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the company under review that we determine in the final results to be part of the Vietnam-wide entity at the Vietnam-wide entity rate of 116.31 percent. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review in the **Federal Register**.[17]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For companies that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnamese or non-Vietnamese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash

[7] Based on a recommendation by CBP, on September 15, 2017, Commerce added HTS 7326.20.0090 to the scope. *See* Memorandum, ''Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,'' dated September 15, 2017 (Barcode 3622582–01).

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[9] *See Antidumping Duty Order: Uncovered Innerspring Units from the Socialist Republic of Vietnam,* 73 FR 75391, 75392 (December 11, 2008).

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(d)(1) and (2); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications are in effect).''); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020) (*Temporary Rule*).

[12] *See* 19 CFR 351.309(c) and (d); *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See Temporary Rule.*

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310(d).

[16] *See* 19 CFR 351.212(b)(1).

[17] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnamese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the Vietnam-wide entity (*i.e.,* 116.31 percent); and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporter that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 315.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: June 23, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–14037 Filed 6–30–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

DATES: Applicable July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s): [1]

DOC Case No.	ITC Case No.	Country	Product	Commerce contact
A–570–891	731–TA–1059	China	Hand Trucks (3rd Review)	Jacqueline Arrowsmith, (202) 482–5255.
A–570–016	731–TA–1258	China	Passenger Vehicle and Light Truck Tires (1st Review).	Jacqueline Arrowsmith, (202) 482–5255
C–570–017	701–TA–522	China Passenger Vehicle and Light Truck Tires (1st Review).	Jacqueline Arrowsmith, (202) 482–5255..	

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.[2]

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[3] Parties must use the certification formats provided in 19 CFR 351.303(g).[4] Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information

[1] In the sunset initiation notice that published on June 1, 2020, Commerce inadvertently listed the wrong case number for the antidumping duty order on Steel Nails from Malaysia. *Initiation of Five-Year (Sunset) Reviews,* 85 FR 33088 (June 1, 2020). The correct case number for Steel Nails from Malaysia is A–557–816. This serves as a correction notice.

[2] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[3] *See* section 782(b) of the Act.

[4] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

(19 CFR 351.301).[5] Parties are advised to review the final rule, available at *https://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *https://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[6]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[7]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[8]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 19, 2020.

James Maeder,

Deputy Assistant Secretaryfor Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–14198 Filed 6–30–20; 8:45 am]

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[5] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[6] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to* COVID–19, 85 FR 29615 (May 18, 2020).

[8] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Antidumping Duty Administrative Review; 2017–2018

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

SUMMARY: The Department of Commerce (Commerce) determines that sales of carbon and certain alloy steel wire rod (wire rod) from Mexico were made at less than normal value during the period of review (POR), October 1, 2017 through September 30, 2018.

DATES: Applicable July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8362.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2019, Commerce published the *Preliminary Results* of this review in the **Federal Register**.[1] For a summary of events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2] On March 12, 2020, Commerce extended the deadline for the final results to June 16, 2020.[3] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for the final results of the administrative review until August 5, 2020.[4]

Scope of the Order

The merchandise subject to this order is carbon and certain alloy steel wire rod. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.997.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059. Although the HTS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[5]

[1] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 69722 (December 19, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Mexico: Extension of Time Limit for Final Results,'' dated March 12, 2020.

[4] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[5] For a full description of the scope of the order, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

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

Changes Since the Preliminary Results

Based on our analysis of the comments received from parties, we have made certain revisions to the margin calculation for Deacero.[6]

Final Results of Review

Deacero was the sole mandatory respondent. We have calculated a weighted-average dumping margin for Deacero that is not zero, *de minimis,* or determined entirely on the basis of facts available. Therefore, the margins assigned to the companies not selected for individual examination are equal to the margin calculated for Deacero.

Commerce determines that the following weighted-average dumping margins exist for the period October 1, 2017 through September 30, 2018:

Producer/exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V	13.68
Ternium Mexico S.A. de C.V	13.68
ArcelorMittal Mexico S.A. de C.V (formerly ArcelorMittal Las Truchas S.A. de C.V.)	13.68
Grupo Villacero S.A. de C.V	13.68
Talleres y Aceros de C.V	13.68

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of these final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

[6] *See* Issues and Decision Memorandum; *see also* Memorandum, ''Carbon and Certain Alloy Steel Wire Rod from Mexico, 2017–2018: Deacero Final Results Sales Calculation Memorandum,'' dated concurrently with this notice.

Assessment Rates

In accordance with the final results of this review, Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review.[7]

For Deacero, Commerce has calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total entered value associated with those sales. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis.* For entries of subject merchandise during the POR produced by Deacero for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For the companies not selected for individual examination, we will instruct CBP to apply an assessment rate to all entries produced and/or exported by those companies equal to the dumping margin indicated above.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) For producers or exporters covered in this administrative review, the cash deposit rates will be the rates established in the final results of this administrative review; (2) for producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.11 percent, the all-others rate established in the investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[7] *See* 19 CFR 356.8(a).

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: June 24, 2020.

Jeffrey I. Kessler,

Assistant Secretaryfor Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. List of Comments
III. Background
IV. Non-Selected Rate
V. Scope of the Order
VI. Discussion of Comments
  Comment 1: Whether Commerce Properly Adjusted Decaero's Costs to Exclude Yield Loss Reporting
  Comment 2: Whether Commerce used the Correct Financial Expense Ratio for the Calculation of Further Manufacturing Costs

[8] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945, 65947 (October 29, 2002).

Comment 3: Whether Commerce Should Correct Ministerial Errors Contained in its Preliminary Margin Calculation and Account for U.S. Inland Freight Expenses

VII. Recommendation

[FR Doc. 2020–14189 Filed 6–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for August 2020

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in August 2020 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Chloropicrin from China (A–570–002) (5th Review)	Matthew Renkey (202) 482–2312.
Crepe Paper from China (A–570–895) (3rd Review)	Matthew Renkey (202) 482–2312.
Diamond Sawblades from China (A–570–900) (2nd Review)	Mary Kolberg (202) 482–1785.
Preserved Mushrooms from Chile (A–337–804) (4th Review)	Mary Kolberg (202) 482–1785.
Preserved Mushrooms from China (A–570–851) (4th Review)	Mary Kolberg (202) 482–1785.
Preserved Mushrooms from India (A–533–813) (4th Review)	Mary Kolberg (202) 482–1785.
Preserved Mushrooms from Indonesia (A–560–802) (4th Review)	Mary Kolberg (202) 482–1785.
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty orders is scheduled for initiation in August 2020.	
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in August 2020.	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year* (*Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[1]

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 25, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–14196 Filed 6–30–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–874]

Certain Cold-Drawn Mechanical Tubing From India: Partial Rescission of Countervailing Duty Administrative Review; 2019

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

SUMMARY: The Department of Commerce (Commerce) is partially rescinding the administrative review of the countervailing duty order on certain cold-drawn mechanical tubing from India for the period of review (POR) January 1, 2019 through December 31, 2019.

DATES: Applicable July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Genevieve Coen or Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3251 or (202) 482–3878, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2020, Commerce published a notice of opportunity to request an administrative review of the countervailing duty order on certain cold-drawn mechanical tubing from India.[1] Pursuant to requests from interested parties, Commerce initiated an administrative review with respect to 16 companies, in accordance with section 751(a) of the Tariff Act of 1930,

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 5938 (February 3, 2020).

as amended (the Act).[2] Subsequent to the initiation of the administrative review, the petitioners[3] timely withdrew their request for an administrative review of 13 companies, as discussed below. No other party requested an administrative review of these companies.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation. The request for an administrative review of the following companies was withdrawn within 90 days of the date of publication of the *Initiation Notice:* Anand Tubes Pvt., Ltd.; Apl Apollo Steel Tubes; Automotive Steel Pipe; Bhushan Steel Ltd./Tata Steel BSL Limited; Garg Tube Limited; Hyundai Steel Pipe India Pvt., Ltd.; Innoventive Industries; ISMT Limited; Jindal (India) Ltd.; Jindal Saw Ltd.; Khanna Industrial Pipes Pvt., Ltd.; Pennar Industries, Inc.; and Sandvik Asia Pvt., Ltd.[4] As a result, Commerce is rescinding this review with respect to these 13 companies, in accordance with 19 CFR 351.213(d)(1). The review will continue with respect to Goodluck India Limited, Good Luck Industries, and Tube Investments of India Ltd.[5]

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For the companies for which this review is rescinded, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification To Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act, and 19 CFR 351.213(d)(4).

Dated: June 25, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–14192 Filed 6–30–20; 8:45 am]

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[2] See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 85 FR 19730 (April 8, 2020) (Initiation Notice).

[3] Collectively, the petitioners are ArcelorMittal Tubular Products LLC and Webco Industries, Inc.

[4] *See* Petitioners' Letter, ''Certain Cold-Drawn Mechanical Tubing from India—Domestic Producers Partial Withdrawal of Request for 2019 Countervailing Duty Administrative Review,'' dated June 18, 2020.

[5] *See Initiation Notice,* 85 FR at 19740.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–040]

Truck and Bus Tires From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2019–2020

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on truck and bus tires from the People's Republic of China (China) for the period February 15, 2019 through January 31, 2020, based on the timely withdrawal of the requests for review.

DATES: Applicable July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2020, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on truck and bus tires from China for the period of review (POR) February 15, 2019 through January 31, 2020.[1] In February 2020, various producers and exporters timely requested an administrative review of the antidumping duty order with respect to truck and bus tires from China.[2] On April 8, 2020, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the order on truck and bus tires from China with respect to the 22 respondents listed in the *Initiation Notice.*[3] During April through June 2020, the respondents timely withdrew their requests for an administrative review.[4] Commerce

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 85 FR 5938 (February 3, 2020).

[2] *See* Triangle Tyre Co., Ltd.'s (Triangle Tyre) Letter, ''Re: Truck and Bus Tires from the People's Republic of China: Request for Administrative Review,'' dated March 2, 2020; *see also* Shanghai Huayi Group Corporation Limited's (Huayi Group) Letter, ''CMA's and Shanghai Huayi's Request for AD Administrative Review Truck and Bus Tires from China,'' dated February 28, 2020; Guangrao Kaichi Trading Co., Ltd.'s (Guangrao Kaichi Trading) Letter, ''Truck and Bus Tires from the People's Republic of China—Request for Review,'' dated February 26, 2020; Shandong Huasheng Rubber Co., Ltd.'s (Shandong Huasheng) Letter, ''Truck and Bus Tires from the People's Republic of China—Request for Review,'' dated February 26, 2020; Giti Tire Global Trading Pte. Ltd.'s (Giti Tire) Letter, ''Truck and Bus Tires from the People's Republic of China Request for Administrative Review,'' dated February 28, 2020; Sailun Group Co., Ltd., Sailun (Shenyang) Tire Co., Ltd., Sailun Group (Hong Kong) Co., Limited (previously known as Sailun Jinyu Group (Hong Kong) Co., Limited) (collectively, Sailun Group), Tongli Tyre Co., Ltd.'s (Tongli Tyre) Letter, ''Request for Administrative Review of the Antidumping Duty Order on Truck and Bus Tires from the People's Republic of China,'' dated March 2, 2020; and Jiangsu General Science Technology Co., Ltd., Maxon Int'l Co., Limited, Megalith Industrial Group Co., Limited, Qingdao Keter International Co., Limited, Qingdao Powerich Tyre Co., Ltd., Qingdao Shinego Tire Tech Co., Limited (also known as Qingdao Shinego Tyre Tech Co., Ltd.), Qingdao Sunfulcess Tyre Co., Ltd., Shandong Hugerubber Co., Ltd., Shandong Yongsheng Rubber Group Co., Ltd., Shengtai Tyre Co., Ltd., Weifang Shunfuchang Rubber And Plastic Products Co., Ltd.'s (collectively, Gaopeng Respondents) Letter, ''Truck and Bus Tires from the People's Republic of China—Request for Administrative Review,'' dated February 28, 2020.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 19730 (April 8, 2020) (*Initiation Notice*).

[4] *See* Huayi Group's Letter, ''CMA and Shanghai Huayi's Withdrawal of Request for Administrative

received no other requests for an administrative review of the antidumping duty order.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' All respondents withdrew their requests for review within 90-days of the publication date of the *Initiation Notice.* Because we received no other requests for review of the respondents, and no other requests for the review of the order on truck and bus tires from China with respect to other companies subject to the order, we are rescinding the administrative review of the order in its entirety, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of truck and bus tires from China during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: June 25, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–14193 Filed 6–30–20; 8:45 am]

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Review Truck and Bus Tires from China,'' dated April 9, 2020; *see also* Sailun Group's Letter, ''Sailun Withdrawal of Review Request in POR 1 of the Antidumping Duty Review of Truck and Bus Tires from the People's Republic of China (A–570–040),'' dated April 14, 2020; Guangrao Kaichi Trading's Letter, ''Truck and Bus Tires from the People's Republic of China—Withdrawal of Request for Antidumping Administrative Review,'' dated April 30, 2020; Shandong Huasheng's Letter, ''Truck and Bus Tires from the People's Republic of China—Withdrawal of Request for Antidumping Administrative Review,'' dated April 30, 2020; Triangle Tyre's Letter, ''Truck and Bus Tires from the People's Republic of China–Withdrawal of Triangle Tyre Request for the First Administrative Review,'' dated April 30, 2020; Gaopeng Respondents's Letter, ''Truck and Bus Tires from the People's Republic of China—Withdrawal of Request for Administrative Review,'' dated May 6, 2020; Tongli Tyre's Letter, ''Tongli Withdrawal of Review Request in POR 1 of the Antidumping Duty Review of Truck and Bus Tires from the People's Republic of China (A–570–040),'' dated May 14, 2020; Giti Tire's Letter, ''Truck and Bus Tires from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated May 28, 2020; and *see* Giti Tire's Letter, ''Re: Truck and Bus Tires from the People's Republic of China: Withdrawal of Request for Administrative Review—Clarification,'' dated June 22, 2020.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below,

Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with

others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity To Request a Review: Not later than the last day of July 2020,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

Antidumping Duty Proceedings	
BELGIUM: Citric Acid and Certain Citrate Salts A–423–813	7/1/19—6/30/20
COLOMBIA: Citric Acid and Certain Citrate Salts A–301–803	7/1/19—6/30/20
INDIA:	
Corrosion-Resistant Steel Products A–533–863	7/1/19—6/30/20
Fine Denier Polyester Staple Fiber A–533–875	7/1/19—6/30/20
Polyethylene Terephthalate (Pet) Film A–533–824	7/1/19—6/30/20
IRAN: In-Shell Pistachios A–507–502	7/1/19—6/30/20
ITALY:	
Certain Pasta A–475–818	7/1/19—6/30/20
Corrosion-Resistant Steel Products A–475–832	7/1/19—6/30/20
JAPAN:	
Clad Steel Plate A–588–838	7/1/19—6/30/20
Cold-Rolled Steel Flat Products A–588–873	7/1/19—6/30/20
Polyvinyl Alcohol A–588–861	7/1/19—6/30/20
Stainless Steel Sheet and Strip in Coils A–588–845	7/1/19—6/30/20
Steel Concrete Reinforcing Bar A–588–876	7/1/19—6/30/20
MALAYSIA:	
Steel Nails A–557–816	7/1/19—6/30/20
Welded Stainless Steel Pressure Pipe A–557–815	7/1/19—6/30/20
OMAN:	
Steel Nails A–523–808	7/1/19—6/30/20
REPUBLIC OF KOREA:	
Corrosion-Resistant Steel Products A–580–878	7/1/19—6/30/20
Fine Denier Polyester Staple Fiber A–580–893	7/1/19—6/30/20
Stainless Steel Sheet and Strip in Coils A–580–834	7/1/19—6/30/20
Steel Nails A–580–874	7/1/19—6/30/20
SOCIALIST REPUBLIC OF VIETNAM:	
Steel Nails A–552–818	7/1/19—6/30/20
Welded Stainless Pressure Pipe A–552–816	7/1/19—6/30/20
TAIWAN:	
Corrosion-Resistant Steel Products A–583–856	7/1/19—6/30/20
Fine Denier Polyester Staple Fiber A–583–860	7/1/19—6/30/20
Polyethylene Terephthalate (Pet) Film A–583–837	7/1/19—6/30/20
Stainless Steel Sheet and Strip in Coils A–583–831	7/1/19—6/30/20
Steel Nails A–583–854	7/1/19—6/30/20
THAILAND:	
Carbon Steel Butt-Weld Pipe Fittings A–549–807	7/1/19—6/30/20
Citric Acid and Certain Citrate Salts A–549–833	7/1/19—6/30/20
Weld Stainless Steel Pressure Pipe A–549–830	7/1/19—6/30/20

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

THE PEOPLE'S REPUBLIC OF CHINA:	
Carbon Steel Butt-Weld Pipe Fittings A–570–814	7/1/19—6/30/20
Certain Potassium Phosphate Salts A–570–962	7/1/19—6/30/20
Certain Steel Grating A–570–947	7/1/19—6/30/20
Circular Welded Carbon Quality Steel Pipe A–570–910	7/1/19—6/30/20
Cold-Rolled Steel Flat Products A–570–029	7/1/19—6/30/20
Corrosion-Resistant Steel Products A–570–026	7/1/19—6/30/20
Fine Denier Polyester Staple Fiber A–570–060	7/1/19—6/30/20
Persulfates A–570–847	7/1/19—6/30/20
Quartz Surface Products A–570–084	11/20/18—6/30/20
Xanthan Gum A–570–985	7/1/19—6/30/20
TURKEY:	
Certain Pasta A–489–805	7/1/19—6/30/20
Steel Concrete Reinforcing Bar A–489–829	7/1/19—6/30/20
UKRAINE: Oil Country Tubular Goods A–823–815	7/1/19—6/30/20
Countervailing Duty Proceedings	
INDIA:	
Corrosion-Resistant Steel Products C–533–864	1/1/19—12/31/19
Polyethylene Terephthalate (Pet) Film C–533–825	1/1/19—12/31/19
ITALY:	
Certain Pasta C–475–819	1/1/19—12/31/19
Corrosion-Resistant Steel Products C–475–833	1/1/19—12/31/19
REPUBLIC OF KOREA: Corrosion-Resistant Steel Products C–580–879	1/1/19—12/31/19
SOCIALIST OF REPUBLIC OF VIETNAM: Steel Nails C–552–819	1/1/19—12/31/19
THE PEOPLE'S REPUBLIC OF CHINA:	
Certain Potassium Phosphate Salts C–570–963	1/1/19—12/31/19
Circular Welded Carbon Quality Steel Pipe C–570–911	1/1/19—12/31/19
Cold-Rolled Steel Flat Products C–570–030	1/1/19—12/31/19
Corrosion-Resistant Steel Products C–570–027	1/1/19—12/31/19
Prestressed Concrete Steel Wire Strand C–570–946	1/1/19—12/31/19
Quartz Surface Products C–570–085	9/21/18—12/31/19
Steel Grating C–570–948	1/1/19—12/31/19
TURKEY:	
Certain Pasta C–489–806	1/1/19—12/31/19
Steel Concrete Reinforcing Bar C–489–830	1/1/19—12/31/19
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review

[3] *See* the Enforcement and Compliance website at *https://legacy.trade.gov/enforcement/.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of July 2020. If Commerce does not receive, by the last day of July 2020, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 19, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–14195 Filed 6–30–20; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 29615 (May 18, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–890]

Emulsion Styrene-Butadiene Rubber From the Republic of Korea: Preliminary Results of the Administrative Review of the Antidumping Duty Order; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that sales of emulsion styrene butadiene rubber (ESB rubber) from the Republic of Korea (Korea) were made at less than normal value during the period of review (POR) September 1, 2018 through August 31, 2019. We invite interested parties to comment on these preliminary results.

DATES: Applicable July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2019, Commerce initiated the administrative review of the antidumping duty order on ESB rubber from Korea in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[1] This review covers seven producers/exporters of subject merchandise.[2] On December 13, 2019, Commerce selected LG Chem, Ltd. (LG Chem) as the sole mandatory respondent for this review.[3] On January 13, 2020, LG Chem notified Commerce that it would not participate in this administrative review.[4]

On April 24, 2020, Commerce tolled deadlines in all administrative reviews by 50 days, thereby extending the deadline for these results until July 21, 2020.[5] For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The product covered by this order is emulsion styrene-butadiene rubber from Korea. For a full description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available with adverse inferences (AFA) for LG Chem, because this respondent notified Commerce that it would not participate in the review.

For a full description of the methodology and analysis underlying the preliminary application of AFA, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Rates for Non-Selected Companies

In accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Albemarle,*[7] we are applying a rate based on the rate preliminarily applied to LG Chem in this administrative review (*i.e.,* 44.30 percent) to the companies not selected

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 61011 (November 12, 2019).

[2] *Id.,* 84 FR 61014.

[3] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order of Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Respondent Selection,'' dated December 13, 2019.

[4] *See* LG Chem's Letter, ''Emulsion Styrene-Butadiene Rubber (ESBR) from Korea: LG Chem's Decision to Stop Participating in AD Review,'' dated January 13, 2020.

[5] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order: Emulsion Styrene-Butadiene Rubber from the Republic of Korea; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *See Albemarle Corp.* v. *United States,* 821 F. 3d 1345 (Fed. Cir. 2016) (*Albemarle*).

for individual examination. This is the only rate determined in this review for an individual respondent, and thus, it is appropriate to apply this rate to the non-selected companies under section 735(c)(5)(B) of the Act. For a detailed discussion, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

We preliminary determine that the following weighted-average dumping margin exists for the period September 1, 2018 through August 31, 2019:

Exporter/producer	Dumping margin (percent)
LG Chem Ltd	44.30
Daewoo International Corporation	44.30
Hyundai Glovis Co	44.30
Kukje Trading Corp	44.30
Kumho Petrochemical Co. Ltd	44.30
Sungsan International Co., Ltd	44.30
WE International Co., Ltd	44.30

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9] If the preliminary results are unchanged for the final results, we will instruct CBP to apply an *ad valorem* assessment rate of 44.30 percent to all entries of subject merchandise during the POR from LG Chem and the companies which were not selected for individual examination.

We intend to issue liquidation instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the dumping margin established in the final results of this review; (2) for previously-investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.66 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, there are no calculations to disclose here because, in accordance with section 776 of the Act, Commerce preliminarily applied AFA to LG Chem, the only mandatory respondent subject to this review.[11]

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[12] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[13] Case and rebuttal briefs should be filed using ACCESS.[14] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety through Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: June 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Application of Facts Available and Adverse Inferences

[8] *See* 19 CFR 351.212(b).

[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders,* 82 FR 42790 (September 12, 2017).

[11] *See Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Initiation of Less-Than-Fair-Value Investigations,* 81 FR 55438 (August 19, 2016), and accompanying Initiation Checklist: Emulsion Styrene-Butadiene Rubber from the Republic of Korea at 10.

[12] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 29615 (May 18, 2020) (*Temporary Rule*).

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

[14] *See generally* 19 CFR 351.303.

[15] *See Temporary Rule.*

V. Recommendation

[FR Doc. 2020–14191 Filed 6–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Meeting

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda for the meeting of the Science Advisory Board (SAB). The members will discuss issues outlined in the section on Matters to be considered.

DATES: The meeting is scheduled for July 22, 2020 from 1:00 p.m. to 5:00 p.m. Eastern Standard Time (EST) and July 23, 2020 from 1:00 p.m. to 5:00 p.m. EST. This time and the agenda topics described below are subject to change.

For the latest agenda please refer to the SAB website: *http://sab.noaa.gov/SABMeetings.aspx.*

ADDRESSES: This is a virtual meeting. The link for the webinar registration for the July 22–23, 2020 meeting may be found here:

July 22, 2020: https://attendee.gotowebinar.com/register/2922353879931912972.

July 23, 2020: https://attendee.gotowebinar.com/register/1952615410559086604.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910; Phone Number: 301–734–1156; Email: *Cynthia.Decker@noaa.gov;* or visit the SAB website at *http://sab.noaa.gov/SABMeetings.aspx.*

SUPPLEMENTARY INFORMATION: The NOAA Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Status: The July 22–23, 2020 meeting will be open to public participation with a 15-minute public comment period at 4:45–5:00 p.m. EST on Wednesday, July 22. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three minutes. Written comments for the July 22–23, 2020 meeting should be received in the SAB Executive Director's Office by July 7, 2020 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after this date will be distributed to the SAB, but may not be reviewed prior to the meeting date.

Special Accommodations: This meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to the Executive Director no later than 12 p.m. on July 7, 2020.

Matters to be Considered: The meeting on July 22–23, 2020 will include:(1) NOAA Updates; (2) Environmental Information Services Working Group Report to Congress; (3) Update on the SAB Tsunami Science and Technology Advisory Panel; (4) SAB Work Plan and NOAA Priorities; (5) NOAA Response to the Climate Working Group Review of the Climate Program Office Climate and Global Change Post-Doctoral Program; (6) Decision Making under Deep Uncertainty: Update from the Ecosystem Management and Sciences Working Group;.(7) Review of the Northern Gulf Institute Cooperative Institute. Meeting materials, including work products, will be made available on the SAB website: *http://sab.noaa.gov/SABMeetings.aspx.*

Dated: June 25, 2020.

David Holst,

Director Chief Financial Officer/CAO,Office of Oceanic and Atmospheric Research,National Oceanic and Atmospheric Administration.

[FR Doc. 2020–14175 Filed 6–30–20; 8:45 am]

BILLING CODE 3510–KD–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before July 31, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0090, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The

[1] 17 CFR 145.9.

Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Gregory Scopino, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5175, email: *gscopino@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Adaptation of Regulations to Incorporate Swaps-Records of Transactions; Exclusion of Utility Operations Related Swaps with Utility Special Entities from De minimis Threshold for Swaps with Special Entities (OMB Control No. 3038–0090). This is a request for extension of a currently approved information collection.

Abstract: Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, Pub. L. 111–203, 124 Stat. 1376 (2010)) amended the Commodity Exchange Act (CEA) to establish a comprehensive new statutory framework for swaps. These amendments required the Commodity Futures Trading Commission (''the Commission'') to amend several of its regulations to implement the new framework.

The information collection obligations imposed by the ''Adaptation of Regulations to Incorporate Swaps'' final regulations [2] are necessary to implement section 721 of the Dodd-Frank Act, which amended the definitions of futures commission merchant (''FCM'') and introducing broker (''IB'') to permit these intermediaries to trade swaps on behalf of customers. They also are necessary to implement section 733 of the Dodd-Frank Act which introduced swap execution facilities (''SEFs'') as a new trading platform for swaps. As a result of the enactment of sections 721 and 733, the Commission needed to amend certain recordkeeping regulations (§§ 1.31, 1.33, 1.35, 1.37, and 1.39) so that records of swap transactions are maintained analogously to how futures transactions are maintained.

Further, the ''Exclusion of Utility Operations-Related Swaps With Utility Special Entities from De Minimis Threshold for Swaps With Special Entities'' [3] regulation amended the Commission's swap dealer definition to permit a person to exclude ''utility operations-related swaps'' with ''utility special entities'' in their de minimis threshold calculations. The regulation requires a person claiming the exclusion to maintain, in accordance with Commission regulation 1.31, any written representations that the person receives from utility special entities related to this exclusion.

The information collection burdens associated with these regulations (collectively, the ''Swap Recordkeeping Requirements'') are restricted to the costs associated with the recordkeeping and reporting requirements that these regulations impose upon affected registrants, registered entities, those registered entities' members, and other respondents covered by the final rules.

An agency may not conduct or sponsor, a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On April 27, 2020, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 85 FR 23331. The Commission did not receive any comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection for futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of designated contract markets and swap execution facilities. The respondent burden for this collection is estimated to be as follows:[4]

Estimated Number of Respondents: 13,664.

Estimated Annual Burden Hours per Respondent: 163.

Estimated Total Annual Burden Hours: 2,233,722.

Frequency of Collection: As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

(*Authority:* 44 U.S.C. 3501 *et seq.*)

Dated: June 25, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–14127 Filed 6–30–20; 8:45 am]

BILLING CODE 6351–01–P

[2] Adaptation of Regulations to Incorporate Swaps, 77 FR 66288 (Nov. 2, 2012).

[3] Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold for Swaps with Special Entities, 79 FR 57767 (Sept. 26, 2014).

[4] These estimates represent the aggregate burden for all data associated with the Swap Recordkeeping Requirements in the collection, namely Swap Recordkeeping (Regulation 1.35), Swap Confirmations (Regulation 1.33), and Utility Special Entities (Regulation 1.3). Please refer to the supporting statement for further explanation of burdens associated with each regulatory requirement.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Volunteering and Civic Life Assessment: Current Population Survey Supplement

AGENCY: Corporation for National and Community Service (CNCS).

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, CNCS is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by August 31, 2020.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Attention Mary Hyde, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that

may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Mary Hyde, (202) 606–6934, or by email at *mhyde@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Current Population Survey Supplement.

OMB Control Number: 3045–0139.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 90,000.

Total Estimated Number of Annual Burden Hours: 15,000.

Abstract: CNCS is soliciting comments concerning its proposed renewal of The Volunteering and Civic Life Assessment: September Current Population Survey Supplement. This is a national survey conducted by the U.S. Census and CNCS. CNCS is directed by Congress to collect data and produce yearly reports on the nation's civic health and volunteering activity (42 U.S.C. 12639(a)); 13 U.S.C. 8(b)). CNCS also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on August 31, 2020.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Dated: June 25, 2020.

Mary Hyde,

Director of Research and Evaluation.

[FR Doc. 2020–14098 Filed 6–30–20; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Enrollment and Exit Form; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps Enrollment and Exit Form for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 31, 2020.

ADDRESSES: Direct written comments and/or suggestions regarding the items contained in this Notice to the Attention: CNCS Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of Notice publication.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Sharron Tendai, at 202–606–3904 or by email to *stendai@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on March 12, 2020 at Vol. 85 FR Page Number 49. This comment period ended May 11, 2020. No public comments were received from this Notice.

Title of Collection: AmeriCorps Enrollment and Exit Form.

OMB Control Number: 3045–0006.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 269,000.

Total Estimated Number of Annual Burden Hours: 49,333.

Abstract: The AmeriCorps program uses the Enrollment and Exit form to collect information from potential AmeriCorps Members and from Members ending their term of service. CNCS seeks to renew the current information collection. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on August 31, 2020.

Dated: June 23, 2020.

Erin Dahlin,

Chief of Program Operations.

[FR Doc. 2020–14104 Filed 6–30–20; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Enrollment and Exit Form; Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps Enrollment and Exit Form for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 31, 2020.

ADDRESSES: Direct written comments and/or suggestions regarding the items contained in this Notice to the Attention: CNCS Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of Notice publication.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Sharron Tendai, at 202–606–3904 or by email to *stendai@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on March 12, 2020 at Vol. 85 FR Page Number 49. This comment period ended May 11, 2020. No public comments were received from this Notice.

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Dated: June 23, 2020.

Erin Dahlin,

Chief of Program Operations.

[FR Doc. 2020–14112 Filed 6–30–20; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Instructions for AmeriCorps State and National Competitive New and Continuation

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Application Instructions for AmeriCorps State and National Competitive New and Continuation for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 31, 2020.

ADDRESSES: Direct written comments and/or suggestions regarding the items contained in this Notice to the Attention: CNCS Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Arminda Pappas, at 202–606–6659 or by email to *apappas@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on April 7, 2020 at 85 FR 19459. This comment period ended June 8, 2020. No public comments were received in response to this Notice.

Title of Collection: Application Instructions for AmeriCorps State and National Competitive New and Continuation.

OMB Control Number: 3045–0047.

Type of Review: Renewal.

Respondents/Affected Public: Organizations and State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 450.

Total Estimated Number of Annual Burden Hours: 18,000.

Abstract: The application instructions conform to the Corporation for National and Community Service's online grant application system, eGrants, which applicants must use to respond to CNCS Notices of Funding Opportunities. CNCS seeks to renew the current

information collection. The revisions are intended to streamline the application process. The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 06/30/2020.

Dated: June 25, 2020.

Arminda Pappas,

Grant Review Manager.

[FR Doc. 2020–14107 Filed 6–30–20; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0063]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Notice of a modified System of Records.

SUMMARY: The DoD Office of Inspector General (OIG) is modifying a System of Records Notice (SORN), Case Control System—Investigative, CIG–26. This System of Records is used by the Office of Professional Responsibility (OPR), an office assigned within the DoD OIG. Pursuant to the Inspector General Act of 1978, as amended, OPR is tasked with investigating administrative or criminal misconduct alleged against DoD OIG employees and military personnel assigned to the DoD OIG. This modification revises blanket routine uses, exemptions, and record source categories. Additional updates include modifications to: System location, security classification, authorities, categories of individuals covered, categories of records, purpose, routine uses, storage, retrieval, safeguards, retention and disposal, system manager(s), notification procedures, record access procedures, and contesting record procedures.

DATES: This System of Records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before July 31, 2020. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.*Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

FOR FURTHER INFORMATION CONTACT: Anna M. Rivera, DoD OIG FOIA, Privacy and Civil Liberties Office, ATTN: Privacy Act Officer, Suite 10B24, 4800 Mark Center Drive, Alexandria, VA 22350–1500, (703) 699–5680.

SUPPLEMENTARY INFORMATION: The DoD OIG is statutorily authorized to conduct and supervise investigations relating to the programs and operations of the DoD; to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste, and abuse in such programs and operations. The records covered by this SORN are used to document the Office of Professional Responsibility's investigations of administrative or criminal misconduct alleged against DoD OIG employees and military personnel assigned to the DoD OIG. The system enables case management, case tracking, and information storage of records. The system also provides users with the capability to record complaints, allegations of wrongdoing, and requests for assistance. Additionally, the system compiles statistical information on the data stored, provides responsive and accurate information regarding the status of ongoing cases, and provides a record of complaint disposition, actions taken, and notifications to interested parties.

The OSD notices for Systems of Records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

The proposed system reports, as required by the Privacy Act, as amended, were submitted on June 16, 2020, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to Section 6 of OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Case Control System—Investigative, CIG–26.

SECURITY CLASSIFICATION:

Classified and Unclassified.

SYSTEM LOCATION:

DoD Office of Inspector General (OIG), Office of Professional Responsibility (OPR), 4800 Mark Center Drive, Alexandria, VA 22350–1500.

SYSTEM MANAGER(S):

DoD OIG, OPR, 4800 Mark Center Drive, Alexandria, VA 22350–1500.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended; Inspector General Reform Act of 2008; Inspector General Empowerment Act of 2016; 10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 141, Inspector General; and DoD Directive 5106.01, Inspector General of the Department of Defense, and Executive Order (E.O.) 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

The DoD OIG maintains this System of Records, on behalf of the Office of Professional Responsibility (OPR), in order to carry out its responsibilities pursuant to the Inspector General Act of 1978, as amended. The DoD OIG is statutorily authorized to conduct and supervise investigations relating to the programs and operations of the DoD, to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and to prevent and detect fraud, waste, and abuse in such programs and operations. Specifically, the OPR is responsible for investigating administrative and criminal misconduct alleged against DoD OIG employees and military personnel assigned to the DoD OIG. The records in this system are used in the course of such investigations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD OIG employees, military personnel, and contractors involved in, mentioned in, and/or subject to OPR investigations or complaints; including any complainants, sources, subjects, and witnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's full name, DoD Identification Number, SSN, date of birth, email addresses, duty positions, telephone numbers, case control

number, and other personal information related to investigations and inquiries.

RECORD SOURCE CATEGORIES:

The individual, DoD OIG investigators, witness statements, DoD records, and law enforcement agencies' records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this System of Records.

b. To appropriate Federal, State, local, territorial, tribal, foreign or international agencies having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations, including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters for the purpose of executing or enforcing laws designed to protect the national security or homeland security of the United States, to include activities authorized by 6 U.S.C. 485(a)(5), Domestic Security; 6 U.S.C. 482, Facilitating Homeland Security; Intelligence Reform and Terrorism Protection Act of 2004; and E.O. 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans.

c. To other Federal Inspector General offices, the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and/or other law enforcement agencies for the purpose of coordinating and conducting administrative inquiries and civil and criminal investigations, or when responding to such offices, CIGIE, and agencies in connection with the investigation of potential violations of law, rule, and/or regulation.

d. To the Department of Justice (DOJ) and other Federal, State, or local government prosecuting or litigating agencies for the purpose of satisfying obligations under Giglio (405 U.S. 150 (1972)) and Henthorn (931 F.2d 29 (9th Cir. 1991)), as well as the DOJ United States Attorneys' Manual, Section 9–5.100 and DoD Inspector General Instruction 5500.1, DOJ Requirements for Potential Impeachment Information (Giglio Policy).

e. To designated officers, contractors, and employees of Federal, State, local, territorial, tribal, international, or foreign agencies for the purpose of the hiring or retention of an individual, the conduct of a suitability or security investigation, the letting of a contract, or the issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to the agency's decision on the matter and that the employer is appropriately informed about information that relates to or may impact an individual's suitability or eligibility.

f. To the news media and the public unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

g. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of an investigation or case arising from the matters of which they complained and/or which they were a victim.

h. To OPM for the purpose of addressing civilian pay and leave, benefits, retirement deduction, and any other information necessary for OPM to carry out its legally authorized government-wide personnel management functions and studies.

i. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

j. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

k. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

l. To the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

m. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

n. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the System of Records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

o. To another Federal agency or Federal entity, when the DoD determines information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by individual's name or case control number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Unfounded or unsubstantiated investigative files are destroyed 10 years from the date the report is completed. Substantiated investigative files are destroyed 10 years from the date the report is completed or 5 years after termination of employee, whichever is later. Reports are dated when completed and once a final determination has been made.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The database access is restricted to authorized Office of Professional Responsibility staff with an authenticated need to know who are properly screened, cleared, and trained. The database is safeguarded by role-

based common access card permissions and an associated personal identification number, encryption, and system firewalls. Paper records are stored in a controlled facility with limited suite access protected by cipher lock and physical security to monitor areas and personnel access.

RECORD ACCESS PROCEDURES:

As specified in the exemptions claimed for this system, the records in this system are exempt from certain notification, access, and amendment procedures. A request for access to non-exempt records shall address written inquiries to the DoD OIG FOIA, Privacy and Civil Liberties Office, ATTN: Privacy Act Officer, Suite 10B24, 4800 Mark Center Drive, Alexandria, VA 22350–1500. For verification purposes, individuals must provide their full name and any details which may assist in locating records of the individual. The request must be signed by the requesting individual and they must provide a notarized statement or a signed declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, for contesting contents and appealing initial agency determinations are published in 32 CFR part 310, or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

As specified in the exemptions claimed for this system, the records in this system are exempt from certain notification, access, and amendment procedures. Individuals seeking to learn whether this system contains nonexempt information about them should address written inquiries to the DoD OIG FOIA, Privacy and Civil Liberties Office, ATTN: Privacy Act Officer, Suite 10B24, 4800 Mark Center Drive, Alexandria, VA 22350–1500. For verification purposes, individuals must provide their full name and any details which may assist in locating records of the individual. The request must be signed by the requesting individual and they must provide a notarized statement or a signed declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The DoD exempted records maintained in the CIG–26, from subsections (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a 552a(j)(2) as records maintained by an agency or component thereof that performs as its principal function any activity pertaining to the enforcement of criminal laws. The DoD also exempted records maintained in the CIG–26, from subsections (c)(3), (d), (e)(1), and (e)(4)(G) through (I), of the Privacy Act pursuant to 5 U.S.C. 552a 552a(k)(1) and (k)(2) to the extent that such records are properly classified pursuant to an executive order and are investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).

This system may contain records or information compiled from or created from information contained in other Systems of Records, which may be exempt from certain provisions of the Privacy Act. To the extent that copies of exempt records from those 'other' System of Records are entered into this System of Records, the DoD claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part. Any exemption claimed from the originating agency will follow the record. A determination as to exemption shall be made at the time a request for access or amendment is received.

Parts of this system may be exempt pursuant to 5 U.S.C. 552a (k)(2) as applicable. However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR 310.28.

HISTORY:

August 9, 2011, 76 FR 48812.

[FR Doc. 2020–14222 Filed 6–30–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–0E]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–0E with attached Policy Justification and Sensitivity of Technology.

Dated: June 25, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202-5408

May 27, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 20-0E. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 12-53 of September 19, 2012.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal

BILLING CODE 5001–06–C

Transmittal No. 20-0E

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Prospective Purchaser:* Government of Indonesia

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 12-53

Date: September 19, 2012

Military Department: Army

(iii) *Description:* On September 19, 2012, Congress was notified, by Congressional Notification Transmittal Number 12-53, of the possible sale under Section 36(b)(1) of the Arms Export Control Act, to the Government of Indonesia of 8 AH-64D Apache Block III Longbow Attack Helicopters, 19 T-700-GE-701D Engines (16 installed and 3 spares), 9 Modernized Target Acquisition and Designation Sight/Modernized Pilot Night Vision Sensors, 4 AN/APG-78 Fire Control Radars (FCR) with Radar Electronics Units (Longbow Component), 4 AN/APR-48A Radar Frequency Interferometers, 10 AAR-57(V) 3/5 Common Missile Warning Systems (CMWS) with 5th Sensor and Improved Countermeasure Dispenser, 10 AN/AVR-2B Laser Detecting Sets, 10 AN/APR-39A(V)4 Radar Signal Detecting Sets, 24 Integrated Helmet and Display Sight Systems (IHDSS-21), 32 M299A1 Hellfire Missile Launchers, and 140 Hellfire AGM-114R3 Missiles. Also included were Identification Friend or Foe transponders, 30mm guns and ammunition, communication equipment, tools and test equipment, training devices, simulators, generators, transportation, wheeled vehicles, organizational equipment, spare and repair parts, support equipment, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated total cost was $1.42 billion. Major Defense Equipment (MDE) constituted $720 million of this total.

On January 14, 2014, Congress was notified, by Congressional certification transmittal number 0P-13, under Section 36(b)(5)(a) of the Arms Export Control Act, of the inclusion of eight sets of Embedded Global Positioning System/Inertial Navigation System (GPS/INS) equipment. Although the value of the GPS/INS was included in the total value of the case, it was not enumerated or valued as MDE in the original notification. Upgrading the status of this equipment to MDE resulted in a net increase in MDE cost of $4.2 million, but the total case value remained $1.42 billion.

On March 30, 2015, Congress was notified, by Congressional certification transmittal number 0E-15, under Section 36(b)(5)(a) of the Arms Export Control Act, of the inclusion of two Embedded Global Positioning Systems/Inertial Navigation Systems (EGI) and eight M36-E9 Captive Air Training Missiles (CATMs) for the AH-64 Apache Helicopter program as Major Defense Equipment. The EGIs were originally reported as 8 sets (2 per set); however,

the quantity was under reported and should have read 9 sets. The value of all 9 sets was captured in the MDE total. The value of the CATMs was included in the sale but not enumerated as MDE in the original notification. The addition of these items as MDE resulted in a net $350,000 increase in the MDE cost. The total case value for this notification remained $1.42 billion.

This transmittal reports the inclusion of an additional one hundred ninety-two (192) AGM-114R (NN) Hellfire missiles (MDE). The estimated additional MDE cost is $30 million, resulting in a revised MDE value of $754 million. The revised case value is $1.72 billion.

(iv) *Significance:* The United States is committed to the security of Indonesia, and it is vital to U.S. national interests to assisting Indonesia in developing and maintaining a strong and ready self-defense capability. The Indonesian Army (TNI-AD) expends Hellfire missiles in training as well as during internal and bilateral exercises to ensure mission readiness and enhance interoperability with U.S. armed forces. Most notably, successful employment of Apache Hellfire missiles in Exercise Garuda Shield in August 2019 reinforced Indonesia's confidence in the weapons.

(v) *Justification:* This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a friendly country. The additional missiles will provide a robust stock to cover several years of training and exercises, and it will prepare Indonesia for future maritime security contingencies.

(vi) *Sensitivity of Technology:* The Sensitivity of Technology statement contained in the original notification applies to items reported here.

(vii) *Date Report Delivered to Congress:* May 27, 2020.

[FR Doc. 2020–14111 Filed 6–30–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board

National Assessment Governing Board; Meetings

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Supplemental virtual meeting notice.

SUMMARY: The National Assessment Governing Board (Governing Board) published a document in the **Federal Register** of June 16, 2020, announcing the schedule and proposed agenda of a forthcoming virtual meeting of the Governing Board on June 29, 2020. The meeting agenda has been updated to reflect a change to the closed session scheduled for Monday, June 29, 2020, from 2:00 p.m. to 4:00 p.m. Eastern Time. (ET).

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Executive Officer/Designated Federal Official for the Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002, telephone: (202) 357–6938, fax: (202) 357–6945, email: *Munira.Mwalimu@ed.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** published on June 16, 2020, in FR Doc. 2020–12952 (85 FR 36384–36385), the Governing Board advised members of the public of a virtual meeting scheduled to take place on June 29, 2020. Updates to the agenda are required based on the fact that the agenda items to be covered during the closed session is now shortened, which impacts the time available for the open session.

The first session, the closed session, will discuss independent cost estimates related to the impact of the COVID–19 pandemic on the National Assessment of Educational Progress (NAEP) 2021 operations and subsequent potential impacts on the NAEP budget and assessment schedule as previously announced. The closed discussion will now take place between 2:00 p.m. to 3:15 p.m. (ET). The discussions may impact current and future NAEP contracts and budgets and must be kept confidential. Public disclosure of this confidential information would significantly impede implementation of the NAEP assessment program if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 of the United States Code. The closed session will be followed by a 15-minute break. The agenda is hereby revised to add an additional item for the open session which will now take place from 3:30 p.m. to 5:00 p.m. ET. The Board will engage in conversation with key stakeholders on NAEP 2021—representatives from the Council of the Great City Schools, the Council of Chief State School Officers, and the Southern Regional Education Board. Following this discussion, the originally published discussion on NAEP 2021 options will continue as scheduled from 4:00 p.m. to 5:00 p.m. ET. The meeting will adjourn at 5:00 p.m. ET.

Access to Records of the Meeting: Pursuant to FACA requirements, the public may also inspect the meeting materials at *www.nagb.gov beginning* on Thursday, June 25, 2020 by 10:00 a.m. ET. The official verbatim transcripts of the public meeting sessions will be available for public inspection no later than 30 calendar days following the meeting.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website.

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.

Authority: Pub. L. 107–279, Title III—National Assessment of Educational Progress section 301.

Lesley A. Muldoon,

Executive Director,National Assessment Governing Board (NAGB),U.S. Department of Education.

[FR Doc. 2020–13758 Filed 6–30–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—National Center To Improve Faculty Capacity To Use Educational Technology in Special Education, Early Intervention, and Related Services Personnel Preparation and Leadership Personnel Preparation Programs

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

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2020 for Educational Technology, Media, and Materials for Individuals with Disabilities—National Center to Improve Faculty Capacity to Use Educational Technology in Special Education, Early Intervention, and Related Services Personnel Preparation and Leadership Personnel Preparation Programs, Catalog of Federal Domestic Assistance (CFDA) number 84.327F. This center will identify and disseminate types of educational technologies that can enhance teaching and learning in educator and leader preparation programs in institutions of higher education (IHEs); and support learning networks for IHE faculty on using educational technologies to enhance teaching and learning in educator and leader preparation programs. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES: *Applications Available:* July 1, 2020.

Deadline for Transmittal of Applications: August 21, 2020.

Pre-Application Webinar Information: No later than July 6, 2020, the Office of Special Education Programs (OSEP) will post a pre-recorded informational webinar designed to provide technical assistance to interested applicants. The webinar may be found at *www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR–2019–02–13/pdf/2019–02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Celia Rosenquist, U.S. Department of Education, 400 Maryland Avenue SW, Room 5158, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7373. Email: *Celia.Rosenquist@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to (1) improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational activities designed to be of educational value in the classroom for children with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials (AEM) to children with disabilities in a timely manner.[1]

Priority: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in sections 674(c)(1)(D) and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1474(c)(1)(D) and 1481(d).

Absolute Priority: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Center to Improve Faculty Capacity to Use Educational Technology in Special Education, Early Intervention, and Related Services Personnel Preparation and Leadership Personnel Preparation Programs.

Background:

Educational technology (*e.g.,* adaptive courseware, digital learning environments, learning analytics, virtual learning tools, accessibility technology, communication technologies) in IHEs can potentially be transformative in how it engages, supports, and enables learning and increases opportunities and options for diverse learners (U.S. Department of Education, 2017). Faculty at IHEs play a critical role in promoting knowledge and shaping the teaching methods of future special education, early intervention, and related services personnel (referred to as ''educators'' hereafter) and leaders (*e.g.,* IHE faculty; school, program, district, and State administrators). The knowledge and use of educational technology by IHE faculty serve two critical purposes. The first purpose is ensuring that future educators and leaders enrolled in preparation programs are efficiently and effectively acquiring the competencies needed to be successful in their future area of employment in special education, early intervention, or related services. The second purpose is serving as a model for future educators and leaders in how best to use educational technology to support engagement and learning in their own teaching and professional activities (Hughes et al., 2016).

Educational technology will undoubtedly play an increasing role in the future of IHEs (U.S. Department of Education, 2017), but there are variations in how technology is used and specific challenges for IHE faculty. For example, IHE faculty members' content expertise, experiences in course design, and varied technological knowledge and skills for teaching and learning influence their use of educational technology (Hughes et al., 2016). Challenges for IHE faculty include the time commitment needed to change instructional approaches and lack of access to sustained professional development to support the continued use of educational technology. The competencies needed by IHE faculty to prepare future educators and leaders have only recently been proposed and approaches to the acquisition of these competencies need to be explored (Foulger et al., 2017). Institutional barriers to faculty use of educational technology also exist in that incentives (*e.g.,* reduced teaching, financial compensation) are often not offered to IHE faculty for improving their knowledge and use of educational technology (Kolb et al., 2018). Also, educational technology continues to rapidly expand and evolve, which presents challenges for IHE faculty to keep up to date on innovative tools and strategies to best prepare future educators and leaders (U.S. Department

[1] Applicants should note that other laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.;* 28 CFR part 35) and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794; 34 CFR part 104), may require that State educational agencies (SEAs) and local educational agencies (LEAs) provide captioning, video description, and other accessible educational materials to students with disabilities when these materials are necessary to provide equally integrated and equally effective access to the benefits of the educational program or activity, or as part of a ''free appropriate public education'' as defined in 34 CFR 104.33.

of Education, 2017). Finally, the need to build faculty capacity to use educational technology is further necessitated when future educators and leaders are unable to receive, or provide, instruction in a traditional classroom setting. Faculty that have the capacity to deliver instruction utilizing distance technology, and prepare future educators and leaders to utilize such technology, will be better able to handle future disruptions in learning in the event of a natural disaster or emergency. Responses to the Novel Coronavirus Disease 2019 (COVID–19) pandemic at the IHE, State, and local educational agency (LEA) levels demonstrate that faculty need support to maintain continuity of operations in the event of such emergencies.

The Department therefore intends to fund a cooperative agreement to establish and operate a national center to support faculty at IHEs by improving their knowledge and use of educational technology, and their capacity to sustain its use in special education, early intervention, and related services personnel preparation and leadership personnel preparation programs.

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

Priority:

The purpose of this priority is to fund a cooperative agreement to establish and operate a national center to improve faculty capacity to use educational technology in special education, early intervention, and related services personnel preparation and leadership personnel preparation programs. To be considered for funding under this priority, applicants, at a minimum, must—

(a) Increase knowledge of faculty at IHEs about the range of educational technologies that can be used for educator or leadership preparation programs;

(b) Increase capacity of faculty at IHEs to use a range of educational technologies in educator or leadership preparation programs; and

(c) Increase capacity of faculty within and across IHEs to sustain professional learning networks related to the use of educational technologies in educator and leadership preparation programs.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address faculty needs at IHEs to identify, select, and use educational technology and how to integrate it into their special education, early intervention, or related services educator and leadership preparation programs. To meet this requirement the applicant must—

(i) Present information on the types of educational technology that can be used in educator and leadership preparation programs, including technologies that support distance learning;

(ii) Present information on the extent to which educator and leadership preparation programs have integrated educational technology into their courses and content; and

(iii) Identify systemic barriers, gaps, or challenges to integrating educational technology in educator and leadership preparation programs.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for technical assistance (TA) and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model [2] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current literature and research on educational technology for educator and leadership preparation programs. To meet this requirement, the applicant must describe—

(i) The current research on educational technology, including technologies that support distance instruction, for educator and leadership preparation programs, the evidence-base related to its effectiveness, and the effective use of such technologies;

(ii) The current literature and research on how to support IHE faculty in the use of educational technology to prepare future educators and leaders;

(iii) The current literature and research on factors associated with the integration of educational technology, including technologies that support distance instruction, into courses and components of educator and leadership preparation programs and how to address those factors;

(iv) How the proposed project will incorporate current literature and research in the development of a framework for IHE faculty's acquisition of competencies to use educational technologies in educator and leader preparation programs;

(v) How the proposed project will identify IHE faculty or programs that have promising approaches and practices for integrating educational technology in its educator and leadership preparation programs and incorporate that information into the development of the framework; and

(vi) How the proposed project will incorporate current literature and research in the development of a framework for increasing the capacity of IHE faculty within and across IHEs to create and sustain professional learning networks related to educational technology and its integration into educator and leadership preparation programs;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base related to educational technology for educator and leadership preparation programs, its effectiveness, and how to use the technologies; and

[2] Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

(ii) How it proposes to engage stakeholders in the development of a framework for—

(A) IHE faculty to acquire needed competencies for integrating educational technology in a current educator and leadership preparation program; and

(B) Increasing capacity of faculty within and across IHEs to create and sustain professional learning networks related to educational technology and its integration in educator and leadership preparation programs;

(iii) Its proposed approach to dissemination, which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach and should include, at a minimum, the following three elements:

(A) A plan to disseminate the knowledge base on the types, use, and effectiveness of educational technologies for educator and leadership preparation programs;

(B) A plan to disseminate the frameworks developed under paragraph (b)(5)(ii) of this priority and develop professional learning support or activities for faculty at IHEs to enhance their understanding and implementation of the frameworks; and

(C) A plan to identify and disseminate other relevant resources, including exemplar faculty and programs that have promising approaches and practices for integrating educational technology;

(iv) Its proposed approach to supporting faculty at IHEs in implementing the frameworks for integrating technology in preparation programs and professional learning networks and sustaining professional learning networks, which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential recipients to work with the project, assessing, at a minimum, their current use of educational technology in the delivery of coursework, technology resources, and ability to build capacity at the institutional level; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the evaluation plan,'' include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe: measures of progress in implementation, including the criteria for determining the extent to which the project's products and services have met the goals for reaching its target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met.

The applicant must provide an assurance that, in designing the evaluation plan, it will—

(1) Designate, with the approval of the Office of Special Education Programs (OSEP) project officer, a project liaison staff person with sufficient dedicated time, experience in evaluation, and knowledge of the project to work in collaboration with the Center to Improve Program and Project Performance (CIPP [3]), the project director, and the OSEP project officer on the following tasks:

(i) Revise, as needed, the logic model submitted in the application to provide for a more comprehensive measurement of implementation and outcomes and to reflect any changes or clarifications to the model discussed at the kick-off meeting;

(ii) Refine the evaluation design and instrumentation proposed in the application consistent with the logic model (*e.g.,* prepare evaluation questions about significant program processes and outcomes; develop quantitative or qualitative data collections that permit both the collection of progress data, including fidelity of implementation, as appropriate, and the assessment of project outcomes; and identify analytic strategies); and

(iii) Revise, as needed, the evaluation plan submitted in the application such that it clearly—

(A) Specifies the measures and associated instruments or sources for data appropriate to the evaluation questions, suggests analytic strategies for those data, provides a timeline for conducting the evaluation, and includes staff assignments for completing the plan;

(B) Delineates the data expected to be available by the end of the second project year for use during the project's evaluation (3+2 review) for continued funding described under the heading *Fourth and Fifth Years of the Project;* and

(C) Can be used to assist the project director and the OSEP project officer, with the assistance of CIPP, as needed, to specify the performance measures to be addressed in the project's annual performance report.

(2) Cooperate with CIPP staff in order to accomplish the tasks described in paragraph (1) of this section; and

(3) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in paragraphs (1) and (2) of this section and implementing the evaluation plan.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are

[3] The major tasks of CIPP are to guide, coordinate, and oversee the design of formative evaluations for every large discretionary investment (*i.e.,* those awarded $500,000 or more per year and required to participate in the 3+2 process) in OSEP's Technical Assistance and Dissemination; Personnel Development; Parent Training and Information Centers; and Educational Technology, Media, and Materials programs. The efforts of CIPP are expected to enhance individual project evaluation plans by providing expert and unbiased TA in designing the evaluations with due consideration of the project's budget. CIPP does not function as a third-party evaluator.

appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period;

(iii) One annual two-day trip to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, during the last half of the second year of the project period;

(3) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(4) Ensure that annual progress toward meeting project goals is posted on the project website; and

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project: In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendation of a 3+2 review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

References

Foulger, T.S., Graziano, K.J., Schmidt-Crawford, D. & Slykhuis, D.A. (2017). Teacher Educator Technology Competencies. *Journal of Technology and Teacher Education, 25*(4), 413–448. Society for Information Technology & Teacher Education. *www.learntechlib.org/primary/p/181966/.*

Hughes, J.E., Liu, S. & Lim, M. (2016). Technological modeling: Faculty use of technologies in preservice teacher education from 2004 to 2012. *Contemporary Issues in Technology & Teacher Education, 16*(2), 184–207. *www.citejournal.org/volume-16/issue-2-16/current-practice/technological-modeling-faculty-use-of-technologies-in-preservice-teacher-education-from-2004-to-2012.*

Kolb, L., Kashef, F., Roberts, C., Terry, C., & Borthwick, A. (2018, March 1–3). *Challenges to creating and sustaining effective technology integration in teacher education programs* [Paper presentation]. American Association of Colleges for Teacher Education Annual Conference, Baltimore, MD, United States.

U.S. Department of Education. (2017). Office of Educational Technology. Reimagining the role of technology in higher education: A supplement to the National Education Technology Plan. *https://tech.ed.gov/files/2017/01/Higher-Ed-NETP.pdf.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2021 from the list of unfunded applications from this competition.

Maximum Award: We will not make an award exceeding $2,500,000 for the 60-month project period.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs); LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding must, with respect to the

aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2020.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) Significance (15 Points).

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project;

(ii) The magnitude or severity of the problem to be addressed by the proposed project;

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses;

(iv) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies; and

(v) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(b) *Quality of project services (30 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services;

(iv) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services; and

(v) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(c) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(v) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

(d) *Adequacy of resources and quality of project personnel (20 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator;

(ii) The qualifications, including relevant training and experience, of key project personnel;

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors;

(iv) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(v) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(vi) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (15 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project;

(iv) How the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate; and

(v) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open

licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* Under the Government Performance Results Modernization Act of 2010, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and Materials for Individuals with Disabilities Program. These measures are—

- *Program Performance Measure 1:* The percentage of Educational Technology, Media, and Materials Program products and services judged to be of high quality by an outside independent review panel of experts in the field that is arranged by OSEP and qualified to review the substantial content of the products and services.
- *Program Performance Measure 2:* The percentage of Educational Technology, Media, and Materials Program products and services judged by an outside independent review panel of experts in the field that is arranged by OSEP to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.
- *Program Performance Measure 3:* The percentage of Educational Technology, Media, and Materials Program products and services judged by an outside independent review panel of experts in the field that is arranged by OSEP to be useful in improving results for infants, toddlers, children, and youth with disabilities.
- *Program Performance Measure 4.1:* The Federal cost per unit of AEM funded by the Educational Technology, Media, and Materials Program.
- *Program Performance Measure 4.2:* The Federal cost per unit of AEM from the National Instructional Materials Accessibility Center funded by the Educational Technology, Media, and Materials Program.
- *Program Performance Measure 4.3:* The Federal cost per unit of video description funded by the Educational Technology, Media, and Materials Program.

These measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance reports and additional performance data to the Department (34 CFR 75.590 and 75.591).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

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

[FR Doc. 2020–13862 Filed 6–30–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information on Battery Critical Materials Supply Chain R&D

AGENCY: Advanced Manufacturing Office (AMO), Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Extension of public comment period.

SUMMARY: On June 16, 2020, the U.S. Department of Energy (DOE) published a notice of Request for Information (RFI) on Battery Critical Materials Supply Chain. The notice provided an opportunity for submitting electronic, written responses to the RFI by July 16, 2020. The RFI will be posted on EERE Exchange on June 29, 2020. DOE is extending the public comment period for submitting comments to the RFI by 15 days until July 31, 2020.

DATES: The comment period for the RFI published on June 16, 2020 (85 FR 36394) is extended. DOE will accept responses regarding this request for information received no later than July 31, 2020.

ADDRESSES: Interested parties are to submit comments electronically to *BatteryCriticalMaterialsRFI@ee.doe.gov.* Include Battery Critical Materials Supply Chain R&D in the subject of the title. Only electronic responses will be accepted. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Question may be addressed to Helena Khazdozian at 202–586–9236 or

BatteryCriticalMaterialsRFI@ee.doe.gov. Further instruction can be found in the RFI document posted on *https://eere-exchange.energy.gov/.*

SUPPLEMENTARY INFORMATION: On June 16, 2020, DOE published a notice of RFI for Battery Critical Materials Supply Chain R&D to solicit feedback from industry, academia, research laboratories, government agencies, and other stakeholders on issues related to challenges and opportunities in the upstream and midstream critical materials battery supply chains. EERE is specifically interested in information on raw minerals production and refining and processing of cathode materials including cobalt, lithium, and battery grade (Class I) nickel.[1]

The RFI will be published on EERE Exchange on June 29, 2020. DOE believes that extending the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is extending the deadline for response until July 31, 2020 to provide interested parties additional time to prepare and submit responses.

Signing Authority

This document of the Department of Energy was signed on June 24, 2020, by Valri Lightner, Acting Director, Advanced Manufacturing Office, Office Energy Efficiency and Renewable Energy, 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 26, 2020.

Treena V. Garrett,

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

[FR Doc. 2020–14166 Filed 6–30–20; 8:45 am]

BILLING CODE 6450–01–P

[1] Nickel is not a critical mineral commodity on the list published by the Secretary of Interior. *https://www.federalregister.gov/documents/2018/05/18/2018-10667/final-list-of-critical-minerals-2018*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–17–000]

Commission Information Collection Activities (FERC–600); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comments on the proposed extension of currently approved information collection FERC–600 (Rules of Practice and Procedure: Complaint Procedures). In addition, the Commission is submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due July 31, 2020.

ADDRESSES: Send written comments on FERC–600 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0180) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments to the Commission (identified by Docket No. IC20–17–000) by either of the following methods:

- *Efiling at the Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp;* or
- *Mail/Express Services:* 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.

Instructions

OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–600, Rules of Practice and Procedure: Complaint Procedures.

OMB Control No.: 1902–0180.

Type of Request: Three-year extension of the FERC–600 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: In accordance with 18 CFR 385.206, any person may file a complaint seeking Commission action against any other person alleged to be in violation of ''any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction.'' Regulations at 18 CFR part 343 provide for additional procedures and information collection requirements for complaints and other filings that pertain to oil pipelines under the Interstate Commerce Act. The Commission received no comments in response to the Notice of Information Collection and Request for Comments published on April 24, 2020 (85 FR 23020).

Type of Respondents: Any person that files a complaint for Commission review and resolution.

Estimate of Annual Burden:[1] The Commission estimates the annual public reporting burden and cost[2] for the

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[2] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon the FERC's 2019 average cost for salary plus benefits, the average hourly cost is $80/hour.

information collection as shown in the following table:

FERC–600—RULES OF PRACTICE AND PROCEDURE: COMPLAINT PROCEDURES

A Number of respondents	B Annual number of responses	C Total number of responses (column A × column B)	D Average burden hour and cost per response	E Total annual burden hour and cost (column C × column D)	F Cost per respondent (column E ÷ column A)
62	1	62	160 hrs.; $12,800	9,920 hrs.; $793,600	$12,800

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14177 Filed 6–30–20; 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 Number: PR20–58–002.

Applicants: Black Hills/Kansas Gas Utility Company, LLC.

Description: Tariff filing per 284.123(b),(e)/: BHKG Substitute Statement of Rates Filing to be effective 4/16/2020 under PR20–58.

Filed Date: 6/24/2020.

Accession Number: 202006245111.

Comments/Protests Due: 5 p.m. ET 7/8/2020.

Docket Numbers: RP20–965–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 062320 Negotiated Rates—Direct Energy Business Marketing R–7465–08 to be effective 7/1/2020.

Filed Date: 6/23/20.

Accession Number: 20200623–5046.

Comments Due: 5 p.m. ET 7/6/20.

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 25, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14159 Filed 6–30–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14867–001]

Scott's Mill Hydro, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 14867–001.

c. *Date filed:* June 17, 2020.

d. *Applicant:* Scott's Mill Hydro, LLC.

e. *Name of Project:* Scott's Mill Hydroelectric Project.

f. *Location:* On the James River, near the City of Lynchburg, in Bedford and Amherst Counties, Virginia. No federal or tribal land would be occupied by project works or located within the project boundary.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. Applicant Contact: Mr. Mark Fendig, P.O. Box 13, Coleman Falls, VA 24536; phone: (540) 320–6762.

i. *FERC Contact:* Jody Callihan, phone: (202) 502–8278 or email at *jody.callihan@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 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:* August 16, 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 Scott's Mill Hydroelectric Project would consist of:* (1) An existing

masonry dam containing two spillways separated by a 25-foot-wide stone pier, with one 735-foot-long, 15-foot-high overflow spillway and the other a 140-foot-long, 16-foot-high arch-section spillway; (2) an impoundment with a surface area of 316 acres at the normal pool elevation of 516 feet North American Vertical Datum of 1988 (NAVD 88); (3) a new modular powerhouse containing nine generating units with a total installed capacity of 4.5 megawatts that would be installed immediately downstream of the existing arch-section spillway of the dam; (4) a new 1,200-foot-long underground transmission line; and (5) appurtenant facilities.

To increase flow through the modular powerhouse, Scott's Mill proposes to remove the top 6.8 feet of the existing arch-section spillway of the dam and add a 2-foot-high concrete cap to the existing overflow spillway. Scott's Mill proposes to operate the project in a run-of-river mode with an estimated annual energy production of 20,700 megawatt-hours.

o. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested individuals an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. At this time, the Commission has suspended access to the Commission's Public Access 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 TTY, (202) 502–8659.

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:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency/Additional Information Request (if necessary).	August 2020.
Issue Acceptance Letter	October 2020.
Issue Scoping Document 1 for comments.	October 2020.
Comments on Scoping Document 1.	November 2020.
Issue Scoping Document 2 (if necessary).	December 2020.
Issue Notice of Ready for Environmental Analysis.	December 2020.
Commission issues EA	June 2021.
Comments on EA	July 2021.

Dated: June 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14176 Filed 6–30–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–481–000]

Rio Bravo Pipeline Company, LLC; Notice of Application To Amend

Take notice that on June 16, 2020, Rio Bravo Pipeline Company, LLC (Rio Bravo), 5400 Westheimer Court, Houston, Texas 77056–531, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and, Part 157 of the Commission's regulations for authority to amend its order issued by the Commission on November 22, 2019, in Docket No. CP16–455–000.[1] Rio Bravo requests authorization to, among other things, modify individual units at Compressor Station 1; eliminate Compressor Stations 2, 3 and two interconnect booster stations; eliminate certain measurement facilities; change the maximum allowable operating pressure of the pipelines and header system, and increase the diameter of the first pipeline from 42 inches to 48 inches, resulting in an increase in the mainline design capacity on the first pipeline from 2.25 Bcf/d to 2.6 Bcf/d. Rio Bravo is not proposing a change to the Project's total certificated design capacity of 4.5 Bcf/d. Rio Bravo also proposes to revise its initial Project rates to reflect an increase in the overall estimated cost to construct the Project facilities; to implement a new electric power charge to reflect the addition of two electric-driven compressor units and to revise the initial fuel retainage percentage for Phase 1 and for the entire Project following in-service of Phase 2 all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659. 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.

Any questions concerning this application may be directed to Lisa A. Connolly Director, Rates & Certificates, Shelly Olmo Specialist I, Rates & Certificates Rio Bravo Pipeline Company, LLC P.O. Box 1642 Houston, Texas 77251–1642 Phone: (713) 627–4102 Fax: (713) 627–5947 and James D. Seegers, Damien R. Lyster, Vinson & Elkins L.L.P., 1001 Fannin, Suite 2500 Houston, Texas 77002 Phone: (713) 758–2939, Fax: (713) 615–5206 Email: *jseegers@velaw.com,* Email: *dlyster@velaw.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the

[1] *Rio Grande LNG, LLC and Rio Bravo Pipeline Company, LLC,* 169 FERC ¶ 61,131 (2019).

Commission and will receive copies of all documents filed by the applicant and by all other parties. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

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 16, 2020.

Dated: June 25, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14182 Filed 6–30–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–483–000]

El Paso Natural Gas Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on June 19, 2020, El Paso Natural Gas Company, LLC, Post Office Box 1087, Colorado Springs, Colorado 80944, filed in the above referenced docket a prior notice pursuant to Section 157.205, 157.208(B) and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, and El Paso Natural Gas Company's blanket certificate issued certificate issued in Docket No. CP82–435–000 to construct, own and operate an approximately 17.1 mile sixteen-inch (16″) outside diameter (''O.D.'') loop line of its existing sixteen-inch (16″) O.D. Line No. 3191 located in Eddy County, New Mexico as well as to undertake minor appurtenant facility modifications at an existing compressor station in Lea County, New Mexico. The proposed facilities will allow for transportation service from a natural gas processing plant located in the Eddy County, New Mexico to EPNG's Keystone Pool. This project is referred to as the ''Carlsbad South Project'' and the estimated cost is $23.5 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing is available for review on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659. 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.

Any questions concerning this application may be directed to Francisco Tarin, Director, Regulatory, El Paso Natural Gas Company, L.L.C.; P.O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 667–7517 or by fax at (719) 520–4697, or David K. Dewey, Assistant General Counsel, El Paso Natural Gas Company, L.L.C.; P.O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 520–4227 or by fax at (719) 520–4898.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission.

Environmental commenter's will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

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. 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.

Dated: June 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14184 Filed 6–30–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–479–000]

Northern Natural Gas Company; Notice of Application

Take notice that on June 11, 2020, Northern Natural Gas Company (Northern Natural), 1111 South 103rd Street, Omaha, NE 68124–1000, filed in Docket No. CP20- 479–000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for authorization to abandon in-place the Auburn A-branch line located in Lancaster, Otoe, Johnson, and Nemaha counties, Nebraska. Northern Natural further seeks authorization to construct and operate a branch line loop consisting of approximately 4.3 miles of 8-inch-diameter pipeline and a pig launcher and regulation station and associated appurtenances in Lancaster and Otoe counties, Nebraska (Auburn J-Line Loop). Northern Natural estimates the cost of the Auburn J-Line Loop project to be $7,777,080, all as more fully described in their application which is on file with the Commission and open to public inspection.

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.

Any questions concerning this application may be directed to Michael T. Loeffler, Senior Director Certificates and External Affairs, Northern Natural Gas Company, P.O. Box 3330, Omaha, NE 68103–0330, by telephone at (402) 398–7103, by facsimile at (402) 398–7592, or by email at *mike.loeffler@nngco.com.*

Pursuant to § 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the environmental assessment (EA) for this proposal. The issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No.

CP16- 4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically 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 Standard Time on July 16, 2020.

Dated: June 25, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14185 Filed 6–30–20; 8:45 am]

BILLING CODE 6717–01–P

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–14–000]

Commission Information Collection Activities (FERC–725T); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–725T, (Mandatory Reliability Standards for the Bulk-Power System: TRE Reliability Standards) and submitting the information collection to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below.

DATES: Comments on the collection of information are due July 31, 2020.

ADDRESSES: Send written comments on FERC–725 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0273) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments to the Commission (identified by Docket No. IC20–14–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, at Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725T, Mandatory Reliability Standards for the Bulk-Power System: TRE[1] Reliability Standards.

OMB Control No.: 1902–0273.

Type of Request: Three-year extension of the FERC–725T information collection requirements with no changes to the current reporting requirements.

Abstract: TRE Reliability Standards apply to entities registered as Generator Owners (GOs), Generator Operators (GOPs), and Balancing Authorities (BAs) within the Texas Reliability Entity region.

The information collection requirements entail the setting or configuration of the Control System software, identification and recording of events, data retention, and submitting frequency measurable events to the compliance enforcement authority (Regional Entity or NERC).

Submitting frequency measurable events. The BA has to identify and post information regarding Frequency Measurable Events (FME). Further, the BA has to calculate and report to the Compliance Enforcement Authority data related to Primary Frequency Response (PFR) performance of each generating unit/generating facility.

Data retention. The BA, GO, and GOP shall keep data or evidence to show compliance, as identified below, unless directed by its Compliance Enforcement Authority to retain specific evidence for a longer period of time as part of an investigation. Compliance audits are generally about three years apart.

- The BA shall retain a list of identified Frequency Measurable Events and shall retain FME information since its last compliance audit.
- The BA shall retain all monthly PFR performance reports since its last compliance audit.
- The BA shall retain all annual Interconnection minimum Frequency Response calculations, and related methodology and criteria documents, relating to time periods since its last compliance audit.
- The BA shall retain all data and calculations relating to the Interconnection's Frequency Response, and all evidence of actions taken to increase the Interconnection's Frequency Response, since its last compliance audit.
- Each GOP and GO shall retain evidence since its last compliance audit.

Type of Respondents: NERC Registered entities: Balancing Authorities, Generator Owners, Generator Operators.

Estimate of Annual Burden[2]: The Commission estimates the annual public reporting burden for the information collection as:

[1] Texas Reliability Entity.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–725T (MANDATORY RELIABILITY STANDARDS FOR THE BULK-POWER SYSTEM: TRE RELIABILITY STANDARDS)

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden and cost per response [3] (4)	Total annual burden hours and total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Maintenance and Submission of Event Log Data.	[4] 1	1	1	16 hrs.; $821.44	16 hrs.; $821.44	$821.44
Evidence Retention	[5] 130	1	130	2 hrs.; $102.68	260 hrs.; $13,348.4.	102.68
Total			131		276 hrs.; $14,169.84.	

Comments: Comments areinvited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 25, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14183 Filed 6–30–20; 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 electric corporate filings:

Docket Numbers: EC20–76–000.

Applicants: NorthWestern Corporation, Puget Sound Energy, Inc.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of NorthWestern Corporation, et al.

Filed Date: 6/23/20.

Accession Number: 20200623–5267.

Comments Due: 5 p.m. ET 8/24/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1790–018; ER10–2597–005.

Applicants: BP Energy Company, Fowler Ridge III Wind Farm LLC.

Description: Market Power Update for Northeast Region of BP Energy Company, et al.

Filed Date: 6/24/20.

Accession Number: 20200624–5205.

Comments Due: 5 p.m. ET 8/24/20.

Docket Numbers: ER10–2924–014.

Applicants: Kleen Energy Systems, LLC.

Description: Triennial Compliance Filing of Kleen Energy Systems, LLC.

Filed Date: 6/24/20.

Accession Number: 20200624–5183.

Comments Due: 5 p.m. ET 8/24/20.

Docket Numbers: ER11–2041–015; ER11–2042–015.

Applicants: Innovative Energy Systems, LLC, Seneca Energy II, LLC.

Description: Triennial Compliance Filing of Innovative Energy Systems, LLC, et al.

Filed Date: 6/24/20.

Accession Number: 20200624–5187.

Comments Due: 5 p.m. ET 8/24/20.

Docket Numbers: ER11–3861–015.

Applicants: Empire Generating Co, LLC.

Description: Triennial Market Power Analysis of Empire Generating Co, LLC.

Filed Date: 6/24/20.

Accession Number: 20200624–5188.

Comments Due: 5 p.m. ET 8/24/20.

Docket Numbers: ER12–1195–004; ER10–2310–005; ER10–2314–005; ER10–2311–005; ER15–595–002; ER15–924–002; ER10–2312–005; ER15–926–002; ER15–927–002; ER14–2486–002; ER17–2580–001.

Applicants: Camden County Energy Recovery Associates, L.P., Covanta Delaware Valley, L.P., Covanta Energy Marketing LLC, Covanta Essex Company, Covanta Fairfax, Inc., Covanta Haverhill Associates, LLC, Covanta Hempstead Company, Covanta Niagara I, LLC, Covanta Plymouth Renewable Energy, LLC, Covanta Union, LLC, SEMASS Partnership.

Description: Updated Market Power Analysis for Northeast Region of the Covanta MBR Entities, et al.

Filed Date: 6/24/20.

Accession Number: 20200624–5184.

Comments Due: 5 p.m. ET 8/24/20.

Docket Numbers: ER14–2500–010; ER14–2498–010.

Applicants: Newark Energy Center LLC, EIF Newark, LLC.

Description: Triennial Compliance Filing of Newark Energy Center LLC, et al. under, et al.

Filed Date: 6/24/20.

Accession Number: 20200624–5185.

Comments Due: 5 p.m. ET 8/24/20.

Docket Numbers: ER20–2154–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 4940; Queue No. AA2–178 (amend) to be effective 2/2/2018.

Filed Date: 6/24/20.

Accession Number: 20200624–5158.

Comments Due: 5 p.m. ET 7/15/20.

Docket Numbers: ER20–2155–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5668; Queue No. AE2–079 to be effective 5/28/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5030.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2157–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Dominion Energy South Carolina Interconnection Agreement Amendment Filing to be effective 5/28/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5047.

[3] the figures for May 2018 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm*) and updated March 2019 for benefits information (at *http://www.bls.gov/news.release/ecec.nr0.htm*). The hourly estimates for salary plus benefits are:

—File Clerks (code 43–4071), $34.50.

—Electrical Engineer (code 17–2071), $68.17.

The average hourly burden cost for this collection is $51.34 [$34.50 + $68.17 = 51.335] and is rounded to $51.34.

[4] BA (balancing authority).

[5] BA (balancing authority), GO (generator owner), and GOP (generator operator).

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2158–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2020–06–25_SA 3527 Ameren Illinois-Hoopeston Wind (H094) FSA to be effective 8/25/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5048.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2159–000.

Applicants: Brandon Shores LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5087.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2160–000.

Applicants: Brunner Island, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5090.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2161–000.

Applicants: Camden Plant Holding, L.L.C.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5091.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2162–000.

Applicants: Dartmouth Power Associates Limited Partnership.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5092.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2163–000.

Applicants: Elmwood Park Power, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5107.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2164–000.

Applicants: H.A. Wagner LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5108.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2165–000.

Applicants: LMBE Project Company LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5095.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2166–000.

Applicants: Martins Creek, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5097.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2167–000.

Applicants: MC Project Company LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5098.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2168–000.

Applicants: Millennium Power Partners, L.P.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5100.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2169–000.

Applicants: Montour, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5101.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2170–000.

Applicants: New Athens Generating Company, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5102.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2171–000.

Applicants: Pedricktown Cogeneration Company LP.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5103.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2172–000.

Applicants: Susquehanna Nuclear, LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5105.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2173–000.

Applicants: York Generation Company LLC.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5110.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2174–000.

Applicants: Newark Bay Cogeneration Partnership, L.P.

Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/26/2020.

Filed Date: 6/25/20.

Accession Number: 20200625–5112.

Comments Due: 5 p.m. ET 7/16/20.

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 25, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–14161 Filed 6–30–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER20–1942–000; ER20–1942–001; Docket No. ER20–2005–000]

Midcontinent Independent System Operator, Inc.; Notice of Conference Call

June 25, 2020.

On Friday, July 10, 2020, Commission staff will hold a conference call with Midcontinent Independent System Operator, Inc. (MISO) at 3:00 p.m. (Eastern Time). The purpose of the conference call is to address factual questions related to MISO's proposed tariff revisions filed in the two captioned dockets regarding the deliverability requirements for intermittent and non-intermittent Capacity Resources to convert capacity

to Zonal Resource Credits. Please be advised that the questions listed in the Appendix to this notice, as well as possible follow-up questions, will be discussed during the conference call. Additional questions may also be discussed.

The conference call will not be webcasted or transcribed. However, for any person interested in these proceedings, an audio listen-only line will be provided. Those wishing to access the listen-only line must email Corey Cox at *Corey.Cox@ferc.gov* by 5:00 p.m. (Eastern Time) on Thursday, July 2, 2020, with your name, email, and phone number, in order to receive the call-in information before the conference call. Please use the following text for the subject line, ''ER20–1942–000 listen-only line registration.''

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For additional information, please contact Corey Cox by phone at (202) 502–6848 or by email at *Corey.Cox@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14186 Filed 6–30–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–127]

Georgia Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2413–127.

c. *Date Filed:* June 12, 2020.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Pumped Storage Project.

f. *Location:* Lake Oconee in Putnam County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Joseph Charles, Hydro Compliance Coordinator, Georgia Power, 241 Ralph McGill Blvd. NE, BIN 10151, Atlanta, Georgia 30308, (404) 506–2337, *jcharles@southernco.com.*

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* July 27, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). The first page of any filing should include docket number P–2413–127. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Georgia Power Company is requesting Commission approval to permit 1054 Lake Oconee Parkway, LLC (applicant) to construct a commercial marina on the site of an existing commercial development (*i.e.,* Jerry's Bait and Tackle) that has closed. The applicant proposes to construct a commercial marina and dry boat storage facility that would include a stationary, wooden dock that could accommodate 18 watercraft, a concrete walkway, and two concrete ramps (one of which would be used as the launch serving the dry storage operation). The dock would not extend farther than 50 feet into the water, would include a fuel pump platform (with two pumps and four dispensers), and would follow the licensee's shoreline management guidelines. Since filing its marina application, on June 18, 2020, the licensee received a new license to continue operating the Wallace Dam project.

l. *Locations of the Application:* 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://www.ferc.gov*) using the ''elibrary'' link. Enter the docket number excluding the last three digits in the document 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) 208–3673 or TYY, (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: June 25, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–14187 Filed 6–30–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2019–0210; FRL 10010–87–OAR]

Determinations of Light-Duty Vehicle Alternative Greenhouse Gas Emissions Standards for Small Volume Manufacturers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing determinations of light-duty vehicle greenhouse gas emissions alternative standards for four small volume manufacturers: Aston Martin, Ferrari, Lotus and McLaren. The alternative standards in these determinations cover model years 2017–2021 and are established pursuant to small volume manufacturer provisions in EPA's light-duty vehicle greenhouse gas regulations.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0210. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Lieske, Office of Transportation and Air Quality, Assessment and Standards Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214–4584. Fax: (734) 214–4816. Email address: *lieske.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2019–0210. Publicly available docket materials are available either electronically through *www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

B. Electronic Access

You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings at FDSys. (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR).*

II. Background

The EPA's light-duty vehicle greenhouse gas (GHG) program for model years (MYs) 2012–2016 provided a conditional exemption for small volume manufacturers (SVMs) with annual U.S. sales of less than 5,000 vehicles due to unique feasibility issues faced by these SVMs.[1] The exemption was conditioned on the manufacturer making a good faith effort to obtain credits from larger volume manufacturers. For the MY 2017–2025 light-duty vehicle GHG program, EPA proposed, took public comment on, and in 2012 finalized specific regulations allowing SVMs to petition EPA for alternative standards, again recognizing that the primary program standards may not be feasible for SVMs and could drive these manufacturers from the U.S. market.[2] EPA acknowledged in the 2012 final rule that SVMs may face a greater challenge in meeting CO_2 standards compared to large manufacturers because they only produce a few vehicle models, mostly focused on high performance sports cars and luxury vehicles. SVMs have limited product lines across which to average emissions, and the few vehicles they produce often have very high CO_2 levels on a per vehicle basis. EPA also noted that the total U.S. annual vehicle sales of SVMs are much less than 1 percent of total sales of all manufacturers and contribute minimally to total vehicular GHG emissions, and foregone GHG reductions from SVMs likewise are a small percentage of total industry-wide reductions. EPA received only supportive public comments on allowing alternative standards for SVMs, including from SVMs, their trade associations, and dealers.[3] EPA adopted a regulatory pathway for SVMs to apply for alternative GHG emissions standards for MYs 2017 and later, based on information provided by each SVM on factors such as technical feasibility, cost, and lead time. [4]

The regulations established in the 2012 rule outline eligibility criteria and a framework for establishing SVM alternative standards. Manufacturer average annual U.S. sales must remain below 5,000 vehicles to be eligible for SVM alternative standards.[5] The regulations specify the requirements for supporting technical data and information that a manufacturer must submit to EPA as part of its application.[6] The regulations specify that an SVM applying for an alternative standard provide the following technical information:

- The CO_2 reduction technologies employed by the manufacturer on each vehicle model, or projected to be employed, including information regarding the cost and CO_2-reducing effectiveness. Include technologies that improve air conditioning efficiency and reduce air conditioning system leakage, and any ''off-cycle'' technologies that potentially provide benefits outside the operation represented by the Federal Test Procedure (FTP) and the Highway Fuel Economy Test (HFET).
- An evaluation of comparable models from other manufacturers, including CO_2 results and air conditioning credits generated by the models.
- A discussion of the CO_2-reducing technologies employed on vehicles offered outside of the U.S. market but not available in the U.S., including a discussion as to why those vehicles and/or technologies are not being used to achieve CO_2 reductions for vehicles in the U.S. market.
- An evaluation, at a minimum, of the technologies projected by the EPA in a final rulemaking as those technologies likely to be used to meet greenhouse gas emission standards and the extent to which those technologies are employed or projected to be employed by the manufacturer.
- The most stringent CO_2 level estimated to be feasible for each model, in each model year, and the technological basis for this estimate.
- For each model year, a projection of the lowest feasible sales-weighted fleet

[1] 75 FR 25419–25421, May 7, 2010.

[2] 77 FR 62789–62795, October 15, 2012.

[3] Docket No. EPA–HQ–OAR–2010–0799

[4] 40 CFR 86.1818–12(g).

[5] 40 CFR 86.1818–12(g)(1).

[6] 40 CFR 86.1818–12(g)(4).

average CO_2 value, separately for passenger automobiles and light trucks, and an explanation demonstrating that these projections are reasonable.

• A copy of any application, data, and related information submitted to the National Highway Traffic Safety Administration (NHTSA) in support of a request for alternative Corporate Average Fuel Economy standards filed under 49 CFR part 525.

SVMs may apply for alternative standards for up to five model years at a time. The GHG standards that EPA establishes for MY 2017 may optionally be met by the manufacturers in MYs 2015–2016.[7] SVMs may use the averaging, banking, and trading provisions to meet the alternative standards, but may not trade credits to another manufacturer.[8] The process for approving an SVM application includes a public comment period of 30 days after which EPA will issue a final determination establishing alternative standards for the manufacturer, as appropriate.[9]

SVMs applied for alternative standards due to continued concern regarding their abilities to meet the primary program GHG standards. Given that the current production MY for manufacturers is 2020, with MY 2021 starting soon, these alternative standards will provide immediate relief for SVMs as authorized under the regulation. The GHG program also allows for a 3-year carry-back provision, which is within the timeframe of this notice and the MYs under consideration.

The Energy Policy and Conservation Act (EPCA), governing the establishment of Corporate Average Fuel Economy (CAFE) standards, contains separate small volume manufacturer alternative standards provisions that are administered by the National Highway Traffic Safety Administration (NHTSA) independent of EPA's SVM alternative standards provisions.[10] Under EPCA's CAFE provisions, SVMs meeting the CAFE eligibility criteria may petition NHTSA for less stringent alternative CAFE standards. Manufacturers generally are also able to pay fines in lieu of meeting the CAFE standards, which is not an option in EPA's GHG program under the Clean Air Act. While eligible SVMs may apply for alternative standards under the CAFE program, and some of the SVMs covered by this decision document have applied for alternative CAFE standards, as of May 4, 2020, none of those SVMs have been granted alternative CAFE standards for MYs 2017–2021.[11]

III. Manufacturer Requested GHG Standards

The EPA received applications for SVM alternative standards from four manufacturers: Aston Martin, Ferrari, Lotus and McLaren.[12] Each manufacturer provided an application to EPA that contained confidential business information (CBI). Each manufacturer also provided a public version of its application with the CBI removed, which EPA placed in the public docket established for this proceeding. As part of their applications, the SVMs requested specific alternative GHG standards for five model years starting with MY 2017 based on their unique projected product mix. Table 1 below provides the standards requested by the manufacturers.

TABLE 1—MANUFACTURER REQUESTED GHG STANDARDS (g/MILE)

Manufacturer	MY 2017*	MY 2018	MY 2019	MY 2020	MY 2021
Aston Martin	431	396	380	374	376
Ferrari	421	408	395	386	377
Lotus	361	361	344	341	308
McLaren	372	372	368	360	334

*Manufacturers may optionally meet MY 2017 standards in MYs 2015–2016 (40 CFR 86.1818–12(g).

In November 2017, subsequent to submitting a request for SVM alternative standards, Lotus was acquired by Zhejiang Geely Holding Group (Geely) which also owns Volvo Car Company. Under the SVM regulations regarding eligibility,[13] Lotus remains eligible for alternative standards for MY 2017. However, it is possible that Lotus will no longer be eligible for SVM standards starting in MY 2018 as Lotus may exceed the 5,000 vehicles eligibility threshold under the aggregation provisions of the regulations, based upon sales volume figures and other information provided by the manufacturer. While EPA is establishing alternative standards for Lotus through MY 2021, in order to use the alternative standards for MYs 2018–2021 Lotus would need to either demonstrate that they remain eligible for SVM alternative standards under the aggregation provisions or apply and be granted operational independence status.[14] EPA is not including any determination of SVM eligibility for Lotus for MY 2018 and beyond in this SVM alternative standards determination notice.

The regulations require SVMs to submit information, including cost information, to EPA as part of their applications, as detailed above. Each SVM provided its technical basis for the requested standards including a discussion of technologies that could and could not be feasibly applied to their vehicles in the time frame of the standards. As noted above, the non-CBI information provided by the SVMs is included in the docket for this proceeding. However, much of the data and information provided by the manufacturers regarding future vehicles and technology projections is claimed as CBI and not included in the public versions of the applications.[15]

IV. EPA Determinations of SVM Alternative Standards

On July 31, 2019, EPA issued proposed determinations of SVM alternative standards, including background information and EPA's

[7] See 40 CFR 86.1818–12(g). Manufacturers may opt to comply with their MY 2017 standard in MYs 2015 and 2016 retroactively in lieu of the Temporary Leadtime Alternative Allowance Standards used in these model years.

[8] 40 CFR 86.1818–12(g)(6).

[9] 40 CFR 86.1818–12(g)(5).

[10] 49 U.S.C. 32902(d). Implementing regulations may be found in 49 CFR part 525. EISA limits eligibility to manufacturers with worldwide production of fewer than 10,000 passenger cars.

[11] See *https://one.nhtsa.gov/cafe_pic/CAFE_PIC_Mfr_LIVE.html*

[12] Ferrari was previously owned by Fiat Chrysler Automobiles (FCA) and petitioned EPA for operationally independent status under 40 CFR 86.1838–01(d). In a separate decision EPA granted this status to Ferrari starting with the 2012 model year, allowing Ferrari to be treated as an SVM under EPA's GHG program. Ferrari has since become an independent company and is no longer owned by FCA.

[13] 40 CFR 86.1818–12(g)(1)(i).

[14] 40 CFR 86.1838–01(d).

[15] For more information about how EPA addresses claims of Confidential Business Information, see 40 CFR part 2, subpart B.

assessment of the proposed standards, and requested public comment.[16] As discussed below, EPA is finalizing the SVM alternative standard determinations as proposed. EPA received only supportive comments concerning the proposed alternative standards and no commenter suggested any adjustment to the proposed standard levels. EPA has also placed a Response to Comments document in the docket for this proceeding.[17]

For the first four model years of the program, MYs 2017–2020, EPA proposed and is adopting the alternative standards requested by the SVMs. These model years are completed or underway and therefore lead-time is a primary consideration. Based on the lack of lead-time available for these model years and EPA's review of the manufacturers' submissions and assessment of the capability of each product and its associated technology adoption, EPA believes this approach is appropriate for MYs 2017–2020.

For MY 2021, EPA considered the levels requested by the manufacturers and compared them to levels each SVM would achieve under an approach where the manufacturers achieved year-over-year reductions from their MY 2017 baseline through MY 2021, analogous to the overall declining fleetwide standards in the primary program. The primary program standards for passenger cars are equivalent to approximately five percent year-over-year improvements. Although the regulations do not mandate a specific year-over-year percent reduction for SVMs, EPA considered an approach based on a minimum level of steady improvement of three percent year-over-year emissions reduction from each SVM's baseline CO_2 levels. This pace of change is not as aggressive as the annual improvement in the passenger car standards in the primary program for these model years, but EPA believes it represents a reasonable minimum pace of meaningful improvements for SVMs under the SVM alternative standards regulatory provisions, given the SVMs' limited product lines and limited ability to average among high and low emitting vehicle models. Historically, EPA has set standards designed to reduce emissions while providing vehicle manufacturers compliance flexibility through averaging. Table 2 below provides the projected CO_2 levels for each manufacturer based on three percent annual improvements, using MY 2017 as the baseline or starting model year.

TABLE 2—THREE PERCENT ANNUAL IMPROVEMENT FROM MY 2017 BASELINE (g/MILE)

Model year	Aston Martin	Ferrari	Lotus	McLaren
2017 Baseline	431	421	361	372
2018	418	408	350	361
2019	406	396	340	350
2020	393	384	329	340
2021	382	373	320	329

Table 3 below compares the levels projected for MY 2021 under the three percent per year reductions with the levels requested by the manufacturers. For Aston Martin and Lotus, their requested standards for MY 2021 are more stringent than the levels represented by the three percent year-over-year reductions, as shown in Table 3. EPA believes that the requested MY 2021 standards for Aston Martin and Lotus are appropriate, and, as proposed, is finalizing the requested alternative standards with no adjustment.

For Ferrari and McLaren, EPA proposed and is finalizing MY 2021 standards reflecting the 3 percent year-over-year reductions shown in Table 3 below. This approach requires Ferrari and McLaren to achieve a MY 2021 standard that is minimally more stringent than that requested by the manufacturers. The differences are small, 5 g/mile or less, and based on EPA's review of the information provided by the manufacturers, EPA believes this additional emissions reduction can be achieved through the use of credits, including air conditioning and off-cycle credits, and the use of program flexibilities including credit carry-forward and credit carry-back within the lead-time available. As discussed above and in the proposal, EPA believes that MY 2021 standards based on 3 percent year-over-year reductions represent reasonable progress over time for SVMs and a reasonable balance between the program goal of GHG reductions and the degree of challenge the standards pose to SVMs, based on EPA's assessment of the information, including cost information, provided to the agency.

TABLE 3—COMPARISON OF THREE PERCENT PER YEAR REDUCTIONS WITH SVM'S PROJECTIONS FOR MY 2021 (G/MILE)

Model year	Aston Martin requested standards	Aston Martin 3% per year reduction	Ferrari requested standards	Ferrari 3% per year reduction	Lotus requested standards	Lotus 3% per year reduction	McLaren requested standards	McLaren 3% per year reduction
2021	*376	382	377	*373	*308	320	334	*329

*Indicates final standard.

As discussed in the notice of proposed determinations, EPA recognizes that the three percent annual improvement approach for SVM alternative standards for MY 2021 described above differs from the approach for the primary program for MY 2021 in the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks rulemaking.[18] However, the SVM alternative standards for MY 2021 remain significantly less stringent than the primary program standards as revised by the SAFE

[16] 84 FR 37277.

[17] ''Determinations of Light-duty Vehicle Alternative Greenhouse Gas Emissions Standards for Small Volume Manufacturers: Response to Comments,'' EPA–420–R–20–009, June 2020.

[18] Proposed rulemaking, 83 FR 42986 (August 24, 2018); Final rule, 85 FR 24174 (April 30, 2020).

Vehicles rulemaking and represent significant relief for the SVMs.

V. Summary of Final Alternative SVM Standards

A summary of the case-by-case alternative SVM standards and associated per-manufacturer GHG reductions is provided in Table 4 of this document. As discussed above, the MY 2017–2020 standards for all four SVMs are the manufacturers' requested alternative standards due to lead time concerns. For Aston Martin and Lotus, the MY 2021 standards also are their requested standards. For Lotus, the MY 2018–2021 standards are conditional based on its ability to either demonstrate that it remains eligible for SVM alternative standards under the program's aggregation provisions or apply and be granted operational independence status, as discussed in Section III above. For Ferrari and McLaren, the MY 2021 standards are based on three percent year-over-year reductions from their respective MY 2017 baselines.

TABLE 4—SUMMARY OF STANDARDS AND PER-MANUFACTURER GHG REDUCTIONS (g/MILE)

	Aston Martin	Ferrari	Lotus	McLaren
MY 2017	431	421	361	372
MY 2018	396	408	361	372
MY 2019	380	395	344	368
MY 2020	374	386	341	360
MY 2021	376	373	308	329
g/mile Reduction	55	48	53	43
% Reduction (MY2017 to MY2021)	12.8%	11.4%	14.7%	11.6%

Andrew Wheeler,

Administrator.

[FR Doc. 2020–14099 Filed 6–30–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket Nos. 18–122, 20–173; DA 20–642; FRS 16888]

Wireless Telecommunications Bureau Establishes a New Docket and Describes the Process for Comment on Space Station Operator Transition Plans

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB) establishes GN Docket No. 20–173, which is captioned ''Eligible Satellite Operator Transition Plans for the 3.7–4.2 GHz Band.'' This document also details the process for notice and comment on space station operators' Transition Plans. Stakeholder comments are on July 13, 2020. Filers responding to the Transition Plans should submit comments in GN Docket No. 20–173.

DATES: Comments are due on or before July 13, 2020.

ADDRESSES: You may submit comments, identified by GN Docket No. 20–173, by any of the following methods:

- *Electronic Filers:* Elections may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/* in docket number GN 20–173.
- *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 Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.
- 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: Susan Mort, Wireless Telecommunications Bureau, at *Susan.Mort@fcc.gov* or 202–418–2429.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, (Public Notice), GN Docket No. 20–173, DA 20–642, released on June 18, 2020. The complete text of this document, is available on the Commission's website at *https://www.fcc.gov/document/wtb-sets-new-docket-and-comment-process-c-band-transition-plans* or by using the search function for GN Docket No. 18–122 or GN Docket No. 20–173 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file elections on or before the date indicated on the first page of this document.

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

Ex Parte Rules: This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation

consisted in whole or in part of the presentation of data or arguments already reflected in the presenters 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. In proceedings governed by § 1.49(f) of the rules 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.

Synopsis

With this Public Notice, the Wireless Telecommunications Bureau (WTB) establishes GN Docket No. 20–173, which is captioned ''Eligible Satellite Operator Transition Plans for the 3.7–4.2 GHz Band.'' This Public Notice also details the process for notice and comment on space station operators' Transition Plans. On March 3, 2020, the Commission released the *Expanding Flexible Use of the 3.7 to 4.2 GHz Band Report and Order* (85 FR 22804 (April 23, 2020)), which adopted new rules to make 280 megahertz of mid-band spectrum available for flexible use through a Commission-administered public auction of overlay licenses, plus a 20 megahertz guard band, throughout the contiguous United States by transitioning existing services out of the lower portion and into the upper 200 megahertz of the 3.7–4.2 GHz band (C-band).

The *3.7 GHz Report and Order* required that each eligible space station operator submit to the Commission, and make available for public review in GN Docket No. 18–122, a Transition Plan describing the necessary steps and estimated costs to transition all existing services out of the lower 300 megahertz of the C-band. The *3.7 GHz Report and Order* directed WTB to issue a Public Notice detailing the process for incumbent earth station operators, programmers, and other C-band stakeholders to file comments on each Transition Plan. Stakeholder comments on the Transition Plans are due on July 13, 2020. Filers responding to the Transition Plans should submit comments in GN Docket No. 20–173.

Federal Communications Commission.

Amy Brett,

Senior Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau.

[FR Doc. 2020–14091 Filed 6–30–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FRS 16894]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 31, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

OMB Control Number: 3060–XXXX.

Title: Connect America Fund—Eligible Locations Adjustment Process (ELAP).

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, individuals or households, and state, local or tribal governments.

Number of Respondents and Responses: 296 unique respondents; 962 responses.

Estimated Time per Response: 2–40 hours.

Frequency of Response: One-time requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 254.

Total Annual Burden: 10,804 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: Some of the requirements contained in this information collection affect individuals or households, and thus, there are impacts under the Privacy Act. As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission will create a system of records notice (SORN) to cover the collection, storage, maintenance, and disposal (when appropriate) of any personally identifiable information that the Commission may collect as part of the information collection.

Nature and Extent of Confidentiality: The information submitted in the ELAP Map will be made public. We intend to keep other information confidential to the extent permitted by law. Also, as noted in this document, this collection contains information that affects individuals or households, and thus, there are impacts under the Privacy Act. As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission will create a SORN to cover the collection, storage, maintenance, and disposal (when appropriate) of any personally identifiable information that the Commission may collect as part of the information collection. USAC must preserve the confidentiality of all personally identifiable information,

must not use the information except for purposes of administering the Universal Service Fund, and must not disclose such information unless directed to do so by the Commission. *See ELAP Order,* 34 FCC Rcd 10395, 10412–14, paras. 50–56. If the Commission requests information that the respondents believe is confidential, respondents may request confidential treatment of such information under section 0.459 of the Commission's rules.

Needs and Uses: This information collection addresses the requirements of a process (the eligible locations adjustment process (ELAP)) that facilitates the post-auction review of certain CAF Phase II Auction support recipients' defined deployment obligations (and associated support), on a state-by-state basis, in situations where the number of eligible locations within a state is less than the number of funded locations. *Connect America Fund,* WC Docket Nos. 10–90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1390–92, paras. 23–28 (2018) (*Phase II Auction* Reconsideration *Order*); *Connect America Fund,* WC Docket No. 10–90, Order, 34 FCC Rcd 10395 (WCB 2019) (adopting rules and requirements necessary to implement this process, consistent with the parameters set forth in the *Phase II Auction Reconsideration Order* and prior Commission guidance for adjusting defined deployment obligations) (*ELAP Order*). CAF Phase II Auction support recipients' participation in this process is voluntary.

ELAP requires the one-time collection of location information for all eligible locations within the state where the participant is seeking an adjustment to its defined deployment obligation. Eligible locations include every location qualifying for support (qualifying locations) and may include additional locations within eligible areas of the state that the participant will reserve as part of its defined deployment obligations, even if such locations cannot be identified as qualifying at the time of the ELAP process (prospective locations). The total number of eligible locations reported by the participant cannot exceed the participant's defined deployment obligation for the state.

Participants must also submit a description of its methods for identifying all locations qualifying for support, as well as some supporting evidence, such as copies of public records, aerial photography, location information for non-eligible locations, or similar evidence. Participants must certify the truth and accuracy of this information.

The Bureau will announce which participants have met their prima facie evidentiary standard, and the Universal Service Administrative Company (USAC) will then use certain location information (address, geocoordinates, number of units) filed by these participants to populate a publicly available map (public ELAP Map).

Other interested parties deemed eligible to participate in ELAP (stakeholders) may then challenge the accuracy and completeness of any relevant participant's eligible location information. To file such a challenge, stakeholders must submit alternative location information (of the same kind and in the same format as required of the participant), a brief description of the methods used to identify the location as an eligible location, and supporting evidence.

Stakeholders include government entities (state, local, and Tribal) as well as individuals or non-governmental entities with a legitimate and verifiable interest in ensuring broadband service in the relevant areas. Such stakeholders cannot hold a controlling interest in a competitor of the relevant participant(s).

The Bureau will use a third-party commercial verifier to confirm the eligibility of stakeholders who challenge a participant's location information. The Bureau will also separately gather certain limited information about these stakeholders (*e.g.,* name and contact information).

All ELAP information will be filed and maintained in a new module within the High-Cost Universal Service Broadband Portal (HUBB) (OMB Control No. 3060–1228). The module will permit centralization and controlled access to ELAP information as well as maintenance of such information.

The module will incorporate several features like those required for reporting deployed location information in the HUBB. Specifically, the module will have an automated validation system that will generate error messages when the location information submitted by ELAP parties fails to meet reporting parameters (such as redundancies, required file type) as specified in the *ELAP Order.* Participants and stakeholders will be able to pre-file information and correct, update, add, or delete information prior to their respective filing deadline. The module will have integrated instructions and guidance for submitting information. To the extent practicable, the module will generate notices where correction, supplementation, or redaction of information is necessary.

Unlike deployed location information collected pursuant to OMB Control No. 3060–1228, all ELAP information, including the description of methods and supporting documentation as well as location data, except the location data published in the public ELAP Map, will be treated as presumptively confidential.

Federal Communications Commission.

Marlene Dortch,

Secretary,Office of the Secretary.

[FR Doc. 2020–14152 Filed 6–30–20; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2020–05; Docket No. 2020–0002; Sequence No. 21]

Announcement of Virtual Public Meeting for the Revised Draft Environmental Impact Statement for the Expansion and Modernization of the San Luis I Land Port of Entry, San Luis, Arizona

AGENCY: Public Building Service (PBS), General Services Administration (GSA).

ACTION: Announcement of virtual public meeting and extension of public review period.

SUMMARY: This notice announces the virtual public meeting for the revised Draft Environmental Impact Statement (DEIS), which analyzes the potential environmental impacts of a proposal by the General Services Administration (GSA) to expand and modernize the San Luis I Land Port of Entry (LPOE) located in San Luis, Arizona along the U.S.-Mexico international border.

DATES: A virtual public meeting will be held on Wednesday, July 14, 2020 from 4:00 p.m. to 6:00 p.m., Mountain Standard Time (MST). Interested parties are encouraged to attend and provide comments on the revised DEIS. The comment period for the revised DEIS has been extended and ends on July 21, 2020.

ADDRESSES: Interested parties are also asked to register for the public meeting on the following website: *https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/land-ports-of-entry/san-luis-i-land-port-of-entry.* An electronic copy of the revised DEIS and the 2019 DEIS may also be found on the provided website.

FOR FURTHER INFORMATION CONTACT: Questions or comments on the DEIS should be directed to: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, GSA, at 415–522–3617, or via email to *osmahn.kadri@gsa.gov.* Written

comments can be mailed to: GSA San Luis EIS, c/o LMI, 7940 Jones Branch Drive, Tysons, VA 22102. All comments must be received by July 21, 2020, in order to be considered for the Final EIS.

SUPPLEMENTARY INFORMATION: During the DEIS review period in April 2019, multiple comments were received, including one comment which identified a new alternative to be included in the analysis. Therefore, GSA determined that the Draft EIS would be re-released for public review that includes the new alternative. The revised DEIS describes the project purpose and need, the alternatives being considered, and the potential impacts of each alternative on the existing environment. As the lead agency for this undertaking, GSA is acting on behalf of its major tenant at the facility, the Department of Homeland Security's U.S. Customs and Border Protection (CBP).

The availability of the revised DEIS was announced in a separate **Federal Register** notice on March 31, 2020 (85 FR 17890, pp. 17890–17891).

Virtual Public Meeting

The virtual public meeting will be held via a Zoom Webinar. Preregistration is strongly encouraged. The meeting will include a presentation by GSA and an opportunity for interested parties to provide comments. Comments can also be provided prior to the meeting via email to *osmahn.kadri@gsa.gov.*

Jared Bradley,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2020–14103 Filed 6–30–20; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Request

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Request for Information; notice of extension of comment period.

SUMMARY: For the ''*Opioid Management in Older Adults*'' project, AHRQ is seeking to identify innovative approaches to managing opioid medications for chronic pain that are particularly relevant for *older adults.* Use of long-term opioid therapy in older adults can be especially problematic because of increased risks such as delirium, falls, and dementia. Through this notice, the comment period has been extended to August 30, 2020. The subject matter content remains unchanged from the original notice which was previously published on March 18, 2020.

DATES: Information must be received by August 30, 2020.

ADDRESSES: Written comments should be submitted by email to: *Opioids_OlderAdults@abtassoc.com.*

FOR FURTHER INFORMATION CONTACT: Parivash Nourjah, *Parivash.nourjah@ahrq.gov,* or 301–427–1106.

SUPPLEMENTARY INFORMATION: The United States is in the midst of an unprecedented opioid epidemic that is affecting people from all walks of life. Regulators and policy makers have initiated many activities to curb the epidemic, but relatively little attention has been paid to the growing toll of opioid use, opioid misuse, and opioid use disorder (OUD) among older adults.

The opioid crisis in older adults is strongly related to challenges in prescription opioid management in this population. Older adults have a high prevalence of chronic pain and are especially vulnerable to suffering adverse events from opioid use, making safe prescribing more challenging even when opioids are an appropriate therapeutic choice. Identifying adverse effects due to opioid use, misuse or abuse is complicated further by factors such as co-occurring medical disorders that can mimic the effects of opioid use. There is also a risk of attributing clinical findings in older adults (*e.g.,* personality changes, falls/balance problems, difficulty sleeping, and heart problems) to other conditions that are also common with age. If adverse events due to opioid prescriptions are identified, finding appropriate alternatives for pain management can be challenging if other pharmacologic options (such as NSAIDS) are contraindicated or mobility issues limit access to other therapeutic options.

Diagnosis of substance use disorders is also more complicated in this population. Clinicians may not associate drug misuse or addiction with older adults or they may be inadequately trained in identification and treatment of opioid misuse and OUD among older adults, and hence may not monitor for the signs of opioid use disorder in this population.

Successfully optimizing the prescribing and use of opioids in older adults will require addressing the issue at many points along the care continuum where older adults may need additional attention or a different approach. AHRQ wants to identify specific tools, strategies and approaches to opioid management in older adults throughout the breadth of the care delivery continuum, from avoiding opioid initiation to screening for opioid misuse and opioid use disorder, as well as approaches to opioid tapering in older adults.

AHRQ is interested in all innovative approaches that address the opioid management concerns in older adults listed above, but respondents are welcome to address as many or as few as they choose and to address additional areas of interest not listed.

Strategies and approaches could come from a variety of health care settings including, but not limited to, primary care and other ambulatory care clinics, emergency departments, home health care organizations, skilled nursing care settings, and inpatient care. Other sources of these strategies might include health care payers, accountable care organizations, and organizations that provide external quality improvement support. Some of the examples of the types of innovations we are looking for might be specific tools or workflows that support providers to assess the risk/benefit balance of opioids within a multidisciplinary approach in pain management; to optimize and monitor the opioid prescribing when appropriate, including tapering strategies; to screen and treat for opioid misuse or opioid use disorder; or to involve family or other caregivers of an older adult in conversations about opioid safety. Descriptions of strategies or approaches should include the setting where it is deployed and the type of patient population served.

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas in response to it. AHRQ will use the information submitted in response to this RFI at its discretion, and will not provide comments to any respondent's submission. However, responses to the RFI may be reflected in future solicitation(s) or policies. Respondents are advised that the Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential or sensitive information should be included in your response. The Government reserves the right to use any non-proprietary technical information in any resultant solicitation(s). The contents of all

submissions will be made available to the public upon request. Submitted materials must be publicly available or able to be made public.

Dated: June 25, 2020.

Virginia Mackay-Smith,

Associate Director.

[FR Doc. 2020–14156 Filed 6–30–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2018–0094; NIOSH–321]

Infectious Diseases and Circumstances Relevant to Notification Requirements: Definition of Emergency Response Employee

AGENCY: Centers for Disease Control and Prevention, Health and Human Services (HHS).

ACTION: Notice of availability and response to comments.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), has added a definition of the term ''emergency response employees'' to the definitions section of the document entitled ''Implementation of Section 2695 (42 U.S.C. 300ff-131) Public Law 111–87: Infectious Diseases and Circumstances Relevant to Notification Requirements.'' This list of potentially life-threatening infectious diseases to which emergency response employees may be exposed and companion guidelines has been re-published by the National Institute for Occupational Safety and Health (NIOSH) and is available on the NIOSH website.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Office of the Director, NIOSH; 1090 Tusculum Avenue, MS:C–48, Cincinnati, OH 45226; telephone (855) 818–1629 (this is a toll-free number); email *NIOSHregs@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

The Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990 (Pub. L. 101–381) was reauthorized in 1996, 2000, 2006, and 2009. The most recent reauthorization, the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. 111–87), amended the Public Health Service Act (PHS Act, 42 U.S.C. 201–300ii) and requires the HHS Secretary to establish the following: a list of potentially life-threatening infectious diseases, including emerging infectious diseases, to which emergency response employees (ERE) may be exposed in responding to emergencies; guidelines describing circumstances in which EREs may be exposed to these diseases, taking into account the conditions under which emergency response is provided; and guidelines describing the manner in which medical facilities should make determinations about exposures.

In a **Federal Register** notice published on July 14, 2010, the HHS Secretary delegated this responsibility to the CDC Director.[1] The CDC Director further assigned the responsibility to the NIOSH Director and formally re-delegated the authority to develop the list and guidelines to NIOSH on August 27, 2018.[2]

II. Background

On November 2, 2011, CDC published a notice in the **Federal Register** entitled *Implementation of Section 2695 (42 U.S.C. 300ff-131) Public Law 111–87: Infectious Diseases and Circumstances Relevant to Notification Requirements.*[3] The notice included ''a list of potentially life-threatening infectious diseases, including emerging infectious diseases, to which EREs may be exposed in responding to emergencies . . .; guidelines describing circumstances in which employees may be exposed to these diseases; and guidelines describing the manner in which medical facilities should make determinations about exposures.'' The list and guidelines published in that notice did not include a definition for ''emergency response employee.''

In a request for information (RFI) published in the **Federal Register** on October 17, 2018,[4] CDC solicited input on a definition of ''emergency response employee.'' In the RFI, CDC explained that Congress included such a definition in earlier iterations of the Ryan White Act but inadvertently omitted it from the current version of the Act. Therefore, interested parties were invited to participate in the RFI by submitting written views, opinions, recommendations, and data regarding the definition of the term ''emergency response employee.''

Five submissions were received from the following commenters: Two private individuals, a professional organization representing fire chiefs, a union representing emergency response employees, and one city emergency management agency; all commenters were supportive of restoring the definition of ''emergency response employee'' to the publication. Two commenters asked that the definition offered in the RFI be revised to remove the word ''employee;'' change ''funeral service practitioners'' to ''coroner'' or ''medical examiner;'' and add the terms ''rescuers'' and ''emergency management personnel.''

After careful consideration of the requested revisions, CDC has determined that adopting the original statutory definition, without change, in the definitions section accompanying the NIOSH list and guidelines allows the notification provisions to be implemented as Congress originally intended. Further, the definition references ''other individuals,'' which allows discretion in determining whether individuals who are employed in job categories other than those enumerated can be considered EREs, including the specific groups recommended by the commenters. Therefore, CDC is retaining the definition of ''emergency response employee'' provided in the RFI:

> firefighters, law enforcement officers, paramedics, emergency medical technicians, funeral service practitioners, and other individuals (including employees of legally organized and recognized volunteer organizations, without regard to whether such employees receive nominal compensation) who, in the course of professional duties, respond to emergencies in the geographic area involved.

NIOSH has updated the guidelines and list with the ERE definition and has re-published them on the NIOSH Ryan White HIV/AIDS Treatment Extension Act of 2009 topic page, at *https://www.cdc.gov/niosh/topics/ryanwhite/.*

John J. Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2020–14201 Filed 6–30–20; 8:45 am]

BILLING CODE 4163–18–P

[1] 75 FR 40842.

[2] 83 FR 50379 (October 4, 2018).

[3] 76 FR 67736.

[4] 83 FR 52454.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10633 and CMS–10744]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human 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 31, 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 website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/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–10633 QIC Demonstration Evaluation Contractor (QDEC): Analyze Medicare Appeals To Conduct Formal Discussions and Reopening's with DME Suppliers and Part A Providers

CMS–10744 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program—Contracting Forms

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:* Revision with change of a currently approved collection; *Title of Information Collection:* QIC Demonstration Evaluation Contractor (QDEC): Analyze Medicare Appeals to Conduct Formal Discussions and Reopening's with DME Suppliers and Part A Providers; *Use:* The Formal Telephone Discussion Demonstration and Reopening's Process is authorized under Section 402(a)(1)(F), U.S.C. 1395–1(a)(1)(F), of the Social Security Amendments of 1967. Primary and secondary data are needed to understand the effectiveness of the Demonstration in improving DME suppliers' and Part A providers' understanding of claims denial during Level 2 of the appeals process and facilitating more accurate claim submission over time. Primary data are necessary to determine, from the perspective of participating DME suppliers and Part A providers, the quality of the formal telephone discussions, satisfaction with the formal telephone discussion process, and the effect of the formal telephone discussions on submitting accurate claims. These data will inform an evaluation of the demonstration's effectiveness in achieving more accurate claims submissions, and thus reducing the number of claims CMS must process each year.

All information collected through the evaluation of the Formal Telephone Demonstration and Reopening's Process will be used by CMS through the QDEC (IMPAQ International and its partner, Palmetto GBA) to conduct analyses of satisfaction with the formal telephone discussions, and determine whether further engagement with the QIC improves understanding of the reasons for claim denials.

CMS will use the results of the evaluation to make informed policy decisions regarding the effectiveness of this demonstration and whether or not the demonstration should become a permanent part of the appeals process. Ultimately, if the information shows that DME suppliers and Part A providers were able to submit more accurate claims on the first pass, and a reduced number of claims are put through the appeals process, the Federal Government could realize cost savings. *Form Number:* CMS–10633 (OMB control number: 0938–1348); *Frequency:* Yearly; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 5,288; *Total Annual Responses:* 5,288; *Total Annual Hours:* 949.7. (For policy questions regarding this collection contact Lynnsie G. Kelley at 410–786–1155.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program—Contracting Forms; *Use:* The Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program was established by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (''Medicare Modernization Act'' or ''MMA''). Section 302 of the MMA amended Section 1847 of the Social Security Act (the Act) to establish the competitive acquisition program and define program requirements.

Under the MMA, the DMEPOS Competitive Bidding Program was to be phased in so that competition under the program would first occur in 10 areas in 2007. The Centers for Medicare & Medicaid Services (CMS) completed the rulemaking process for the competitive acquisition of DMEPOS items and services in 42 CFR parts 411 and 414 published in the **Federal Register** Volume 72 on April 10, 2007. CMS conducted the Round 1 competition in 10 areas and for 10 DMEPOS product categories, and implemented the program on July 1, 2008. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), enacted on July 15, 2008, made limited changes to the Competitive Bidding Program, including termination of existing contracts that were in effect and a requirement to re-bid Round 1.

As required by MIPPA, CMS conducted the competition for the Round 1 Rebid in 2009. The Round 1 Rebid contracts and prices became effective on January 1, 2011. The Affordable Care Act (ACA), enacted on March 23, 2010, expanded the Round 2 competition by adding an additional 21 metropolitan statistical areas (MSAs), bringing the total MSAs for Round 2 to 91. The competition for Round 2 began in December 2011. CMS also began a competition for National Mail Order (NMO) of diabetes testing supplies at the same time as Round 2. The Round 2 and NMO contracts and prices were implemented on July 1, 2013.

The MMA requires the Secretary to recompete contracts not less often than once every three years. The Round 1 Rebid contract period for all product categories except mail-order diabetes testing supplies expired on December 31, 2013. (Round 1 Rebid contracts for mail-order diabetes testing supplies ended on December 31, 2012.) The competition for the Round 1 Recompete began in August of 2012 and contracts and prices became effective on January 1, 2014. The Round 1 Recompete contract period expires on December 31, 2016. Round 1 2017 contracts will become effective on January 1, 2017 through December 31, 2018. Round 2 and NMO contracts and prices expired on June 30, 2016. Round 2 Recompete and the NMO Recompete contracts became effective on July 1, 2016, and expired on December 31, 2018. CMS will be implementing a consolidated round of competition to include all Round 1 2017 and Round 2 Recompete competitive bidding areas, referred to as Round 2021. Round 2021 will not include NMO, which will be competed again in future rounds of the program.

The forms included in this ICR were previously included in the ICR currently approved under 0938–1016. Due to the temporary gap in the DMEPOS Competitive Bidding Program, which started on January 1, 2019, we do not currently have any active PRA package for this specific collection of information (Form C, Subcontracting, Change of Ownerships, and Grandfathering). We are now seeking approval of a PRA package based on estimates from previous rounds of the program (specifically Round 2 Recompete and Round 1 2017) and without reference to changes in burden *Form Number:* CMS–10744 (OMB control number: 0938-New); *Frequency:* Occasionally (varies by form); *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 2,984; *Total Annual Responses:* 271,597; *Total Annual Hours:* 31,121. (For policy questions regarding this collection contact Julia Howard at 410–786–8645.)

Dated: June 25, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–14088 Filed 6–30–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10219, CMS–R–142 and CMS–10695]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human 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 (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 a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by July 30, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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 website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to publish a 30-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 that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* HEDIS® Data Collection for Medicare Advantage; *Use:* The HEDIS® data collection supports the CMS strategic goal of improving the quality of care and health status for Medicare beneficiaries. The HEDIS® measures are part of the Medicare Part C Star Ratings as described at §§ 422.160, 422.162, 422.164, and 422.166. CMS publishes the Medicare Part C Star Ratings each year to: (1) Incentivize quality improvement in Medicare Advantage (MA); and (2) assist beneficiaries in finding the best plan for them. The ratings feed into MA Quality Bonus Payments. The Medicare Star Ratings support the efforts of CMS to improve the level of accountability for the care provided by physicians, hospitals, and other providers.

HEDIS® data support the agency's goal to hold MA contracts accountable for delivering care in accordance with widely accepted clinical guidelines and standards of care. CMS uses HEDIS® data to obtain the information necessary for the proper oversight of the Medicare Advantage program. NCQA trains and licenses organizations to conduct audits on-site at the MAOs secure record-keeping facilities where they compile their administrative and medical records for the HEDIS data file submissions *Form Number:* CMS–10219 (OMB control number: 0938–1028); *Frequency:* Yearly; *Affected Public:* Federal Government; *Number of Respondents:* 677; *Total Annual Responses:* 677; *Total Annual Hours:* 216,640. (For policy questions regarding this collection contact Lori Teichman at 410–786–6684.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Examination and Treatment for Emergency Medical Conditions and Women in Labor (EMTALA); *Use:* Pursuant to section 1866(a)(1)(I) of the Act, Congress has mandated that the Secretary enforce section 1867 of the Act. Under section 1867, effective August 1, 1986, hospitals may continue to participate in the Medicare program only if they are not out of compliance with its provisions. Continued Paper Work Reduction Act (PRA) approval of the regulation sections cited below will promote uniform and thorough application of the section 1866 and 1867 requirements. They will also provide information when requested by Congress and other interested parties regarding the implementation of the statute. During 2004 through 2018, approximately 8,146 complaints were received, approximately 7,770 of those complaints were investigated, and approximately 3,567 EMTALA deficiencies were found. During Federal fiscal years 2001 through 2005 the Inspector General's Office imposed civil monetary penalties on hospitals in 105 cases, for a total of $2,645,750 in penalties. An audit completed by the Office of Inspector General (OIG) (entitled, Office of Inspector General: Implementation and Enforcement of the Examination and Treatment for Emergency Medical Conditions and Women in Labor by the Health Care Financing Administration, April 1995, A–06–93–00087) determined that CMS's implementation of the Act was generally effective, but Regional Offices (RO) were not consistent with conducting timely investigations, sending acknowledgments to complaints, ensuring that investigations were thorough, or ensuring that violations were referred to the OIG in accordance with CMS policy for possible civil monetary penalty action. OIG further concluded that without proper compliance, there is an increased risk that individuals with emergency medical conditions will not receive the treatment needed to stabilize their condition, which may place them in greater risk of death. *Form Number:* CMS–R–142 (OMB control number: 0938–0667); *Frequency:* Occasionally; *Affected Public:* Private Sector; Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 5,291; *Total Annual Responses:* 5,291; *Total Annual Hours:* 5,291. (For policy questions regarding this collection contact Renate Dombrowski at (410) 786–4645.)

3. *Type of Information Collection Request:* New collection of information request; *Title of Information Collection:* Quality Payment Program/Merit-Based Incentive Payment System (MIPS) Surveys and Feedback Collections; *Use:* The purpose of this submission is to request approval for generic clearance of a program of survey and feedback collections supporting the Quality Payment Program which includes the Merit-Based Incentive Payment System (MIPS) and Advanced Alternative Payment Models (AAPMs). MIPS is a program for certain eligible clinicians that makes Medicare payment adjustments based on performance on quality, cost and other measures and activities, and that consolidates components of three precursor programs—the Physician Quality Reporting system (PQRS), the Value Modifier (VM), and the Medicare Electronic Health Record (EHR) Incentive Program for eligible professionals. AAPMs are a track of the Quality Payment Program that offer incentives for achieving threshold levels of payments or patients in Advanced APMs or Other Payer Advanced APMs. Under the AAPM path, eligible clinicians may become Qualifying APM Participants (QPs) and are excluded from MIPS. Partial Qualifying APM Participants (Partial QPs) may opt to report and be scored under MIPS.

This generic clearance will cover a program of surveys and feedback collections designed to strategically obtain data and feedback from MIPS eligible clinicians, third-party intermediaries, Medicare beneficiaries, and any other audiences that would support the Agency in improving MIPS or the Quality Payment Program. The specific collections we intend to conduct are: Human Centered Design (HCD) User Testing Volunteer Sign-Up Survey; HCD User Satisfaction, Product Usage, and Benchmarking Surveys; and Physician Compare (and/or successor website) User Testing. *Form Number:* CMS–10695 (OMB control number: 0938–NEW); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and Individuals; *Number of Respondents:* 630,300; *Total Annual Responses:* 630,300; *Total Annual Hours:* 57,950. (For policy questions regarding this collection, contact Michelle Peterman at 410–786–2591.)

Dated: June 25, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–14087 Filed 6–30–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA–1903–N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—October 2019 Through March 2020

AGENCY: Office of Medicare Hearings and Appeals (OMHA), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice lists the OMHA Case Processing Manual (OCPM) instructions that were published from October 2019 through March 2020. This

manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

FOR FURTHER INFORMATION CONTACT: Jon Dorman, by telephone at (571) 457–7220, or by email at *jon.dorman@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary within the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage organizations (MAOs), Medicaid State agencies, and applicable plans, have a fair and impartial forum to address disagreements with Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D plan sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization determination, coverage determination, and at-risk determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an Independent Review Entity (IRE) for Part C organization determination appeals, or by PDPSs and an IRE for Part D coverage determination and at-risk determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges and attorney adjudicators. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council (Council). In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D–4(h) of the Act are implemented through the regulations at 42 CFR part 405, subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. To help ensure nationwide consistency in that effort, OMHA established a manual, the OCPM. Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations and at-risk determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that the Secretary publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every three months in the **Federal Register**.

II. Format for the Quarterly Issuance Notices

This notice provides the specific updates to the OCPM that have occurred in the period of October 2019 through March 2020. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website provides more timely access to the current OCPM chapters for those involved in the Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive notification of certain updates to the OMHA website, including when new or revised OCPM chapters are posted. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

III. How to Use the Notice

This notice lists the OCPM chapters and subjects published during the period covered by the notice so the reader may determine whether any are of particular interest. The OCPM can be accessed at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

IV. OCPM Releases for October 2019 Through March 2020

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of OCPM provisions that were issued or revised in the period of October 2019 through March 2020. This information is available on our website at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

OCPM Chapter 16: Decisions

On October 9, 2019, OMHA issued OCPM Chapter 16, which describes the structure and content of the decisions issued by OMHA adjudicators. The chapter details when an adjudicator classifies a decision as favorable or fully favorable, unfavorable, or partially favorable, and the effect the financial responsibility determination has on the characterization of the decision. Additionally, the chapter provides general writing guidelines and the protocols for protecting personally identifiable and protected health information in a decision. The chapter also describes the format for a decision affirming the dismissal of a request for reconsideration, a decision addressing multiple consolidated appeals, and a stipulated decision. An OMHA-approved notice of decision template must accompany every decision and describes the parties' appeals rights. OMHA also issued a Citation Policy as chapter support material to Chapter 16.

OCPM Chapter 15: Conducting Conferences and Hearings: Posthearing Development

On November 21, 2019, OMHA issued OCPM Chapter 15, which describes the process used by OMHA adjudicators when conducting prehearing/

posthearing conferences and hearings. The chapter details regulatory requirements, OMHA administrative requirements, and suggested best practices when conducting a conference or hearing. The chapter also explains when and how to hold a consolidated, supplemental, or continued hearing; the procedures for responding to a request for a copy of the administrative record; and available actions that can be taken to develop the administrative record after an initial hearing has been conducted.

OCPM Chapter 10: Party and Non-Party Participant Requests and Submissions

On February 19, 2020, OMHA issued OCPM Chapter 10, which explains how to route, document and address contacts from parties and non-party participants involving both general and case-specific matters. The chapter describes how to provide language or communication assistance services to individuals with limited English proficiency or a disability, and summarizes the services OMHA offers in response to such requests. The chapter also explains how to process requests for a stay of proceedings, discovery, or subpoena; and review submissions of evidence and other case-related materials. Many types of requests and submissions that generally occur at a specific stage in the adjudication process are covered in detail in other OCPM chapters. To facilitate locating this information, Chapter 10 contains a list of these requests and submissions, along with cross-references to the specific OCPM provisions where they are discussed.

Dated: June 26, 2020.

Karen W. Ames,

Executive Director, Office of Medicare Hearings and Appeals.

[FR Doc. 2020–14203 Filed 6–30–20; 8:45 am]

BILLING CODE 4150–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mental Health Services: Member Conflict.

Date: July 15, 2020.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: June 26, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14163 Filed 6–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Review of RFA NS–20–013 White Matter Lesion Etiology of Dementia in the U.S. Including in Health Disparity Populations (U19).

Date: July 8, 2020.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, Bethesda, MD 20892, 301 827–9087 *mooremar@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Biology and Biophysics of Neural Stimulations and Recording Technologies SRB M01.

Date: July 9, 2020.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Blvd., North Bethesda, MD 20852 (Video Assisted Meeting).

Contact Person: Mirela Milescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, *mirela.milescu@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Accelerating Medicine Partnership in Parkinson's disease (AMP PD) data use and analysis (U01).

Date: July 10, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Blvd., North Bethesda, MD 20852 (Video Assisted Meeting).

Contact Person: Joel A. Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3205, MSC 9529, Bethesda, MD 20892, (301) 496–9223, *joel.saydoff@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Early Phase Trials & Comparative Effectiveness Research.

Date: July 10, 2020.

Time: 10:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Blvd., North Bethesda, MD 20852 (Video Assisted Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities,

NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 435–6033 *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; R34 VCID Review.

Date: July 14, 2020.

Time: 2:15 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Blvd., North Bethesda, MD 20852 (Video Assisted Meeting).

Contact Person: Mir Ahamed Hossain, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *mirahamed.hossain@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 25, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14162 Filed 6–30–20; 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 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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; RFA–AA–20–008—Collaborative Initiative on Fetal Alcohol Spectrum Disorders (CIFASD).

Date: August 3, 2020.

Time: 10:00 a.m. to 3:00 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: Philippe Marmillot, Ph.D., Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2118 Bethesda, MD 20892 301–443–2861 *marmillotp@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA Review Subcommittee Member Conflict Review Panel.

Date: August 4, 2020.

Time: 1:00 p.m. to 3:00 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: Philippe Marmillot, Ph.D., Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2118 Bethesda, MD 20892 301–443–2861 *marmillotp@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 25, 2020.

Melanie J. Pantoja,

Program Analyst,Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14167 Filed 6–30–20; 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; PAR17–158: Secondary Data Analyses to Explore NIMH Research Domain Criteria.

Date: July 23, 2020.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 6701 Rockledge Dr. Bethesda, MD 21740 (Virtual Meeting).

Contact Person: Julius Cinque, MS Scientific Review Officer Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Disease Prevention and Management, Risk Reduction and Health Behavior Change.

Date: July 27, 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: Michael J McQuestion, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 3114 MSC 7808 Bethesda, MD 20892 (301) 480–1276 *mike.mcquestion@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cognition, Perception, and Language.

Date: July 27, 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: Brian H Scott, Ph.D., Scientific Review Officer National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive Room 3142, MSC 7850, Bethesda, MD 20892, (301) 827–7490 *brianscott@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery Involving the Nervous System.

Date: July 28–29, 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: Aurea D De Sousa, Ph.D., Scientific Review Officer National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5186, MSC 7840 Bethesda, MD 20892 301–827–6829 *aurea.desousa@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immunology.
Date: July 28, 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: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 4203, MSC 7814 Bethesda, MD 20892 (301) 435–3566 *alok.mulky@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Molecular, Cellular and Behavior Neuroscience.
Date: July 28, 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: Joseph G Rudolph, Ph.D., BS Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892 (301) 408–9098 *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Endocrinology, Metabolism and Reproductive Biology.
Date: July 28, 2020.
Time: 1:00 p.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: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, MSC 7892 Bethesda, MD 20892–7892 (301) 435–0492 *shelnessgs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Tobacco Regulatory Science B.
Date: July 28, 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: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 3112, MSC 7808 Bethesda, MD 20892 301–496–0726 *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Pathobiology.
Date: July 29–30, 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: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 4118, MSC 7814 Bethesda, MD 20892 301–408–9497 *zouai@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 25, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–14165 Filed 6–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0033]

Agency Information Collection Activities: Bonded Warehouse Proprietor's Submission

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than August 31, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0033 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to

be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Bonded Warehouse Proprietor's Submission.

OMB Number: 1651–0033.

Form number: CBP Form 300.

Current Actions: CBP proposes to extend the expiration date of this information collection with an increase in the burden hours. There is no change to the information collected or CBP Form 300.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 300, *The Bonded Warehouse Proprietor's Submission,* is prepared annually by each warehouse proprietor, as mandated under 19 CFR 19.12 (g). The information on CBP Form 300 is used by CBP to evaluate warehouse activity for the year. This form must be completed within 45 days from the end of his business year, pursuant to the provisions of the Tariff Act of 1930, as amended, 19 U.S.C. 66, 1311, 1555, 1556, 1557, 1623 and 19 CFR 19.12. The information collected on this form helps CBP determine all bonded merchandise that was entered, released, and manipulated in the warehouse. CBP Form 300 is accessible at *https://www.cbp.gov/document/forms/form-300-bonded-warehouse-proprietors-submission.*

Estimated Number of Respondents: 1,980.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 1,980.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden Hours: 19,800.

Dated: June 26, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–14158 Filed 6–30–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of the National Customs Automation Program (NCAP) Test Regarding Reconciliation for Filing Post-Importation Claims Arising Under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces a modification to the Automated Commercial Environment (ACE) National Customs Automation Program (NCAP) reconciliation prototype test to include the flagging for filing of post-importation preferential treatment claims arising under the Agreement Between the United States of America, the United Mexican States, and Canada (the USMCA) as implemented pursuant to the United States-Mexico-Canada Agreement Implementation Act (the USMCA Act). Importers may file USMCA post-importation claims for refunds of certain duties assessed on merchandise that both qualifies for preferential tariff treatment under the USMCA and was entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. Unless and until the USMCA Act is subsequently amended, refunds for merchandise processing fees (MPF) are excluded from USMCA post-importation claims. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in previously published **Federal Register** notices regarding the test remain in effect.

DATES: The test is modified to allow reconciliation of post-importation preferential tariff treatment claims to be filed on or after July 1, 2020, for refunds of certain duties assessed on merchandise that both qualifies for preferential tariff treatment under the USMCA and was entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

ADDRESSES: Comments concerning the reconciliation prototype test may be submitted via email to Randy Mitchell, Director, Commercial Operations, Revenue & Entry (CORE) Division, Office of Trade, U.S. Customs and Border Protection at *OT-Reconfolder@cbp.dhs.gov,* with a subject line identifier reading, ''Modification of Reconciliation Test-USMCA''.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Randy Mitchell, Director, Commercial Operations, Revenue & Entry (CORE) Division, Office of Trade, U.S. Customs and Border Protection, at (202) 325–6532 or via email at *OTReconFolder@cbp.dhs.gov,* with a subject line identifier reading ''Modification of Reconciliation Test-USMCA''. For technical questions related to ACE or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Tonya Perez, Director, Client Services Division, Office of Trade, U.S. Customs and Border Protection, at (571) 421–7477 or via email at *gmb.clientrepoutreach@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document announces a modification to U.S. Customs and Border Protection's (CBP's) Automated Commercial Environment (ACE) reconciliation prototype test (hereinafter ''reconciliation test'') by adding the processing of post-importation claims arising under the United States-Mexico-Canada Agreement Implementation Act (the USMCA Act), Public Law 116–113, 134 Stat. 11 (January 29, 2020) (19 U.S.C. chapter 29), to permit an importer, who did not claim preferential tariff treatment at the time of importation, to file a claim, at any time within one year after the date of importation of qualifying merchandise, to receive a refund of certain excess duties paid on that merchandise at the time of importation. As is further explained below, although the USMCA eliminates the assessment of the merchandise processing fee (MPF) on qualifying goods from Canada and Mexico, the USMCA Act excluded the refund of MPF under 19 U.S.C. 1520(d) post-importation claims for USMCA preferential treatment.

Purpose of the Reconciliation Test

Reconciliation, a planned component of the National Customs Automation Program (NCAP), is provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (the NAFTA Implementation Act; Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993)) (19 U.S.C. 1411).

Section 637 of the Customs Modernization Act amended section 484 of the Tariff Act of 1930 to establish a

new section (b), entitled ''Reconciliation'', and a planned component of the NCAP. (19 U.S.C. 1484(b)). Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify indeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic ''flag'' which is placed on the entry summary at the time the entry summary is filed and payment of the applicable estimated duties is deposited.

Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995). The NCAP reconciliation test was announced in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in subsequent **Federal Register** notices: 63 FR 44303 (August 18, 1998); 64 FR 39187 (July 21, 1999); 64 FR 73121 (December 29, 1999); 66 FR 14619 (March 13, 2001); 67 FR 61200 (September 27, 2002) (with a correction document published at 67 FR 68238 (November 8, 2002)); 69 FR 53730 (September 2, 2004); 70 FR 1730 (January 10, 2005); 70 FR 46882 (August 11, 2005); and 71 FR 37596 (June 30, 2006). On September 13, 2000, CBP extended the test indefinitely in a notice published in the **Federal Register** (65 FR 55326). On July 23, 2016, the NCAP test regarding reconciliation transitioned from the Automated Commercial System (ACS) to ACE. (83 FR 2645). This document announces a modification to the reconciliation test to expand reconciliation to include post-importation preferential tariff treatment claims arising under the USMCA Act, which is permitted under 19 U.S.C. 1520(d). Aside from this modification, the test remains as set forth in the previously published **Federal Register** notices.

Reconciliation Generally

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic ''flag'' which is placed on the entry summary at the time the entry summary is filed and payment of the applicable estimated duties is deposited.

The flagged entry summary (the underlying entry summary) is liquidated by CBP for all aspects of the entry except those issues that were flagged. Upon liquidation of an underlying entry summary, any decision by CBP entering into that liquidation, *e.g.,* classification, may be protested pursuant to 19 U.S.C. 1514. The means of providing the outstanding information flagged on the underlying entry summary to be reconciled is through the filing of a reconciliation entry. A reconciliation entry is treated as an entry for purposes of liquidation, reliquidation, and protest.

When the outstanding information, *e.g.,* value as determined by the actual costs, is later furnished in the reconciliation entry, CBP will liquidate the reconciliation entry as to the flagged issues. Any adjustments in duties owed will be made at that time. (*See* February 6, 1998 **Federal Register** notice (63 FR 6257) for a more detailed presentation of the basic reconciliation process.) The liquidation of the reconciliation entry will be posted in the same manner and place as the notices of liquidation of other entries. Liquidation of a reconciliation entry may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue(s) flagged for and contained in the reconciliation entry (*i.e.,* the protest may not address issues previously liquidated on the underlying entry summary).

Previously published **Federal Register** notices have set forth that the issues for which an entry summary may be ''flagged'' (for the purpose of later reconciliation) are limited and relate to: (1) Value issues other than claims based on latent manufacturing defects; (2) classification issues, on a limited basis; (3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS) (9802 issues); and (4) issues concerning post-importation claims, under 19 U.S.C. 1520(d), for preferential tariff treatment for merchandise entered under the acts implementing the North American Free Trade Agreement (NAFTA), the United States-Chile Free Trade Agreement, the Dominican Republic-Central America-United States Free Trade Agreement, the United States-Oman Free Trade Agreement, the United States-Peru Trade Promotion Agreement, the United States-Korea Free Trade Agreement, the United States-Colombia Trade Promotion Agreement, and the United States-Panama Trade Promotion Agreement.

The filing of a reconciliation entry, like the filing of a regular consumption entry, is governed by 19 U.S.C. 1484 and can be done only by an importer of record, who is required to exercise reasonable care in filing the underlying entry summary, flagging issues for later reconciliation, and filing the reconciliation entry. Importers are also reminded of the distinction between prior disclosure and reconciliation. A prior disclosure exists when a person discloses the circumstances of a violation of 19 U.S.C. 1592 pursuant to CBP regulations. The person disclosing this information must do so before, or without knowledge of, the commencement of a formal investigation of that violation. Under reconciliation, the importer is not disclosing a violation, but rather identifying information which is indeterminable and will be provided at a later time when the reconciliation entry is filed.

Modification of the Reconciliation Test

The Agreement Between the United States of America, the United Mexican States, and Canada (the USMCA) was entered into by the governments of the United States of America (United States), the United Mexican States (Mexico), and Canada on November 30, 2018. The USMCA was signed on December 10, 2019, and ratified by all three countries, with final ratification on April 24, 2020. The USMCA covers all merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

Section 103 of the USMCA Act authorizes the President to proclaim the tariff modifications and to promulgate the regulations for preferential tariff treatment and other customs related provisions of the USMCA. This notice announces that a post-importation claim under 19 U.S.C. 1520(d) for preferential tariff treatment pursuant to the USMCA may be made under the reconciliation test, but without a refund of merchandise processing fees (MPF) at this time.

1. Use of Current FTA Flag for USMCA Post-Importation Claims

Importers that file an entry for USMCA preferential treatment under the reconciliation test must use the existing Free Trade Agreement (FTA) flag, as authorized in this notice.

Section 205(a) of the USMCA Act provides for the reliquidation of entries. The USMCA Act repealed the NAFTA Implementation Act. Section 205(a) of the USMCA Act amends section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) by removing the reference to ''section 202 North American Free

Trade Agreement Implementation Act'' and replacing it with ''section 202 of the United States-Mexico-Canada Agreement Implementation Act (except with respect to any merchandise processing fees)''. Additionally, Section 205(a) amends the certification of origin requirement in 19 U.S.C. 1520(d) by removing ''(2) copies of all applicable NAFTA Certificates of Origin (as defined in section 1508(b)(1) of this title), or other certificates or certifications of origin, as the case may be; and'' and replacing it with ''(2) copies of all applicable certificates or certifications of origin; and''. Accordingly, Section 205 of the USMCA Act effectively replaces reliquidation of entries under NAFTA with the reliquidation of entries under the USMCA, eliminates the refund of MPF under USMCA post-importation preferential treatment claims, and replaces the requirement to submit a NAFTA certificate of origin with the requirement to submit any applicable certificate or certification of origin as part of a post-importation preferential treatment claim (as discussed in Section 204 of the USMCA Act). Consistent with Section 205 of the USMCA Act, the importer must make a post-importation preference claim pursuant to 19 U.S.C. 1520(d), within one year from the date of importation. Post-importation claims for reconciliation are made electronically in ACE and must include the following:

(1) A declaration stating that the good qualified as an originating good at the time of importation and the number and date of the entry or entries covering the good (this is provided as part of the electronic submission of the claim containing the special program indicator for the USMCA);

(2) A statement indicating whether the entry summary or equivalent documentation was provided to any other person; and

(3) A statement indicating whether a protest, petition, or request for re-liquidation has been filed relating to the good and identification of such filing(s).

Claims for preferential treatment under the USMCA may be made as of July 1, 2020. CBP is publishing an interim final rule (IFR) in the **Federal Register** (CBP Dec. 20–11) amending part 181 and adding a new part 182 containing several USMCA provisions, including an appendix that contains the trilaterally negotiated and agreed upon Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapter 4 (Rules of Origin) and Related Provisions in Chapter 6 (Textile and Apparel Goods) (Uniform Regulations regarding rules of origin) (Appendix A to part 182).

In addition to the IFR, persons intending to make USMCA preference claims as of July 1, 2020, may refer to the CBP website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA* for further guidance (including the U.S. USMCA Implementing Instructions). The United States International Trade Commission has also modified the HTSUS to add a new General Note 11, incorporating the USMCA rules of origin for claiming preferential treatment and providing for the special program indicators ''S or S+'' for the USMCA in the HTSUS ''special'' rate of duty subcolumn.[1] For ACE, please note that CBP will update the information on USMCA post-importation claims submitted via reconciliation in the Reconciliation Entry Summary Create/Update chapter of the CBP and Trade Automated Interface Requirements (CATAIR) posted on *https://www.cbp.gov/trade/ace/catair.*

2. Entry Into Force of USMCA and Import Eligibility for Reconciliation

Section 205(a) of the USMCA Act further provides that these amendments (replacement of NAFTA preference from 19 U.S.C. 1520(d) with USMCA preference) will take place on the date on which the USMCA enters into force on July 1, 2020. Therefore, importers may file USMCA post-importation claims for refunds of certain duties assessed on merchandise that both qualifies for preferential tariff treatment under the USMCA and was entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

This notice does not modify the current reconciliation test, which waive the requirement to file a certification of origin for post-importation claims, under 19 U.S.C. 1520(d), for preferential tariff treatment for merchandise qualifying under the other agreements covered by the FTA flag. For reconciliation entries making a post-importation claim, under 19 U.S.C. 1520(d), for preferential tariff treatment for qualifying merchandise entered under the USMCA, a certification of origin is not required to be presented at the time of filing the reconciliation entry, but must be in the importer's possession at that time and must be presented if requested by CBP. The failure to present the certification of origin when requested by CBP may result in the denial of the post-importation claim for preferential tariff treatment under the USMCA, the reliquidation of the reconciliation entry, and/or administrative and judicial sanctions including, but not limited to, liquidated damages and recordkeeping or other penalties and may be considered misconduct under the rules, terms and conditions of this test.

Importers filing a reconciliation entry making a USMCA post-importation claim for preferential tariff treatment for a covered vehicle, as defined in the Appendix to Annex 4–B of Chapter 4 of the USMCA, are reminded that the following certifications must be filed with CBP in order to receive preferential tariff treatment: (1) A certification providing that the labor value content requirements are met; and, (2) a certification that the steel and aluminum content requirements are met. These certifications are not filed with the reconciliation entry, but would be separately submitted; and, this notice does not waive any requirements related to these certifications for purposes of the reconciliation test.

3. Transition From NAFTA Treatment-Reliquidation

Section 205 provides for a transition from NAFTA treatment. Consistent with this section, the amendments to 19 U.S.C. 1520(d), as discussed above, do not apply in the case of a good entered for consumption, or withdrawn from warehouse for consumption, before the date in which the USMCA enters into force, which is July 1, 2020. This section further provides that the section 1520(d), as it is in effect (on June 30, 2020) will apply, and shall continue to apply on or after that date with respect to the good. Therefore, importers may submit post-importation claims for NAFTA preference only for those goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020. Since importers may file post-importation claims at any time within one year after the date of importation, no post-importation claims for NAFTA preference will be accepted after June 30, 2021.

4. Ineligibility for Post-Importation Refunds of Merchandise Processing Fees

Section 203 of the USMCA Act, which amends Section 13031(b)(10) of the Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(10)), eliminates the refund of merchandise processing fees (MPF) for USMCA post-importation claims. That section also disallows the use of the Customs User Fee Account to refund MPF. Accordingly, not only are refunds of MPF not allowed, but there is also no mechanism available for CBP

[1] The S+ indicator is used for certain agricultural goods and textile tariff preference levels (TPLs).

to refund MPF for goods that qualify for preferential treatment under the USMCA. Importers may, however, wish to flag USMCA entries for the possibility of MPF refunds for a post-importation USMCA claim, as CBP will provide for refunds consistent with any legislative changes to 19 U.S.C. 1520(d). Importers are reminded that FTA reconciliation entries must be filed within 12 months of the earliest import date and that the FTA flag expires after 12 months.

Dated: June 26, 2020.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2020–14200 Filed 6–30–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2020–N085; FF09E42000 189 FXES11130900000]

Endangered and Threatened Species; Issuance of Enhancement of Survival and Incidental Take Permits for Safe Harbor Agreements, Candidate Conservation Agreements, Habitat Conservation Plans, and Recovery Activities, January 1, 2019, Through December 31, 2019; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a document in the April 30, 2020, **Federal Register** that provided a list of permits issued under the Endangered Species Act. We inadvertently made unsubstantive errors, which we correct via this notice.

FOR FURTHER INFORMATION CONTACT: Amanda Murnane, via phone at 703–358–2469,*viaemailatAmanda_Murnane@fws.gov,*or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, published a document in the April 30, 2020, **Federal Register** that provided a list of permits we issued under the Endangered Species Act for Candidate Conservation Agreements with Assurances, Safe Harbor Agreements, Habitat Conservation Plans (HCPs), and Recovery Permits for calendar year 2019. We inadvertently made an error, which we correct via this notice.

Corrections

In FR Doc. 2020–09176, appearing at 85 FR 23992 in the issue of Thursday, April 30, 2020, make the following three corrections in the table on page 23994:

Remove HCP permit number TE34898D for the Pueblo of Santa Clara; no permit has been issued.

Remove permits with numbers TE33765D (VALERO PARTNERS WYNNEWOOD, LLC) and TE113500 (BASTROP COUNTY; MR. PAUL PAPE) from the table. Both are duplicate entries of other issued permits.

All other items in the original notice (April 30, 2020; 85 FR 23992) are correct as printed.

Gary Frazer,

Assistant Director for Ecological Services.

[FR Doc. 2020–14188 Filed 6–30–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0017]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Financial Assistance and Social Services

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before July 31, 2020.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Evangeline Campbell, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS–4513–MIB, Washington, DC 20240; facsimile: (202) 208–5113; email: *Evangline.Campbell@bia.gov.* Please reference OMB Control Number 1076–0017 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Evangeline M. Campbell by telephone at (202) 513–7621.

You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 24, 2020 (85 FR 16651). No comments were received.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIA is seeking to renew the information collection it conducts to provide assistance under 25 CFR part 20 to eligible Indians when comparable financial assistance or social services either are not available or not provided by State, Tribal, county, local, or other Federal agencies. The information collection allows BIA to determine whether an individual is eligible for assistance and services. No third party notification or public disclosure burden is associated with this collection.

Title of Collection: Financial Assistance and Social Services Program.

OMB Control Number: 1076–0017.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individual Indians seeking financial assistance or social services from BIA.

Total Estimated Number of Annual Respondents: 140,000 provide information on the application; of those, 72,000 contribute information to an employability assessment and ISP.

Total Estimated Number of Annual Responses: 196,000.

Estimated Completion Time per Response: One half hour for the application and 1 hour for the employability assessment and ISP.

Total Estimated Number of Annual Burden Hours: 134,000 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Once per respondent.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2020–14219 Filed 6–30–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Public Land Order No. 7895; San Diego Project 4 Modification, San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Order withdraws, subject to valid existing rights, approximately 37 acres of Federal lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, for a period ending September 18, 2022, for use by the Department of the Army for border security purposes. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Army.

DATES: This Public Land Order takes effect on June 24, 2020. This withdrawal will expire on September 18, 2022.

FOR FURTHER INFORMATION CONTACT: Karen E. Mouritsen, State Director California, telephone: 916–978–4600, email: *kmourits@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Mouritsen. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described Federal lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, mineral leasing laws, and geothermal leasing laws, and jurisdiction over such lands is hereby transferred to the Department of the Army for border security purposes:

A strip of land of the uniform width of 300 feet lying contiguous to and parallel with the 200 feet withdrawn strip parallel with the international border between the United States and Mexico, located in the County of San Diego, State of California and situate in the following described locations:

San Bernardino Meridian, California

T.18 S., R. l E.,

sec. 34.

The areas described above aggregate approximately 37 acres of Federal lands in San Diego County.

2. This withdrawal will expire on September 18, 2022, unless it is extended in accordance with subsections (c)(1) or (d), whichever is applicable, and (b)(1) of Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Dated: June 24, 2020.

David L. Bernhardt,

Secretary of the Interior.

[FR Doc. 2020–14205 Filed 6–30–20; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0081; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas and Sulfur

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing to renew an information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 31, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You may find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0081 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Anna Atkinson by email, or by telephone at 703–787–1025. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of the information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this proposed information collection request was published on January 29, 2020 (85 FR 5234). One comment was received, which focused

on banning lithium collection in the OCS. Such a ban is outside the scope of this ICR. Nonetheless, BOEM notes that there has been no competitive leasing in the OCS for minerals other than oil, gas, and sulfur; therefore, collection of lithium is not occurring in the OCS.

BOEM is again soliciting comments on the proposed ICR that is described below. BOEM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure this information will be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments that you submit in response to this notice are a matter of public record. You should be aware that your entire comment—including your address, phone number, email address, or other personal identifying information—may be made publicly available at any time. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in the submittal of your comments that, if released, would clearly constitute an unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of your information, such as embarrassment, injury, or other harm. While you can ask BOEM in your comment to withhold your personally identifiable information from public review, BOEM cannot guarantee that it will be able to do so.

BOEM protects proprietary information in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Department of the Interior's implementing regulations (43 CFR part 2), and under applicable sections of 30 CFR parts 550 and 552 promulgated pursuant to Outer Continental Shelf Lands Act (OCSLA) at 43 U.S.C. 1352(c).

Abstract: The OCSLA (43 U.S.C. 1334 and 43 U.S.C. 1337(k)(1)) authorizes the Secretary of the Interior to issue regulations to grant to qualified persons who offer the highest cash bonus on a basis of competitive bidding, leases for any mineral other than oil, gas, and sulfur in any area of the OCS not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.

Regulations at 30 CFR part 582 carry out these statutory requirements by regulating mining operations within the OCS for minerals other than oil, gas, and sulfur and establishing a comprehensive regulatory program for such minerals.

There has been no competitive leasing activity in the OCS for minerals other than oil, gas, and sulfur for many years. Accordingly, BOEM has not generally collected information under this Part of its regulations. However, since these are regulatory requirements, the potential exists for information to be collected. Therefore, we are renewing OMB approval for this information collection.

BOEM will use the information required by 30 CFR part 582 to determine if lessees are complying with the regulations for mining minerals other than oil, gas, sulfur. BOEM will also use the information to ensure that such operations are conducted in a manner that will result in orderly resource recovery and development; the protection of the human, marine, and coastal environments; and for technical and environmental evaluations which provide a basis for BOEM to make informed decisions to approve, disapprove, or require modification of the proposed activities.

Title of Collection: 30 CFR 582, Operations in the Outer Continental Shelf for Minerals Other than Oil, Gas, and Sulfur.

OMB Control Number: 1010–0081.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents are OCS lessees.

Total Estimated Number of Annual Responses: 20 responses.

Total Estimated Number of Annual Burden Hours: 212 hours.

Respondent's Obligation: Mandatory or voluntary.

Frequency of Collection: Monthly; quarterly; on occasion.

Total Estimated Annual Non-hour Burden Cost: None.

Estimated Reporting and Recordkeeping Hour Burden: We expect the burden estimate for the renewal will be 212 hours. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2020–14164 Filed 6–30–20; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–522 and 731–TA–1258 (Review)]

Passenger Vehicle and Light Truck Tires From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on certain passenger vehicle and light truck tires from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2020. To be assured of consideration, the deadline for responses is July 31, 2020. Comments on the adequacy of responses may be filed with the Commission by September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 10, 2015, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of

certain passenger vehicle and light truck tires from China (80 FR 47902). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of passenger vehicle light truck tires coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all producers of certain passenger vehicle light truck tires except for one U.S. producer that was excluded as a related party. Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is August 10, 2015.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2020. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 14, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–464, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in number of tires and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in number of tires and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in number of tires and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or

countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) *(Optional)* A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14125 Filed 6–30–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1059 (Third Review)]

Hand Trucks and Certain Parts Thereof From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping duty order on hand trucks and certain parts thereof from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted July 1, 2020. To be assured of consideration, the deadline for responses is July 31, 2020. Comments on the adequacy of responses may be filed with the Commission by September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 2, 2004, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of hand trucks and certain parts thereof from China (69 FR 70122). Following first five-year reviews by Commerce and the Commission, effective April 28, 2010, Commerce issued a continuation of the antidumping duty order on imports of hand trucks and certain parts thereof from China (75 FR 22369). Following the second five-year reviews by Commerce and the Commission, effective August 19, 2015, Commerce issued a continuation of the antidumping duty order on imports of hand trucks and certain parts thereof from China (80 FR 50266). The Commission is now conducting a third review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission found a single *Domestic Like Product* comprised of finished hand trucks and certain hand truck parts corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission found a single *Domestic*

Industry consisting of all U.S. producers of the *Domestic Like Product* which, as stated above, consists of all finished hand trucks and hand truck parts corresponding to Commerce's scope.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 31, 2020. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 14, 2020. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 20–5–463, expiration date June 30, 2023. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject*

Merchandise, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2014.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2019, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in units and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2019 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2014, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) *(Optional)* A statement of whether you agree with the above

definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: June 25, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–14124 Filed 6–30–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment To Consent Decree Under The Clean Water Act

On June 24, 2020, the Department of Justice lodged a proposed Amendment to Consent Decree with the United States District Court for the Southern District of Indiana in the lawsuit entitled *United States and State of Indiana* v. *City of Jeffersonville,* Civil Action No. 4:09cv125.

The United States and the State of Indiana filed this lawsuit under the Clean Water Act in 2009. The Complaint sought injunctive relief and civil penalties for violations of the regulations that govern discharges of untreated sewer overflows. Concurrent with filing of that Complaint, the parties lodged a Consent Decree resolving the claims in the Complaint. The Court entered the Consent Decree in 2009.

The proposed Amendment to Consent Decree authorizes the City of Jeffersonville to modify its Long Term Control Plan. The modification will allow the City of Jeffersonville to complete infrastructure projects that will enable it to comply with a State-mandated phosphorus limit. The modification also allows the City more flexibility in the counting of overflows and reduces the overall volume of sewage discharged without changing the Consent Decree's compliance deadlines. The Amendment to Consent Decree does not seek civil penalties, and all other terms of the 2009 Consent Decree remain in effect.

The publication of this notice opens a period for public comment on the Amendment to Consent Decree. Comments should be addressed to the Principal Deputy Assistant Attorney General, Environment and Natural Resources Division, Jonathan D. Brightbill and should refer to *United States and State of Indiana* v. *City of Jeffersonville,* D.J. Ref. No. 90–5–1–1–08723. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD,P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the Amendment to Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Amendment to Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $88.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the Amendment to Consent Decree without the exhibits and signature pages, the cost is $1.50.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2020–14179 Filed 6–30–20; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 20–060]

Applied Sciences Advisory Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Applied Sciences Advisory Committee (ASAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, July 28, 2020, 12:30 p.m.—4:00 p.m.; Wednesday, July 29, 2020, 9:00 a.m.—1:00 p.m.; and Thursday, July 30, 2020, 11:30 a.m.—4:00 p.m., Eastern Time.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. The meeting will take place telephonically and via WebEx. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the number 1–888–677–3055, passcode 6537636, followed by the # sign to participate in this meeting by telephone on all three days. The WebEx link is *https://nasaenterprise.webex.com/.* The meeting number on July 28 is 199 771 4350 and the password is nAJpDq8g?33. The meeting number on July 29 is 199 997 7136 and the password is F23u2hywM5*. The meeting number on July 30 is 199 251 8740 and the password is eZpJ6Wg3A$5.

The agenda for the meeting includes the following topics:

- Earth Science and Applied Sciences Program Updates
- Consortium approaches used by the Applied Sciences Program
- Research and Analysis Program and linkages to the Applied Sciences Program
- Earth Science Data Systems Program and linkages to the Applied Sciences Program

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–14180 Filed 6–30–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2020–052]

Office of Government Information Services (OGIS) Annual Open Meeting

AGENCY: Office of Government Information Service (OGIS), National Archives and Records Administration (NARA).

ACTION: Office of Government Information Services (OGIS) annual open meeting.

SUMMARY: We are announcing OGIS's annual meeting, open to the public. The purpose of the meeting is to discuss OGIS's reviews and reports and allow interested people to appear and present oral or written statements, in accordance with the Freedom of Information Act (FOIA). DATES: The meeting will be on Monday, July 20, 2020, from 10:00 a.m. to 12:00 p.m. EDT. Please register no later than 11:59 p.m. EDT on Thursday, July 16, 2020.

ADDRESSES: This meeting will be held virtually due to the COVID–19 situation. We will email instructions on how to access the meeting to those who register according to instructions below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell by email at *ogisopenmeeting@nara.gov* or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION: *OGIS's 2020 Report for Fiscal Year 2019,* published during Sunshine Week (March 15–21, 2020), summarizes OGIS's work, in accordance with FOIA, 5 U.S.C. 552(h)(4)(A). We will post meeting materials online at *https://archives.gov/ogis/outreach-events/annual-public-meeting.* You are invited to present oral or written statements at the meeting, in accordance with the FOIA at 5 U.S.C. 552(h)(6). You may submit written statements or questions for OGIS to consider before the meeting by emailing *ogisopenmeeting@nara.gov.* We will not answer questions about specific OGIS cases.

Procedures: This virtual meeting is open to the public. You must register through Eventbrite, *https://ogis-annual-open-meeting-2020.evenbrite.com,* if you wish to attend, and you must provide an email address so that we can provide you with access instructions for the online meeting. To request accommodations (*e.g.,* a transcript), email *ogis@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Kimberly Keravuori,

Federal Register Liaison.

[FR Doc. 2020–14178 Filed 6–30–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Strategies for Future Examination and Supervision Utilizing Digital Technology

AGENCY: National Credit Union Administration.

ACTION: Request for information (RFI).

SUMMARY: The National Credit Union Administration (NCUA) is conducting a comprehensive study of alternative procedures to modernize the agency's examination program. The objective of modernizing is to improve efficiency and effectiveness in achieving the NCUA's mandates under the Federal Credit Union Act. The agency seeks to support a predominately offsite examination and supervision model by taking advantage of new and emerging approaches and techniques to utilizing data and technology.

Through modernization, the NCUA intends to:

- Reduce burden on credit unions and increase agency efficiency by reducing onsite examination time;
- Improve offsite supervision capabilities;
- Provide more consistency and standardization for the examination and supervision process;
- Improve communication between examiners, credit unions, and state supervisory authorities; and
- Explore and evaluate technology utilization and appetite for adoption.

The NCUA is using this RFI as a research tool in its modernization efforts. Specifically, this RFI explains the NCUA's objectives and seeks assistance identifying the interrelated considerations and challenges that could arise if the agency moves forward with doing more examination work using technology. The resulting information will support a re-engineering of the concept of regulatory examination and supervision oversight.

Recent events, such as the COVID–19 pandemic, have shown that adopting modern technology helps make credit unions more resilient to economic shocks. In turn, a credit union's resiliency has a positive impact on its member-owners and the economy at-large. Further, the current social unrest in the United States has exposed the limited financial options available to many minorities and underserved areas. This modernization effort could reduce the regulatory burden and establish technology options that would make it easier for credit unions to provide services to these underserved communities and populations.

The NCUA seeks public input on its modernization initiative and is eager for feedback from interested stakeholders. The NCUA will use stakeholder responses to:

- Refine a strategy for leveraging technology in the future examination and supervision process;
- Determine how much onsite examination activity would still be required with an examination primarily done offsite; and
- Develop an implementation strategy that reduces burden while maintaining the agency's ability to determine whether federally insured credit unions are operating safely and soundly and in compliance with applicable laws and regulations.

In addition to this RFI, the agency may seek clearance from the Office of Management and Budget to conduct stakeholder calls and form focus groups to gather additional information about barriers and benefits to the modernization initiative. The NCUA invites interested parties to respond generally to this modernization initiative and specifically to the questions included in this RFI.

DATES: Comments must be received on or before August 31, 2020.

ADDRESSES: Comments may be submitted using *one* of the methods below (Please do not send comments via multiple methods). Include ''[Your name and company name (if any)]—Strategies for Future Examination and Supervision utilizing Digital Technology'' in all correspondence.

- *Email: exammodernization@NCUA.gov.* Include ''[Your name] Comments on Strategies for Future Examination and Supervision utilizing Digital Technology'' in the email subject line. Acceptable formats: HTML, ASCII, Word, RTF, or PDF.
- *Mail:* Heather Phelps, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

The NCUA will post all comments received by August 31, 2020 on *ncua.gov* without alteration or redaction. Commenters should not include information they do not wish to be made public (for example, personal or confidential business information). Marketing materials and spam will be discarded without publication.

FOR FURTHER INFORMATION CONTACT: Heather Phelps, Program Analysis Officer for Virtual Examination Studies, Office of Examination and Insurance, at 1775 Duke Street, Alexandria, VA 22314 or (703) 380–2756. Media inquiries should be directed to the NCUA Office of External Affairs Communication at *OEACmail@ncua.gov.*

SUPPLEMENTARY INFORMATION:

Background

Examiners from the NCUA and the states have historically conducted annual (or 18-month) onsite examinations of federally insured credit unions, scheduling onsite supervision contacts throughout the year as warranted. During an onsite visit, agency examiners gather information, conduct analysis, review documents and controls, hold meetings, develop recommendations, and deliver a final report to a credit union's board of directors.

During an examination, credit unions provide data from multiple sources and in multiple formats. Collectively, this data provides examiners with essential information used to evaluate risks in federally insured credit unions, and are integral to risk supervision. Likewise, risk supervision is central to safeguarding the National Credit Union Share Insurance Fund. Before 1995, the NCUA collected data from credit unions in written format. In 1995, the agency initiated its first electronic data collection program, and encouraged federally insured credit unions to provide member data to examiners electronically. (See NCUA Letter to Credit Unions 95–CU–179, AIRES Examination Program, issued September 1995.) Over time, as examinations and technology progressed, credit unions began providing examiners additional information electronically.

In May 2016, the NCUA Board established the Exam Flexibility Initiative internal working group to evaluate the agency's examination and supervision program. This working group sought input from credit unions and others to obtain opinions and advice regarding the existing examination and supervision program. In late 2016, this working group provided the NCUA Board with ten recommendations to consider. One of these recommendations encouraged the agency to evaluate alternative approaches to our current examination program by seeking ways to reduce our onsite presence.

Consistent with the NCUA Board promoting modernizing the examination program and reducing our onsite presence, the Flexible Examination Program, commonly referred to as FLEX, was piloted in 2017 to assess examiners' ability to work remotely on elements of examinations of well-run credit unions that have appropriate technology and platforms to securely provide electronic data. On average, examiners were able to reduce their time onsite by 30 percent. One of the issues noted during the FLEX pilot was the need for a secure file transfer portal to support the transmission of data remotely and securely. The agency deployed a secure file transfer portal in July 2018. However, most of the review of credit union information and data is still conducted onsite.

In November 2017, the NCUA Board approved funding for virtual examination exploration and research and, in 2018, the Virtual Examination Program was established. The Virtual Examination Program is part of a series of interrelated programs to transform the agency's operations to meet core mission objectives. Currently, the Program is in the research and discovery phase. During this phase, the team is researching ways the agency can harness new and emerging data, assess advancements in analytical techniques, and utilize innovative technologies. Additionally, the team is identifying ways to improve its supervisory approach and to move to a more virtual-based examination model in the next five to ten years.

In response to the recent COVID–19 Pandemic, the agency moved to an offsite posture in March 2020. During this time, for credit unions that were able, examiners worked with credit union staff to facilitate the secure exchange of information needed to conduct offsite examination and supervision functions. Examiners were able to successfully perform many elements of the examination program that would otherwise have been performed onsite at the credit union.

In support of the ongoing examination modernization initiatives, the NCUA anticipates adopting an examination model that enables examiners to review a credit union's operational and financial condition from an alternate worksite, such as a home office. In addition to reviewing data offsite, the agency is looking for innovative methods to augment the agency's evaluation of a credit union's financial and operational condition.

Context

The credit union industry is dynamic, with federally insured credit unions growing larger and more complex each year. The NCUA must ensure its examination approach evolves with industry practices and technological advances to:

- Evaluate all material risk exposures and compliance matters fully;
- Leverage new data and analytical techniques to achieve desired supervisory outcomes efficiently and effectively;
- Optimize the benefits of utilizing technology for examinations without increasing the risk to the safety and soundness of the credit union system; and
- Minimize the burden on supervised institutions.

Increasing complexity, a desire for more effective supervision, and evolving technologies necessitate a review of the agency's current examination process. Table One illustrates the evolution of the federally insured credit unions over the last 15 years. While the number of institutions has declined, credit unions overall continue to grow in assets, loans, shares, membership, and complexity.

TABLE ONE—15-YEAR FEDERALLY INSURED CREDIT UNION TRENDS

	12/31/2005	12/31/2019	% Change
# Federally Insured Credit Unions	8,695	5,236	(39.78%).
Total Assets	$678.98B	$1,566.91B	130.77%.
Total Loans	$458.56B	$1,107.99B	141.62%.
Real Estate Loans [1]	$218.42B	$557.98B	155.46%.
% CU involved in RE	68.8%	76.1%	10.56%.
Auto Loans	$170.56 B	$375.11 B	119.93%.
% CU involved in Auto	96.2%	97.2%	1.08%.
Indirect Loans	$64.82B	$228.13B	251.94%.
% CUs involved in IL	19.9%	35.8%	80.28%.
Commercial/MBL	$16.31B	$81.85B	401.84%.
% CU involved in MBL	21.5%	34.9%	62.59%.
Credit Cards	$23.91 B	$66.03 B	176.16%.
% CU involved in CC	50.6%	62.5%	23.51%.
Participation Loans	$7.49B	$41.15B	449.40%.

TABLE ONE—15-YEAR FEDERALLY INSURED CREDIT UNION TRENDS—Continued

	12/31/2005	12/31/2019	% Change
% CU involved in PL	13.7%	36.3%	166.09%.
Student Loans [2]	Not collected	$5.47B	Not available.
% CU involved in SL	Not available	13.2%	Not available.
Total Shares	$577.42B	$1,319.75B	138.02%.
Average Assets	$78.06M	$299.22M	283.32%.
Median Assets	$11.95M	$35.19M	194.48%.
# Loans	42.47M	70.71M	66.49%.
# Shares Accounts	149.22M	223.0M	55.48%.
# Members	84.5M	120.39M	42.47%.

[1] Total real estate loans includes commercial/member business loans secured by real estate.

[2] Non-federally guaranteed student loans as reported on the 5300 Call Report. The NCUA began collecting this information with the March 31, 2011 Call Report. Credit unions reported a total of $1.02B non-federally guaranteed student loans as of March 31, 2011. Since then, these loans have increased 536%.

Today, examiners request documentation and data electronically. Documents requested typically include policies, board minutes, budgets, business plans, audits, accounting records, and various reports. Data requests typically relate to loans, shares, and investment portfolios. The level of information requested has increased due to the increased range of products and services most credit unions provide.

The agency recognizes that advances in technology may enable new practices or approaches that would achieve the objectives more efficiently or effectively and reduce the supervision burden for credit unions. Technological advances and modern approaches to examinations, including offsite examination procedures, may enhance the examination experience for both credit unions and examiners, while supporting the NCUA's mission of ensuring the safety and soundness of the credit union community.

We also anticipate that moving offsite could save credit union resources—such as staff time, money spent on manually preparing examination materials, among others. Given the history of credit unions, we anticipate that the savings to the credit union would be passed on to members in the form of dividends, improved services or that credit unions will use these resources to expand their reach to new members. We would hope many of these new members would be those who are currently not in the mainstream financial system.

Through existing modernization efforts, the NCUA has improved the loan and deposit portfolio analysis tools examiners use to support a more consistent analysis of risk within and across institutions in order to mitigate losses to the National Credit Union Share Insurance Fund. The NCUA is also replacing legacy systems and developing a central user interface to help credit unions and examiners communicate and share documents. The agency hopes to use its new systems to aid the examination process by using vendors for analytics and reporting. This will also provide the groundwork for exploration of future examination and supervision using technology.

Request for Comment

The questions identified below are intended to prompt suggestions to inform the agency's development of an examination program that benefits all parties. The questions are not intended to limit discussion; responders may explore any issue relevant to this examination initiative. Commenters are also invited to report any concerns, issues, or comments they have regarding the program.

Responses that contain references to studies, research, or data not widely available to the public should include copies of referenced materials. When responding, please provide a description of the commenter's organization and its interest in this concept to help the NCUA use the feedback for the future examination model.

Questions for Future Examination and Supervision Utilizing Digital Technology

1. What capabilities can federally insured credit unions adopt to facilitate the NCUA's transition toward more offsite exam work?

2. What capabilities do you recommend the NCUA adopt to be able to conduct more examination work offsite?

3. How would such offsite capabilities increase the efficiency and effectiveness of the exam and supervision process from the credit union perspective?

4. Do you think the NCUA can do significantly more offsite work without compromising its safety and soundness responsibilities?

5. What credit union data can be provided to examiners to facilitate more offsite supervision and reduce time onsite during the examination?

6. What credit union data is currently provided to other parties that NCUA could potentially leverage to reduce the burden on credit unions? To ease the administrative burden, should the NCUA ask third party service providers for data on credit unions directly?

7. Are credit unions moving from a physical presence in member services to more reliance on digital or mobile banking platforms? How should the examination program evolve to accommodate these changes?

8. What other methodologies or approaches should NCUA include in this exam study?

9. Would credit unions benefit from more clarity and consistency on the timing and types of documents and data examiners need to conduct examinations?

10. Would it be easier or less burdensome for credit unions to provide documents and data to the NCUA on a more scheduled, flow basis throughout the year so the time spent onsite would be more efficient and the majority of the examination/supervision could primarily be conducted offsite? If this process could lead to more frequent/offsite contacts using technology and reduce the time and frequency of full-scope onsite examinations, do you think this would be an improvement and/or less burdensome than the current examination process or cause more disruption?

11. What do you see as the most significant challenges facing the NCUA's move to an offsite examination/supervision model that utilizes technology?

12. What difficulties do you foresee with moving to a future examination model for federal and state charted credit unions? How could we better coordinate with the states in this approach?

13. What concerns do you have, if any, about a diminished NCUA onsite presence, and can these be mitigated?

14. What impact, positive or negative, do you anticipate this future examination program strategy will have on your credit union and its operation?

15. Will moving offsite create any noticeable change in credit unions' ability to provide services to members, particularly during major disruptions, like pandemics?

16. Are there resiliency tests that can be performed by examiners offsite that could not be performed when examiners are onsite? If so, please detail them.

17. If rebuilding the examination process from scratch, how might you redesign what is currently done today in order to reduce the burden on credit unions and/or minimize time that examiners need to be onsite at credit unions?

18. What new or emerging technologies could enable the NCUA to examine a credit union with less time onsite?

19. Are video and telecommunications capabilities sufficient to maintain good lines of communication between examiners and credit union management and officials with reduced in-person meeting opportunities? What other methods of communication or communication protocols would support quality communications between the credit union and examination staff?

20. What types of artificial intelligence and/or machine learning techniques are you currently using or anticipate using?

21. Does the NCUA have regulations/policies that are sufficiently flexible to allow you to leverage various technological advances such as artificial intelligence, machine learning, process robotics, Fintech, Regtech, and Suptech etc.?

22. Do the current regulations/policies create unnecessary hurdles or burdens with respect to adopting technology? Are there ways we can update our regulations/policies to help facilitate a greater use of technology?

23. Do you feel comfortable using the NCUA's secure file transfer portal as a means to transfer data electronically, including personally identifiable information and confidential credit union data, to NCUA staff? If not, please provide details regarding your concerns and recommendations on ways the NCUA could mitigate these concerns.

24. What issues are unique to smaller institutions regarding the use and implementation of innovative products, services, or processes that the NCUA should consider? Additionally, by moving to an offsite exam posture, will this negatively affect small credit unions that may not have the technology required to transmit requested documentation? Are you exploring any types of services, products or technologies to offer to your members in the future?

25. With respect to the future examination model, should the NCUA consider alternative exam approaches for smaller credit unions?

26. Are there better ways for the NCUA to support your financial inclusion and financial education mission through the use of technology? Additionally, are there better ways for the NCUA to use technology to help low-income designated credit unions and minority depository institutions to better serve their members?

27. Do you feel there are circumstances that would disqualify or preclude a credit union from participating in this examination model where the majority of work is completed offsite?

28. What documentation and measures should be collected and used to assess a credit union's financial education efforts or programs?

29. Are there better ways for the NCUA to receive important contextual information regarding how you serve the low-income, underserved, and unbanked communities in your field of membership?

30. What baseline data protection and privacy safeguards would enable credit unions to comply with consumer protection statutes and federal/state law when sharing data for remote examinations?

31. How could an offsite posture affect the oversight of consumer financial protection and BSA/anti-money laundering laws and regulations at your credit union? What changes should the NCUA make to address your concerns?

32. All technology is coupled with internal and external security risks. As credit unions remain diligent in addressing these risks, what can the NCUA do to support credit unions' security posture?

33. What cybersecurity challenges do you see with the NCUA moving to this future examination model?

34. Are there digital banking activities or issues that are not covered by this RFI that the NCUA should address?

35. In response to the pandemic, the NCUA moved to an offsite posture. Did you participate in an exam during this time?

a. From your perspective, what has worked well?

b. What exam steps could continue to be completed offsite after we return to an onsite posture?

c. Were there parts of the exam, during the offsite posture that did not work well?

36. Are there issues the NCUA should consider in light of changes in the banking system that have occurred in response to the COVID–19 pandemic?

Commenters are also encouraged to discuss any other relevant issues they believe the NCUA should consider with respect to this examination study.

By the National Credit Union Administration Board on June 25, 2020.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2020–14129 Filed 6–30–20; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice; request for comments.

SUMMARY: The National Endowment for the Humanities (NEH) is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, NEH is requesting comments from all interested individuals and organizations on this proposed collection.

DATES: Please submit comments by July 31, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Carrigan, Chief Funding Opportunity Officer, Office of Grant Management, National Endowment for the Humanities: 400 Seventh Street SW, Washington, DC 20506, or *tcarrigan@neh.gov;* or 202–606–8377.

SUPPLEMENTARY INFORMATION: NEH first published notice of its intent to seek OMB approval for this information

collection in the **Federal Register** of April 13, 2020 (85 FR 20531) and allowed 60 days for public comment. The agency received one public comment, dated April 13, 2020, which expressed general concern about high taxes and doubt about the benefit of this information collection to the taxpayer. NEH acknowledged the comment but determined that it did not call for any change to the planned information collection since the opinion expressed was of a general nature and did not pertain to any specific aspects of the information collection. The purpose of this notice is to allow an additional 30 days for public comment.

Overview of This Information Collection

Type of Review: Revision of an existing information collection.

Title of Information Collection: General Clearance Authority to Develop Grantee Survey Instruments for the National Endowment for the Humanities.

Abstract: The National Endowment for the Humanities is seeking to revise its general clearance authority to develop survey instruments for recipients of its grant programs. The NEH regularly monitors its grants, relying primarily on data obtained in performance reports. In many instances, outcomes are not readily observable during the one- to three-year period of performance. The clearance to collect data from grant recipients beyond the period of performance is essential to the NEH's ability to assess it programs systemically and to measure progress in achieving the goals articulated in the agency's strategic plan.

The proposed revision adjusts the overall burden estimate from 580 to 615 hours, to reflect the anticipated change in the number of respondents from 1,160 to 1,230. The estimated time per response remains unchanged.

OMB Number: 3136–0139.

Affected Public: NEH grant recipients.

Frequency of Collection: On occasion.

Total Respondents: 1,230.

Total Responses: 1,230.

Estimated Time per Response: 30 minutes.

Estimated Total Burden Hours: 615 hours.

Request for Comments

The public is invited to comment on all aspects of this ICR, including: (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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Dated: June 25, 2020.

Caitlin Cater,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2020–14096 Filed 6–30–20; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2020–0136]

Holtec Decommissioning International, LLC; Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an amendment to Renewed Facility Operating License No. DPR–35, issued to Holtec Decommissioning International, LLC for the decommissioning of the Pilgrim Nuclear Power Station (Pilgrim). The amendment would amend the Pilgrim Physical Security Plan and amend License Condition 3.G, ''Physical Protection.'' The proposed revised Physical Security Plan would integrate the existing Physical Security Plan's Appendix D. Holtec Decommissioning International, LLC indicated that this proposed appendix provides the security requirements for the new Independent Spent Fuel Storage Installation that is currently being built in the Owner Controlled Area outside of the existing Pilgrim Protected Area. According to Holtec Decommissioning International, LLC, the Security Training and Qualification Plan and the Safeguards Contingency Plan are included in the proposed revised Physical Security Plan but remain unchanged from the existing Physical Security Plan. The NRC proposes to determine that the amendment involves no significant hazards consideration. Because the amendment request contains safeguards information (SGI), an order imposes procedures to obtain access to SGI for contention preparation.

DATES: Comments must be filed by July 31, 2020. A request for a hearing must be filed by August 31, 2020. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SGI is necessary to respond to this notice must request document access by July 13, 2020.

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

- Federal Rulemaking Website: Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0136. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Amy M. Snyder, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6822; email: *Amy.Snyder@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0136 when contacting the NRC about the availability of information for this

action. You may obtain publicly-available information related to this action by any of the following methods:

• Federal Rulemaking Website: Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0136.

• NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ''Pilgrim Nuclear Power Station, Physical Security Plan Revision and License Amendment Request to Incorporate Additional Independent Spent Fuel Storage Installation,'' the ''Pilgrim Nuclear Power Station, Supplemental Information to Support [Physical Security Plan] Revision and [License Amendment Request],'' and the ''Pilgrim Nuclear Power Station, Response to NRC Request for Clarifying Information'' are available in ADAMS under Accession Nos. ML20141L057 (Package), ML20171A520, and ML20122A055, respectively.

B. Submitting Comments

Please include Docket ID NRC–2020–0136 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This document includes a notice of an amendment containing SGI.

III. Notice of Consideration of Issuance of Amendment to Renewed Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for the amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov*, or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern

Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

The amendment would amend the Pilgrim Physical Security Plan and amend License Condition 3.G, ''Physical Protection.'' The proposed revised Physical Security Plan would integrate the existing Physical Security Plan's Appendix D. Holtec Decommissioning International, LLC indicated that this proposed appendix provides the security requirements for the new Independent Spent Fuel Storage Installation that is currently being built in the Owner Controlled Area outside of the existing Pilgrim Protected Area. According to Holtec Decommissioning International, LLC, the Security Training and Qualification Plan and the Safeguards Contingency Plan are included in the proposed revised Physical Security Plan but remain unchanged from the existing Physical Security Plan. This amendment request contains SGI.

Order Imposing Procedures for Access to Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SGI. Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SGI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of ''need to know'' as stated in 10 CFR 73.2, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' for each individual who

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the requestor's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the Electronic Questionnaires for Investigations Processing website, a secure website that is owned and operated by the Defense Counterintelligence and Security Agency (DCSA). To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–415–3710.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d). Copies of Form FD–258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, subpart C, 10 CFR 73.22(b)(1), and Section 149 of the Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check.

(d) A check or money order payable in the amount of $340.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual(s) who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(3)(b), (c), and (d) of this Order must be sent to the following address: U.S. Nuclear Regulatory Commission, Office of Administration, ATTN: Personnel Security Branch, Mail Stop: TWFN–07D04M, 11555 Rockville Pike, Rockville, MD 20852.

These documents and materials should *not* be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraph C.(3) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need to know the SGI requested.

F. If the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[5] by each individual who will be granted access to SGI.

G. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

H. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SGI must be filed by the requestor no later than 25 days after receipt (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SGI contentions by that later deadline.

I. Review of Denials of Access.

(1) If the request for access to SGI is denied by the NRC staff either after a determination on standing and need to know, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) for access to SGI, the Office of Administration, in accordance with 10 CFR 2.336(f)(1)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient(s) have an opportunity to correct or explain the record.

(3) The requestor may challenge the NRC staff's adverse determination with respect to standing or need to know by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the Office of Administration's adverse determination with respect to trustworthiness and reliability for access

[3] The requestor will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the DCSA's adjustable billing rates.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

to SGI by filing a request for review in accordance with 10 CFR 2.336(f)(1)(iv).

(5) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

J. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

K. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

Dated: June 25, 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Safeguards Information (SGI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and including the application fee for the fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need to know. If NRC staff makes the finding of need to know and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need to know'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need to know,'' the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
190	(Receipt +180) If NRC staff finds standing, need to know, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes a final adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination under 10 CFR 2.336(f)(1)(iv).
A	If access granted: Issuance of a decision by a presiding officer or other designated officer on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2020–14134 Filed 6–30–20; 8:45 am]

BILLING CODE 7590–01–P

[6] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SGI request submitted to the NRC staff under these procedures.

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0056]

Information Collection: Grants and Cooperative Agreement Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''Grants and Cooperative Agreement Provisions.''

DATES: Submit comments by August 31, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- Federal Rulemaking website: Go to *http://www.regulations.gov* and search for Docket ID NRC–2020–0056. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0056 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- Federal Rulemaking Web site: Go to *https://www.regulations.gov/* and search for docket ID NRC–2020–0056. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2020–0056 on this website.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement is available in ADAMS under Accession ML20114E165.
- NRC's Clearance Officer: A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2020–0056 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov/* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* Grant and Cooperative Agreement Provisions.

2. *OMB approval number:* 3105–0107.

3. *Type of submission:* Extension.

4. *The form number:* Not applicable.

5. *How often the collection is required or requested:* Technical Performance reports are required every six months; other information is submitted on occasion as needed.

6. *Who will be required or asked to respond:* Grants and Cooperative Agreement recipients.

7. *The estimated number of annual responses:* 542 (366 responses plus 176 record keepers).

8. *The estimated number of annual respondents:* 176.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 4,127 (3851 reporting hours plus 276 record keeping hours).

10. *Abstract:* The Acquisition Management Division is responsible for the awarding grants and cooperative agreement provisions in order to administer the NRC's financial assistance program. The information collected under the provisions ensures that the Government's rights are protected, the agency adheres to public laws, the work proceeds on schedule, and that disputes between the Government and recipient are settled.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: June 26, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–14174 Filed 6–30–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0110]

Acceptability of Probabilistic Risk Assessment Results for Risk-Informed Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1362, ''Acceptability of Probabilistic Risk Assessment Results for Risk-Informed Activities.'' This proposed guide, which is Revision 3 to Regulatory Guide (RG) 1.200, describes one acceptable approach for determining whether a base probabilistic risk assessment (PRA), in total or the portions that are used to support an application, is acceptable to provide confidence in the results, such that the PRA can be used in regulatory decision-making for light-water reactors. When used in support of an application, the use of this RG will obviate the need for an in-depth review of the base PRA by NRC reviewers, allowing them to focus their review on key assumptions and areas identified by peer reviewers.

DATES: Submit comments by July 31, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

This public review and comment period is 30 days. The staff has discussed the content of this draft RG in several public meetings and the staff has addressed multiple comments from the public and industry representatives.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2012–0110. Address questions about NRC dockets in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Anders Gilbertson, telephone: 301–415–1541, email: *Anders.Gilbertson@nrc.gov,* and Harriet Karagiannis, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2012–0110 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action, by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2012–0110.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

B. Submitting Comments

Please include Docket ID NRC–2012–0110 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, titled, ''Acceptability of Probabilistic Risk Assessment Results for Risk-Informed Activities,'' is proposed Revision 3 of RG 1.200 and is temporarily identified by its task number, DG–1362 (ADAMS Accession No. ML19308B636).

DG–1362 describes one acceptable approach for determining whether the acceptability of the base probabilistic risk assessment (PRA), in total or the portions that are used to support an application, is sufficient to provide confidence in the results, such that the PRA can be used in regulatory decision-making for light-water reactors (LWRs). Also, it addresses new industry guidance and enhancements identified since the last revision was issued in March 2009. Specifically, this revision endorses, with staff clarifications and exceptions, the American Society of Mechanical Engineers (ASME) and American Nuclear Society (ANS) Standard ASME/ANS RA-Sa-2009, ''Standard for Level 1/Large Early Release Frequency Probabilistic Risk Assessment for Nuclear Power Plant Applications,'' the ASME/ANS standard ASME/ANS RA–S Case 1 for seismic PRA, ''Case for ASME/ANS RA-Sb-2013 Standard for Level 1/Large Early Release Frequency Probabilistic Risk Assessment of Nuclear Power Plant Applications,'' Nuclear Energy Institute (NEI) 17–07, Revision 2, ''Performance of PRA Peer Reviews Using the ASME/ANS PRA Standard'' (ADAMS Accession No. ML19241A615) and Pressurized-Reactor Owners Group (PWROG) report PWROG–19027–NP, Revision 1, ''Newly Developed Method Requirements and Peer Review'' (ADAMS Accession No. ML20010F274). This revision further provides for a peer review of newly developed methods, clarifies the process for determining how to classify changes to a PRA,

provides definitions related to newly developed methods and other PRA terms, and enhances guidance related to key assumptions and sources of uncertainty.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML20052C809). The staff develops a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

This DG, if finalized, would provide one acceptable approach for determining whether the acceptability of the base PRA, in total or the portions that are used to support an application, is sufficient to provide confidence in the results, such that the PRA can be used in regulatory decision-making for LWRs. Issuance of this DG, if finalized, would not constitute backfitting as defined in section 50.109 of title 10 of *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087); affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants''; or constitute forward fitting as defined in Management Directive 8.4, because, as explained in this DG, licensees are not required to comply with the positions set forth in this DG.

IV. Specific Requests for Comments

In addition to the general request for comments on DG–1362, the NRC is also seeking specific comments that address the following questions:

1. Prolonged retention of peer review exceptions and deficiencies, which are more commonly referred to as Facts and Observations (F&Os), has the potential to reduce confidence in the implementation of risk-informed programs and increase licensing and potential inspection review resources. As part of a licensee's base PRA model configuration control process, should licensees periodically close all F&Os using one of the two relevant processes (*i.e.,* a focused-scope peer review or an independent assessment team closure review) in NEI 17–07, Revision 2?

2. What should be the periodicity for completion of these closure processes?

Dated: June 26, 2020.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2020–14197 Filed 6–30–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

International Product Change—International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service With Reseller Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–172 and CP2020–195.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–14147 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–163 and CP2020–186.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–14133 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller contract to the list of Negotiated Service

Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–160 and CP2020–183.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–14148 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–165 and CP2020–188.

Brittany M. Johnson,

Attorney, Federal Register.

[FR Doc. 2020–14151 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 6 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–173 and CP2020–197.

Brittany M. Johnson,

Attorney, Federal Register.

[FR Doc. 2020–14154 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service With Reseller Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 3 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–176 and CP2020–200.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–14149 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail*

International & First-Class Package International Service with Reseller Contract 5 to Competitive Product List. Documents are available at *www.prc.gov,* Docket Nos. MC2020–174 and CP2020–198.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–14150 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 8 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–171 and CP2020–194.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–14146 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 15, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 6 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–167 and CP2020–190.

Brittany M. Johnson,

Attorney, Federal Compliance.

[FR Doc. 2020–14145 Filed 6–30–20; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

The Railroad Retirement Board (RRB) is directed by 45 U.S.C. 231f(c)(2) to establish a financial interchange (FI) between the railroad retirement and social security systems to place the Social Security Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds and the Centers for Medicare and Medicaid Services (CMS) Hospital Insurance (HI) Trust Fund in the same condition they would have been had railroad employment been covered by the Social Security Act and Federal Insurance Contributions Act (FICA). Each year, the RRB estimates the benefits and expenses that would have been paid by these trust funds, as well as the payroll taxes and income taxes that would have been received by them. To make these estimates, the RRB requires information on all earnings data that are not taxable under the Railroad Retirement Tax Act (RRTA), but would be taxable under FICA.

A recent court ruling, *Wisconsin Central Ltd.* v. *U.S.,* determined that non-qualified stock options (NQSOs) are not taxable under Section 3231 of RRTA but would be taxable under FICA. Additionally, in *Union Pacific Railroad Co.* v. *U.S.,* the Eight Circuit Court of Appeals determined whether certain ratification payments were taxable under the RRTA. The RRB requires railroad employer to provide information on the value of NQSOs and any ratification payments from the railroad employer separately from a railroad worker's reported RRTA compensation to determine the payroll taxes due to the Social Security Administration (SSA) and CMS and administer transfer of funds between the RRB, SSA and CMS accordingly.

The payroll information collected from the BA–15 is essential for the calculation of payroll taxes and benefits used by the FI. Failure to collect NQSOs and ratification payment information will result in understating the payroll taxes that should have been collected and the benefit amounts that would have been payable under the Social Security Act for FI purposes. Accurate

compensation file tabulations are also an integral part of the data needed to estimate future tax revenues and corresponding FI amounts. Without information on NQSOs and ratification payments, the amount of funds to be transferred between the RRB, SSA and CMS cannot be determined.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (81 FR 14510 on March 12, 2020) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)—NEW

Title: Report of Stock Options and Other Payments.

OMB Control Number: 3220–NEW.

Form(s) submitted: BA–15.

Type of request: New Collection (Request for a new OMB Control Number).

Affected public: Private Sector; Businesses or other for-profits.

Abstract: Section 7(b)(6) of the Railroad Retirement Act (45 U.S.C. 231f(c)(2)) requires a financial interchange between the SSA, CMS, and the RRB trust funds. The collection obtains non-qualified stock options and ratification payments for railroad employees. The information is used to calculate the correct payroll taxes and benefits that would have been paid to place the OASIDI and CMS trust funds in the same condition they would have been had railroad employment been covered by the SS and FIC acts.

Changes proposed: The RRB proposes no changes to Form BA–15, as it is a new form.

The burden estimate for the ICR is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
BA–15 (by secure Email, FTP, or CD–ROM)—Positive	50	300	250
BA–15 (by secure Email, FTP, or CD–ROM)—Negative	550	15	137.5
Total	600		387.5

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or *Brian.Foster@rrb.gov.*

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.

Brian Foster,

Clearance Officer.

[FR Doc. 2020–14109 Filed 6–30–20; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89158; File No. SR–ISE–2020–24]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 3 To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options

June 25, 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 23, 2020, Nasdaq ISE, LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the ''OLPP'').

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend Options 3, Section 3 (Minimum Trading Increments) to align the rule

with the recently approved amendment to the OLPP.

Background

On January 23, 2007, the Commission approved on a limited basis a Penny Pilot in option classes in certain issues (''Penny Pilot''). The Penny Pilot was designed to determine whether investors would benefit from options being quoted in penny increments, and in which classes the benefits were most significant. The Penny Pilot was expanded and extended numerous times over the last 13 years.[5] In each instance, these approvals relied upon the consideration of data periodically provided by the Exchanges that analyzed how quoting options in penny increments affects spreads, liquidity, quote traffic, and volume. Today, the Penny Pilot includes 363 option classes, which are among the most actively traded, multiply listed option classes. The Penny Pilot is scheduled to expire by its own terms on June 30, 2020.[6]

In light of the imminent expiration of the Penny Pilot on June 30, 2020, the Exchange, together with other participating exchanges, filed, on July 18, 2019 a proposal to amend the OLPP.[7] On April 1, 2020 the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the ''OLPP Program'').[8]

The OLPP Program replaces the Penny Pilot by instituting a permanent program that would permit quoting in penny increments for certain option classes. Under the terms of the OLPP Program, designated option classes would continue to be quoted in $0.01 and $0.05 increments according to the same parameters for the Penny Pilot. In addition, the OLPP Program would: (i) Establish an annual review process to add option classes to, or to remove option classes from, the OLPP Program; (ii) to allow an option class to be added to the OLPP Program if it is a newly listed option class and it meets certain criteria; (iii) to allow an option class to be added to the OLPP Program if it is an option class that has seen a significant growth in activity; (iv) to provide that if a corporate action involves one or more option classes in the OLPP Program, all adjusted and unadjusted series and classes emerging as a result of the corporate action will be included in the OLPP Program; and (v) to provide that any series in an option class participating in the OLPP Program that have been delisted, or are identified by OCC as ineligible for opening Customer transactions, will continue to trade pursuant to the OLPP Program until they expire.

To conform its Rules to the OLPP Program, the Exchange proposes to delete the current rule text in Supplementary Material.01 to Options 3, Section 3 (the ''Penny Pilot Rule''), and replace it with the requirements for the proposed Penny Interval Program from the OLPP Program, which is described below, and to replace references to the ''Penny Pilot'' in several Exchange rules with ''Penny Interval Program.''

The Exchange also proposes to amend Options 3, Section 3 to adopt new subparagraphs (a)(3)(A)–(C) to conform the Exchange's rules regarding the minimum price variations for options in the proposed Penny Interval Program with similar rules of other options exchanges.[9] Specifically, the Exchange proposes to provide in new subparagraphs (a)(3)(A)–(C) that for options series traded pursuant to the proposed Penny Interval Program as described in Supplementary Material .01 to Options 3, Section 3, the following minimum quoting increments will apply: (A) One cent ($0.01) for all options contracts in QQQ, SPY, and IWM; (B) one cent ($0.01) for all other options contracts included in the Penny Interval Program that are trading at less than $3.00; and (C) five cents ($0.05) for all other options contracts included in the Penny Interval Program that are trading at or above $3.00. The Exchange notes that the Commission previously approved minimum quoting increments of one cent ($0.01) for all options contracts in QQQ, IWM, and SPY, regardless of price, over the course of the expansion of the Penny Pilot rules.[10] Accordingly, the Exchange proposes to align its rules regarding minimum price variations for options contracts in the Penny Interval Program with other options exchanges.

The Exchange also proposes to delete obsolete and superfluous language in Options 3, Section 3(a) regarding amendments to the minimum increments that may be established by the Board and designated as a stated policy, practice or interpretation within the meaning of the Act, and the process for such amendments by rule filing.[11] Today, the Exchange may determine to establish a change to the minimum increments within its Rules and must submit proposed rule changes for such amendments to the Commission.[12] Accordingly, Options 3, Section 3(a), as amended, will simply provide that the following minimum quoting increments (as enumerated within Options 3, Section 3(a)) shall apply to options contracts traded on the Exchange.

Penny Interval Program

The Exchange proposes to codify the OLPP Program in Supplementary Material .01 to Options 3, Section (Requirements for Penny Interval Program) (the ''Penny Program''), which will replace the Penny Pilot Rule and permanently permit the Exchange to quote certain option classes in minimum increments of one cents ($0.01) and five cents ($0.05) (''penny increments''), as set forth in proposed subparagraphs (a)(3)(A)–(C) of Options 3, Section 3. The penny increments that currently apply under the Penny Pilot[13] will continue to apply for options classes included in the Penny Program.[14]

The Penny Program would initially apply to the 363 most actively traded multiply listed option classes, based on National Cleared Volume at The Options Clearing Corporation (''OCC'') in the six full calendar months ending in the month of approval (*i.e.,* November 2019–April 2020) that currently quote in penny increments, or

[5] The Penny Pilot was established on the Exchange in January 2007 and was last extended in December 2019. *See* Securities Exchange Act Release Nos. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); and 87752 (December 16, 2019), 84 FR 70230 (December 20, 2019) (SR–ISE–2019–33).

[6] *See* Securities Exchange Act Release No. 87752 (December 16, 2019), 84 FR 70230 (December 20, 2019) (SR–ISE–2019–33).

[7] *See* Securities Exchange Act Release No. 87681 (December 9, 2019), 84 FR 68960 (December 17, 2019) (''Notice'').

[8] *See* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4–443) (''Approval Order'').

[9] *See e.g.,* NYSE Arca Rule 6.72–O; and Nasdaq Options Market Supplementary Material .01 to Options 3, Section 3.

[10] *See* Securities Exchange Act Release Nos. 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73) (Order Granting Approval to Proposed rule Change as Modified by Amendment No. 1 Thereto, To Create an Options Penny Pilot Program); 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44) (Order Granting Partial Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, Expanding the Penny Pilot Program).

[11] *See* Options 3, Section 3(a), which specifically provides: ''The Board may establish minimum trading increments for options traded on the Exchange. Such changes by the Board will be designated as a stated policy, practice, or interpretation with respect to the administration of this Options 3, Section 3 within the meaning of subparagraph (3)(A) of Section 19(b) of the Exchange Act and will be filed with the SEC as a rule change for effectiveness upon filing.''

[12] Decisions to change the minimum increments relate to Exchange trading and operations, and thus are made by Exchange management via delegated authority from the Board, rather than the Board itself, which is generally not involved in determinations related to day-to-day operations of the Exchange.

[13] *See supra* notes 9 and 10, with accompanying text.

[14] *See* proposed subparagraphs (a)(3)(A)–(C) of Options 3, Section 3.

overlie securities priced below $200, or any index at an index level below $200. Eligibility for inclusion in the Penny Program will be determined at the close of trading on the monthly Expiration Friday of the second full month following April 1, 2020 (*i.e.,* June 19, 2020).

Once in the Penny Program, an option class will remain included until it is no longer among the 425 most actively traded option classes at the time the annual review is conducted (described below), at which point it will be removed from the Penny Program. As described in more detail below, the removed class will be replaced by the next most actively traded multiply listed option class overlying securities priced below $200 per share, or any index at an index level below $200, and not yet in the Penny Program. Advanced notice regarding the option classes included, added, or removed from the Penny Program will be provided to the Exchange's membership via Options Trader Alert and published by the Exchange on its website.

Annual Review

The Penny Program would include an annual review process that applies objective criteria to determine option classes to be added to, or removed from, the Penny Program. Specifically, on an annual basis beginning in December 2020 and occurring every December thereafter, the Exchange will review and rank all multiply listed option classes based on National Cleared Volume at OCC for the six full calendar months from June 1st through November 30th for determination of the most actively traded option classes. Any option classes not yet in the Penny Program may be added to the Penny Program if the class is among the 300 most actively traded multiply listed option classes and priced below $200 per share or any index at an index level below $200.

Following the annual review, option classes to be added to the Penny Program would begin quoting in penny increments (*i.e.,* $0.01 if trading at less than $3; and $0.05 if trading at $3 and above) on the first trading day of January. In addition, following the annual review, any option class in the Penny Program that falls outside of the 425 most actively traded option classes would be removed from the Penny Program. After the annual review, option classes that are removed from the Penny Program will be subject to the minimum trading increments set forth in Options 3, Section 3, effective on the first trading day of April.

Changes to the Composition of the Penny Program Outside of the Annual Review

Newly Listed Option Classes and Option Classes With Significant Growth in Activity

The Penny Program would specify a process and parameters for including option classes in the Penny Program outside the annual review process in two circumstances. These provisions are designed to provide objective criteria to add to the Penny Program new option classes in issues with the most demonstrated trading interest from market participants and investors on an expedited basis prior to the annual review, with the benefit that market participants and investors will then be able to trade these new option classes based upon quotes expressed in finer trading increments.

First, the Penny Program provides for certain newly listed option classes to be added to the Penny Program outside of the annual review process, provided that (i) the class is among the 300 most actively traded, multiply listed option classes, as ranked by National Cleared Volume at OCC, in its first full calendar month of trading; and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Such newly listed option classes added to the Penny Program pursuant to this process would remain in the Penny Program for one full calendar year and then would be subject to the annual review process.

Second, the Penny Program would allow an option class to be added to the Penny Program outside of the annual review process if it is an option class that meets certain specific criteria. Specifically, new option classes may be added to the Penny Program if: (i) the option class is among the 75 most actively traded multiply listed option classes, as ranked by National Cleared Volume at OCC, in the prior six full calendar months of trading and (ii) the underlying security is priced below $200 or the underlying index is at an index level below $200. Any option class added under this provision will be added on the first trading day of the second full month after it qualifies and will remain in the Penny Program for the rest of the calendar year, after which it will be subject to the annual review process.

Corporate Actions

The Penny Program would also specify a process to address option classes in the Penny Program that undergo a corporate action and is designed to ensure continuous liquidity in the affected option classes. Specifically, if a corporate action involves one or more option classes in the Penny Program, all adjusted and unadjusted series of an option class would continue to be included in the Penny Program.[15] Furthermore, neither the trading volume threshold, nor the initial price test would apply to option classes added to the Penny Program as a result of the corporate action. Finally, the newly added adjusted and unadjusted series of the option class would remain in the Penny Program for one full calendar year and then would become subject to the annual review process.

Delisted or Ineligible Option Classes

Finally, the Penny Program would provide a mechanism to address option classes that have been delisted or those that are no longer eligible for listing. Specifically, any series in an option class participating in the Penny Program in which the underlying has been delisted, or is identified by OCC as ineligible for opening customer transactions, would continue to quote pursuant to the terms of the Penny Program until all options series have expired.

Technical Changes

The Exchange proposes to replace references to the Penny Pilot with references to the Penny Interval Program in Options 3, Section 8(a)(7) and in Options 3, Section 15(a)(2)(A)(iv). The Exchange believes these technical changes would add clarity, transparency, and internal consistency to the Exchange's rules, making them easier for market participants to navigate.

Implementation

The Exchange proposes to implement the Penny Program on July 1, 2020, which is the first trading day of the third month following the Approval Order issued on April 1, 2020—*i.e.,* July 1, 2020.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative

[15] For example, if Company A acquires Company B and Company A is not in the Penny Program but Company B is in the Penny Program, once the merger is consummated and an options contract adjustment is effective, then Company A would be added to the Penny Program and remain in the Penny Program for one calendar year.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which conforms the Exchange rules to the recently adopted OLPP Program, allows the Exchange to provide market participants with a permanent Penny Program for quoting options in penny increments, which maximizes the benefit of quoting in a finer quoting increment to investors while minimizing the burden that a finer quoting increment places on quote traffic.

Accordingly, the Exchange believes that the proposal is consistent with the Act because, in conforming the Exchange rules to the OLPP Program, the Penny Program would employ processes, based upon objective criteria, that would rebalance the composition of the Penny Program, thereby helping to ensure that the most actively traded option classes are included in the Penny Program, which helps facilitate the maintenance of a fair and orderly market.

The Exchange notes that the proposed changes to Options 3, Section 8(a)(7) and Options 3, Section 15(a)(2)(A)(iv) to replace references to the Penny Pilot with references to the Penny Interval Program would provide clarity and transparency to the Exchange's rules, would promote just and equitable principles of trade, and remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule changes would also provide internal consistency within Exchange rules and operate to protect investors and the investing public by making the Exchange's rules easier to navigate and comprehend.

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 proposed Penny Program, which modifies the Exchange's rules to align them with the Commission approved OLPP Program, is not designed to be a competitive filing nor does it impose an undue burden on intermarket competition as the Exchange anticipates that the options exchanges will adopt substantially identical rules. Moreover, the Exchange believes that by conforming Exchange rules to the OLPP Program, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. To the extent that there is a competitive burden on those option classes that do not qualify for the Penny Program, the Exchange believes that it is appropriate because the proposal should benefit all market participants and investors by maximizing the benefit of a finer quoting increment in those option classes with the most trading interest while minimizing the burden of greater quote traffic in option classes with less trading interest. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by all option exchanges that are participants in the OLPP, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) [19] thereunder. The Exchange has proposed to implement the Penny Program on July 1, 2020 and has asked the Commission to waive the 30-day operative delay for this filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to modify its rules to conform to the OLPP Program and implement the Penny Program on July 1, 2020, consistent with the Commission's approval of the OLPP Amendment. Accordingly, the Commission designates the proposed rule change as operative on July 1, 2020.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–ISE–2020–24 on the subject line

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2020–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website *(http://www.sec.gov/rules/sro.shtml)*.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2020–24 and should be submitted on or before July 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14118 Filed 6–30–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89152; File No. SR–ISE–2020–23]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Sections 13 and 15 To Increase the Position and Exercise Limits for Options on Certain Exchange-Traded Funds

June 25, 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 17, 2020, Nasdaq ISE, LLC (''ISE'' 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Options 9, Section 13, Position Limits, to increase position limits for options on certain exchange-traded funds (''ETFs''), and similarly increase exercise limits within Options 9, Section 15, Exercise Limits.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 9, Section 13, Position Limits, to increase position limits for options on certain exchange-traded funds (''ETFs''), and similarly increase exercise limits within Options 9, Section 15, Exercise Limits. The Exchange proposes to specifically amend Supplementary Material .01 to Options 9, Section 13 and Supplementary Material .01 to Options 9, Section 15. These proposed rule changes are based on the similar proposal by Cboe Exchange, Inc. (''Cboe'').[3] The Exchange also proposes to make a minor non-substantive technical corrections to an ETF name within Supplementary Material .01 to Options 9, Section 13 and Supplementary Material .01 to Options 9, Section 15. Each change will be described below.

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

The Exchange has observed an ongoing increase in demand in options on the SPDR® S&P 500® ETF Trust (''SPY''), iShares® MSCI EAFE ETF (''EFA''), iShares® China Large-Cap ETF (''FXI''), iShares® iBoxx® High Yield Corporate Bond Fund (''HYG''), Financial Select Sector SPDR® Fund (''XLF'') (collectively, with the aforementioned ETFs, the ''Underlying ETFs'') for both trading and hedging purposes. Though the demand for these options on the Underlying ETFs appear to have increased, position limits (and corresponding exercise limits) for these options have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options, resulting in the transfer of volume to over-the-counter (''OTC'') markets. OTC transactions occur through bilateral agreements, the terms of which are not publically disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increases in position limits (and exercise limits) for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange, as well as other options exchange on which they participate. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs and ETF component securities, as well as the highly liquid markets for those securities, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88768 (April 29, 2020) (SR–CBOE–2020–015) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Increase Position Limits for Options on Certain Exchange-Traded Funds and Indexes). The Cboe proposal also proposed to increase position limits for options overlying the MSCI Emerging Markets Index (''MXEF'') and the MSCI EAFE Index (''MXEA''). The Exchange, however, does not list options on the MXEF or MXEA indexes. Accordingly, this proposal is limited to the ETFs described above.

economic purposes compels an increase in position limits (and corresponding exercise limits).

Proposed Position Limits for Options on the Underlying ETFs

Position limits for options on ETFs are determined pursuant to Options 9, Section 13, and vary according to the number of outstanding shares and the trading volumes of the underlying stocks or ETFs over the past six months. Pursuant to Options 9, Section 13, the largest in capitalization and the most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. Options on HYG, and XLF are currently subject to the standard position limit of 250,000 contracts. Options 9, Section 13 sets forth separate position limits for options on specific ETFs, including SPY, FXI and EFA. In addition, the Exchange is making corresponding amendments to exercise limits within Options 9, Section 15.

The Exchange proposes to amend Options 9, Section 13 and Options 9, Section 15, respectively, to double the position and exercise limits for options on each of FXI, EFA, SPY, HYG and XLF. The Exchange also proposes to list position and exercise limits for HYG and XLF within Options 9, Section 13 and Options 9, Section 15, respectively. The table below represents the current, and proposed, position limits for options on the ETFs subject to this proposal:

ETF	Current position limit	Proposed position limit
SPY	1,800,000	3,600,000
EFA	500,000	1,000,000
FXI	500,000	1,000,000
HYG	250,000	500,000
XLF	250,000	500,000

The Exchange notes that the proposed position limits for options on EFA and FXI are consistent with existing position limits for options on the iShares® Russell 2000 ETF (''IWM'') and the iShares® MSCI Emerging Markets ETF (''EEM''), while the proposed limits for options on XLF and HYG are consistent with current position limits for options on the iShares® MSCI Brazil Capped ETF (''EWZ''), iShares® 20+ Year Treasury Bond Fund ETF (''TLT''), and iShares® MSCI Japan ETF (''EWJ''). The Exchange represents that the Underlying ETFs qualify for either (1) the initial listing criteria set forth in to Options 4, Section 3(h) for ETFs holding non-U.S. component securities, or (2) generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (''CSA'') is not required, as well as the continued listing criteria in Options 4, Section 4.[4] In compliance with its listing rules, the Exchange also represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement (''CSA'') do not, in the aggregate, represent more than more than 50% of the weight of any of the Underlying ETFs.[5]

Composition and Growth Analysis for Underlying ETFs

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[6] The Underlying ETFs as well as the ETF components are highly liquid, and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. Indeed, the Commission recognized the liquidity of the securities comprising the underlying interest of SPY and permitted no position limits on SPY options from 2012 through 2018.[7]

To support the proposed position limit increases (and corresponding increase in exercise limits), the Exchange considered both liquidity of the Underlying ETFs and the component securities of the Underlying ETFs, as well as the availability of economically equivalent products to the overlying options and their respective position limits. For instance, some of the Underlying ETFs are based upon broad-based indices that underlie cash-settled options, and therefore the options on the Underlying ETFs are economically equivalent to the options on those indices, which have no position limits. Other Underlying ETFs are based upon broad-based indices that underlie cash-settled options with position limits reflecting notional values that are larger than current position limits for options on the ETF analogues. For indexes that are tracked by an Underlying ETF but on which there are no options listed, the Exchange believes, based on the liquidity, depth and breadth of the underlying market of the components of the indexes, that each of the indexes referenced by the applicable ETFs would be considered a broad-based index under the Exchange's Rules. Additionally, if in some cases certain position limits are appropriate for the options overlying comparable indexes or basket of securities that the Underlying ETFs track then those economically equivalent position limits should be appropriate for the options overlying the Underlying ETFs.

The Exchange is presenting data collected by Cboe as part of its initial filing to increase position and exercise limits on the Underlying ETFs, that the

[4] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Options 4, Section 4(h).

[5] *See* Options 4, Section 3(h).

[6] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[7] *See* Securities Exchange Act Release No. 68000 (October 5, 2012), 77 FR 62300 (October 12, 2012) (SR–ISE–2012–81), which implemented a pilot program that ran through 2017, during which there were no position limits for options on SPY. The Exchange notes that throughout the duration of the pilot program it was not aware of any problems created or adverse consequences as of result of the pilot program. *See also* Securities Exchange Act Release No. 83416 (June 12, 2018), 83 FR 28293 (June 18, 2018) (SR–ISE–2018–53).

Commission approved,[8] following trading statistics regarding shares of and options on the Underlying ETFs, as well as the component securities:

Product	ADV[9] (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs)[10]	Fund market cap (USD)	Total market cap of ETF components[11]
SPY	70.3 million	2.8 million	968.7 million	312.9 billion	29.3 trillion
FXI	26.1 million	196,600	106.8 million	4.8 billion	28.0 trillion
EFA	25.1 million	155,900	928.2 million	64.9 billion	19.3 trillion
HYG	20.0 million	193,700	216.6 million	19.1 billion	906.4 billion[12]
XLF	48.8 million	102,100	793.6 million	24.6 billion	3.8 trillion

The Exchange is presenting the following data collected by Cboe as part of its initial filing, that the Commission has approved,[13] for the same trading statistics, where applicable, as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs pursuant to Options 9, Section 13, to draw comparisons in support of proposed position limit increases for options on a number of the Underlying ETFs (see further discussion below):

Product	ADV (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs)	Fund market cap (USD)	Total market cap of ETF components	Current position limits
QQQ	30.2 million	670,200	410.3 million	88.7 billion	10.1 trillion	1,800,000
EWZ	26.7 million	186,500	233 million	11.3 billion	234.6 billion	500,000
TLT	9.6 million	95,200	128.1 million	17.5 billion	N/A	500,000
EWJ	7.2 million	5,700	236.6 million	14.2 billion	3 trillion	500,000

The Exchange believes that, overall, the liquidity in the shares of the Underlying ETFs and in the component securities of the Underlying ETFs and in their overlying options, as well as the large market capitalizations and structure of each of the Underlying ETFs support the proposal to increase the position limits for each option class (and corresponding exercise limits). Given the robust liquidity and capitalization in the Underlying ETFs and in the component securities of the Underlying ETFs the Exchange does not anticipate that the proposed increase in position limits would create significant price movements. Also, the Exchange believes the market capitalization of the underlying component securities of the applicable index or reference asset are large enough to adequately absorb potential price movements that may be caused by large trades.

The following analyses for the Underlying ETFs, which the Exchange agrees with in support of this proposal, as well as the statistics presented in support thereof, were presented by Cboe in their initial filing, which was approved by the Commission.[14] The Exchange notes that SPY tracks the performance of the S&P 500 Index, which is an index of diversified large cap U.S. companies.[15] It is composed of 505 selected stocks spanning over approximately 24 separate industry groups. The S&P 500 is one of the most commonly followed equity indices, and is widely considered to be the best indicator of stock market performance as a whole. SPY is one of the most actively traded ETFs, and, since 2017,[16] its ADV has increased from approximately 64.6 million shares to 70.3 million shares by the end of 2019. Similarly, its ADV in options contracts has increased from 2.6 million to 2.8 million through 2019.[17] As noted, the demand for options trading on SPY has continued to increase, however, the position limits have remained the same, which the Exchange believes may have impacted growth in SPY option volume from 2017 through 2019. The Exchange also notes that SPY shares are more liquid than INVESCO QQQ Trust℠, Series 1 (''QQQ'') shares, which is also currently subject to a position limit of 1,800,000 contracts. Specifically, SPY currently experiences over twice the ADV in shares and over four times the ADV in options than that of QQQ.[18]

EFA tracks the performance of MSCI EAFE Index (''MXEA''), which is comprised of over 900 large and mid-cap securities across 21 developed markets, including countries in Europe, Australia and the Far East, excluding the U.S. and Canada.[19] In support of its proposal to increase the position limit for EFA, Cboe's proposal specifies, that from 2017 through 2019, ADV has grown significantly in shares of EFA and in options on EFA, from approximately 19.4 million shares in 2017 to 25.1 million through 2019, and from approximately 98,800 options contract in 2017 to 155,900 through 2019. Further, Cboe compared the notional value of EFA's share price of $69.44 and MXEA's index level of 2036.94, approximately 29 EFA option contracts equal one MXEA option contract. Based on the above comparison of notional values, Cboe concluded that a position limit for EFA options would be economically equivalent to that of MXEA options which equates to 725,000 contracts (previously) and 1,450,000 for Cboe's

[8] *See supra* note 3.

[9] Cboe's Average daily volume (ADV) data for ETF shares and options contracts are for all of 2019. Additionally, reference to ADV in ETF shares, and ETF options herein this proposal are for all of 2019, unless otherwise indicated.

[10] *See* Amendment No. 1 to SR–CBOE–2020–015, at page 4, available at *https://www.sec.gov/comments/sr-cboe-2020-015/srcboe2020015-7081714-215592.pdf* (''Amendment No. 1'').

[11] *See* Amendment No. 1, at page 4.

[12] *See* Notice, at note 13.

[13] *See supra* note 3.

[14] *See supra* note 3.

[15] *See* SPDR S&P 500 ETF Trust, available at *https://www.ssga.com/us/en/individual/etfs/funds/spdr-sp-500-etf-trust-spy* (January 21, 2020).

[16] *See* Securities Exchange Release No. 83156 (May 2, 2018), 83 FR 20882 (May 8, 2018) (SR–ISE–2018–39) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rules 412, Position Limits, and 414, Exercise Limits). *See also supra* note 3.

[17] *See also* Securities Exchange Act Release No. 83416 (June 12, 2018), 83 FR 28293 (June 18, 2018) (SR–ISE–2018–53) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Position and Exercise Limits for Options on the SPY Exchange Traded Fund).

[18] The 2019 ADV for QQQ shares is 30.2 million and for options on QQQ is 670,200.

[19] *See* iShares MSCI EAFE ETF, available at *https://www.ishares.com/us/products/239623/ishares-msci-eafe-etf* (February 10, 2020).

current 50,000 contract position limit for MXEA options.[20] Cboe also noted that MXEA index options have an ADV of 594 options contracts, which equate to an ADV of 17,226 EFA option contracts (as that is 29 times the size of 594). The Exchange believes the significantly higher actual ADV (155,900 contracts), economically equivalent ADV (17,226 contracts), notional value, and economically equivalent position limits for EFA as compared to MXEA options, supports an increase in position limits for EFA options from 500,000 contracts to 1,000,000 contracts.

FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks.[21] According to Cboe, FXI shares and options have also experienced increased liquidity since 2017, as ADV has grown from approximately 15.1 million shares in 2017 to 26.1 million through 2019, as well as approximately 71,900 options contracts in 2017 to 196,600 through 2019. Cboe notes that although there are currently no options on the FTSE China 50 Index listed for trading, the components of the FTSE China 50 Index, which can be used to create a basket of stocks that equate to the FXI ETF, currently have a market capitalization of approximately $28 trillion and FXI has a market capitalization of $4.8 billion (as indicated above), which the Exchange believes are both large enough to absorb potential price movements caused by a large trade in FXI.

XLF invests in a wide array of financial service firms with diversified business lines ranging from investment management to commercial and investment banking. It generally corresponds to the price and yield performance of publicly traded equity securities of companies in the SPDR Financial Select Sector Index.[22] In support of its proposal, Cboe compared XLF's ADV in shares and in options to the ADV in shares and options for EWZ (26.7 million shares and 186,500 options contracts), TLT (9.6 million shares and 95,200 options contracts), and EWJ (7.2 million shares and 5,700 options contracts). According to Cboe, XLF experiences significantly greater ADV in shares and options than EWZ, TLT, and EWJ, which already have a position limit of 500,000 contracts—the proposed position limit for XLF options. According to Cboe, although there are no options listed on the SPDR Financial Select Sector Index listed for trading, the components of the index, which can be used to create a basket of stocks that equate to the XLF ETF, currently have a market capitalization of $3.8 trillion (indicated above). Additionally, XLF has a market capitalization of $24.6 billion. The Exchange believes that both of these are large enough to absorb potential price movements caused by a large trade in XLF.

Finally, HYG attempts to track the investment results of Markit iBoxx® USD Liquid High Yield Index, which is composed of U.S. dollar-denominated, high-yield corporate bonds and is one of the most widely used high-yield bond ETFs.[23] To support its proposed position limit increase on HYG, Cboe compared the HYG's ADV in share and options to that of both TLT (9.6 million shares and 95,200 options contracts), and EWJ (7.2 million shares and 5,700 options contracts). The Exchange agrees with Cboe's comparison and following analysis. Cboe found that HYG experiences significantly higher ADV in shares and options than both TLT and EWJ, which are currently subject to a position limit of 500,000 options contracts—the proposed limit for options on HYG. According to Cboe, while HYG does not have an index option analogue listed for trading, Cboe believes that its market capitalization of $19.1 billion, and of $906.4 billion in component securities, is adequate to absorb a potential price movement that may be caused by large trades in HYG.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for ETFs will lessen the potential for manipulative activity with options on the Underlying ETFs. When an ETF provider wants to create more shares, it looks to an Authorized Participant (generally a market maker or other large financial institution) to acquire the securities the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the Authorized Participant can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the net asset value, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day, and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption process, therefore, creates a direct link to the underlying components of the ETF, and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the ETF options.

The Exchange understands that the ETF creation and redemption process seeks to keep an ETF's share price trading in line with the ETF's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, the ETF's share price might rise above the value of its underlying securities. When this happens, the Authorized Participant believes the ETF may now be overpriced, so it may buy shares of the component securities and then sell ETF shares in the open market (*i.e.,* creations). This may drive the ETF's share price back toward the underlying net asset value. Likewise, if the ETF share price starts trading at a discount to the securities it holds, the Authorized Participant can buy shares of the ETF and redeem them for the underlying securities (*i.e.,* redemptions). Buying undervalued ETF shares may drive the share price of the ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits for the options on the Underlying ETFs would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on the Underlying ETFs would remain unchanged. Thus, the Exchange would still require that each Member that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers would continue to be exempt

[20] The Exchange does not list options on foreign indexes.

[21] *See* iShares China Large-Cap ETF, available at *https://www.ishares.com/us/products/239536/ishares-china-largecap-etf* (February 10, 2020).

[22] *See* Select Sector SPDR ETFs, XLF, available at *http://www.sectorspdr.com/sectorspdr/sector/xlf* (January 15, 2020).

[23] *See* iShares iBoxx $ High Yield Corporate Bond ETF, available at *https://www.ishares.com/us/products/239565/ishares-iboxx-high-yield-corporatebond-etf* (January 15, 2020).

from this reporting requirement, however, the Exchange may access Market-Maker position information.[24] Moreover, the Exchange's requirement that Members file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more options contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.[25]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of the Underlying ETFs and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.[26] The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[27] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the Underlying ETFs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Member must maintain for a large position held by itself or by its customer.[28] In addition, Rule 15c3–1[29] imposes a capital charge on Members to the extent of any margin deficiency resulting from the higher margin requirement.

Technical Corrections

The Exchange also proposes to rename SPDR Dow Jones® Industrial Average ETF Trust (SPY) as SPDR® S&P 500® ETF Trust (SPY) to conform to the correct name of the product.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[30] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[31] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[32] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on the Underlying ETFs will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (*e.g.,* there are Exchange-Traded Products (''ETPs'') that use options on the Underlying ETFs as part of their investment strategy, and the applicable position limits (and corresponding exercise limits) as they stand today may inhibit these ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from over the counter markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of the Underlying ETFs, the considerable market capitalization of the funds, underlying component securities and the liquidity of the markets for the applicable options and underlying component securities will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of securities deter manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization, trading volume, and liquidity in shares of the Underlying ETFs, and the components of the Underlying ETFs (as described above). The Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that removing position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[33]

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options, is not novel and has been previously approved by the Commission. The proposed increase to the position and exercise limits on the Underlying ETFs has recently been approved by the Commission.[34] The Commission has previously approved, on a pilot basis, eliminating position

[24] The Options Clearing Corporation (''OCC'') through the Large Option Position Reporting (''LOPR'') system acts as a centralized service provider for Member compliance with position reporting requirements by collecting data from each Member, consolidating the information, and ultimately providing detailed listings of each Member's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'').

[25] *See* Options 6E, Section 2 for reporting requirements.

[26] The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal, and will continue to employ them.

[27] 17 CFR 240.13d–1.

[28] *See* Options 6C, Section 3 for a description of margin requirements.

[29] 17 CFR 240.15c3–1.

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(5).

[32] *Id.*

[33] *See* Securities Exchange Act Release No. 62147 (October 28, 2005) (SR–CBOE–2005–41), at 62149.

[34] *See* supra note 3.

limits for options on SPY.[35] Additionally, the Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on highly liquid, actively traded ETFs.[36] In approving increases in position limits in the past, the Commission relied heavily upon the exchange's surveillance capabilities, expressing trust in the enhanced surveillances and reporting safeguards that the exchange took in order to detect and deter possible manipulative behavior which might arise from eliminating position and exercise limits.

Furthermore, the Exchange again notes that that the proposed position limits for options on EFA and FXI are consistent with existing position limits for options on IWM and EEM, and the proposed limits for options on XLF and HYG are consistent with current position limits for options on EWZ, TLT, and EWJ.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on the Underlying ETFs, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

Technical Corrections

The Exchange's proposal to make a technical amendment to the name of an ETF, within Supplementary Material .01 to Options 9, Section 13 and Supplementary Material .01 to Options 9, Section 15 will correct the name of this product and is therefore non-substantive. Accordingly, this technical amendment is intended to bring greater clarity to the rule text and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intra-market competition because it will apply to all market participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives of market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders.[37] The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange understands that other options exchanges intend to file similar proposed rule changes with the Commission to increase position limits on options on the Underlying ETFs. This may further contribute to fair competition among exchanges for multiply listed options.

Technical Corrections

The Exchange's proposal to make a technical amendment to the name of an ETF, within Supplementary Material .01 to Options 9, Section 13 and Supplementary Material .01 to Options 9, Section 15 will correct the name of this product and is therefore non-substantive. Accordingly, this technical amendment is intended to bring greater clarity to the rule text and does not impose a 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[38] and Rule 19b–4(f)(6) thereunder.[39]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[40] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[41] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would allow the Exchange to immediately increase its position and exercise limits for the products subject to this proposal to those of Cboe, which the Exchange believes will ensure fair competition among exchanges and provide consistency and uniformity among members of both Cboe and ISE by subjecting members of both exchanges to the same position and exercise limits for these multiply-listed options classes. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[35] *See* supra notes 7 and 8.

[36] *See* supra note 20.

[37] Additionally, several other options exchanges have the same position limits as the Exchange is proposing, as they incorporate by reference to Cboe's position limits, and as a result the position limits for options on the Underlying ETFs and will increase at those exchanges. *See* Nasdaq Stock Market LLC Rules, Options 9, Section 13 (Position Limits).

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

[42] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2020–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2020–23. 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–ISE–2020–23, and should be submitted on or before July 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14120 Filed 6–30–20; 8:45 am]

BILLING CODE 8011–01–P

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89154; File No. SR–MSRB–2020–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change To Align Certain MSRB Rules to Securities Exchange Act Rule 15 /–1, Regulation Best Interest

June 25, 2020.

I. Introduction

On May 1, 2020, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to align MSRB rules to the Commission's recently adopted Rule 15*l*-1 under the Exchange Act (''Regulation Best Interest'');[3] specifically, amendments to MSRB Rule G–8 (on books and records), MSRB Rule G–9 (on preservation of records), MSRB Rule G–19 (on suitability of recommendations and transactions), MSRB Rule G–20 (on gifts, gratuities, non-cash compensation and expenses of issuance), MSRB Rule G–48 (on transactions with Sophisticated Municipal Market Professionals (''SMMPs'')), and the deletion of an interpretation of MSRB Rule G–20 (the ''proposed rule change'').

The proposed rule change was published for comment in the **Federal Register** on May 12, 2020.[4] The public comment period closed on June 2, 2020.[5] As described further below, the Commission is approving the proposed rule change.

II. Description of Proposed Rule Change

As described further below, the MSRB proposed to align MSRB rules with Regulation Best Interest by revising the MSRB's rules to comport with Regulation Best Interest obligations involving: (i) Suitability, by amending MSRB Rule G–19 to apply only in circumstances in which Regulation Best Interest does not apply and eliminate the control element from the quantitative suitability obligation for recommendations subject to MSRB Rule G–19, and MSRB Rule G–48 to make clear that the exception from the requirement to perform a customer-specific suitability analysis when making a recommendation to a Sophisticated Municipal Market Participant (''SMMP'') (as defined in MSRB Rule D–15) is available only for recommendations that are subject to MSRB Rule G–19; (ii) non-cash compensation, by updating MSRB Rule G–20 to require any permissible non-cash compensation to align with the applicable requirements of Regulation Best Interest; and (iii) books and records, by requiring dealers to maintain books and records required by Regulation Best Interest and the related SEC Form CRS requirement through revisions to MSRB Rules G–8 and G–9.

A. Background

On June 5, 2019, the SEC adopted Regulation Best Interest, which establishes a new standard of conduct for Broker-Dealers [6] and natural persons who are associated persons of a Broker-Dealer.

Specifically, this standard of conduct for a Broker-Dealer applies when making a recommendation to a retail customer, defined generally as a natural person or the legal representative of such person, who receives and uses a recommendation from a Broker-Dealer primarily for personal, family, or household purposes, of any securities transaction or investment strategy involving securities.[7] The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15 *l*–1; *see also* Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019) (File No. S7–07–18) (''Regulation Best Interest Adopting Release'').

[4] Securities Exchange Act Release No. 88829 (May 6, 2020) (the ''Notice''), 85 FR 28082 (May 12, 2020) (MSRB–2020–02).

[5] All comment letters received on the proposed rule change are available on the Commission's website at *https://www.sec.gov.*

[6] Under Regulation Best Interest, ''broker-dealers'' are defined as ''broker-dealers and natural persons who are associated persons of a broker-dealer (unless otherwise indicated, together referred to as ''broker-dealer[s]''). Regulation Best Interest Adopting Release, 84 FR at 33318. Each broker-dealer subject to Regulation Best Interest is referred to herein as a ''Broker-Dealer'' and, collectively as ''Broker-Dealers.''

[7] *Id.*

stated that Regulation Best Interest enhances the Broker-Dealer standard of conduct beyond existing suitability obligations, and aligns the standard of conduct with retail customers' reasonable expectations by imposing certain new requirements on Broker-Dealers.[8] Specifically, Regulation Best Interest imposes the following ''general obligation'' on Broker-Dealers:

> [W]hen making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the [Broker-Dealer] making the recommendation ahead of the interest of the retail customer.[9]

Regulation Best Interest [10] provides that this general obligation is satisfied only if a Broker-Dealer complies with four component obligations: (i) An obligation to make certain prescribed disclosures, before or at the time of the recommendation, about the recommendation and the relationship between the retail customer and the Broker-Dealer (the ''Disclosure Obligation''); [11] (ii) an obligation to exercise reasonable diligence, care, and skill in making a recommendation (the ''Care Obligation''); [12] (iii) an obligation to establish, maintain, and enforce written policies and procedures reasonably designed to address conflicts of interest (the ''Conflict of Interest Obligation''); [13] and (iv) an obligation to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest (the ''Compliance Obligation'').[14]

The MSRB stated that the following changes to its rules reflect its attempt to harmonize the MSRB's rules with Regulation Best Interest and Form CRS and reduce the potential for conflicting or duplicative regulation in the municipal securities market among Dealers.[15]

B. Suitability

i. MSRB Rule G–19

MSRB Rule G–19 provides that a Dealer must have a reasonable basis to believe that a recommended transaction or investment strategy involving municipal securities is suitable for the customer, based on the information obtained through the reasonable diligence of the Dealer to ascertain the customer's investment profile.[16] The MSRB Rule G–19 suitability standard is composed of three component obligations:

1. *Reasonable-basis suitability,* which requires a dealer to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors; [17]
2. *Customer-specific suitability,* which requires a dealer to have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile; [18] and
3. *Quantitative suitability,* which requires a dealer who has actual or *de facto* control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.[19]

MSRB Rule G–19 applies to all Dealers when making a recommendation to a ''customer,'' which is defined in MSRB Rule D–9 as any person other than a Dealer acting in its capacity as a Dealer or an issuer in transactions involving the sale of a new issue of its securities.[20] When a Dealer reasonably concludes that a customer is an SMMP,[21] such Dealer is not obligated to perform a customer-specific suitability analysis under MSRB Rule G–19.[22]

Conceptually similar to MSRB Rule G–19, the Care Obligation of Regulation Best Interest also requires a three-part analysis to evaluate recommendations to retail customers but employs the higher best interest standard instead of MSRB Rule G–19's suitability standard.[23] In addition, while Regulation Best Interest applies only to recommendations to ''retail customers,'' defined generally as a natural person or the legal representative of such person, who receives and uses a recommendation from a Broker-Dealer primarily for personal, family, or household purposes,[24] MSRB Rule G–19 applies to ''customers'' (with an exception to the customer-specific suitability requirement for recommendations to SMMPs).[25]

The proposed rule change includes two amendments to MSRB Rule G–19 designed to harmonize MSRB

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[8] Regulation Best Interest Adopting Release, 84 FR at 33319.

[9] 17 CFR 240.15*l*–1(a)(1).

[10] SEC staff frequently asked questions on Regulation Best Interest are available at: *https://www.sec.gov/tm/faq-regulation-best-interest.*

[11] 17 CFR 240.15*l*–1(a)(2)(i).

[12] 17 CFR 240.15*l*–1(a)(2)(ii).

[13] 17 CFR 240.15*l*–1(a)(2)(iii).

[14] 17 CFR 240.15*l*–1(a)(2)(iv).

[15] To effect transactions in municipal securities, a person must be a Broker-Dealer subject to registration with the Commission under Section 15(b)(1) or a municipal securities dealer subject to registration with the Commission under Section 15B(a)(2) of the Exchange Act. *See* 15 U.S.C. 78f(b)(1); 15 U.S.C. 78o–4(b)(2)(C).

With respect to municipal securities dealers subject to registration under Section 15B(a)(2) of the Exchange Act, MSRB Rule D–8 provides that ''a municipal securities dealer which is a bank or a separately identifiable department or division of a bank'' is a bank dealer (''Bank Dealer''). As used herein, a Bank Dealer, together with a Broker-Dealer is a ''Dealer.''

Bank Dealers are registered with the Commission under Exchange Section 15B(a)(2), and thus are *not* subject to Regulation Best Interest. Nevertheless, because Bank Dealers can make recommendations of municipal securities transactions or investment strategies involving municipal securities to retail customers, the Board stated it plans to issue a separate Request for Comment on whether the Board will apply the requirements of Regulation Best Interest, through further amendments to MSRB rules, to Bank Dealers. *See* Notice, 85 FR at 28083 n.5.

[16] MSRB Rule G–19 defines a customer's investment profile to include the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the dealer in connection with such recommendation.

[17] MSRB Rule G–19, Supplementary Material .05(a).

[18] MSRB Rule G–19, Supplementary Material .05(b).

[19] MSRB Rule G–19(c).

[20] MSRB Rule D–9 states that, ''Except as otherwise specifically provided by rule of the Board, the term 'customer' shall mean any person other than a broker, dealer, or municipal securities dealer acting in its capacity as such or an issuer in transactions involving the sale by the issuer of a new issue of its securities.''

[21] MSRB Rule D–15 defines a customer as an SMMP according to three elements:

(a) *Nature of the Customer.* The customer must be:

(1) a bank, savings and loan association, insurance company, or registered investment company;

(2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

(3) any other person or entity with total assets of at least $50 million.

(b) *Dealer Determination of Customer Sophistication.* The dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently, both in general and with regard to particular transactions and investment strategies in municipal securities.

(c) *Customer Affirmation.* The customer must affirmatively indicate that it:

(1) Is exercising independent judgment in evaluating:

(A) the recommendations of the dealer;

(B) the quality of execution of the customer's transactions by the dealer; and

(C) the transaction price for non-recommended secondary market agency transactions as to which (i) the dealer's services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and (ii) the dealer does not exercise discretion as to how or when the transactions are executed; and

(2) has timely access to material information that is available publicly through established industry sources as defined in Rule G–47(b)(i) and (ii).

[22] MSRB Rule G–48(c).

[23] *See* Notice, 85 FR at 28084.

[24] *See* 17 CFR 240.15*l*-1(b)(1).

[25] *See* Notice, 85 FR at 28084.

requirements with Regulation Best Interest.[26] First, to avoid unnecessary regulatory complexity, the applicability of MSRB Rule G–19 would be limited only to circumstances in which Regulation Best Interest does not apply.[27] Second, the proposed rule change would remove the existing limitation in MSRB Rule G–19 that requires a quantitative suitability determination only when a Dealer has ''actual or *de facto* control'' over the customer's account.[28] These proposed amendments are discussed below.

a. Eliminate Applicability of MSRB Rule G–19 to Recommendations Subject to Regulation Best Interest

The MSRB stated that Regulation Best Interest addresses generally the same conduct that is addressed by MSRB Rule G–19 but employs a best interest, rather than a suitability, standard. The MSRB also stated that, absent action by the Board, a Broker-Dealer would be required to reconcile compliance with both Regulation Best Interest and MSRB Rule G–19 in many circumstances.[29] In such circumstances, the MSRB believed that compliance with Regulation Best Interest would result in compliance with MSRB Rule G–19 because a Broker-Dealer that ''act[s] in the best interest of the retail customer'' [30] when making a recommendation to a retail customer of any securities transaction or investment strategy involving securities would necessarily also meet the MSRB Rule G–19 requirement to ''have a reasonable basis to believe that [the recommendation] is suitable for the customer.'' [31]

The MSRB stated that the proposed rule change reduces the potential for duplicative regulation and unnecessary complexity and provides regulatory clarity about the applicability and requirements of MSRB Rule G–19 and Regulation Best Interest to market participants in an effective and efficient manner.[32] In particular, the proposed rule change adds new text to MSRB Rule G–19 that states that MSRB Rule G–19 does not apply to recommendations subject to Regulation Best Interest.[33] MSRB Rule G–19 would thus apply only to:

1. Recommendations to customers that are not ''retail customers,'' [34] as defined by Regulation Best Interest; and
2. Recommendations to any customers by Bank Dealers.[35]

b. Align MSRB Rule G–19's Quantitative Suitability Obligation to the Requirements of Regulation Best Interest

MSRB Rule G–19's quantitative suitability obligation requires a Dealer to have a reasonable basis for believing that a series of recommended transactions are not excessive and unsuitable for the customer when taken together in light of the customer's profile, but only if the Dealer has actual or *de facto* control over the customer's account.[36] In contrast, the quantitative care obligation of Regulation Best Interest applies regardless of whether the Broker-Dealer exercises actual or *de facto* control over the customer's account.[37] In the Regulation Best Interest Adopting Release, the Commission stated:

> [I]mposing the quantitative care obligation without a ''control'' element would provide consistency in the investor protections provided to retail customers by requiring a broker-dealer to always form a reasonable basis as to the recommended frequency of trading in a retail customer's account—irrespective of whether the broker-dealer ''controls'' or exercises ''de facto control'' over the retail customer's account. This would also be consistent with the other obligations of the Care Obligation, which apply regardless of whether a broker-dealer ''controls'' or exercises ''de facto control'' over the retail customers' account.[38]

The MSRB offered the same rationale eliminating the control element of the quantitative suitability obligation prescribed in Supplementary Material .05(c) of MSRB Rule G–19.[39]

ii. MSRB Rule G–48

MSRB Rule G–48(c) provides that a Dealer making a municipal securities recommendation to an SMMP does not have any obligation under MSRB Rule G–19 to perform a customer-specific suitability analysis.[40] Under MSRB Rule D–15, an SMMP is defined by three components:

1. The customer must fit within a prescribed category of institutional investor or be a natural person or entity with total assets of at least $50 million; [41]
2. The dealer must have a reasonable basis to believe that the customer is capable of evaluating investment risks and market value independently; [42] and
3. The customer must make certain affirmations regarding the exercise of independent judgment and access to information.[43]

As provided in MSRB Rule G–48(c), a Dealer making a recommendation to a natural person with at least $50 million in assets and who otherwise meets the definition of SMMP, shall not have an obligation under MSRB Rule G–19 to perform a customer-specific suitability analysis.[44]

Though as discussed above in Section II(B)(i)(a), the proposed rule change would exclude the recommendations of Broker-Dealers to retail customers from the scope of MSRB Rule G–19, the MSRB also proposes to amend MSRB Rule G–48(c) to make clear that the exception contained therein from the obligation to conduct a customer-specific suitability analysis only applies when a recommendation is subject to MSRB Rule G–19 and not Regulation Best Interest.[45] As the MSRB stated in its Notice, there is no exception from the customer-specific care obligation for high-net worth individuals.[46]

C. Non-Cash Compensation

MSRB Rule G–20(g) broadly prohibits Dealers and their associated persons from directly or indirectly accepting or making payments or offers of payments of any non-cash compensation in connection with the sale and distribution of a primary offering of municipal securities, subject to certain limited exceptions.[47] The MSRB stated that described generally, these exceptions are:

1. Gifts that do not exceed $100 per individual per year and are not preconditioned on achievement of a sales target; [48]
2. Occasional gifts of meals or tickets to theatrical, sporting, and other entertainments, provided that such gifts are

[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] 17 CFR 240.15*l*–1(a)(1).
[31] *See* Notice, 85 FR at 28084.
[32] *Id.*
[33] *Id.*
[34] Regulation Best Interest defines a retail customer as a natural person, or the legal representative of such natural person, who receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer and uses the recommendation primarily for personal, family, or household purposes. See 17 CFR 240.15*l*–1(b)(1).
[35] As noted above, the MSRB plans to issue a Request for Comment on whether the MSRB will apply the requirements of Regulation Best Interest to Bank Dealers through further amendments to MSRB rules. *See* Notice, 85 FR at 28083 n.5.
[36] MSRB Rule G–19, Supplementary Material .05(c).
[37] *See* 17 CFR 240.15*l*–1(a)(2)(ii)(C); *see also* Regulation Best Interest Adopting Release, 84 FR at 33327.
[38] Regulation Best Interest Adopting Release, 84 FR at 33384 (citation omitted).
[39] *See* Notice, 85 FR at 28084.
[40] *Id.*
[41] MSRB Rule D–15(a).
[42] MSRB Rule D–15(b).
[43] MSRB Rule D–15(c).
[44] *See* Notice, 85 FR at 28085.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] MSRB Rule G–20(d)(i).

not so frequent or so extensive as to raise any question of propriety and are not preconditioned on achievement of a sales target;[49]

3. Payment or reimbursement by offerors (generally, the issuer and any advisors to the issuer, the underwriters, and their affiliates) in connection with training or education meetings, subject to specified conditions, including that the payment is not conditioned on achieving a sales target;[50]

4. Internal non-cash compensation arrangements between the dealer and its associated persons, subject to specified conditions including that any non-cash compensation related to a sales contest must be based on the total production of all associated persons with respect to all municipal securities within respective product types distributed by the dealer and credit for those sales must be weighted equally;[51] and

5. Contributions by any person other than the dealer to a non-cash compensation arrangement between a dealer and its associated persons, subject to the same conditions for permissible internal non-cash compensation arrangements, described above.[52]

Regulation Best Interest's Conflict of Interest Obligation requires, among other things, Broker-Dealers to establish, maintain and enforce written policies and procedures reasonably designed to, among other things, identify and eliminate sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time.[53] As described above, MSRB Rule G–20 permits certain sales contests in connection with primary offerings.[54] The proposed rule change clarifies that any non-cash compensation permitted by MSRB Rule G–20(g), including any sales contests, must also be consistent with the applicable requirements of Regulation Best Interest.[55]

Additionally, in June 1982, the MSRB published interpretive guidance under MSRB Rule G–20 stating that sales contests offered by an underwriter to participating members of a syndicate constitute compensation for services and, therefore, must meet the requirements of the then-current version of MSRB Rule G–20.[56] The proposed rule change deletes the 1982 Guidance.[57] The MSRB noted that, depending on the particular facts and circumstances, such sales contests, with respect to Dealers that make recommendations to retail customers, may be inconsistent with the requirements of Regulation Best Interest's Conflict of Interest Obligation, which requires Broker-Dealers to establish, maintain and enforce written policies and procedures reasonably designed to ''[i]dentify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.'' [58] In support of its decision to rescind the 1982 Guidance, the MSRB quoted the following from the Commission's Adopting Release for Regulation Best Interest:

> [s]ales contests, sales quotas, bonuses and non-cash compensation that are based on the sales of specific securities within a limited period of time create high-pressure situations for associated persons to increase the sales of specific securities or specific types of securities within a limited period of time and thus compromise the best interests of their retail customers.[59]

Deciding to rescind the 1982 Guidance for all recommendations of municipal securities transactions made by Dealers to all customers, the MSRB stated that the same policy concerns apply with respect to non-retail customers.[60] Specifically, the MSRB stated that the high-pressure sales situations described above have the potential to compromise the best interests of non-retail customers as well. Accordingly, the proposed rule change deletes this interpretation in full.[61]

D. Books and Records

i. MSRB Rule G–8

MSRB Rule G–8 directs Dealers to make and keep current specified books and records to the extent they are applicable to a Dealer's business.[62] For Dealers subject to Exchange Act Rule 17a–3, MSRB Rule G–8(f) provides that compliance with Exchange Act Rule 17a–3 will be deemed compliance with MSRB Rule G–8, provided that certain records required by MSRB Rule G–8 must be maintained in any event. Exchange Act Rule 17a–3 requires Broker-Dealers to make and keep current specified books and records and provides that for purposes of transactions in municipal securities by Dealers, compliance with MSRB Rule G–8 will be deemed compliance with Exchange Act Rule 17a–3.[63]

When the Commission adopted Regulation Best Interest, it amended Exchange Act Rule 17a–3 to require Broker-Dealers to maintain a record of all information collected from and provided to a retail customer pursuant to Regulation Best Interest, along with the identity of each natural person who is an associated person, if any, responsible for the account.[64] The Commission also adopted a related requirement for Broker-Dealers to provide retail investors with Form CRS[65] and amended Exchange Act Rule 17a-3 to require Broker-Dealers to maintain a record of the date it provided each Form CRS to its retail customers.[66]

The MSRB stated that the proposed rule change includes amendments to MSRB Rule G–8 that parallel the new Exchange Act Rule 17a–3 requirements relating to Regulation Best Interest and Form CRS because Broker-Dealers may comply with Exchange Act Rule 17a–3 for purposes of transactions in municipal securities by complying with MSRB Rule G–8.[67] Specifically, the proposed rule change requires that each Broker-Dealer shall make and keep current in its books and records: (i) Under proposed MSRB Rule G–8(a)(xi)(F), a record of all information collected from, and provided to, a retail customer (as well as the identify of each natural person who is an associated person, if any, responsible for the account), to whom a recommendation of any securities transaction or investment strategy involving municipal securities is or will be provided; and (ii) under

[49] MSRB Rule G–20(d)(ii).

[50] MSRB Rule G–20(d)(iii).

[51] MSRB Rule G–20(d)(iv).

[52] MSRB Rule G–20(d)(v).

[53] 17 CFR 240.15*l*–1(a)(2)(iii)(D). The Conflict of Interest Obligation also requires broker-dealers to (1) identify and at a minimum disclose or eliminate all conflicts of interest associated with a recommendation of any securities transaction or investment strategy involving securities to a retail customer; (2) identify and mitigate any conflicts of interest associated with such recommendations that create an incentive for a natural person who is an associated person of a broker-dealer to place the interest of the broker-dealer or such natural person ahead of the interest of the retail customer; and (3) identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations and prevent such limitations and associated conflicts of interest from causing the broker-dealer, or a natural person who is an associated person of the broker-dealer, to make recommendations that place the interest of the broker-dealer or such natural person ahead of the interest of the retail customer. 17 CFR 240.15*l*–1(a)(3)(A)–(C).

[54] *See* Notice, 85 FR at 28085.

[55] *Id.*

[56] *See* Rule G–20 Interpretive Guidance, ''Authorization of Sales Contests'' (June 25, 1982) (''1982 Guidance'').

[57] *See* Notice, 85 FR at 28085.

[58] *See* 17 CFR 240.15*l*–1(a)(2)(iii).

[59] Regulation Best Interest Adopting Release, 84 FR at 33331.

[60] *See* Notice, 85 FR at 28085.

[61] *Id.*

[62] *See* Notice, 85 FR at 28085–6.

[63] 17 CFR 240.17a–3.

[64] 17 CFR 240.17a–3(a)(35).

[65] 17 CFR 240.17a–14.

[66] 17 CFR 240.17a–3(a)(24).

[67] *See* Notice, 85 FR at 28086.

proposed MSRB Rule G–8(a)(xxvii), a record of the date that each Form CRS was provided to each retail investor (including any Form CRS before any such retail investor opens an account).[68] The MSRB stated it believes that the proposed rule change's amendments are necessary to ensure that Broker-Dealers subject to Regulation Best Interest and the Form CRS requirement are required to maintain the records regardless of which books and records rule they follow.[69]

ii. MSRB Rule G–9

MSRB Rule G–9 prescribes the periods of time that records must be preserved by Dealers.[70] Similar to MSRB Rule G–8, MSRB Rule G–9 provides that Dealers who are subject to and comply with Exchange Act Rules 17a–3 and 17a–4 will be deemed to comply with MSRB Rule G–9, provided that certain specified records are preserved for the applicable time periods specified in Rule G–9 in any event.[71] Exchange Act Rule 17a–4 establishes record preservation requirements for Broker-Dealers and, like Exchange Act Rule 17a–3, provides that for purposes of transactions in municipal securities by Dealers, compliance with MSRB Rule G–9 will be deemed compliance with Exchange Act Rule 17a–4.[72]

The Commission amended Exchange Act Rule 17a–4 to require Broker-Dealers to retain the records related to Regulation Best Interest and Form CRS described above for six years.[73] The MSRB stated that the proposed rule change includes amendments to MSRB Rule G–9 to parallel these new requirements.[74] Specifically, this proposed rule change requires preserving copies of: (i) All documents required under MSRB Rule G–8(a)(xi)(F) (until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated); and (ii) the records concerning Form CRS (required to be maintained pursuant to Rule G–8(a)(xxvii)); and (iii) a copy of each Form CRS, until at least six years after such record or Form CRS is created.[75] The MSRB stated that the proposed rule change's revisions to MSRB G–9 are necessary to ensure that Broker-Dealers are subject to similar requirements, whether under MSRB rules or the rules of the SEC.[76]

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and the comment letters received. The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change is consistent with the provisions of Exchange Act Section 15B(b)(2)(C), which provides, in part, that the MSRB's rules shall:

> [B]e designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, and to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[77]

A. Amendments Related to Suitability

The Commission finds that the proposed rule change's proposed amendments to MSRB Rules G–19 and G–48 are consistent with Exchange Act Section 15B(b)(2)(C) because the amendments will foster cooperation and coordination with regulators, facilitate transactions in municipal securities and municipal financial products, remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and protect investors.[78]

i. Eliminating the Applicability of MSRB Rule G–19 to Recommendations Subject to Regulation Best Interest

The Commission believes that the proposed rule change's revision to MSRB Rule G–19 will protect investors by ensuring Broker-Dealers comply with the heightened regulatory requirements of the Commission's Regulation Best Interest. As stated by the Commission in the Regulation Best Interest Adopting Release:

> The enhancements contained in Regulation Best Interest are designed to improve investor protection by enhancing the quality of broker-dealer recommendations to retail customers and reducing the potential harm to retail customers that may be caused by conflicts of interest.[79]

The Commission also finds that the proposed rule change's revisions to MSRB Rule G–19 to eliminate the applicability of MSRB Rule G–19's suitability requirements to recommendations subject to Regulation Best Interest will foster cooperation and coordination with regulators by harmonizing MSRB rules with Regulation Best Interest. The Commission also believes that the proposed rule change will facilitate transactions in municipal securities and municipal financial products and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products by eliminating potential regulatory duplication and complexity through the establishment of a uniform standard for assessing the recommendations of municipal securities made by Broker-Dealers to retail customers.

ii. Aligning MSRB Rule G–19's Quantitative Suitability Obligation to the Requirements of Regulation Best Interest

The Commission finds that proposed rule change's amendments to MSRB Rule G–19 eliminating the control element from a Dealer's quantitative suitability obligations for recommendations subject to MSRB Rule G–19 will enhance investor protection for customers that are not retail customers for purposes of Regulation Best Interest by requiring a Dealer to always form a reasonable basis as to the recommended frequency of trading in a retail customer's account—irrespective of whether the Dealer ''controls'' or exercises ''*de facto* control'' over the retail customer's account.[80]

The Commission also believes that the proposed rule change will foster cooperation and coordination with regulators by joining the Commission (in Regulation Best Interest) and FINRA (in FINRA–2020–07)[81] in collectively eliminating the control element from assessing the recommendations made by Dealers. In this respect, the proposed rule change will allow Dealers to more efficiently operationalize compliance with their obligations under both Regulation Best Interest and MSRB Rule G–19, and to more efficiently

[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] 17 CFR 240.17a–4(e)(5), (e)(10).
[74] *See* Notice, 85 FR at 28086.
[75] *Id.*
[76] *Id.*
[77] 15 U.S.C. 78*o*–4(b)(2)(C).
[78] *Id.*
[79] Regulation Best Interest Adopting Release, 83 FR at 33321.
[80] *See, e.g.,* Regulation Best Interest Adopting Release, 83 FR at 33374.
[81] *See* Exchange Act Release No. 89091 (June 18, 2020), 85 FR 37970 (June 23, 2020) (SR–FINRA–2020–07).

recommend and ultimately execute transactions in the municipal securities market without any attendant reduction in investor protection and thereby facilitate transactions in municipal securities and municipal financial products and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products.

iii. Amending MSRB Rule G–48(c) To State That the Exception From the Customer-Specific Suitability Requirement Is Available Only When a Recommendation Is SubjectTo MSRB Rule G–19

The Commission believes that the proposed rule change's revision of MSRB Rule G–48(c) (stating that the exception from the customer-specific suitability requirement is available only when a recommendation is subject to MSRB Rule G–19) will foster cooperation and coordination with regulators by harmonizing MSRB rules with Regulation Best Interest and enhance investor protection by ensuring that the Best Interest Standard applies to all recommendations by Broker-Dealers made to retail customers irrespective of their net worth. By clarifying that there is no SMMP-based exception to a Broker-Dealer's obligations when making a recommendation to a retail customer, all retail customers of Broker-Dealers will benefit from the enhanced quality of Broker-Dealer recommendations and reduced harm caused by conflicts of interest, consistent with Regulation Best Interest.

The Commission also believes that eliminating any ambiguity regarding the interplay of MSRB Rule G–48 and MSRB Rule G–19 will enable Broker-Dealers to more efficiently fulfill their regulatory obligations and thereby remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products market due to the greater regulatory certainty under the proposed rule change.

B. Amendments Related to Non-Cash Compensation

The Commission believes that the approach proposed by the MSRB with respect to its non-cash compensation rules is appropriate and designed to protect investors and the public interest, consistent with of the Exchange Act. In particular, the Commission believes that the proposed rule change will help protect investors and the public interest by clarifying that the incentives Dealers may offer pursuant to non-cash compensation arrangements under the relevant MSRB rules as amended are consistent with the applicable requirements under Regulation Best Interest. For these reasons, the Commission finds that the proposed rule change to MSRB Rule G–20 is consistent with the Exchange Act.

Furthermore, by clarifying that any non-cash compensation permitted by MSRB Rule G–20(g) must also be consistent with the applicable requirements of Regulation Best Interest to be permissible and thereby eliminating any potential regulatory duplication or ambiguity, the Commission believes that the proposed rule change will foster cooperation and coordination with regulators as well as remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products by harmonizing MSRB rules with Regulation Best Interest.[82]

C. Amendments Related to Books and Records

The Commission believes that the proposed rule change's amendments to MSRB Rules G–8 and G–9 are consistent with Exchange Act Section 15B(b)(2)(C) because the proposed rule change will foster cooperation and coordination with regulators, facilitate transactions in municipal securities and municipal financial products, remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and protect investors.[83]

i. Amending MSRB Rule G–8 To Align With Exchange Act Rule 17a–3

The Commission believes that the proposed rule change to MSRB Rule G–8 will foster cooperation and coordination with regulators and will protect investors by harmonizing MSRB rules with the Commission's record-keeping requirements under Exchange Rule Act Rule 17a–3, as amended by Regulation Best Interest and Form CRS. Specifically, the Commission believes that the proposed rule change will enable regulators to assess Broker-Dealers' compliance with their obligations under Regulation Best Interest and Form CRS by ensuring that such Broker-Dealers are required to make records related to Regulation Best Interest and Form CRS regardless of whether they look to MSRB Rule G–8 or Exchange Act Rule 17a–3 for their record-making obligations. The Commission also believes that this approach to ensuring Broker-Dealer compliance with the requirements of Regulation Best Interest and Form CRS will also protect investors by ensuring that Broker-Dealers, whether they follow MSRB G–8 or Exchange Act Rule 17a–3, will be obligated to create certain records to evidence their compliance with their obligations.

ii. Amending MSRB Rule G–9 To Align With Exchange Act Rule 17a–4

The Commission finds that the proposed rule change's revisions to MSRB Rule G–9 to correspond with SEC books and records requirements will protect investors, thereby ensuring that Broker-Dealers are subject to similar requirements, whether under MSRB rules or the rules of the SEC under record-keeping requirements under Exchange Rule Act Rule 17a–4, as amended by Regulation Best Interest and Form CRS. Specifically, the Commission believes that the proposed rule change will enable regulators to assess Broker-Dealers' compliance with their obligations under Regulation Best Interest and Form CRS by ensuring that such Broker-Dealers are required to preserve records related to Regulation Best Interest and Form CRS regardless of whether they look to MSRB Rule G–9 or Exchange Act Rule 17a–4 for their record-making obligations. The Commission also believes that this approach to ensuring Broker-Dealer compliance with the requirements of Regulation Best Interest and Form CRS will also protect investors by ensuring that Broker-Dealers, whether they follow MSRB G–9 or Exchange Act Rule 17a–4, will be obligated to preserve certain records to evidence their compliance with their obligations for the same duration.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.[84] Exchange Act Section 15B(b)(2)(C)[85] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because the proposed rule change would align MSRB rules with (or otherwise clarify the applicability of MSRB rules in relation to) the requirements of Regulation Best Interest.

Moreover, the Commission observes that because Bank Dealers are not

[82] 15 U.S.C. 78*o*–4(b)(2)(C).

[83] *Id.*

[84] 15 U.S.C. 78c(f).

[85] 15 U.S.C. 78*o*–4(b)(2)(C).

subject to Regulation Best Interest or Form CRS, any different compliance standards between Bank Dealers and non-Bank Dealers under MSRB Rules result from Regulation Best Interest and Form CRS directly rather than the MSRB's promulgation of rules for consistency therewith. Consequently, this proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, because it does not change the already existing competitive landscape between Broker-Dealers subject to Regulation Best Interest and Form CRS and Bank Dealers not subject thereto. In addition, to the extent the proposed rule change imposes regulatory obligations in excess of those prescribed by Regulation Best Interest or Form CRS, those new obligations apply equally to all Dealers, and therefore does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission has also reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation. Furthermore, the Commission believes the proposed rule change would not impose barriers to capital formation, as the intention is to increase regulatory certainty by harmonizing MSRB rules with Regulation Best Interest. The Commission also finds that the proposed rule change includes provisions that help promote efficiency. In particular, the Commission believes the proposed rule change may improve Dealers' regulatory certainty by promoting clarity and consistency on issues related to suitability and permissible non-cash compensation, as well recordkeeping and record-making.

The Commission received comment letters on the proposed rule change, which were supportive of the proposed rule change and suggested no amendments to the propose rule change.[86]

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

[86] *See* Letter to Secretary, Commission, from Kelli McMorrow, Head of Government Affairs & Director of Fixed Income Policy, American Securities Association, dated May 21, 2020 (the ''ASA Letter''); Letter to Secretary, Commission, from Kristen Malinconico, Director, U.S. Chamber of Commerce's Center for Capital Market Competitiveness, dated June 2, 2020 (the ''CCMC Letter'').

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[87] that the proposed rule change (SR–MSRB–2020–02) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.[88]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14115 Filed 6–30–20; 8:45 am]

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[87] 15 U.S.C. 78s(b)(2).

[88] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89153; File No. SR–Phlx–2020–30]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Section 13 To Increase the Position Limits for Options on Certain Exchange-Traded Funds

June 25, 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 17, 2020, Nasdaq PHLX LLC (''Phlx'' 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Options 9, Section 13, Position Limits, to increase position limits for options on certain exchange-traded funds (''ETFs''). The Exchange is also proposing to amend Options 4A, Section 10, Limitation of Exchange Liability, to replace this rule with rule text that was inadvertently deleted in a prior rule change.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Options 9, Section 13, Position Limits, to increase position limits for options on certain exchange-traded funds (''ETFs''). These proposed rule changes are based on the similar proposal by Cboe Exchange, Inc. (''Cboe'').[3] The Exchange proposes to make certain minor non-substantive technical corrections to certain ETF names and symbols within Options 9, Section 13. The Exchange is also proposing to amend Options 4A, Section 10, Limitation of Exchange Liability, to replace this rule with rule text that was inadvertently deleted in a prior rule change. Each change will be described below.

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that

[3] *See* Securities Exchange Act Release No. 88768 (April 29, 2020) (SR–CBOE–2020–015) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Increase Position Limits for Options on Certain Exchange-Traded Funds and Indexes). The Cboe proposal also proposed to increase position limits for options overlying the MSCI Emerging Markets Index (''MXEF'') and the MSCI EAFE Index (''MXEA''). The Exchange, however, does not list options on the MXEF or MXEA indexes. Accordingly, this proposal is limited to the ETFs described above.

could be used for legitimate economic purposes.

The Exchange has observed an ongoing increase in demand in options on the SPDR® S&P 500® ETF Trust (''SPY''), iShares® MSCI EAFE ETF (''EFA''), iShares® China Large-Cap ETF (''FXI''), iShares® iBoxx® High Yield Corporate Bond Fund (''HYG''), Financial Select Sector SPDR® Fund (''XLF'') (collectively, with the aforementioned ETFs, the ''Underlying ETFs'') for both trading and hedging purposes. Though the demand for these options on the Underlying ETFs appear to have increased, position limits (and corresponding exercise limits) for these options have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options, resulting in the transfer of volume to over-the-counter (''OTC'') markets. OTC transactions occur through bilateral agreements, the terms of which are not publically disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increases in position limits (and exercise limits) for options on the Underlying ETFs may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange, as well as other options exchange on which they participate. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of the Underlying ETFs and ETF component securities, as well as the highly liquid markets for those securities, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on the Underlying ETFs for legitimate economic purposes compels an increase in position limits (and corresponding exercise limits).

Proposed Position Limits for Options on the Underlying ETFs

Position limits for options on ETFs are determined pursuant to Options 9, Section 13, and vary according to the number of outstanding shares and the trading volumes of the underlying stocks or ETFs over the past six months. Pursuant to Options 9, Section 13, the largest in capitalization and the most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, recapitalizations, etc.) on the same side of the market. Options on HYG and XLF are currently subject to the standard position limit of 250,000 contracts. Options 9, Section 13 sets forth separate position limits for options on specific ETFs, including SPY, FXI and EFA.

The Exchange proposes to amend Options 9, Section 13 to double the position limits and, as a result, exercise limits, for options on each of FXI, EFA, SPY, HYG and XLF. The Exchange also proposes to list position limits for HYG and XLF within Options 9, Section 13. The table below represents the current, and proposed, position limits for options on the ETFs subject to this proposal:

ETF	Current position limit	Proposed position limit
SPY	1,800,000	3,600,000
EFA	500,000	1,000,000
FXI	500,000	1,000,000
HYG	250,000	500,000
XLF	250,000	500,000

The Exchange notes that the proposed position limits for options on EFA and FXI are consistent with existing position limits for options on the iShares® Russell 2000 ETF (''IWM'') and the iShares® MSCI Emerging Markets ETF (''EEM''), while the proposed limits for options on XLF and HYG are consistent with current position limits for options on the iShares® MSCI Brazil Capped ETF (''EWZ''), iShares® 20+ Year Treasury Bond Fund ETF (''TLT''), and iShares® MSCI Japan ETF (''EWJ''). The Exchange represents that the Underlying ETFs qualify for either (1) the initial listing criteria set forth in Supplementary Material .06(b) to Options 4, Section 3 for ETFs holding non-U.S. component securities, or (2) generic listing standards for series of portfolio depository receipts and index fund shares based on international or global indexes under which a comprehensive surveillance agreement (''CSA'') is not required, as well as the continued listing criteria in Options 4, Section 4.[4] In compliance with its listing rules, the Exchange also represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement (''CSA'') do not, in the aggregate, represent more than more than 50% of the weight of any of the Underlying ETFs.[5]

Composition and Growth Analysis for Underlying ETFs

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[6] The Underlying ETFs as well as the ETF components are highly liquid, and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. Indeed, the Commission recognized the liquidity of the securities comprising the underlying interest of SPY and permitted no position limits on SPY options from 2012 through 2018.[7]

To support the proposed position limit increases (and corresponding increase in exercise limits), the Exchange considered both liquidity of the Underlying ETFs and the component securities of the Underlying ETFs, as well as the availability of economically equivalent products to the overlying options and their respective position limits. For instance, some of the Underlying ETFs are based upon broad-based indices that underlie cash-settled options, and therefore the options on the Underlying ETFs are economically equivalent to the options

[4] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Supplementary Material .06(b) to Options 4, Section 3; Supplementary Material .06 to Options 4, Section 4.

[5] *See* Supplementary Material .06(b) to Options 4, Section 3.

[6] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[7] *See* Securities Exchange Act Release No. 67999(October 5, 2012), 77 FR 62295 (October 12, 2012) (SR–Phlx–2012–122), which implemented a pilot program that ran through 2017, during which there were no position limits for options on SPY. The Exchange notes that throughout the duration of the pilot program it was not aware of any problems created or adverse consequences as of result of the pilot program. *See also* Securities Exchange Act Release No. 83412 (June 12, 2018), 83 FR 28298 (June 18, 2018) (SR–Phlx–2018–44).

on those indices, which have no position limits. Other Underlying ETFs are based upon broad-based indices that underlie cash-settled options with position limits reflecting notional values that are larger than current position limits for options on the ETF analogues. For indexes that are tracked by an Underlying ETF but on which there are no options listed, the Exchange believes, based on the liquidity, depth and breadth of the underlying market of the components of the indexes, that each of the indexes referenced by the applicable ETFs would be considered a broad-based index under the Exchange's Rules. Additionally, if in some cases certain position limits are appropriate for the options overlying comparable indexes or basket of securities that the Underlying ETFs track then those economically equivalent position limits should be appropriate for the options overlying the Underlying ETFs.

The Exchange is presenting data collected by Cboe as part of its initial filing to increase position and exercise limits on the Underlying ETFs, that the Commission approved,[8] following trading statistics regarding shares of and options on the Underlying ETFs, as well as the component securities:

Product	ADV[9] (ETF shares) (million)	ADV (option contracts)	Shares outstanding (ETFs)[10]	Fund market cap (USD)	Total market cap of ETF Components[11]
SPY	70.3	2.8 million	968.7 (million)	312.9 (billion)	29.3 trillion.
FXI	26.1	196,600	106.8	4.8	28.0 trillion.
EFA	25.1	155,900	928.2	64.9	19.3 trillion.
HYG	20.0	193,700	216.6	19.1	906.4 billion.[12]
XLF	48.8	102,100	793.6	24.6	3.8 trillion.

The Exchange is presenting the following data collected by Cboe as part of its initial filing, that the Commission has approved,[13] for the same trading statistics, where applicable, as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs pursuant to Options 9, Section 13, to draw comparisons in support of proposed position limit increases for options on a number of the Underlying ETFs (see further discussion below):

Product	ADV (ETF shares) (million)	ADV (option contracts)	Shares outstanding (ETFs) (million)	Fund market cap (USD)	Total market cap of ETF components	Current position limits
QQQ	30.2	670,200	410.3	88.7 (billion)	10.1 trillion	1,800,000
EWZ	26.7	186,500	233	11.3	234.6 billion	500,000
TLT	9.6	95,200	128.1	17.5	N/A	500,000
EWJ	7.2	5,700	236.6	14.2	3 trillion	500,000

The Exchange believes that, overall, the liquidity in the shares of the Underlying ETFs and in the component securities of the Underlying ETFs and in their overlying options, as well as the large market capitalizations and structure of each of the Underlying ETFs support the proposal to increase the position limits for each option class (and corresponding exercise limits). Given the robust liquidity and capitalization in the Underlying ETFs and in the component securities of the Underlying ETFs the Exchange does not anticipate that the proposed increase in position limits would create significant price movements. Also, the Exchange believes the market capitalization of the underlying component securities of the applicable index or reference asset are large enough to adequately absorb potential price movements that may be caused by large trades.

The following analyses for the Underlying ETFs, which the Exchange agrees with in support of this proposal, as well as the statistics presented in support thereof, were presented by Cboe in their initial filing, which was approved by the Commission.[14] The Exchange notes that SPY tracks the performance of the S&P 500 Index, which is an index of diversified large cap U.S. companies.[15] It is composed of 505 selected stocks spanning over approximately 24 separate industry groups. The S&P 500 is one of the most commonly followed equity indices, and is widely considered to be the best indicator of stock market performance as a whole. SPY is one of the most actively traded ETFs, and, since 2017,[16] its ADV has increased from approximately 64.6 million shares to 70.3 million shares by the end of 2019. Similarly, its ADV in options contracts has increased from 2.6 million to 2.8 million through 2019.[17] As noted, the demand for options trading on SPY has continued to increase, however, the position limits have remained the same, which the Exchange believes may have impacted growth in SPY option volume from 2017 through 2019. The Exchange also notes that SPY shares are more liquid than INVESCO QQQ Trust℠, Series 1 (''QQQ'') shares, which is also currently subject to a position limit of 1,800,000 contracts. Specifically, SPY currently experiences over twice the

[8] *See supra* note 3.

[9] Cboe's Average daily volume (ADV) data for ETF shares and options contracts are for all of 2019. Additionally, reference to ADV in ETF shares, and ETF options herein this proposal are for all of 2019, unless otherwise indicated.

[10] *See* Admendment No.1 to SR–CBOE–2020–015, at page 4, available at *https://www.sec.gov/comments/sr-cboe-2020-015/srcboe2020015-7081714-215592.pdf* (''Admendment No.1'').

[11] *See* Amendment No.1, at page 4.

[12] *See* Notice, at note 13.

[13] *See supra* note 3.

[14] *See supra* note 3.

[15] *See* SPDR S&P 500 ETF Trust, available at *https://www.ssga.com/us/en/individual/etfs/funds/spdr-sp-500-etf-trust-spy* (January 21, 2020).

[16] *See* Securities Exchange Release No. 82932 (March 22, 2018), 83 FR 13316 (March 28, 2018) (SR–Phlx–2018–24) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Section (a) of Exchange Rule 1001, Position Limits, To Increase the Position Limits for Options). *See also supra* note 3.

[17] *See also* Securities Exchange Act Release No. 83412 (June 12, 2018), 83 FR 28298 (June 18, 2018) (SR–Phlx–2018–44) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1001, Entitled ''Position Limits'').

ADV in shares and over four times the ADV in options than that of QQQ.[18]

EFA tracks the performance of MSCI EAFE Index (''MXEA''), which is comprised of over 900 large and mid-cap securities across 21 developed markets, including countries in Europe, Australia and the Far East, excluding the U.S. and Canada.[19] In support of its proposal to increase the position limit for EFA, Cboe's proposal specifies, that from 2017 through 2019, ADV has grown significantly in shares of EFA and in options on EFA, from approximately 19.4 million shares in 2017 to 25.1 million through 2019, and from approximately 98,800 options contract in 2017 to 155,900 through 2019. Further, Cboe compared the notional value of EFA's share price of $69.44 and MXEA's index level of 2036.94, approximately 29 EFA option contracts equal one MXEA option contract. Based on the above comparison of notional values, Cboe concluded that a position limit for EFA options would be economically equivalent to that of MXEA options which equates to 725,000 contracts (previously) and 1,450,000 for Cboe's current 50,000 contract position limit for MXEA options.[20] Cboe also noted that MXEA index options have an ADV of 594 options contracts, which equate to an ADV of 17,226 EFA option contracts (as that is 29 times the size of 594). The Exchange believes the significantly higher actual ADV (155,900 contracts), economically equivalent ADV (17,226 contracts), notional value, and economically equivalent position limits for EFA as compared to MXEA options, supports an increase in position limits for EFA options from 500,000 contracts to 1,000,000 contracts.

FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks.[21] According to Cboe, FXI shares and options have also experienced increased liquidity since 2017, as ADV has grown from approximately 15.1 million shares in 2017 to 26.1 million through 2019, as well as approximately 71,900 options contracts in 2017 to 196,600 through 2019. Cboe notes that although there are currently no options on the FTSE China 50 Index listed for trading, the components of the FTSE China 50 Index, which can be used to create a basket of stocks that equate to the FXI ETF, currently have a market capitalization of approximately $28 trillion and FXI has a market capitalization of $4.8 billion (as indicated above), which the Exchange believes are both large enough to absorb potential price movements caused by a large trade in FXI.

XLF invests in a wide array of financial service firms with diversified business lines ranging from investment management to commercial and investment banking. It generally corresponds to the price and yield performance of publicly traded equity securities of companies in the SPDR Financial Select Sector Index.[22] In support of its proposal, Cboe compared XLF's ADV in shares and in options to the ADV in shares and options for EWZ (26.7 million shares and 186,500 options contracts), TLT (9.6 million shares and 95,200 options contracts), and EWJ (7.2 million shares and 5,700 options contracts). According to Cboe, XLF experiences significantly greater ADV in shares and options than EWZ, TLT, and EWJ, which already have a position limit of 500,000 contracts—the proposed position limit for XLF options. According to Cboe, although there are no options listed on the SPDR Financial Select Sector Index listed for trading, the components of the index, which can be used to create a basket of stocks that equate to the XLF ETF, currently have a market capitalization of $3.8 trillion (indicated above). Additionally, XLF has a market capitalization of $24.6 billion. The Exchange believes that both of these are large enough to absorb potential price movements caused by a large trade in XLF.

Finally, HYG attempts to track the investment results of Markit iBoxx® USD Liquid High Yield Index, which is composed of U.S. dollar-denominated, high-yield corporate bonds and is one of the most widely used high-yield bond ETFs.[23] To support its proposed position limit increase on HYG, Cboe compared the HYG's ADV in share and options to that of both TLT (9.6 million shares and 95,200 options contracts), and EWJ (7.2 million shares and 5,700 options contracts). The Exchange agrees with Cboe's comparison and following analysis. Cboe found that HYG experiences significantly higher ADV in shares and options than both TLT and EWJ, which are currently subject to a position limit of 500,000 options contracts—the proposed limit for options on HYG. According to Cboe, while HYG does not have an index option analogue listed for trading, Cboe believes that its market capitalization of $19.1 billion, and of $906.4 billion in component securities, is adequate to absorb a potential price movement that may be caused by large trades in HYG.

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for ETFs will lessen the potential for manipulative activity with options on the Underlying ETFs. When an ETF provider wants to create more shares, it looks to an Authorized Participant (generally a market maker or other large financial institution) to acquire the securities the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the Authorized Participant can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the net asset value, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day, and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption process, therefore, creates a direct link to the underlying components of the ETF, and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the ETF options.

The Exchange understands that the ETF creation and redemption process seeks to keep an ETF's share price trading in line with the ETF's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, the ETF's share price might rise above the value of its underlying securities. When this happens, the Authorized Participant believes the ETF may now be overpriced, so it may buy shares of the component securities and then sell ETF shares in the open market (*i.e.* creations). This may drive the ETF's share price back toward the underlying net asset value. Likewise, if the ETF share price starts trading at a discount

[18] The 2019 ADV for QQQ shares is 30.2 million and for options on QQQ is 670,200.

[19] *See* iShares MSCI EAFE ETF, available at *https://www.ishares.com/us/products/239623/ishares-msci-eafe-etf* (February 10, 2020).

[20] The Exchange does not list options on foreign indexes.

[21] *See* iShares China Large-Cap ETF, available at *https://www.ishares.com/us/products/239536/ishares-china-largecap-etf* (February 10, 2020).

[22] *See* Select Sector SPDR ETFs, XLF, available at *http://www.sectorspdr.com/sectorspdr/sector/xlf* (January 15, 2020).

[23] *See* iShares iBoxx $ High Yield Corporate Bond ETF, available at *https://www.ishares.com/us/products/239565/ishares-iboxx-high-yield-corporatebond-etf* (January 15, 2020).

to the securities it holds, the Authorized Participant can buy shares of the ETF and redeem them for the underlying securities (*i.e.* redemptions). Buying undervalued ETF shares may drive the share price of the ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits for the options on the Underlying ETFs would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on the Underlying ETFs would remain unchanged. Thus, the Exchange would still require that each member or member organization that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers would continue to be exempt from this reporting requirement, however, the Exchange may access Market-Maker position information.[24] Moreover, the Exchange's requirement that members and member organizations file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more options contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.[25]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of the Underlying ETFs and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlying's, as applicable.[26] The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[27] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on the Underlying ETFs. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member or member organization must maintain for a large position held by itself or by its customer.[28] In addition, Rule 15c3–1 [29] imposes a capital charge on members and member organizations to the extent of any margin deficiency resulting from the higher margin requirement.

Technical Corrections

The Exchange proposes to amend Options 4A, Section 10 which currently contains a rule titled ''Limitation of Exchange Liability.'' This rule is also currently within Options 4A, Section 19. The Exchange notes that when relocating Phlx's Rules to a new Rulebook Shell,[30] the Exchange inadvertently copied prior Rule 1102A (Limitation of Exchange Liability) twice. The Exchange should have copied prior Rule 1002A (Exercise Limits) within Options 4A, Section 10, as noted within a chart within the 19b4 to that rule change. At this time, the Exchange proposes to restore prior Rule 1002A (Exercise Limits) within Options 4A, Section 10 as originally intended.

The Exchange also proposes other technical amendments within Options 9, Section 13 to: (1) Rename PowerShares QQQ Trust (''QQQQ'') as INVESCO QQQ Trust℠, Series 1 (''QQQ''); (2) rename ''SPDR® S&P 500® exchange-traded fund (''SPY ETF'') or (''SPY'') as ''SPDR® S&P 500® ETF (''SPY''); and (3) conform the text of the remainder of the rule text.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[31] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [32] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [33] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limits for options on the Underlying ETFs will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increases will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (*e.g.,* there are Exchange-Traded Products (''ETPs'') that use options on the Underlying ETFs as part of their investment strategy, and the applicable position limits (and corresponding exercise limits) as they stand today may inhibit these ETPs in achieving their investment objectives, to the detriment of investors). Also,

[24] The Options Clearing Corporation (''OCC'') through the Large Option Position Reporting (''LOPR'') system acts as a centralized service provider for member and member organization compliance with position reporting requirements by collecting data from each member and member organization, consolidating the information, and ultimately providing detailed listings of each member's and member organization's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'').

[25] *See* Options 6E, Section 2 for reporting requirements.

[26] The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal, and will continue to employ them.

[27] 17 CFR 240.13d–1.

[28] *See* Options 6C, Section 3 for a description of margin requirements.

[29] 17 CFR 240.15c3–1.

[30] *See* Securities Exchange Act Release No. 88213 (February 14, 2020), 85 FR 9859 (February 20, 2020) (SR–Phlx–2020–03) (''Phlx Rulebook Relocation Rule Change'').

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

[33] *Id.*

increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from over the counter markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of the Underlying ETFs, the considerable market capitalization of the funds, underlying component securities and the liquidity of the markets for the applicable options and underlying component securities will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of securities deter manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization, trading volume, and liquidity in shares of the Underlying ETFs, and the components of the Underlying ETFs (as described above). The Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that removing position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[34]

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options, is not novel and has been previously approved by the Commission. The proposed increase to the position and exercise limits on the Underlying ETFs has recently been approved by the Commission.[35] The Commission has previously approved, on a pilot basis, eliminating position limits for options on SPY.[36] Additionally, the Commission has approved similar proposed rule changes by the Exchange to increase position limits for options on highly liquid, actively traded ETFs.[37] In approving increases in position limits in the past, the Commission relied heavily upon the exchange's surveillance capabilities, expressing trust in the enhanced surveillances and reporting safeguards that the exchange took in order to detect and deter possible manipulative behavior which might arise from eliminating position and exercise limits.

Furthermore, the Exchange again notes that that the proposed position limits for options on EFA and FXI are consistent with existing position limits for options on IWM and EEM, and the proposed limits for options on XLF and HYG are consistent with current position limits for options on EWZ, TLT, and EWJ.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on the Underlying ETFs, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

Technical Corrections

The Exchange's proposal to amend Options 4A, Section 10, which currently contains a rule titled ''Limitation of Exchange Liability'' is consistent with the Act. The Exchange noted in its Phlx Rulebook Relocation Rule Change that it intended to copy prior Rule 1002A (Exercise Limits) within Options 4A, Section 10. This rule was inadvertently removed from the Rulebook. The Exchange did not intend to replace this rule with a duplicate of prior Rule 1102A (Limitation of Exchange Liability). Restoring prior Rule 1002A will correct the Rulebook.

The Exchange's proposal to make several technical amendments within Options 9, Section 13, which separate line items for each product, correct the names of products, and conform the rule language, are non-substantive amendments. Accordingly, these technical amendments are intended to bring greater clarity to the rule text and are consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intra-market competition because it will apply to all market participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limits (and exercise limits) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives of market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders.[38] The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange understands that other options exchanges intend to file similar proposed rule changes with the Commission to increase position limits on options on the Underlying ETFs. This may further contribute to fair competition among exchanges for multiply listed options.

Technical Corrections

The Exchange's proposal to amend Options 4A, Section 10, which currently contains a rule titled ''Limitation of Exchange Liability'' does not impose an undue burden on competition. The Exchange noted in its Phlx Rulebook Relocation Rule Change that it intended to copy prior Rule 1002A (Exercise Limits) within Options 4A, Section 10.

[34] *See* Securities Exchange Act Release No. 62147 (October 28, 2005) (SR–CBOE–2005–41), at 62149.

[35] *See* supra note 3.

[36] *See* supra notes 7 and 8.

[37] *See* supra note 20.

[38] Additionally, several other options exchanges have the same position limits as the Exchange is proposing, as they incorporate by reference to Cboe's position limits, and as a result the position limits for options on the Underlying ETFs and will increase at those exchanges. *See* Nasdaq Stock Market LLC Rules, Options 9, Section 13 (Position Limits).

This rule was inadvertently removed from the Rulebook. The Exchange did not intend to replace this rule with a duplicate of prior Rule 1102A (Limitation of Exchange Liability). Restoring prior Rule 1002A will correct the Rulebook.

The Exchange's proposal to make several technical amendments within Options 9, Section 13, which separate line items for each product, correct the names of products, and conform the rule language, are non-substantive amendments. Accordingly, these technical amendments are intended to bring greater clarity to the rule text and do not impose a 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [39] and Rule 19b–4(f)(6) thereunder.[40]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [41] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [42] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would allow the Exchange to immediately increase its position and exercise limits for the products subject to this proposal to those of Cboe, which the Exchange believes will ensure fair competition among exchanges and provide consistency and uniformity among members of both Cboe and Phlx by subjecting members of both exchanges to the same position and exercise limits for these multiply-listed options classes. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[43]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-Phlx-2020–30. 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–Phlx–2020–30, and should be submitted on or before July 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

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[39] 15 U.S.C. 78s(b)(3)(A).

[40] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 240.19b–4(f)(6)(iii).

[43] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89156; File No. SR–CBOE–2020–059]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend Chapter 7, Section B of the Rules, Which Contains the Exchange's Compliance Rule (''Compliance Rule'') Regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'')

June 25, 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 24, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Chapter 7, Section B of the Rules, which contains the Exchange's compliance rule (''Compliance Rule'') regarding the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''),[3] to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems. 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set 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 this proposed rule change is to amend the Consolidated Audit Trail (''CAT'') Compliance Rule[4] in Chapter 7, Section B of the Rules to be consistent with certain proposed amendments to and exemptions from the CAT NMS Plan as well as to facilitate the retirement of certain existing regulatory systems.[5] As described more fully below, the proposed rule change would make the following changes to the Compliance Rule:

- Add additional data elements to the CAT reporting requirements for Industry Members to facilitate the retirement of the Financial Industry Regulatory Authority, Inc.'s (''FINRA'') Order Audit Trail System (''OATS'');
- Add additional data elements related to OTC Equity Securities that FINRA currently receives from alternative trading systems (''ATSs'') that trade OTC Equity Securities for regulatory oversight purposes to the CAT reporting requirements for Industry Members;
- Implement a phased approach for Industry Member reporting to the CAT (''Phased Reporting'');
- To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, revise the timestamp granularity requirement to require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds;
- Require Introducing Industry Members (as defined below) to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members;
- Revise the CAT reporting requirements so Industry Members would not be required to report to the Central Repository dates of birth, ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' (collectively, referred to as ''SSNs'') or account numbers; and
- Revise the CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information will be available from FINRA's trade reports submitted to the CAT.

(1) CAT–OATS Data Gaps

The Participants have worked to identify gaps between data reported to existing systems and data to be reported to the CAT to ''ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.''[6] As a result of this process, the Participants identified several data elements that must be included in the CAT reporting requirements before existing systems can be retired. In particular, the Participants identified certain data elements that are required by OATS, but not currently enumerated in the CAT NMS Plan. Accordingly, the Exchange proposes to amend its Compliance Rule to include these OATS data elements in the CAT. Each of such OATS data elements are discussed below. The addition of these OATS data elements to the CAT will facilitate the retirement of OATS.

(A) Information Barrier Identification

The FINRA OATS rules require OATS Reporting Members[7] to record the identification of information barriers for certain order events, including when an order is received or originated, transmitted to a department within the OATS Reporting Member, and when it is modified. The Participants propose to amend the Compliance Rule to incorporate these requirements into the CAT.

Specifically, FINRA Rule 7440(b)(20) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''if the member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member where the order was received or originated.''[8] The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 7.22, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member where the order was received or originated.''

In addition, FINRA Rule 7440(c)(1) states that ''[w]hen a Reporting Member transmits an order to a department within the member, the Reporting Member shall record: . . . (H) if the

[3] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Compliance Rule.

[4] The proposed rule change also amends the heading in Chapter 7, Section B to define the section as the CAT Compliance Rule.

[5] The Exchange initially filed the proposed rule change on June 22, 2020 (SR-Cboe-2020–057). On June 24, 2020, the Exchange withdrew that filing and submitted this filing.

[6] Letter from Participants to Brent J. Fields, Secretary, SEC, re: File Number 4–698; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail (September 23, 2016) at 21 (''Participants' Response to Comments'') (available at *https://www.sec.gov/comments/4-698/4698-32.pdf*).

[7] An OATS ''Reporting Member'' is defined in FINRA Rule 7410(o).

[8] FINRA Rule 5320 prohibits trading ahead of customer orders.

member is relying on the exception provided in Rule 5320.02 with respect to the order, the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted.'' The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to revise paragraph (a)(1)(B)(vi) of Rule 7.22 to require, for the routing of an order, if routed internally at the Industry Member, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member to which the order was transmitted.''

FINRA Rule 7440(c)(2)(B) and 7440(c)(4)(B) require an OATS Reporting Member that receives an order transmitted from another member to report the unique identification of any appropriate information barriers in place at the department within the member to which the order was transmitted. The Compliance Rule not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(C)(vii) to Rule 7.22, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received the order.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification to the terms of an order to report the unique identification of any appropriate information barriers in place at the department within the member to which the modification was originated or received. The Compliance Rule does not require Industry Members to report such information barrier information. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(D)(vii) to Rule 7.22, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''the unique identification of any appropriate information barriers in place at the department within the Industry Member which received or originated the modification.''

(B) Reporting Requirements for ATSs

Under FINRA Rule 4554, ATSs that receive orders in NMS stocks are required to report certain order information to OATS, which FINRA uses to reconstruct ATS order books and perform order-based surveillance, including layering, spoofing, and mid-point pricing manipulation surveillance.[9] The Participants believe that Industry Members operating ATSs—whether such ATS trades NMS stocks or OTC Equity Securities—should likewise be required to report this information to the CAT. Because ATSs that trade NMS stocks are already recording this information and reporting it to OATS, the Participants believe that reporting the same information to the CAT should impose little burden on these ATSs. Moreover, including this information in the CAT is also necessary for FINRA to be able to retire the OATS system. The Participants similarly believe that obtaining the same information from ATSs that trade OTC Equity Securities will be important for purposes of reconstructing ATS order books and surveillance. Accordingly, the Exchange proposes to add to the data reporting requirements in the Compliance Rule the reporting requirements for ATSs in FINRA Rule 4554,[10] but to expand such requirements so that they are applicable to all ATSs rather than solely to ATSs that trade NMS stocks.

(i) New Definition

The Exchange proposes to add a definition of ''ATS'' to new paragraph (d) in Rule 7.20 to facilitate the addition to the CAT of the reporting requirements for ATSs set forth in FINRA Rule 4554. The Exchange proposes to define an ''ATS'' to mean ''an alternative trading system, as defined in Rule 300(a)(1) of Regulation ATS under the Exchange Act.''

(ii) ATS Order Type

FINRA Rule 4554(b)(5) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

A unique identifier for each order type offered by the ATS. An ATS must provide FINRA with (i) a list of all of its order types 20 days before such order types become effective and (ii) any changes to its order types 20 days before such changes become effective. An identifier shall not be required for market and limit orders that have no other special handling instructions.

The Compliance Rule does not require Industry Members to report such order type information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: paragraphs (a)(1)(A)(xi)(1), (a)(1)(C)(x)(1), (a)(1)(D)(ix)(1) and (a)(2)(D) of paragraphs (a)(1)(A)(xi)(a), (a)(1)(C)(x)(a), (a)(1)(D)(ix)(a) and (a)(2)(D) of Rule 7.22.

Proposed paragraph (a)(1)(A)(xi)(a) of Rule 7.22 would require an Industry Member that operates an ATS to record and report to the Central Repository for the original receipt or origination of an order ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(C)(x)(a) of Rule 7.22 would require an Industry Member that operates an ATS to record and report to the Central Repository for the receipt of an order that has been routed ''the ATS's unique identifier for the order type of the order.'' Proposed paragraph (a)(1)(D)(ix)(a) of Rule 7.22 would require an Industry Member that operates an ATS to record and report to the Central Repository if the order is modified or cancelled ''the ATS's unique identifier for the order type of the order.'' Furthermore, as with the requirements in FINRA Rule 4554(b)(5), proposed paragraph (a)(2)(D) of Rule 7.22 would state that:

An Industry Member that operates an ATS must provide to the Central Repository:

(i) A list of all of its order types twenty (20) days before such order types become effective; and

(ii) any changes to its order types twenty (20) days before such changes become effective.

An identifier shall not be required for market and limit orders that have no other special handling instructions.

(iii) *National Best Bid and Offer*

FINRA Rules 4554(b)(6) and (7) require the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

(6) The NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(7) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (6). If for any reason, the ATS uses an alternative feed than what was

[9] *See* FINRA *Regulatory Notice* 16–28 (August 2016).

[10] FINRA Rule 4554 was approved by the SEC on May 10, 2016, while the CAT NMS Plan was pending with the Commission. *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (Order Approving SR–FINRA–2016–010). As noted in the Participants' Response to Comments, throughout the process of developing the Plan, the Participants worked to keep the gap analyses for OATS, electronic blue sheets, and the CAT up to date, which included adding data fields related to the tick size pilot and ATS order book amendments to the OATS rules. *See* Participants' Response to Comments at 21. However, due to the timing of the expiration of the tick size pilot, the Participants decided not to include those data elements into the CAT NMS Plan.

reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, FINRA Rule 4554(c) requires the following information to be recorded and reported to FINRA by ATSs when reporting the execution of an order to OATS:

(1) The NBBO (or relevant reference price) in effect at the time of order execution;

(2) The timestamp of when the ATS recorded the effective NBBO (or relevant reference price); and

(3) Identification of the market data feed used by the ATS to record the NBBO (or other reference price) for purposes of subparagraph (1). If for any reason, the ATS uses an alternative feed than what was reported on its ATS data submission, the ATS must notify FINRA of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

The Compliance Rule does not require Industry Members to report such NBBO information to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate these requirements into four new provisions to the Compliance Rule: (a)(1)(A)(xi)(b) to (c), (a)(1)(C)(x)(b) to (c), (a)(1)(D)(ix)(b) to (c) and (a)(1)(E)(viii)(b) to (c) of Rule 7.22.

Specifically, proposed paragraph (a)(1)(A)(xi)(b) to (c) of Rule 7.22 would require an Industry Member that operates an ATS to record and report to the Central Repository the following information when reporting the original receipt or origination of order:

(b) the National Best Bid and National Best Offer (or relevant reference price) at the time of order receipt or origination, and the date and time at which the ATS recorded such National Best Bid and National Best Offer (or relevant reference price);

(c) the identification of the market data feed used by the ATS to record the National Best Bid and National Best Offer (or relevant reference price) for purposes of subparagraph (xi)(b). If for any reason the ATS uses an alternative market data feed than what was reported on its ATS data submission, the ATS must provide notice to the Central Repository of the fact that an alternative source was used, identify the alternative source, and specify the date(s), time(s) and securities for which the alternative source was used.

Similarly, proposed paragraphs (a)(1)(C)(x)(b) to (c), (a)(1)(D)(ix)(b) to (c) and (a)(1)(E)(viii)(a) to (b) of Rule 7.22 would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed, when reporting if the order is modified or cancelled, and when an order has been executed, respectively.

(iv) Sequence Numbers

FINRA Rule 4554(d) states that ''[f]or all OATS-reportable event types, all ATSs must record and report to FINRA the sequence number assigned to the order event by the ATS's matching engine.'' The Compliance Rule does not require Industry Members to report ATS sequence numbers to the Central Repository. To address this OATS–CAT data gap, the Exchange proposes to incorporate this requirement regarding ATS sequence numbers into each of the Reportable Events for the CAT. Specifically, the Exchange proposes to add new paragraph (a)(1)(A)(xi)(d) to Rule 7.22, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt or origination of the order by the ATS's matching engine.'' The Exchange proposes to add new paragraph (a)(1)(B)(viii) to Rule 7.22, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the routing of the order by the ATS's matching engine.'' The Exchange also proposes to add new paragraph (a)(1)(C)(x)(d) to Rule 7.22, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the receipt of the order by the ATS's matching engine.'' In addition, the Exchange proposes to add new paragraph (a)(1)(D)(x)(d) to Rule 7.22, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the modification or cancellation of the order by the ATS's matching engine.'' Finally, the Exchange proposes to add new paragraph (a)(1)(E)(viii)(c) to Rule 7.22, which would require an Industry Member that operates an ATS to record and report to the Central Repository ''the sequence number assigned to the execution of the order by the ATS's matching engine.''

(v) Modification or Cancellation of Orders by ATSs

FINRA Rule 4554(f) states that ''[f]or an ATS that displays subscriber orders, each time the ATS's matching engine re-prices a displayed order or changes the display quantity of a displayed order, the ATS must report to OATS the time of such modification,'' and ''the applicable new display price or size.'' The Exchange proposes adding a comparable requirement into new paragraph (a)(1)(D)(ix)(e) to Rule 7.22. Specifically, proposed new paragraph (a)(1)(D)(ix)(e) of Rule 7.22 would require an Industry Member that operates an ATS to report to the Central Repository, if the order is modified or cancelled, ''each time the ATS's matching engine re-prices an order or changes the display quantity of an order,'' the ATS must report to the Central Repository ''the time of such modification, and the applicable new price or size.'' Proposed new paragraph (a)(1)(D)(ix)(e) of Rule 7.22 would apply to all ATSs, not just ATSs that display orders.

(vi) Display of Subscriber Orders

FINRA Rule 4554(b)(1) requires the following information to be recorded and reported to FINRA by ATSs when reporting receipt of an order to OATS:

Whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data);

The Compliance Rule does not require Industry Members to report to the CAT such information about the displaying of subscriber orders. The Exchange proposes to add comparable requirements into proposed paragraphs (a)(1)(A)(xi)(e) and (a)(1)(C)(x)(e) of Rule 7.22. Specifically, proposed new paragraph (a)(1)(A)(xi)(e) would require an Industry Member that operates an ATS to report to the Central Repository, for the original receipt or origination of an order,

whether the ATS displays subscriber orders outside the ATS (other than to alternative trading system employees). If an ATS does display subscriber orders outside the ATS (other than to alternative trading system employees), indicate whether the order is displayed to subscribers only or through publicly disseminated quotation data.

Similarly, proposed new paragraph (a)(1)(C)(x)(e) would require an Industry Member that operates an ATS to record and report to the Central Repository the same information when reporting receipt of an order that has been routed.

(C) Customer Instruction Flag

FINRA Rule 7440(b)(14) requires a FINRA OATS Reporting Member to record the following when an order is received or originated: ''any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to

applicable rules.'' The Compliance Rule does not require Industry Members to report to the CAT such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(viii) to Rule 7.22, which would require Industry Members to record and report to the Central Repository, for original receipt or origination of an order, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.'' The Exchange also proposes to add paragraph (a)(1)(C)(ix) to Rule 7.22, which would require Industry Members to record and report to the Central Repository, for the receipt of an order that has been routed, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

FINRA Rule 7440(d)(1) requires an OATS Reporting Member that modifies or receives a modification of an order to report the customer instruction flag. The Compliance Rule does not require Industry Members to report such a customer instruction flag. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(D)(viii) to Rule 7.22, which would require Industry Members to record and report to the Central Repository, if the order is modified or cancelled, ''any request by a Customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules.''

(D) Department Type

FINRA Rules 7440(b)(4) and (5) require an OATS Reporting Member that receives or originates an order to record the following information: ''the identification of any department or the identification number of any terminal where an order is received directly from a customer'' and ''where the order is originated by a Reporting Member, the identification of the department of the member that originates the order.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the department or terminal where the order is received or originated. To address this OATS–CAT data gap, the Exchange proposes to add new paragraph (a)(1)(A)(ix) to Rule 7.22, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the nature of the department or desk that originated the order, or received the order from a Customer.''

Similarly, per FINRA Rules 7440(c)(2)(B) and (4)(B), when an OATS Reporting Member receives an order that has been transmitted by another Member, the receiving OATS Reporting Member is required to record the information required in 7440(b)(4) and (5) described above as applicable. The Compliance Rule does not require Industry Members to report to the CAT information regarding the department that received an order. To address this OATS–CAT data gap, the Exchange propose to add new paragraph (a)(1)(C)(viii) to Rule 7.22, which would require Industry Members to record and report to the Central Repository upon the receipt of an order that has been routed ''the nature of the department or desk that received the order.''

(E) Account Holder Type

FINRA Rule 7440(b)(18) requires an OATS Reporting Member that receives or originates an order to record the following information: ''the type of account, *i.e.,* retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted.'' The Compliance Rule does not require Industry Members to report to the CAT information regarding the type of account holder for which the order is submitted. To address this OATS–CAT data gap, the Exchange proposes to add paragraph (a)(1)(A)(x) to Rule 7.22, which would require Industry Members to record and report to the Central Repository upon the original receipt or origination of an order ''the type of account holder for which the order is submitted.''

(2) OTC Equity Securities

The Participants have identified several data elements related to OTC Equity Securities that FINRA currently receives from ATSs that trade OTC Equity Securities for regulatory oversight purposes, but are not currently included in CAT Data. In particular, the Participants identified three data elements that need to be added to the CAT: (1) bids and offers for OTC Equity Securities; (2) a flag indicating whether a quote in OTC Equity Securities is solicited or unsolicited; and (3) unpriced bids and offers in OTC Equity Securities. The Participants believe that such data will continue to be important for regulators to oversee the OTC Equity Securities market when using the CAT. Moreover, the Participants do not believe that the proposed requirement would burden ATSs because they currently report this information to FINRA and thus the reporting requirement would merely shift from FINRA to the CAT. Accordingly, as discussed below, the Exchange proposes to amend its Compliance Rule to include these data elements.

(A) Bids and Offers for OTC Equity Securities

In performing its current regulatory oversight, FINRA receives a data feed of the best bids and offers in OTC Equity Securities from ATSs that trade OTC Equity Securities. These best bid and offer data feeds for OTC Equity Securities are similar to the best bid and offer SIP Data required to be collected by the Central Repository with regard to NMS Securities.[11] Accordingly, the Exchange proposes to add new paragraph (f)(1) to Rule 7.22 to require the reporting of the best bid and offer data feeds for OTC Equity Securities to the CAT. Specifically, proposed new paragraph (f)(1) of Rule 7.22 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the best bid and best offer for each OTC Equity Security traded on such ATS.''

(B) Unsolicited Bid or Offer Flag

FINRA also receives from ATSs that trade OTC Equity Securities an indication whether each bid or offer in OTC Equity Securities on such ATS was solicited or unsolicited. Therefore, the Exchange proposes to add new paragraph (f)(2) to Rule 7.22 to require the reporting to the CAT of an indication as to whether a bid or offer was solicited or unsolicited. Specifically, proposed new paragraph (f)(2) of Rule 7.22 would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''an indication of whether each bid and offer for OTC Equity Securities was solicited or unsolicited.''

(C) Unpriced Bids and Offers

FINRA receives from ATSs that trade OTC Equity Securities certain unpriced bids and offers for each OTC Equity Security traded on the ATS. Therefore, the Exchange proposes to add new paragraph (f)(3) to Rule 7.22, which would require each Industry Member that operates an ATS that trades OTC Equity Securities to provide to the Central Repository ''the unpriced bids and offers for each OTC Equity Security traded on such ATS.

(3) Revised Industry Member Reporting Timeline

On February 19, 2020, the Participants filed with the Commission a request for exemptive relief from

[11] Section 6.5(a)(ii) of the CAT NMS Plan.

certain provisions of the CAT NMS Plan to allow for the implementation of phased reporting to the CAT by Industry Members (''Phased Reporting'').[12] Specifically, in their exemptive request, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(v) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Industry Members other than Small Industry Members (''Large Industry Members'') to report to the Central Repository Industry Member Data within two years of the Effective Date (that is, by November 15, 2018). In addition, the Participants requested that the SEC exempt each Participant from the requirement in Section 6.7(a)(vi) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require its Small Industry Members [13] to report to the Central Repository Industry Member Data within three years of the Effective Date (that is, by November 15, 2019). Correspondingly, the Participants requested that the SEC provide an exemption from the requirement in Section 6.4 of the CAT NMS Plan that ''[t]he requirements for Industry Members under this Section 6.4 shall become effective on the second anniversary of the Effective Date in the case of Industry Members other than Small Industry Members, or the third anniversary of the Effective Date in the case of Small Industry Members.'' On April 20, 2020, the SEC granted the Participants exemptive relief to implement Phased Reporting, subject to certain timeline changes and conditions.[14]

As a condition to the exemption, each Participant would implement Phased Reporting through its Compliance Rule by requiring:

(1) Its Large Industry Members and its Small Industry Members that are required to record or report information to OATS pursuant to applicable SRO rules (''Small Industry OATS Reporters'') to commence reporting to the Central Repository Phase 2a Industry Member Data by June 22, 2020, and its Small Industry Non-OATS Reporters to commence reporting to the Central Repository Phase 2a Industry Member Data by December 13, 2021;

(2) its Large Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by July 20, 2020, and its Small Industry Members to commence reporting to the Central Repository Phase 2b Industry Member Data by December 13, 2021;

(3) its Large Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by April 26, 2021, and its Small Industry Members to commence reporting to the Central Repository Phase 2c Industry Member Data by December 13, 2021;

(4) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2d Industry Member Data by December 13, 2021; and

(5) its Large Industry Members and Small Industry Members to commence reporting to the Central Repository Phase 2e Industry Member Data by July 11, 2022.

The full scope of CAT Data required under the CAT NMS Plan will be required to be reported when all five phases of the Phased Reporting have been implemented, subject to any applicable exemptive relief or amendments related to the CAT NMS Plan.

As a further condition to the exemption, each Participant proposes to implement the testing timelines, described in Section F below, through its Compliance Rule by requiring the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b begins in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, begins in February 2020.

(3) The Industry Member test environment will be open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment will be open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment will be open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment will be open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting will begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

As a result, the Exchange proposes to amend its Compliance Rule to be consistent with the exemptive relief to implement Phased Reporting as described below.

(A) Phase 2a

In the first phase of Phased Reporting, referred to as Phase 2a, Large Industry Members and Small Industry OATS Reporters would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by April 20, 2020.[15] To implement the Phased Reporting for Phase 2a, the Exchange proposes to add paragraph (t)(1) of Rule 7.20 (previously paragraph (s)) and amend paragraphs (c)(1) and (2) of Rule 7.31.

(i) Scope of Reporting in Phase 2a

To implement the Phased Reporting with respect to Phase 2a, the Exchange proposes to add a definition of ''Phase 2a Industry Member Data'' as new paragraph (t)(1) of Rule 7.20. Specifically, the Exchange proposes to define the term ''Phase 2a Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2a.'' Phase 2a Industry Member Data would include Industry Member Data solely related to Eligible Securities that are equities. While the following summarizes categories of Industry Member Data required for Phase 2a, the Industry Member Technical Specifications provide detailed

[12] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry Member Reporting Dates (Feb. 19, 2020).

[13] *See* Section 1.1 of the CAT NMS Plan.

[14] *See* Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020). As discussed in the SEC's exemptive order, the Commission granted the Participants conditional exemptive relief from the CAT NMS Plan so that the Compliance Rules may require Phase 2a reporting to commence on June 22, 2020, rather than the April 20, 2020 date set forth in the exemptive request, and Phase 2b reporting to commence on July 20, 2020, rather than the May 18, 2020 date set forth in the exemptive request. As a condition to the exemptive relief, Industry Members who elect to report to the CAT prior to such dates will be permitted to report to the CAT as early as April 20, 2020 for Phase 2a reporting and as early as May 18, 2020 for Phase 2b reporting.

[15] Small Industry Members that are not required to record and report information to FINRA's OATS pursuant to applicable SRO rules (''Small Industry Non-OATS Reporters'') would be required to report to the Central Repository ''Phase 2a Industry Member Data'' by December 13, 2021, which is twenty months after Large Industry Members and Small Industry OATS Reporters begin reporting.

guidance regarding the reporting for Phase 2a.[16]

Phase 2a Industry Member Data would include all events and scenarios covered by OATS. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry OATS Reporters would be required to submit data to the CAT for these same events and scenarios during Phase 2a. The inclusion of all OATS events and scenarios in the CAT is intended to facilitate the retirement of OATS.

Phase 2a Industry Member Data also would include Reportable Events for:

- Proprietary orders, including market maker orders, for Eligible Securities that are equities;
- electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) sent to a national securities exchange or FINRA's Alternative Display Facility (''ADF'');
- electronic quotes in unlisted Eligible Securities (*i.e.,* OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (''IDQS''); and
- electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member.

Phase 2a Industry Member Data would include Firm Designated IDs. During Phase 2a, Industry Members would be required to report Firm Designated IDs to the CAT, as required by paragraphs (a)(1)(A)(i), and (a)(2)(C) of Rule 7.22. Paragraph (a)(1)(A)(i) of Rule 7.22 requires Industry Members to submit the Firm Designated ID for the original receipt or origination of an order. Paragraph (a)(2)(C) of Rule 7.22 requires Industry Members to record and report to the Central Repository, for original receipt and origination of an order, the Firm Designated ID if the order is executed, in whole or in part.

In Phase 2a, Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications. A representative order is an order originated in a firm owned or controlled account, including principal, agency average price and omnibus accounts, by an Industry Member for the purpose of working one or more customer or client orders.

In Phase 2a, Industry Members would be required to report the link between the street side representative order and the order being represented when: (1) The representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member's system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member's system.

Phase 2a Industry Member Data also would include the manual and Electronic Capture Time for Manual Order Events. Specifically, for each Reportable Event in Rule 7.22, Industry Members would be required to provide a timestamp pursuant to Rule 7.25. Rule 7.25(b)(1) states that:

> Each Industry Member may record and report: Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Members shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member (''*Electronic Capture Time*'') in milliseconds.

Accordingly, for Phase 2a, Industry Members would be required to provide both the manual and Electronic Capture Time for Manual Order Events.[17]

Industry Members would be required to report special handling instructions for the original receipt or origination of an order during Phase 2a. In addition, during Phase 2a, Industry Members will be required to report, when routing an order, whether the order was routed as an intermarket sweep order (''ISO''). Industry Members would be required to report special handling instructions on routes other than ISOs in Phase 2c, rather than Phase 2a.

In Phase 2a, Industry Members would not be required to report modifications of a previously routed order in certain limited instances. Specifically, if a trader or trading software modifies a previously routed order, the routing firm is not required to report the modification of an order route if the destination to which the order was routed is a CAT Reporter that is required to report the corresponding order activity. If, however, the order was modified by a Customer or other non-CAT Reporter, and subsequently the routing Industry Members sends a modification to the destination to which the order was originally routed, then the routing Industry Member must report the modification of the order route.[18] In addition, in Phase 2a, Industry Members would not be required to report a cancellation of an order received from a Customer after the order has been executed.

(ii) Timing of Phase 2a Reporting

Pursuant to paragraph (c)(1) of Rule 7.31, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2a for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 7.31 with new paragraph (c)(1)(A) of Rule 7.31, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: (A) Phase 2a Industry Member Data by June 22, 2020.''

Pursuant to paragraph (c)(2) of Rule 7.31, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2a for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 7.31 with new paragraphs (c)(2)(A) and (B) of Rule 7.31. Proposed new paragraph (c)(2)(A) of Rule 7.31 would state that

> Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: (A) Small Industry Members that are required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by June 22, 2020.

Proposed new paragraph (c)(2)(B) of Rule 7.31 would state that ''Small Industry Members that are not required to record or report information to FINRA's Order Audit Trail System pursuant to applicable SRO rules (''Small Industry Non-OATS Reporter'') to report to the Central Repository Phase 2a Industry Member Data by December 13, 2021.''

[16] The items required to be reported commencing in Phase 2a do not include the items required to be reported in Phase 2c, as discussed below.

[17] Industry Members would be required to provide an Electronic Capture Time following the manual capture time only for new orders that are Manual Order Events and, in certain instances, routes that are Manual Order Events. The Electronic Capture Time would not be required for other Manual Order Events.

[18] This approach is comparable to the approach set forth in OATS Compliance FAQ 35.

(B) Phase 2b

In the second phase of the Phased Reporting, referred to as Phase 2b, Large Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by July 20, 2020. Small Industry Members would be required to report to the Central Repository ''Phase 2b Industry Member Data'' by December 13, 2021, which is approximately seventeen months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2b, the Exchange proposes to add paragraph (t)(2) to Rule 7.20 and amend paragraphs (c)(1) and (2) of Rule 7.31.

(i) Scope of Phase 2b Reporting

To implement the Phased Reporting with respect to Phase 2b, the Exchange proposes to add a definition of ''Phase 2b Industry Member Data'' as new paragraph (t)(2) of Rule 7.20. Specifically, the Exchange proposes to define the term ''Phase 2b Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2b.'' Phase 2b Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2b. While the following summarizes the categories of Industry Member Data required for Phase 2b, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2b.

Phase 2b Industry Member Data would include Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders.[19] A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member's order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders are also reportable in Phase 2b.

Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by Exchange rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.

(ii) Timing of Phase 2b Reporting

Pursuant to paragraph (c)(1) of Rule 7.31, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2b for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 7.31 with new paragraph (c)(1)(B) of Rule 7.31, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (B) Phase 2b Industry Member Data by July 20, 2020.''

Pursuant to paragraph (c)(2) of Rule 7.31, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2b for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 7.31 with new paragraph (c)(2)(C) of Rule 7.31, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository Phase 2b Industry Member Data . . . by December 13, 2021.''

(C) Phase 2c

In the third phase of the Phased Reporting, referred to as Phase 2c, Large Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by April 26, 2021. Small Industry Members would be required to report to the Central Repository ''Phase 2c Industry Member Data'' by December 13, 2021, which is approximately seven months after Large Industry Members begin reporting such data to the Central Repository. To implement the Phased Reporting for Phase 2c, the Exchange proposes to add new paragraph (t)(3) of Rule 7.20 and amend paragraphs (c)(1) and (2) of Rule 7.31.

(i) Scope of Phase 2c Reporting

To implement the Phased Reporting with respect to Phase 2c, the Exchange proposes to add a definition of ''Phase 2c Industry Member Data'' as paragraph (t)(3) to Rule 7.31. Specifically, the Exchange proposes to define the term ''Phase 2c Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2c.'' Phase 2c Industry Member Data'' would be Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data or Phase 2e Industry Member Data. Phase 2c Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2c. While the following summarizes the categories of Industry Member Data required for Phase 2c, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2c.

Phase 2c Industry Member Data would include Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.,* NMS stocks) that are not sent to a national securities exchange or FINRA's Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which

[19] The items required to be reported in Phase 2b do not include the items required to be reported in Phase 2d, as discussed below.

is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of large trader identifiers [20] (''LTID'') (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date [21] (as applicable) for accounts and flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for all representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (''OMS'')—Execution Management System (''EMS'') scenarios, as required in the Industry Member Technical Specifications.[22]

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) An equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the Alternative Display Facility (ADF) operated by FINRA; or (b) for unlisted equity securities to an ''inter-dealer quotation system'' as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.,* no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this quote definition (*i.e.,* an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.

(ii) Timing of Phase 2c Reporting

Pursuant to paragraph (c)(1) of Rule 7.31, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2c for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 7.31 with new paragraph (c)(1)(C) of Rule 7.31, which would state, in relevant part, that ''Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Phase 2c Industry Member Data by April 26, 2021.''

Pursuant to paragraph (c)(2) of Rule 7.31, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2c for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 7.31 with new paragraph (c)(2)(C) of Rule 7.31, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2c Industry Member Data . . . by December 13, 2021.''

(D) Phase 2d

In the fourth phase of the Phased Reporting, referred to as Phase 2d, Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2d Industry Member Data'' by December 13, 2021. To implement the Phased Reporting for Phase 2d, the Exchange proposes to add paragraph (t)(4) to Rule 7.20 and amend paragraphs (c)(1) and (2) of Rule 7.31.

(i) Scope of Phase 2d Reporting

To implement the Phased Reporting with respect to Phase 2d, the Exchange proposes to add a definition of ''Phase 2d Industry Member Data'' as new paragraph (t)(4) of Rule 7.20. Specifically, the Exchange proposes to define the term ''Phase 2d Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2d.[23]

''Phase 2d Industry Member Data'' is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data is described in detail in the Industry Member Technical Specifications for Phase 2d. While the following summarizes the categories of Industry Member Data required for Phase 2d, the Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2d.

Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) Simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; [24] (6) Allocation Reports as required to be recorded and reported to

[20] See definition of ''Customer Account Information'' in Section 1.1 of the CAT NMS Plan; see also Rule 13h–1 under the Exchange Act.

[21] See definition of ''Customer Account Information'' and ''Account Effective Date'' in Section 1.1 of the CAT NMS Plan. The Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 7.20 to replace the references to November 15, 2018 and 2019, the prior implementation dates, with references to the Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2) to (5) of Rule 7.20 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

[22] In Phase 2c, for any scenarios that involve orders originated in different systems that are not directly linked, such as a customer order originated in an OMS and represented by a principal order originated in an EMS that is not linked to the OMS, marking and linkages must be reported as required in the Industry Member Technical Specifications.

[23] The Participants have determined that reporting information regarding the modification or cancellation of a route is necessary to create the full lifecycle of an order. Accordingly, the Participants require the reporting of information related to the modification or cancellation of a route similar to the data required for the routing of an order and modification and cancellation of an order pursuant to Sections 6.3(d)(ii) and (iv) of the CAT NMS Plan.

[24] As noted above, the Exchange also proposes to amend the dates in the definitions of ''Account Effective Date'' and ''Customer Account Information'' to reflect the Phased Reporting. Specifically, the Exchange proposes to amend paragraph (m)(2) of Rule 7.20 to replace the references to November 15, 2018 and 2019, with references to the commencement of Phase 2c and Phase 2d. The Exchange also proposes to amend paragraphs (a)(1)(A), (a)(1)(B) and (a)(2) to (5) of Rule 7.20 regarding the definition of ''Account Effective Date'' with similar changes to the dates set forth therein.

the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders.

Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: A listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.,* no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.,* FIX) that meets this definition would be reportable in Phase 2d for options.

Phase 2d Industry Member Data also would include with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.,* quotations provided via email or instant messaging).

(ii) Timing of Phase 2d Reporting

Pursuant to paragraph (c)(1) of Rule 7.31, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2d for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 7.31 with new paragraph (c)(1)(D) of Rule 7.31, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (D) Phase 2d Industry Member Data by December 13, 2021.''

Pursuant to paragraph (c)(2) of Rule 7.31, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2d for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 7.31 with new paragraph (c)(2)(C) of Rule 7.31, which would state, in relevant part, that ''Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (C) Small Industry Members to report to the Central Repository . . . Phase 2d Industry Member Data by December 13, 2021.''

(E) Phase 2e

In the fifth phase of Phased Reporting, referred to as Phase 2e, both Large Industry Members and Small Industry Members would be required to report to the Central Repository ''Phase 2e Industry Member Data'' by July 11, 2022. To implement the Phased Reporting for Phase 2e, the Exchange proposes to add paragraph (t)(5) to Rule 7.20 and amend paragraphs (c)(1) and (2) of Rule 7.31.

(i) Scope of Phase 2e Reporting

To implement the Phased Reporting with respect to Phase 2e, the Exchange proposes to add a definition of ''Phase 2e Industry Member Data'' as paragraph (t)(5) of Rule 7.20. Specifically, the Exchange proposes to define the term ''Phase 2e Industry Member Data'' as ''Industry Member Data required to be reported to the Central Repository commencing in Phase 2e as set forth in the Technical Specifications. The full scope of Industry Member Data required by the CAT NMS Plan will be required to be reported to the CAT when Phase 2e has been implemented, subject to any applicable exemptive relief or amendments to the CAT NMS Plan.'' LTIDs and Account Effective Date are both required to be reported in Phases 2c and 2d in certain circumstances, as discussed above. The terms ''Customer Account Information'' and ''Customer Identifying Information'' are defined in Rule 7.20 of the Compliance Rule.[25] The Industry Member Technical Specifications provide detailed guidance regarding the reporting for Phase 2e.

(ii) Timing of Phase 2e Reporting

Pursuant to paragraph (c)(1) of Rule 7.31, Large Industry Members are required to begin reporting to the CAT by November 15, 2018. To implement the Phased Reporting for Phase 2e for Large Industry Members, the Exchange proposes to delete the November 15, 2018 date and to supplement paragraph (c)(1) of Rule 7.31 with new paragraph (c)(1)(E) of Rule 7.31, which would state, in relevant part, that ''[e]ach Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Phase 2e Industry Member Data by July 11, 2022.''

Pursuant to paragraph (c)(2) of Rule 7.31, Small Industry Members are required to begin reporting to the CAT by November 15, 2019. To implement the Phased Reporting for Phase 2e for Small Industry Members, the Exchange proposes to delete the November 15, 2019 date and to supplement paragraph (c)(2) of Rule 7.31 with new paragraph (c)(2)(D) of Rule 7.31, which would state, in relevant part, that ''[e]ach Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository, as follows: . . . (E) Small Industry Members to report to the Central Repository Phase 2e Industry Member Data by July 11, 2022.''

(F) Industry Member Testing Requirements

Rule 7.28(a) sets forth various compliance dates for the testing and development for connectivity, acceptance and the submission order data. In light of the intent to shift to Phased Reporting in place of the two specified dates for the commencement of reporting for Large and Small Industry Members, the Exchange correspondingly proposes to replace the Industry Member development testing milestones in Rule 7.28(a) with the testing milestones set forth in the proposed request for exemptive relief.

[25] The term ''Customer Account Information'' includes account numbers, and the term ''Customer Identifying Information'' includes, with respect to individuals, dates of birth and SSNs. *See* Rule 7.20. The Participants have received exemptive relief from the requirements for the Participants to require their members to provide dates of birth, account numbers and social security numbers for individuals to the CAT. *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020). *See* also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020). Given the relief has been granted, Phase 2e Industry Member Data will not include account numbers, dates of birth and SSNs for individuals.

Specifically, the Exchange proposes to replace Rule 7.28(a) with the following:

(1) Industry Member file submission and data integrity testing for Phases 2a and 2b shall begin in December 2019.

(2) Industry Member testing of the Reporter Portal, including data integrity error correction tools and data submissions, shall begin in February 2020.

(3) The Industry Member test environment shall open with intra-firm linkage validations to Industry Members for both Phases 2a and 2b in April 2020.

(4) The Industry Member test environment shall open to Industry Members with inter-firm linkage validations for both Phases 2a and 2b in July 2020.

(5) The Industry Member test environment shall open to Industry Members with Phase 2c functionality (full representative order linkages) in January 2021.

(6) The Industry Member test environment shall open to Industry Members with Phase 2d functionality (manual options orders, complex options orders, and options allocations) in June 2021.

(7) Participant exchanges that support options market making quoting shall begin accepting Quote Sent Time on quotes from Industry Members no later than April 2020.

(8) The Industry Member test environment (customer and account information) will be open to Industry Members in January 2022.

(4) Granularity of Timestamps

On February 3, 2020, the Participants filed with the Commission a request for exemptive relief from the requirement in Section 6.8(b) of the CAT NMS Plan for each Participant, through its Compliance Rule, to require that, to the extent that its Industry Members utilize timestamps in increments finer than nanoseconds in their order handling or execution systems, such Industry Members utilize such finer increment when reporting CAT Data to the Central Repository.[26] On April 8, 2020, the Participants received the exemptive relief.[27] As a condition to this exemption, the Participants, through their Compliance Rules, will require Industry Members that capture timestamps in increments more granular than nanoseconds to truncate the timestamps, after the nanosecond level for submission to CAT, not round up or down in such circumstances. The timestamp granularity exemption remains in effect for five years, until April 8, 2025. After five years, the exemption would no longer be in effect unless the period the exemption is in effect is extended by the SEC.

Accordingly, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Specifically, the Exchange proposes to amend paragraph (a)(2) of Rule 7.25. Rule 7.25(a)(2) states that

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

The Exchange proposes to amend this provision to read as follows to reflect the exemptive relief:

> Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment up to nanoseconds; provided, that Industry Members that capture timestamps in increments more granular than nanoseconds must truncate the timestamps after the nanosecond level for submission to CAT, rather than rounding such timestamps up or down until April 8, 2025.

(5) Introducing Industry Members

On February 3, 2020, the Participants requested that the Commission exempt broker-dealers that do not qualify as Small Industry Members solely because they satisfy Rule 0–10(i)(2) under the Exchange Act and, as a result, are deemed affiliated with an entity that is not a small business or small organization (''Introducing Industry Member'') from the requirements in the CAT NMS Plan applicable to Industry Members other than Small Industry Members (''Large Industry Members'').[28] Instead, such Introducing Industry Members would comply with the requirements in the CAT NMS Plan applicable to Small Industry Members. On April 20, 2020, the SEC granted the Participants exemptive relief with regard to Introducing Industry Members.[29]

As a result, the Exchange proposes to amend its Compliance Rule to adopt a definition of ''Introducing Industry Member'' and to revise Rule 7.31 to require Introducing Industry Members to comply with the requirements of the CAT NMS Plan applicable to Small Industry Members. Specifically, the Exchange proposes to define ''Introducing Industry Member'' in proposed paragraph (v) to Rule 7.20, as ''a broker-dealer that does not qualify as a Small Industry Member solely because such broker-dealer satisfies Rule 0–10(i)(2) under the Exchange Act in that it introduces transactions on a fully disclosed basis to clearing firms that are not small businesses or small organizations.'' The Exchange also proposes to add a new paragraph (3) to Rule 7.31(c) to state that ''Introducing Industry Members must comply with the requirements of the CAT NMS Plan applicable to Small Industry Members.'' With these changes, Introducing Industry Members would be required to comply with the requirements in the CAT NMS Plan applicable to Small Industry Members, rather than the requirements in the CAT NMS Plan applicable to Large Industry Members.

(6) CCID/PII

On January 29, 2020, the Participants filed with the Commission a request for exemptive relief from certain requirements related to reporting SSNs, dates of birth and account numbers to the CAT.[30] The Commission, Participants and others indicated security concerns with maintaining such sensitive Customer information in the CAT. On March 17, 2020, the Participants received the exemptive relief, subject to certain conditions.[31] Assuming the Participants comply with the conditions set forth in the PII Exemption Order, Industry Members would not be required to report SSNs,

[26] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020).

[27] *See* Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

[28] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Small Industry Members (Feb. 3, 2020).

[29] *See* Securities Exchange Act Release No. 88703 (April 20, 2020), 85 FR 23115 (April 24, 2020).

[30] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemptive Relief from Certain Provisions of the CAT NMS Plan related to Social Security Numbers, Dates of Birth and Account Numbers (Jan. 29, 2020).

[31] *See* Securities Exchange Act Release No. 88393 (March 17, 2020), 85 FR 16152 (March 20, 2020) (Order Granting Conditional Exemptive Relief, Pursuant to Section 36 and Rule 608(e) of the Securities Exchange Act of 1934, from Section 6.4(d)(ii)(C) and Appendix D Sections 4.1.6, 6.2, 8.1.1, 8.2, 9.1, 9.2, 9.4, 10.1, and 10.3 of the National Market System Plan Governing the Consolidated Audit Trail) (''PII Exemption Order''). The PII Exemption Order lists several conditions that must be met by the Exchange. If the Exchange does not satisfy the conditions, the PII Exemption Order would not apply to the Exchange.

dates of birth and account numbers to the CAT NMS Plan.

As described in the request for exemptive relief, the Participants requested exemptive relief to allow for an alternative approach to generating a CAT Customer ID (''CCID'') without requiring Industry Members to report SSNs to the CAT (the ''CCID Alternative''). In lieu of retaining such SSNs in the CAT, the Participants would use the CCID Alternative, a strategy developed by the Chief Information Security Officer for the CAT and the Chief Information Security Officers from each of the Participants, in consultation with security experts from member firms of Securities Industry and Financial Markets Association. The CCID Alternative facilitates the ability of the Plan Processor to generate a CCID without requiring the Plan Processor to receive SSNs or store SSNs within the CAT. Under the CCID Alternative, the Plan Processor would generate a unique CCID using a two-phase transformation process that avoids having SSNs reported to or stored in the CAT. In the first transformation phase, a CAT Reporter would transform the SSN to an interim value (the ''transformed value''). This transformed value, and not the SSN, would be submitted to a separate system within the CAT (''CCID Subsystem''). The CCID Subsystem would then perform a second transformation to create the globally unique CCID for each Customer that is unknown to, and not shared with, the original CAT Reporter. The CCID would then be sent to the customer and account information system of the CAT, where it would be linked with the other customer and account information. The CCID may then be used by the Participants' regulatory staff and the SEC in queries and analysis of CAT Data. To implement the CCID Alternative, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report SSNs to the Central Repository for the original receipt of an order. As set forth in one condition of the PII Exemption Order, Industry Members would be required to transform an SSN to an interim value and report the transformed value to the CAT.

The Participants also requested exemptive relief to allow for an alternative approach which would exempt the reporting of dates of birth and account numbers [32] to the CAT (''Modified PII Approach''), and instead would require Industry Members to report the year of birth and the Firm Designated ID for each trading account associated with the Customers. To implement the Modified PII Approach, the Participants requested exemptive relief from the requirement in Section 6.4(d)(ii)(C) of the CAT NMS Plan to require, through their Compliance Rules, Industry Members to record and report to the Central Repository for the original receipt of an order dates of birth and account numbers for Customers. As conditions to the exemption, Industry Members would be required to report the year of birth of an individual to the Central Repository, and to report the Firm Designated ID to the Central Repository.

To implement the request for exemptive relief and to eliminate the requirement to report SSNs, date of birth and account numbers to the CAT, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief. Rule 7.22(a)(2)(C) states that:

> [s]ubject to subparagraph (a)(3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and, collectively with the information referred to in subparagraph (a)(1), ''Industry Member Data'')), in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 7.23, Customer Account Information and Customer Identifying Information for the relevant Customer.

Similarly, Rule 7.22 requires the reporting of Customer Account Information and Customer Identifying Information to the Central Repository. Currently, Rule 7.20(m) defines ''Customer Identifying Information'' to include, with respect to individuals, ''date of birth, individual tax payer identification number (''ITIN'')/social security number (''SSN'').'' Accordingly, the Exchange proposes to replace ''date of birth'' in the definition of ''Customer Identifying Information'' in Rule 7.20(m) (now renumbered Rule 7.20(n)) with ''year of birth'' and to delete ''individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' from Rule 7.20(m) (now renumbered Rule 7.20(n)). In addition, currently, Rule 7.20(l) defines ''Customer Account Information'' to include account numbers. The Exchange proposes to delete ''account number'' from the definition of ''Customer Account Information'' in Rule 7.20(l) (now renumbered Rule 7.20(m)).

The Exchange also proposes to add a definition of the term ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to Rule 7.20. Specifically, the Exchange proposes to add paragraph (pp) to Rule 7.20 to define ''Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'')'' to mean ''the interim value created by an Industry Member based on a Customer ITIN/SSN.''

The Exchange proposes to revise Rule 7.22(a)(2)(C) to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''). Specifically, the Exchange proposes to revise Rule 7.22(a)(2)(C) to state:

> [s]ubject to subparagraph (a)(3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (''Received Industry Member Data'' and collectively with the information referred to in Rule 7.22(a)(1) ''Industry Member Data'')) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan: . . . (C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), and in accordance with Rule 7.23, Customer Account Information and Customer Identifying Information for the relevant Customer.

The Exchange also proposes to include the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') in the Customer information reporting required under Rule 7.22. Specifically, the Exchange proposes to revise Rule 7.22(a) to require each Industry Member to submit to the Central Repository the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN''), for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 7.31. The Exchange also proposes to revise Rule 7.22(b) to require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account

[32] With respect to this aspect of the requested relief, the PII Exemption Order provided relief with regard to the reporting of all account numbers, not just account numbers for individuals as requested by the Participants.

on a daily basis. In addition, the Exchange proposes to revise Rule 7.22(c) to require, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member to submit to the Central Repository a complete set of the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account. The Exchange also proposes to revise Rule 7.22(d) to require, for each Industry Member for which errors in the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Paragraph (1)(B) of Rule 7.20(m), the definition of ''Customer Account Information'' states that ''in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will'' . . . ''provide the relationship identifier in lieu of the ''account number.'' As an account number will no longer be an element in ''Customer Account Information,'' the relationship identifier used in lieu of the account number will no longer be required as an element of Customer Account Information. Therefore, the Exchange proposes to delete the requirement set forth in Rule 7.20(m)(a)(B) regarding relationship identifiers from Rule 7.20(m).

With these changes, Industry Members would not be required to report to the Central Repository dates of birth, SSNs or account numbers pursuant to Rule 6830(a)(2)(C). However, Industry Members would be required to report the Transformed Value for individual tax payer identification number (''ITIN'')/social security number (''SSN'') and the year of birth to the Central Repository.[33]

(7) FINRA Facility Data Linkage

On June 5, 2020, the Participants filed with the Commission a request for exemptive relief from certain provisions of the CAT NMS Plan to allow for an alternative approach to the reporting of clearing numbers and cancelled trade indicators.[34] The SEC provided this exemptive relief on June 11, 2020.[35] FINRA is required to report to the Central Repository data collected by FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility (collectively, ''FINRA Facility'') pursuant to applicable SRO rules (''FINRA Facility Data''). Included in this FINRA Facility Data is the clearing number of the clearing broker for a reported trade as well as the cancelled trade indicator. Under this alternative approach, the clearing number and the cancelled trade indicator of the FINRA Facility Data that is reported to the CAT would be linked to the related execution reports reported by Industry Members. To implement this approach in a phased manner, the Participants received exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require, through their Compliance Rules, that Industry Members record and report to the Central Repository: (1) If the order is executed, in whole or in part, the SRO-Assigned Market Participant Identifier of the clearing broker, if applicable; and (2) if the trade is cancelled, a cancelled trade indicator, subject to certain conditions.

As a condition to this exemption, the Participants would continue to require Industry Members to submit a trade report for a trade, and, if the trade is cancelled, a cancellation, to a FINRA Facility pursuant to applicable SRO rules, and to report the corresponding execution to the Central Repository. In addition, Industry Members would be required to report to the Central Repository the unique trade identifier reported to a FINRA Facility with the corresponding trade report. Furthermore, if an Industry Member does not submit a cancellation to a FINRA Facility, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator and cancelled trade timestamp if the trade is cancelled. Similarly, if an Industry Member does not submit the clearing number of the clearing broker to a FINRA Facility for a trade, or is unable to provide a link between the execution reported to the Central Repository and the related FINRA Facility trade report, then the Industry Member would be required to record and report to the Central Repository the clearing number as well as contra party information.

As a result, the Exchange proposes to amend its Compliance Rule to reflect the exemptive relief to implement this alternative approach. Specifically, the Exchange proposes to require Industry Members to report to the CAT with an execution report the unique trade identifier reported to a FINRA facility with the corresponding trade report. For example, 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 Facility, it would be the Branch Sequence Number, and for the FINRA/NYSE Trade Reporting Facility, it would the FINRA Compliance Number. This unique trade identifier would be used to link the FINRA Facility Data with the execution report in the CAT. Specifically, the Exchange proposes to add new paragraph (a)(2)(E) to Rule 7.22, which states that:

(E) If an Industry Member is required to submit and submits a trade report for a trade, and, if the trade is cancelled, a cancellation, to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, and the Industry Member is required to report the corresponding execution and/or cancellation to the Central Repository:

(i) The Industry Member is required to report to the Central Repository trade identifier reported by the Industry Member to such FINRA facility for the trade when the Industry Member reports the execution of an order pursuant to Rule 7.22(a)(1)(E) or cancellation of an order pursuant to Rule 7.22(a)(1)(D) beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters, and such trade identifier must be unique beginning October 26, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

The Exchange also proposes to relieve Industry Members of the obligation to report to the CAT data related to clearing brokers and trade cancellations pursuant to Rule 7.22(a)(2)(A)(ii) and (B), respectively, as this data will be reported by FINRA to the CAT, except in certain circumstances. Accordingly, the Exchange proposes new paragraphs (a)(2)(E)(ii) and (iii) to Rule 7.22, which would state:

(ii) if the order is executed in whole or in part, and the Industry Member submits the trade report to one of FINRA's Trade

[33] The Exchange anticipates that the Compliance Rule may be further amended when further details regarding the CCID Alternative are finalized.

[34] *See* Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (June 5, 2020).

[35] *See* Securities Exchange Act Release No. 89051 (June 11, 2020) (**Federal Register** publication pending).

Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the SRO-Assigned Market Participant Identifier of the clearing broker pursuant to Rule 7.22(a)(2)(A)(ii); provided, however, if the Industry Member does not report the clearing number of the clearing broker to such FINRA facility for a trade, or does not report the unique trade identifier to the Central Repository as required by Rule 7.22(a)(2)(E)(i), then the Industry Member would be required to record and report to the Central Repository the clearing number of the clearing broker as well as information about the contra party to the trade beginning April 26, 2021 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters; and

(iii) if the trade is cancelled and the Industry Member submits the cancellation to one of FINRA's Trade Reporting Facilities, OTC Reporting Facility or Alternative Display Facility pursuant to applicable SRO rules, the Industry Member is not required to submit the cancelled trade indicator pursuant to Rule 7.22(a)(2)(B); provided, however, if the Industry Member does not report a cancellation for a canceled trade to such FINRA facility, or does not report the unique trade identifier as required by Rule 7.22(a)(2)(E)(i), then the Industry Member would be required to record and report to the Central Repository a cancelled trade indicator as well as a cancelled trade timestamp beginning June 22, 2020 for Large Industry Members and Small Industry OATS Reporters and beginning December 13, 2021 for Small Industry Non-OATS Reporters.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'' and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[36] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[37] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[38] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that this proposal is consistent with the Act because it is consistent with certain exemptions from the CAT NMS Plan, because it facilitates the retirement of certain existing regulatory systems and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and 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 mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.''[39] To the extent that this proposal implements the Plan, including the exemptive relief, and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule changes are consistent with certain exemptions from the CAT NMS Plan, facilitate the retirement of certain existing regulatory systems, and are designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the amendments to the Compliance Rules will apply equally to all Industry Members that trade NMS Securities and OTC Equity Securities. In addition, all national securities exchanges and FINRA are proposing these amendments to their Compliance Rules. Therefore, this is not a competitive rule filing, and, therefore, it does not impose a burden on competition.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[40] and subparagraph (f)(6) of Rule 19b–4 thereunder.[41]

A proposed rule change filed under Rule 19b–4(f)(6)[42] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[43] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it implements exemptive relief from the CAT NMS Plan granted by the Commission and facilitates the start of Industry Member reporting. In addition, as noted by the Exchange, the proposed rule change is based on a filing recently approved by the Commission.[44] Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[45]

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

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] Id.

[39] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696, 84697 (November 23, 2016).

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[42] 17 CFR 240.19b–4(f)(6).

[43] 17 CFR 240.19b–4(f)(6)(iii).

[44] *See* Securities Exchange Act Release No. 89108 (June 19, 2020).

[45] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CBOE–2020–059 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–CBOE–2020–059. 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–CBOE–2020–059 and should be submitted on or before July 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14121 Filed 6–30–20; 8:45 am]

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[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–39, OMB Control No. 3235–0049]

Proposal 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 ADV

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission is issuing this Notice in order to supplement the Notice it issued on May 12, soliciting comments on the collection of information. The Commission is issuing this supplemental Notice to update the approximate average per adviser burden based on data as of March 31, 2020. 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 ADV'' (17 CFR 279.1). Form ADV is the investment adviser registration form and exempt reporting adviser reporting form filed electronically with the Commission pursuant to rules 203–1 (17 CFR 275.203–1), 204–1 (17 CFR 275.204–1) and 204–4 (17 CFR 275.204–4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*) by advisers registered with the Commission or applying for registration with the Commission or by exempt reporting advisers filing reports with the Commission. The information collected takes the form of disclosures to the adviser's clients and potential clients. The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, its conflicts of interest and personnel. Clients use certain of the information to determine whether to hire or retain an adviser.

The information collected provides the Commission with knowledge about the adviser, its business, its conflicts of interest and personnel. The Commission uses the information to determine eligibility for registration with the Commission and to manage its regulatory, examination, and enforcement programs. Part 1 of Form ADV contains information used primarily by the Commission staff and Part 2 is the client brochure. Part 3 requires registered investment advisers that offer services to retail investors to prepare and file with the Commission a relationship summary.

The respondents to this information collection are investment advisers registered with the Commission or applying for registration with the Commission and exempt reporting advisers filing reports with the Commission. Our latest data indicate that there were 13,500 advisers registered with the Commission as of March 31, 2020. The Commission has estimated that Form ADV imposes an annual blended average per adviser burden of approximately 21.55 hours per respondent. Based on this figure, the Commission estimates a total annual burden of 383,652 hours for this collection of information.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (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 45 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 25, 2020.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14106 Filed 6–30–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89150; File No. SR–BX–2020–012]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Sections 13 and 15 To Increase the Position and Exercise Limits for Options on the SPDR® S&P 500® ETF Trust

June 25, 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 17, 2020, Nasdaq BX, Inc. (''BX'' 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Options 9, Section 13, Position Limits, to increase position limits for options on the SPDR® S&P 500® ETF Trust (''SPY''), and similarly increase exercise limits within Options 9, Section 15, Exercise Limits.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.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 Exchange proposes to amend Options 9, Section 13, Position Limits, to increase position limits for options on SPY. The Exchange's position limits are incorporated by reference to Cboe Exchange, Inc. (''Cboe''), except for SPY.[3] The proposed amendments to SPY are based on the similar proposal by Cboe.[4] The Exchange also proposes to make minor non-substantive technical corrections to Options 9, Section 13 and Options 9, Section 15. Each change will be described below.

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

The Exchange has observed an ongoing increase in demand in options on the SPDR® S&P 500® ETF Trust (''SPY'') for both trading and hedging purposes. Though the demand for options on SPY appear to have increased, position limits (and corresponding exercise limits) for options on SPY have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options, resulting in the transfer of volume to over-the-counter (''OTC'') markets. OTC transactions occur through bilateral agreements, the terms of which are not publically disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increase for position limits (and exercise limits) on options on SPY may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange, as well as other options exchange on which they participate. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of SPY and SPY component securities, as well as the highly liquid markets for those securities, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on SPY for legitimate economic purposes compels an increase in position limits (and corresponding exercise limits).

Proposed Position Limits for Options on SPY

Options 9, Section 13 sets forth the position limit for options on SPY. The Exchange proposes to amend Options 9, Section 13 to double the position limits for options on SPY. The current position limit for options on SPY is 1,800,000 and the proposed position limit for options on SPY is 3,600,000. The Exchange represents that SPY qualifies for the initial listing criteria set forth in Options 4, Section 3(i) for ETFs. In addition, the Exchange is making corresponding amendments to exercise limits for options on SPY within Options 9, Section 15.

Composition and Growth Analysis for SPY

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used or might create

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Options 9, Section 13(a)(1). The Exchange notes that with respect to U.S. Dollar-Settled Foreign Currency Options, those position limits are incorporated by reference to Phlx. *See* Options 9, Section 13(a)(4).

[4] *See* Securities Exchange Act Release No. 88768 (April 29, 2020) (SR–CBOE–2020–015) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Increase Position Limits for Options on Certain Exchange-Traded Funds and Indexes). The Cboe proposal also proposed to increase position limits for options overlying a number of ETFs as well as the MSCI Emerging Markets Index (''MXEF'') and the MSCI EAFE Index (''MXEA''). The Exchange's proposal only proposes an increase to the position (and exercise limit) for options overlying SPY. BX does not list options on MXEF and MXEA. Also, other options and Exchange-Traded Fund position limits, which were amended in Cboe's rule change, have already been increased on BX because BX's rules at Options 9, Section 13 and Options 9, Section 15 incorporate its position limits and exercise limits to Cboe, except for SPY. Accordingly, this proposal is limited to SPY.

incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[5]

SPY as well as SPY components are highly liquid, and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. Indeed, the Commission recognized the liquidity of the securities comprising the underlying interest of SPY and permitted no position limits on SPY options from 2012 through 2018.[6]

To support the proposed position limit increase (and corresponding increase in exercise limit), the Exchange considered both the liquidity of SPY and the component securities of SPY, as well as the availability of economically equivalent products to the overlying option and its respective position limit. SPY is based upon the S&P 500 Index, and therefore the options on SPY are economically equivalent to the options on the index, which have no position limits. Accordingly, the Exchange believes the position limit of 3,600,000 contracts is appropriate for options on SPY.

The Exchange is presenting data collected by Cboe as part of its initial filing to increase the position and exercise limit on SPY, that the Commission approved,[7] following trading statistics regarding shares of and options on SPY, as well as the component securities:

Product	ADV[8] (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs)[9]	Fund market cap (USD)	Total market cap of ETF components[10]
SPY	70.3 million	2.8 million	968.7 million	312.9 billion	29.3 trillion.

The Exchange is presenting the following data collected by Cboe as part of its initial filing, that the Commission has approved,[11] for the same trading statistics, where applicable, as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs pursuant to Options 9, Section 13, to draw comparisons in support of a proposed position limit increase for options on SPY (see further discussion below):

Product	ADV (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs)	Fund market cap (USD)	Total market cap of ETF components	Current position limits
QQQ	30.2 million	670,200	410.3 million	88.7 billion	10.1 trillion	1,800,000

The Exchange believes that, overall, the liquidity in the shares of SPY and in the component securities of SPY and in its overlying options, as well as the large market capitalizations and structure of SPY support the proposal to increase the position limit for SPY (and corresponding exercise limit). Given the robust liquidity and capitalization in SPY and in the component securities of SPY the Exchange does not anticipate that the proposed increase in position limits would create significant price movements. Also, the Exchange believes the market capitalization of the underlying component securities of the S&P 500 Index are large enough to adequately absorb potential price movements that may be caused by large trades.

The following analysis for SPY, which the Exchange agrees with in support of this proposal, as well as the statistics presented in support thereof, were presented by Cboe in their initial filing, which was approved by the Commission.[12] The Exchange notes that SPY tracks the performance of the S&P 500 Index, which is an index of diversified large cap U.S. companies.[13] It is composed of 505 selected stocks spanning over approximately 24 separate industry groups. The S&P 500 is one of the most commonly followed equity indices, and is widely considered to be the best indicator of stock market performance as a whole. SPY is one of the most actively traded ETFs, and, since 2017,[14] its ADV has increased from approximately 64.6 million shares to 70.3 million shares by the end of 2019. Similarly, its ADV in options contracts has increased from 2.6 million to 2.8 million through 2019.[15] As noted,

[5] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[6] *See* Securities Exchange Act Release No. 69179 (March 19, 2013), 78 FR 17952 (March 25, 2013) (SR–BX–2013–024), which implemented a pilot program that ran through 2017, during which there were no position limits for options on SPY. The Exchange notes that throughout the duration of the pilot program it was not aware of any problems created or adverse consequences as of result of the pilot program. *See also* Securities Exchange Act Release No. 83423 (June 13, 2018), 83 FR 28481 (June 19, 2018) (SR–BX–2018–022).

[7] *See supra* note 3.

[8] Chboe's Average daily volume (ADV) data for ETF shares and options contracts are for all of 2019. Additionally, reference to ADV in ETF shares, and ETF options herein this proposal are for all of 2019, unless otherwise indicated.

[9] *See* Amendment No. 1 to SR–CBOE–2020–015, at page 4, available at *https://www.sec.gov/comments/sr-cboe-2020-015/srcboe2020015-7081714-215592.pdf* (''Amendment No. 1'').

[10] *See* Amendment No. 1, at page 4.

[11] *See supra* note 4.

[12] *See supra* note 4.

[13] *See* SPDR S&P 500 ETF Trust, available at *https://www.ssga.com/us/en/individual/etfs/funds/spdr-sp-500-etf-trust-spy* (January 21, 2020).

[14] *See supra* note 4.

[15] *See also* Securities Exchange Act Release No. 83423 (June 13, 2018), 83 FR 28481 (June 19, 2018) (SR–BX–2018–022) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Position Limits and Exercise Limits for Options on the SPDR Exchange-Traded Fund).

the demand for options trading on SPY has continued to increase, however, the position limits have remained the same, which the Exchange believes may have impacted growth in SPY option volume from 2017 through 2019. The Exchange also notes that SPY shares are more liquid than INVESCO QQQ Trust℠, Series 1 (''QQQ'') shares, which is also currently subject to a position limit of 1,800,000 contracts. Specifically, SPY currently experiences over twice the ADV in shares and over four times the ADV in options than that of QQQ.[16]

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for ETFs will lessen the potential for manipulative activity with options on SPY. When an ETF provider wants to create more shares, it looks to an Authorized Participant (generally a market maker or other large financial institution) to acquire the securities the ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the Authorized Participant can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the net asset value, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day, and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption process, therefore, creates a direct link to the underlying components of the ETF, and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the ETF options.

The Exchange understands that the ETF creation and redemption process seeks to keep an ETF's share price trading in line with the ETF's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, the ETF's share price might rise above the value of its underlying securities. When this happens, the Authorized Participant believes the ETF may now be overpriced, so it may buy shares of the component securities and then sell ETF shares in the open market (*i.e.,* creations). This may drive the ETF's share price back toward the underlying net asset value. Likewise, if the ETF share price starts trading at a discount to the securities it holds, the Authorized Participant can buy shares of the ETF and redeem them for the underlying securities (*i.e.,* redemptions). Buying undervalued ETF shares may drive the share price of the ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits for the options on SPY would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on SPY would remain unchanged. Thus, the Exchange would still require that each Participant that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers would continue to be exempt from this reporting requirement, however, the Exchange may access Market-Maker position information.[17] Moreover, the Exchange's requirement that Participants file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more options contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.[18]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of SPY and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlying's, as applicable.[19] The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[20] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on SPY. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Participant must maintain for a large position held by itself or by its customer.[21] In addition, Rule 15c3–1 [22] imposes a capital charge on Participants to the extent of any margin deficiency resulting from the higher margin requirement.

Technical Corrections

The Exchange proposes to: (1) Update the Chicago Board Options Exchange to Cboe Exchange, Inc. (''Cboe'') as the name of this self-regulatory organization has changed; (2) rename the SPDR® S&P 500® exchange-traded fund (''SPY ETF'' or ''SPY'') as ''SPDR® S&P 500® ETF Trust (SPY) to update the name of this product; (3) amend ''Customer'' to ''customer'' as this reference refers to the customer of a Participant; and (4) amend ''PHLX'' to ''Phlx.''

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

[16] The 2019 ADV for QQQ shares is 30.2 million and for options on QQQ is 670,200.

[17] The Options Clearing Corporation (''OCC'') through the Large Option Position Reporting (''LOPR'') system acts as a centralized service provider for Participant compliance with position reporting requirements by collecting data from each Participant, consolidating the information, and ultimately providing detailed listings of each Participant's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'').

[18] *See* Options 6E, Section 2 for reporting requirements.

[19] The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal, and will continue to employ them.

[20] 17 CFR 240.13d–1.

[21] *See* Options 6C, Section 3 for a description of margin requirements.

[22] 17 CFR 240.15c3–1.

Section 6(b) of the Act.[23] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[24] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[25] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limit for options on the SPY will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increase will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (*e.g.,* there are Exchange-Traded Products (''ETPs'') that use options on SPY as part of their investment strategy, and the applicable position limits (and corresponding exercise limits) as they stand today may inhibit these ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from over the counter markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of SPY, the considerable market capitalization of the fund, underlying component securities and the liquidity of the markets for the applicable options and underlying component securities will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of securities deters manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization, trading volume, and liquidity in SPY, and the components of the Underlying ETFs [sic] (as described above). The Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that removing position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[26]

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options, is not novel and has been previously approved by the Commission. The proposed increase to the position and exercise limits on SPY has recently been approved by the Commission.[27] The Commission has previously approved, on a pilot basis, eliminating position limits for options on SPY.[28] In approving increases in position limits in the past, the Commission relied heavily upon the exchange's surveillance capabilities, expressing trust in the enhanced surveillances and reporting safeguards that the exchange took in order to detect and deter possible manipulative behavior which might arise from eliminating position and exercise limits.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on SPY, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

Technical Corrections

The Exchange's proposal to make various technical amendments, within Options 9, Section 13 and Options 9, Section 15 to: (1) Update the Chicago Board Options Exchange to Cboe Exchange, Inc. (''Cboe'') as the name of this self-regulatory organization has changed; (2) rename the SPDR® S&P 500® exchange-traded fund (''SPY ETF'' or ''SPY'') as ''SPDR® S&P 500® ETF Trust (SPY) to update the name of this product; (3) amend ''Customer'' to ''customer'' as this reference refers to the customer of a Participant; and (4) amend ''PHLX'' to ''Phlx.'' Accordingly, these amendments are non-substantive technical changes which add clarity to the Rulebook and are consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intra-market competition because it will apply to all market participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limit (and exercise limit) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives of market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders.[29] The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *Id.*

[26] *See* Securities Exchange Act Release No. 62147 (October 28, 2005) (SR–CBOE–2005–41), at 62149.

[27] *See supra* note 4.

[28] *See supra* notes 9 and 10.

[29] Additionally, several other options exchanges have the same position limits as the Exchange is proposing, as they incorporate by reference to Cboe's position limits, and as a result the position limits for options on SPY and will increase at those exchanges.

market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange understands that other options exchanges intend to file similar proposed rule changes with the Commission to increase position limits on options on SPY. This may further contribute to fair competition among exchanges for multiply listed options.

Technical Corrections

The Exchange's proposal to make various technical amendments, within Options 9, Section 13 and Options 9, Section 15 to: (1) Update the Chicago Board Options Exchange to Cboe Exchange, Inc. (''Cboe'') as the name of this self-regulatory organization has changed; (2) rename the SPDR® S&P 500® exchange-traded fund (''SPY ETF'' or ''SPY'') as ''SPDR® S&P 500® ETF Trust (SPY) to update the name of this product; (3) amend ''Customer'' to ''customer'' as this reference refers to the customer of a Participant; and (4) amend ''PHLX'' to ''Phlx.'' Accordingly, these amendments are non-substantive technical changes which add clarity to the Rulebook and do not impose a 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [32] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [33] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would allow the Exchange to immediately increase its position and exercise limits for options on SPY to those of Cboe, which the Exchange believes will ensure fair competition among exchanges and provide consistency for BX Participants that are also members at Cboe where these increased position and exercise limits are currently in place. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2020–012 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–BX–2020–012. 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–BX–2020–012, and should be submitted on or before July 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

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[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89151; File No. SR–NASDAQ–2020–033]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Sections 13 and 15 To Increase the Position and Exercise Limits for Options on the SPDR® S&P 500® ETF Trust

June 25, 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 17, 2020, The Nasdaq Stock Market LLC (''Nasdaq'' 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC's (''NOM'') Options 9, Section 13, Position Limits, to increase position limits for options on the SPDR® S&P 500® ETF Trust (''SPY''), and similarly increase exercise limits within Options 9, Section 15, Exercise Limits.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 9, Section 13, Position Limits, to increase position limits for options on SPY. The Exchange's position limits are incorporated by reference to Cboe Exchange, Inc. (''Cboe''), except for SPY.[3] The proposed amendments to SPY are based on the similar proposal by Cboe.[4] The Exchange also proposes to make minor non-substantive technical corrections to Options 9, Section 13 and Options 9, Section 15. Each change will be described below.

Position limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that position limits must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

The Exchange has observed an ongoing increase in demand in options on the SPDR® S&P 500® ETF Trust (''SPY'') for both trading and hedging purposes. Though the demand for options on SPY appear to have increased, position limits (and corresponding exercise limits) for options on SPY have remained the same. The Exchange believes these unchanged position limits may have impeded, and may continue to impede, trading activity and strategies of investors, such as use of effective hedging vehicles or income generating strategies (*e.g.,* buy-write or put-write), and the ability of Market Makers to make liquid markets with tighter spreads in these options, resulting in the transfer of volume to over-the-counter (''OTC'') markets. OTC transactions occur through bilateral agreements, the terms of which are not publically disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process on a public exchange or other lit markets. Therefore, the Exchange believes that the proposed increase for position limits (and exercise limits) on options on SPY may enable liquidity providers to provide additional liquidity to the Exchange and other market participants to transfer their liquidity demands from OTC markets to the Exchange, as well as other options exchange on which they participate. As described in further detail below, the Exchange believes that the continuously increasing market capitalization of SPY and SPY component securities, as well as the highly liquid markets for those securities, reduces the concerns for potential market manipulation and/or disruption in the underlying markets upon increasing position limits, while the rising demand for trading options on SPY for legitimate economic purposes compels an increase in position limits (and corresponding exercise limits).

Proposed Position Limits for Options on SPY

Options 9, Section 13 sets forth the position limit for options on SPY. The Exchange proposes to amend Options 9, Section 13 to double the position limits for options on SPY. The current position limit for options on SPY is 1,800,000 and the proposed position limit for options on SPY is 3,600,000. The Exchange represents that SPY qualifies for the initial listing criteria set forth in Options 4, Section 3(i) for ETFs. In addition, the Exchange is making corresponding amendments to exercise limits for options on SPY within Options 9, Section 15.

Composition and Growth Analysis for SPY

As stated above, position (and exercise) limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit options positions. The Commission has recognized that these limits are designed to minimize the potential for

[3] *See* Options 9, Section 13(a)(1). The Exchange notes that with respect to U.S. Dollar-Settled Foreign Currency Options, those position limits are incorporated by reference to Phlx. *See* Options 9, Section 13(a)(4).

[4] *See* Securities Exchange Act Release No. 88768 (April 29, 2020) (SR–CBOE–2020–015) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Increase Position Limits for Options on Certain Exchange-Traded Funds and Indexes). The Cboe proposal also proposed to increase position limits for options overlying a number of ETFs as well as the MSCI Emerging Markets Index (''MXEF'') and the MSCI EAFE Index (''MXEA''). The Exchange's proposal only proposes an increase to the position (and exercise limits) for options overlying SPY. NOM does not list options on MXEF and MXEA. Also, other options and Exchange-Traded Fund position limits, which were amended in Cboe's rule change, have already been increased on NOM because NOM's rules at Options 9, Section 13 and Options 9, Section 15 incorporate its position limits and exercise limits to Cboe, except for SPY. Accordingly, this proposal is limited to SPY.

mini-manipulations and for corners or squeezes of the underlying market, as well as serve to reduce the possibility for disruption of the options market itself, especially in illiquid classes.[5]

SPY as well as SPY components are highly liquid, and are based on a broad set of highly liquid securities and other reference assets, as demonstrated through the trading statistics presented in this proposal. Indeed, the Commission recognized the liquidity of the securities comprising the underlying interest of SPY and permitted no position limits on SPY options from 2012 through 2018.[6]

To support the proposed position limit increase (and corresponding increase in exercise limit), the Exchange considered both the liquidity of SPY and the component securities of SPY, as well as the availability of economically equivalent products to the overlying option and its respective position limit. SPY is based upon S&P 500 Index, and therefore the options on SPY are economically equivalent to the options on the index, which have no position limits. Accordingly, the Exchange believes the position limit of 3,600,000 contracts is appropriate for options on SPY.

The Exchange is presenting data collected by Cboe as part of its initial filing to increase the position and exercise limit on SPY, that the Commission approved,[7] following trading statistics regarding shares of and options on SPY, as well as the component securities:

Product	ADV [8] (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs) [9]	Fund market cap (USD)	Total market cap of ETF components [10]
SPY	70.3 million	2.8 million	968.7 million	312.9 billion	29.3 trillion.

The Exchange is presenting the following data collected by Cboe as part of its initial filing, that the Commission has approved,[11] for the same trading statistics, where applicable, as above regarding a sample of other ETFs, as well as the current position limits for options on such ETFs pursuant to Options 9, Section 13, to draw comparisons in support of a proposed position limit increase for options on SPY (see further discussion below):

Product	ADV (ETF shares)	ADV (option contracts)	Shares outstanding (ETFs)	Fund market cap (USD)	Total market cap of ETF components	Current position limits
QQQ	30.2 million	670,200	410.3 million	88.7 billion	10.1 trillion	1,800,000

The Exchange believes that, overall, the liquidity in the shares of SPY and in the component securities of SPY and in its overlying options, as well as the large market capitalizations and structure of SPY support the proposal to increase the position limit for SPY (and corresponding exercise limit). Given the robust liquidity and capitalization in SPY and in the component securities of SPY the Exchange does not anticipate that the proposed increase in position limits would create significant price movements. Also, the Exchange believes the market capitalization of the underlying component securities of the S&P 500 Index are large enough to adequately absorb potential price movements that may be caused by large trades.

The following analysis for SPY, which the Exchange agrees with in support of this proposal, as well as the statistics presented in support thereof, were presented by Cboe in their initial filing, which was approved by the Commission.[12] The Exchange notes that SPY tracks the performance of the S&P 500 Index, which is an index of diversified large cap U.S. companies.[13] It is composed of 505 selected stocks spanning over approximately 24 separate industry groups. The S&P 500 is one of the most commonly followed equity indices, and is widely considered to be the best indicator of stock market performance as a whole. SPY is one of the most actively traded ETFs, and, since 2017,[14] its ADV has increased from approximately 64.6 million shares to 70.3 million shares by the end of 2019. Similarly, its ADV in options contracts has increased from 2.6 million to 2.8 million through 2019.[15] As noted, the demand for options trading on SPY has continued to increase, however, the position limits have remained the same, which the Exchange believes may have impacted growth in SPY option volume from 2017 through 2019. The Exchange also notes that SPY shares are more liquid than INVESCO QQQ Trust℠, Series 1 (''QQQ'') shares, which is also currently subject to a position limit of 1,800,000 contracts. Specifically, SPY currently experiences over twice the ADV in shares and over four times the ADV in options than that of QQQ.[16]

Creation and Redemption for ETFs

The Exchange believes that the creation and redemption process for ETFs will lessen the potential for manipulative activity with options on SPY. When an ETF provider wants to create more shares, it looks to an Authorized Participant (generally a market maker or other large financial institution) to acquire the securities the

[5] *See* Securities Exchange Act Release No. 67672 (August 15, 2012), 77 FR 50750 (August 22, 2012) (SR–NYSEAmex–2012–29).

[6] *See* Securities Exchange Act Release No. 69180 (March 19, 2013), 78 FR 17962 (March 25, 2013) (SR–NASDAQ–2013–046), which implemented a pilot program that ran through 2017, during which there were no position limits for options on SPY. The Exchange notes that throughout the duration of the pilot program it was not aware of any problems created or adverse consequences as of result of the pilot program. *See also* Securities Exchange Act Release No. 83421 (June 13, 2018), 83 FR 28474 (June 19, 2018) (SR–NASDAQ–2018–044).

[7] *See supra* note 3.

[8] Cboe's Average daily volume (ADV) data for ETF shares and options contracts are for all of 2019. Additionally, reference to ADV in ETF shares, and ETF options herein this proposal are for all of 2019, unless otherwise indicated.

[9] *See* Amendment No. 1 to SR–CBOE–2020–015, at page 4, available at *https://www.sec.gov/comments/sr-cboe-2020-015/srcboe2020015-7081714-215592.pdf* (''Amendment No. 1'').

[10] *See* Amendment No. 1, at page 4.

[11] *See supra* note 4.

[12] *See supra* note 4.

[13] *See* SPDR S&P 500 ETF Trust, available at *https://www.ssga.com/us/en/individual/etfs/funds/spdr-sp-500-etf-trust-spy* (January 21, 2020).

[14] *See supra* note 4.

[15] *See also* Securities Exchange Act Release No. 83421 (June 13, 2018), 83 FR 28474 (June 19, 2018) (SR–NASDAQ–2018–044). (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market LLC (''NOM'') Rules at Supplementary Material to Chapter III, Section 7, Entitled ''Position Limits,'' and Section 9, Entitled ''Exercise Limits'').

[16] The 2019 ADV for QQQ shares is 30.2 million and for options on QQQ is 670,200.

ETF is to hold. For instance, when an ETF is designed to track the performance of an index, the Authorized Participant can purchase all the constituent securities in the exact same weight as the index, then deliver those shares to the ETF provider. In exchange, the ETF provider gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. The price is based on the net asset value, not the market value at which the ETF is trading. The creation of new ETF units can be conducted during an entire trading day, and is not subject to position limits. This process works in reverse where the ETF provider seeks to decrease the number of shares that are available to trade. The creation and redemption process, therefore, creates a direct link to the underlying components of the ETF, and serves to mitigate potential price impact of the ETF shares that might otherwise result from increased position limits for the ETF options.

The Exchange understands that the ETF creation and redemption process seeks to keep an ETF's share price trading in line with the ETF's underlying net asset value. Because an ETF trades like a stock, its share price will fluctuate during the trading day, due to simple supply and demand. If demand to buy an ETF is high, for instance, the ETF's share price might rise above the value of its underlying securities. When this happens, the Authorized Participant believes the ETF may now be overpriced, so it may buy shares of the component securities and then sell ETF shares in the open market (*i.e.,* creations). This may drive the ETF's share price back toward the underlying net asset value. Likewise, if the ETF share price starts trading at a discount to the securities it holds, the Authorized Participant can buy shares of the ETF and redeem them for the underlying securities (*i.e.,* redemptions). Buying undervalued ETF shares may drive the share price of the ETF back toward fair value. This arbitrage process helps to keep an ETF's share price in line with the value of its underlying portfolio.

Surveillance and Reporting Requirements

The Exchange believes that increasing the position limits for the options on SPY would lead to a more liquid and competitive market environment for these options, which will benefit customers interested in trading these products. The reporting requirement for the options on SPY would remain unchanged. Thus, the Exchange would still require that each Participant that maintains positions in the options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the options' positions, whether such positions are hedged and, if so, a description of the hedge(s). Market Makers would continue to be exempt from this reporting requirement, however, the Exchange may access Market-Maker position information.[17] Moreover, the Exchange's requirement that Participants file reports with the Exchange for any customer who held aggregate large long or short positions on the same side of the market of 200 or more options contracts of any single class for the previous day will remain at this level for the options subject to this proposal and will continue to serve as an important part of the Exchange's surveillance efforts.[18]

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange and other SROs are capable of properly identifying disruptive and/or manipulative trading activity. The Exchange also represents that it has adequate surveillances in place to detect potential manipulation, as well as reviews in place to identify potential changes in composition of SPY and continued compliance with the Exchange's listing standards. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlyings, as applicable.[19] The Exchange also notes that large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G,[20] which are used to report ownership of stock which exceeds 5% of a company's total stock issue and may assist in providing information in monitoring for any potential manipulative schemes.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged positions in the options on SPY. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Participant must maintain for a large position held by itself or by its customer.[21] In addition, Rule 15c3–1 [22] imposes a capital charge on Participants to the extent of any margin deficiency resulting from the higher margin requirement.

Technical Corrections

The Exchange proposes to: (1) Update the Chicago Board Options Exchange to Cboe Exchange, Inc. (''Cboe'') as the name of this self-regulatory organization has changed; (2) rename the SPDR® S&P 500® exchange-traded fund (''SPY ETF'' or ''SPY'') as ''SPDR® S&P 500® ETF Trust (SPY) to update the name of this product; (3) amend ''Customer'' to ''customer'' as this reference refers to the customer of a Participant; and (4) amend ''PHLX'' to ''Phlx.''

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[23] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [24] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [25] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed increase in position limit for options on the SPY will remove

[17] The Options Clearing Corporation (''OCC'') through the Large Option Position Reporting (''LOPR'') system acts as a centralized service provider for Participant compliance with position reporting requirements by collecting data from each Participant, consolidating the information, and ultimately providing detailed listings of each Participant's report to the Exchange, as well as Financial Industry Regulatory Authority, Inc. (''FINRA''), acting as its agent pursuant to a regulatory services agreement (''RSA'').

[18] *See* Options 6E, Section 2 for reporting requirements.

[19] The Exchange believes these procedures have been effective for the surveillance of trading the options subject to this proposal, and will continue to employ them.

[20] 17 CFR 240.13d–1.

[21] *See* Options 6C, Section 3 for a description of margin requirements.

[22] 17 CFR 240.15c3–1.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *Id.*

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide market participants with the ability to more effectively execute their trading and hedging activities. The proposed increase will allow market participants to more fully implement hedging strategies in related derivative products and to further use options to achieve investment strategies (*e.g.,* there are Exchange-Traded Products (''ETPs'') that use options on SPY as part of their investment strategy, and the applicable position limits (and corresponding exercise limits) as they stand today may inhibit these ETPs in achieving their investment objectives, to the detriment of investors). Also, increasing the applicable position limits may allow Market Makers to provide the markets for these options with more liquidity in amounts commensurate with increased consumer demand in such markets. The proposed position limit increases may also encourage other liquidity providers to shift liquidity, as well as encourage consumers to shift demand, from over the counter markets onto the Exchange, which will enhance the process of price discovery conducted on the Exchange through increased order flow.

In addition, the Exchange believes that the structure of SPY, the considerable market capitalization of the fund, underlying component securities and the liquidity of the markets for the applicable options and underlying component securities will mitigate concerns regarding potential manipulation of the products and/or disruption of the underlying markets upon increasing the relevant position limits. As a general principle, increases in market capitalizations, active trading volume, and deep liquidity of securities deters manipulation and/or disruption. This general principle applies to the recently observed increased levels of market capitalization, trading volume, and liquidity in SPY, and the components of the Underlying ETFs [sic] (as described above). The Exchange does not believe that the options markets or underlying markets would become susceptible to manipulation and/or disruption as a result of the proposed position limit increases. Indeed, the Commission has previously expressed the belief that removing position and exercise limits may bring additional depth and liquidity to the options markets without increasing concerns regarding intermarket manipulation or disruption of the options or the underlying securities.[26]

Further, the Exchange notes that the proposed rule change to increase position limits for select actively traded options, is not novel and has been previously approved by the Commission. The proposed increase to the position and exercise limits on SPY has recently been approved by the Commission.[27] The Commission has previously approved, on a pilot basis, eliminating position limits for options on SPY.[28] In approving increases in position limits in the past, the Commission relied heavily upon the exchange's surveillance capabilities, expressing trust in the enhanced surveillances and reporting safeguards that the exchange took in order to detect and deter possible manipulative behavior which might arise from eliminating position and exercise limits.

The Exchange's surveillance and reporting safeguards continue to be designed to deter and detect possible manipulative behavior that might arise from increasing or eliminating position and exercise limits in certain classes. The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns regarding potentially large, unhedged position in the options on SPY, further promoting just and equitable principles of trading, the maintenance of a fair and orderly market, and the protection of investors.

Technical Corrections

The Exchange's proposal to make various technical amendments, within Options 9, Section 13 and Options 9, Section 15 to: (1) Update the Chicago Board Options Exchange to Cboe Exchange, Inc. (''Cboe'') as the name of this self-regulatory organization has changed; (2) rename the SPDR® S&P 500® exchange-traded fund (''SPY ETF'' or ''SPY'') as ''SPDR® S&P 500® ETF Trust (SPY) to update the name of this product; (3) amend ''Customer'' to ''customer'' as this reference refers to the customer of a Participant; and (4) amend ''PHLX'' to ''Phlx.'' Accordingly, these amendments are non-substantive technical changes which add clarity to the Rulebook and are consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intra-market competition because it will apply to all market participants. The Exchange does not believe the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increased position limit (and exercise limit) will be available to all market participants and apply to each in the same manner. The Exchange believes that the proposed rule change will provide additional opportunities for market participants to more efficiently achieve their investment and trading objectives of market participants.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. On the contrary, the Exchange believes the proposal promotes competition because it may attract additional order flow from the OTC market to exchanges, which would in turn compete amongst each other for those orders.[29] The Exchange believes market participants would benefit from being able to trade options with increased position limits in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor. The Exchange understands that other options exchanges intend to file similar proposed rule changes with the Commission to increase position limits on options on SPY. This may further contribute to fair competition among exchanges for multiply listed options.

Technical Corrections

The Exchange's proposal to make various technical amendments, within Options 9, Section 13 and Options 9, Section 15 to: (1) Update the Chicago Board Options Exchange to Cboe Exchange, Inc. (''Cboe'') as the name of this self-regulatory organization has changed; (2) rename the SPDR® S&P 500® exchange-traded fund (''SPY ETF'' or ''SPY'') as ''SPDR® S&P 500® ETF Trust (SPY) to update the name of this product; (3) amend ''Customer'' to ''customer'' as this reference refers to the customer of a Participant; and (4) amend ''PHLX'' to ''Phlx.'' Accordingly, these amendments are non-substantive

[26] *See* Securities Exchange Act Release No. 62147 (October 28, 2005) (SR–CBOE–2005–41), at 62149.

[27] *See supra* note 4.

[28] *See supra* notes 9 and 10.

[29] Additionally, several other options exchanges have the same position limits as the Exchange is proposing, as they incorporate by reference to Cboe's position limits, and as a result the position limits for options on SPY and will increase at those exchanges.

technical changes which add clarity to the Rulebook and do not impose a 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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [30] and Rule 19b–4(f)(6) thereunder.[31]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [32] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [33] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay would be consistent with the protection of investors and the public interest because it would allow the Exchange to immediately increase its position and exercise limits for options on SPY to those of Cboe, which the Exchange believes will ensure fair competition among exchanges and provide consistency for Nasdaq Participants that are also members at Cboe where these increased position and exercise limits are currently in place. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2020–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2020–033. 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–NASDAQ–2020–033, and should be submitted on or before July 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 240.19b–4(f)(6).

[33] 17 CFR 240.19b–4(f)(6)(iii).

[34] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89155; File No. SR–IEX–2020–09]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations

June 25, 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 23, 2020, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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 and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

4 thereunder,[5] IEX proposes to add the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in Rule 9.218. The Exchange requests accelerated approval and effectiveness of this filing.

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 add IEX's CAT industry member compliance rules (the ''CAT Compliance Rules'') to the list of minor rule violations in Rule 9.218.[6] This proposal is based upon the Financial Industry Regulatory Authority, Inc. (''FINRA'') filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.[7]

Proposed Rule Change

The Exchange adopted the CAT Compliance Rules in the Rule Series 11.600 in order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[8] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,[9] and each Plan Participant accordingly has adopted the same compliance rules in the Exchange's Rule Series 11.600. The common CAT Compliance Rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 9.218 sets forth the list of rules under which a Member [10] or associated person may be subject to a fine under Rule 9.216(b). Rule 9.216(b) permits the Exchange to impose a fine of up to $2,500 on any Member or associated person for a minor violation of an eligible rule. The Exchange proposes to amend Rule 9.218 to add the CAT Compliance Rules in the Rule Series 11.600 to the list of rules in Rule 9.218 eligible for disposition pursuant to a minor fine under Rule 9.216(b).[11]

IEX is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[12] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants that are not members of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to IEX pursuant to the Rule 17d–2 Plan, the Exchange and FINRA entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will conduct surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. IEX understands that the other exchanges entered into similar RSAs with FINRA.

FINRA, in connection with its amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, represented that it will apply MRVP fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[13] Accordingly, in order to promote regulatory consistency, the Exchange, and FINRA acting on behalf of the Exchange, plan to do the same. Specifically, application of a MRVP fine with respect to CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[14]

Upon effectiveness of this rule change, the Exchange will publish a regulatory bulletin notifying its

[5] 17 CFR 240.19b–4.

[6] IEX's minor rule violation plan (''MRVP'') was declared effective by the Commission on August 3, 2016. *See* Securities Exchange Act Release No. 78474 (August 3, 2016), 81 FR 52717 (August 9, 2016) (File No. 4–701).

[7] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013). The proposal is also based upon the New York Stock Exchange (''NYSE'') filing to amend NYSE Rule 9217 in order to add NYSE's corresponding CAT Compliance Rules to NYSE's list of rules that are eligible for MRVP treatment. *See* SR–NYSE–2020–51.

[8] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017).

[9] 17 CFR 242.613.

[10] *See* Rule 1.160(s).

[11] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is also $2,500. Like FINRA, the Exchange, or FINRA on its behalf, would be able to pursue a fine greater than $2,500 for violations of the Rule Series 11.600 in a regular disciplinary proceeding or an acceptance, waiver, and consent (''AWC'') under Chapter 9 of the IEX Rule Book, as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 13–14, *infra.*

[12] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618).

[13] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768, 30768–69 (May 20, 2020) (SR–FINRA–2020–013); *see also* FINRA Notice to Members 04–19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[14] *See supra* note 13.

Members of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through an AWC if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Thus, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in the Rule Series 11.600 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct, and thereby promote regulatory consistency across self-regulatory organizations

The Exchange further believes that the proposed changes to Rule 9.218 are consistent with Section 6(b)(6) of the Act,[17] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of the Rule Series 11.600 pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[18] Rule 9.216 does not preclude a Member or associated person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in the Rule Series 11.600 eligible for disposition pursuant to a MRVP, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. 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–IEX–2020–09 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–IEX–2020–09. 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–IEX–2020–09 and should be submitted on or before July 22, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(6).

[18] 15 U.S.C. 78f(b)(7) and 78f(d).

exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [21] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[22] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Rule 9.218 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[23] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[24] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[25] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [26] and Rule 19d–1(c)(2) thereunder,[27] that the proposed rule change (SR–IEX–2020–09) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14119 Filed 6–30–20; 8:45 am]

BILLING CODE 8011–01–P

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[22] 17 CFR 240.19d–1(c)(2).

[23] As discussed above, the Exchange has entered into a Rule 17d–2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[24] *See supra* note 7.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 240.19d–1(c)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33913; File No. 812–15072]

Conversus StepStone Private Markets, et al.

June 25, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

APPLICANTS: Conversus StepStone Private Markets (''Conversus Fund'' or the ''Existing Regulated Entity''); StepStone Conversus LLC (''StepStone Conversus''); StepStone Group LP (''StepStone Group''); 2006 Co-Investment Portfolio, L.P., 2007 Co-Investment Portfolio, L.P., 2008 Co-Investment Portfolio, L.P., Asia Enterprise II Offshore L.P., Asia Enterprise II Onshore LLC, Capitol Private Opportunities II (Parallel) LP, Capitol Private Opportunities II LP, Capitol Private Opportunities III (Parallel) LP, Capitol Private Opportunities III LP, Capitol Private Opportunities LP, CGR/PE, LLC, Europe Enterprise II Offshore, L.P., Europe Enterprise II Offshore, L.P., Europe Enterprise III Offshore L.P., Europe Enterprise III Onshore L.P., Latin America Opportunities (Delaware) L.P., Latin America Opportunities L.P., Lexington C/RE, LLC, Masters IV Cayman Holdings, L.P., MBKP North Asian Opportunities Partners Offshore L.P., Mezzanine Co-Investment Portfolio, L.P., NYSCRF Pioneer Opportunities Fund A, L.P., NYSCRF Pioneer Partnership Fund B, L.P., Pegasus Multi-Strategy Series (A) LP, Real Estate Domestic Partnership Fund I, L.P., Real Estate Global Partnership Fund II, L.P., Real Estate International Partnership Fund I, L.P., Silverstone I, LLC, Silverstone II, LLC—Series A, Silverstone II, LLC—Series B, Silverstone II, LLC—Series C, Silverstone II, LLC—Series D, Silverstone II, LLC—Series E, Silverstone II, LLC—Series F, Silverstone II, LLC—Series G, Silverstone II, LLC—Series H, Silverstone II, LLC—Series I, Silverstone II, LLC—Series J, Silverstone II, LLC—Series K (Class 1), Silverstone II, LLC—Series K (Class 2), Silverstone III, L.P., SIMA Private Equity 6 GmbH & Co. KG, SRE Care—Investco, L.P., SRE Colt Devco—Investco, L.P., SRE Colt Opco—Investco, L.P., SRE Curator—Investco, L.P., SRE Curator-TS, LP, SRE Encore—Investco, L.P., SRE Freyja—Investco, L.P., SRE Hasso—Investco, L.P., SRE Magnesia—Investco, L.P., SRE Maple Direct Investco, LP, SRE Maple REIT Investco, LP, SRE Panther—Investco, L.P., SRE Preservation—Investco, L.P., SRE Ripple—Investco LP, SRE Stern Debt—Investco, L.P., SRE Stern Equity—Investco, L.P., SREP III COLT OPCO REIT, LLC, SREP III Flight—Investco, L.P., StepStone A Opportunities Fund, L.P., StepStone Aegon Opportunities Fund, LP.—Series

A, StepStone Aegon Opportunities Fund, LP.—Series B, StepStone AMP Opportunities Fund, L.P., Stepstone AMP Opportunities Fund, L.P.—Series A, StepStone AP Opportunities Fund, L.P., StepStone Atlantic Fund, L.P.—Infrastructure Series 1 2011, StepStone Atlantic Fund, L.P.—Private Equity Series 1 2009, StepStone Atlantic Fund, L.P.—Private Equity Series 2 2012, StepStone Atlantic Fund, L.P.—Private Markets Series 2014, StepStone Atlas Opportunities Fund II, L.P., StepStone Atlas Opportunities Fund LP, StepStone AZ China and Asia Opportunities Fund, L.P., StepStone AZ Secondary Opportunities Fund, L.P., StepStone BVK Opportunities Fund SCSP, StepStone C Strategic Core Infrastructure Partnership, L.P., StepStone Capital Partners II Cayman Holdings, L.P., StepStone Capital Partners II Onshore, L.P., StepStone Capital Partners III Offshore Holdings, L.P., StepStone Capital Partners III, L.P., StepStone Capital Partners IV Europe Holdings SCSP, StepStone Capital Partners IV Offshore Holdings, L.P., StepStone Capital Partners IV, L.P., StepStone CC Opportunities Fund, LLC, StepStone CGC Opportunities I, L.P., StepStone Endurance L.P., StepStone European Fund SCS, SICAV–FIS—StepStone Capital Partners III Compartment, StepStone European Fund SCS, SICAV–FIS—StepStone Real Estate Partners III Compartment, StepStone Ferro Opportunities Fund, L.P., StepStone FSS Opportunities Fund, L.P., StepStone G Infrastructure Opportunities, L.P., StepStone H Opportunities Fund, L.P., StepStone International Investors II, L.P., StepStone International Investors II–G, L.P., StepStone International Investors III, L.P., StepStone International Investors IV (Delaware), L.P., StepStone International Investors IV (Guernsey), L.P., StepStone JP Opportunities Fund IA, L.P., StepStone JP Opportunities Fund II, L.P., StepStone JP Opportunities Fund, L.P., StepStone K Infrastructure Opportunities Fund, L.P., StepStone K Real Estate Co-Investment Fund, L.P., StepStone K Strategic Opportunities Fund II, L.P., StepStone K Strategic Opportunities Fund III, L.P., StepStone K Strategic Opportunities Fund, L.P., StepStone KF Infrastructure Fund II, L.P., StepStone KF Infrastructure Fund, L.P., StepStone KF Private Equity Fund II, L.P., StepStone KF Private Equity Fund, L.P., StepStone Maple Opportunities Fund, L.P., StepStone Masters III L.P., StepStone Masters III Offshore L.P., StepStone Masters IV L.P., StepStone Masters V Cayman Holdings, L.P., StepStone Masters V LP, StepStone Mexico I Co-Investment Opportunities Fund, L.P., StepStone Mexico I SPC, StepStone Mezzanine Partners (Offshore) I–A L.P., StepStone Mezzanine Partners I–A L.P., StepStone NL Opportunities Fund II, L.P., StepStone NL Opportunities Fund, L.P., StepStone NLGI Infrastructure Opportunities Fund, L.P., StepStone NPS Infrastructure Fund, L.P., StepStone NPS PE Fund, L.P., StepStone NPS PE Fund, L.P.—Tranche B, StepStone OH Secondary Opportunities Fund, L.P., StepStone P Opportunities Fund, L.P., StepStone PA Tap Fund I, LP, StepStone Phoenix Opportunities Fund, L.P., StepStone PIFSS Real Estate Co-Investment Fund, L.P., StepStone Pioneer Capital Buyout Fund I, L.P., StepStone Pioneer Capital Buyout Fund II, L.P., StepStone Pioneer Capital Europe II, L.P. Incorporated, StepStone Pioneer Capital Europe Opportunities Fund I, L.P. Incorporated, StepStone Pioneer Capital Europe Opportunities Fund I, L.P. Incorporated, StepStone Pioneer Capital Europe Opportunities Fund IB, L.P. Incorporated, StepStone Pioneer Capital I, L.P., StepStone Pioneer Capital II, L.P., StepStone Pioneer Capital III, L.P., StepStone Pioneer Opportunities Fund II, L.P., StepStone Pioneer Opportunities Fund, L.P., StepStone PPL Secondary Opportunities Fund, L.P., StepStone Private Access Partnership, L.P., StepStone Private Equity Partners II L.P., StepStone Private Equity Partners III Cayman Holdings, L.P., StepStone Private Equity Partners III L.P., StepStone Private Equity Partners L.P., StepStone Private Equity Partners Offshore II L.P., StepStone Private Equity Partners Offshore L.P., StepStone Private Equity Portfolio L.P., StepStone R Co-Investment Partnership, L.P., StepStone Real Estate Partners III Cayman, LP, StepStone Real Estate Partners III I Opportunities Fund, L.P., Stepstone Real Estate Partners III Offshore, L.P., StepStone Real Estate Partners III TE, L.P., StepStone Real Estate Partners III, L.P., StepStone Real Estate Partners IV Parallel, L.P., StepStone Real Estate Partners IV, L.P., StepStone Rivas Private Equity Fund, L.P., StepStone Scorpio Infrastructure Opportunities Fund, L.P., StepStone Secondary Opportunities Fund II Offshore Holdings, L.P., StepStone Secondary Opportunities Fund II, L.P., StepStone Secondary Opportunities Fund III Offshore Holdings SCSP, StepStone Secondary Opportunities Fund III, L.P., StepStone Secondary Opportunities Fund IV Offshore Holdings, L.P., StepStone Secondary Opportunities Fund IV, L.P., StepStone Secondary Opportunities Fund, L.P., StepStone Sedco European Opportunities Fund, L.P., StepStone Sedco U.S. Opportunities Fund, L.P., StepStone Tactical Growth Fund II Offshore Holdings, L.P., StepStone Tactical Growth Fund II, L.P., StepStone Tactical Growth Fund Offshore Holdings, L.P., StepStone Tactical Growth Fund, L.P., StepStone UWF Secondary Opportunities Fund, L.P.—Series A, StepStone UWF Secondary Opportunities Fund, L.P.—Series B, StepStone XL Opportunities Fund II–A, L.P., StepStone XL Opportunities Fund II–B, L.P., StepStone XL Opportunities Fund, L.P., StepStone-SYN Investments, L.L.L.P., Sunsira Infrastructure Fund, LLC, Sunstone PE Opportunities Fund, LLC, Sunstone Real Estate, L.P., T.F. Capital Investors II L.P., T.F. Capital Investors II Offshore L.P., Terrace Investment Holdings SMF, LLC, Terrace Investment Holdings, LLC, UK Canadian Hydro HoldCo A Limited, Bridge Village Limited, StepStone E Opportunities Fund, L.P., StepStone E Offshore Opportunities Fund, L.P., StepStone M Opportunities Fund, L.P., StepStone LMM Opportunities Fund I, L.P.—Series A, StepStone LMM Opportunities Fund I, L.P.—Series B, Multibrand SICAV–SIF—Valida Private Equity Fund, Heathrow Forest Asia Opportunities Fund, L.P., StepStone NPS PE Fund II, L.P., LCIV Infrastructure Fund, StepStone B Infrastructure Opportunities Fund, L.P., StepStone NPS Infrastructure Fund II, L.P., Swiss Capital FPT Private Debt Fund L.P., Swiss Capital GPIM Private Debt Fund L.P., Swiss Capital HPS Private Debt Fund L.P., SC ACM Private Debt Fund L.P., SC Co-Investments Private Debt Fund L.P., SC NXT Capital Private Debt Fund L.P., SC ACA Private Debt Fund L.P., Swiss Capital HYS Private Debt Fund L.P., Swiss Capital KKR Private Debt Fund L.P., Swiss Capital Capitala Private Debt Fund L.P., SC BTC Private Debt Fund L.P., Swiss Capital KA Private Debt Fund L.P., Swiss Capital TLCP Private Debt Fund L.P., Swiss Capital DCM Private Debt Fund L.P., Swiss Capital PD (Offshore) Funds SPC, SC FPT Private Debt Offshore SP, SC NXT Capital Private Debt Offshore SP, SC ACA Private Debt Offshore SP, Swiss Capital CAPITALA Private Debt Offshore SP, Swiss Capital BTC Private Debt Offshore SP, Swiss Capital Co-Investments Private Debt Offshore SP, Swiss Capital HYS Private Debt Offshore SP, Swiss Capital ASP Private Debt Offshore SP, SC ACM Private Debt Offshore SP, Swiss Capital KA Private Debt Offshore SP, StepStone Private

Debt Secondary Funds SPC, SC DCM Secondary SP, Swiss Capital Alternative Strategies Funds SPC, SC Alternative Strategy 1 SP, SC Alternative Strategy 2 SP, SC Alternative Strategy 3 SP, SC Alternative Strategy 4 SP, SC Alternative Strategy 5 SP, SC Alternative Strategy 6 SP, SC Alternative Strategy 7 SP, SC Alternative Strategy 8 SP, SC Alternative Strategy 9 SP, SC Alternative Strategy 10 SP, SC Alternative Strategy 11 SP, SC Alternative Strategy 12 SP, SC Alternative Strategy 13 SP, SC Alternative Strategy 14 SP, StepStone ADF Opportunities Fund L.P., SC CWMAA Senior Corporate Lending L.P., Senior Corporate Lending Enhanced I Fund L.P., SCL XL I Fund L.P., SSG NLGI Private Debt Funds SPC, SSG NLGI European Direct Lending SP, Swiss Capital PRO Loan V plc, Swiss Capital PRO Loan VII plc, Swiss Capital Private Markets Funds, LG Income Fund, SC LV Private Debt Fund, Swiss Capital Private Markets II Funds, AGON Fund, Senior Corporate Lending Fund I, EuroPrima Fund, CWPS Global Infrastructure Fund, Senior Corporate Lending Europe Fund, Swiss Capital Credit Strategies ICAV, LG Direct Lending Platform Fund, SC LV Private Debt Platform Fund, Swiss Capital Credit Strategies II ICAV, 3SC PRIDE Fund, SSG Valluga Fund, Swiss Capital PRO Colours Funds PLC, SC New Targets Funds, SC Target D Fund, SC Target O Fund, Oceanic Global Investment Funds plc, Pacific Ocean Fund, Swiss Capital Non-Traditional Funds, Swiss Capital PRO Non-Traditional Funds, Swiss Capital PRO Matrix Fund, Swiss Capital PRO Disintermediation I Fund, Swiss Capital PRO Unicum Fund, Swiss Capital PRO SST Fund, SC Private Debt Fund III L.P., Swiss Capital European Private Debt Funds I (SICAV) SCSP, ACM European Private Debt Fund, BLK European Private Debt Fund, TKH European Private Debt Fund, Co-Investment European Private Debt Fund, Apera European Private Debt Fund, CVC CP SSG European Private Debt Fund, TEREF LUX I, HCM European Private Debt Fund, Bridgepoint European Private Debt Fund, StepStone Trade Finance ICAV, StepStone Trade Finance Fund, Swiss Capital Credit Strategies III ICAV, PR Private Debt Fund, Swiss Capital Private Markets III, PR Private Debt Platform Fund, SSG Credit Strategies IV ICAV, SSG Gen Credit Fund I, SSG Credit Strategies V ICAV, SSG Gen Credit Fund II, SSG ME Private Debt Fund LP, Swiss Capital BG OL Private Debt Fund LP, Swiss Capital Alternative Strategies Funds II SPC, SC Alternative Strategy A SP, StepStone Real Estate Partners IV Europe SCS, and StepStone Secondary Opportunities Fund IV Europe Holdings SCSP (collectively, the ''Existing Affiliated Funds'').

FILING DATES: The application was filed on October 7, 2019, and amended on January 9, 2020, April 27, 2020, June 22, 2020, and June 23, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on July 20, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov.* Applicants: Robert W. Long, StepStone Conversus LLC, *conversus@stepstoneglobal.com.*

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Senior Counsel, at (202) 551–7345 or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. Conversus Fund is a Delaware statutory trust organized as a non-diversified, closed-end management investment company, registered under the Act. Conversus Fund's investment objectives are to invest in a broad cross section of private markets assets that will enable the Conversus Fund to, over time, achieve long-term capital appreciation and provide regular, current income through quarterly distributions. The board of directors (''Board'') of the Conversus Fund has five members, three of whom are not an ''interested person'' of the Conversus Fund within the meaning of Section 2(a)(19) of the Act (the ''Independent Trustees'').[1]

2. StepStone Conversus is a Delaware limited liability company that is registered as an investment adviser with the Commission under the Investment Advisers Act of 1940 (the ''Advisers Act''). StepStone Conversus serves as the investment adviser to the Existing Regulated Entity. StepStone Conversus is a wholly-owned subsidiary of StepStone Group.

3. StepStone Group is a Delaware limited partnership that is registered as an investment adviser with the Commission under the Advisers Act. StepStone Group serves as the sub-adviser to the Existing Regulated Entity and controls StepStone Conversus.

4. The Existing Affiliated Funds pursue strategies focused on investing in a portfolio of professionally managed private markets funds and select direct private markets investments. Each Existing Affiliated Fund is advised by an Existing Adviser[2] and would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

5. Applicants seek an order (''Order'') to permit a Regulated Entity[3] and one or more other Regulated Entities and one or more Affiliated Funds[4] to (a) participate in the same investment opportunities through a proposed co-investment program where such participation would otherwise be prohibited under section 17 of the Act; and (b) make additional investments in securities of such issuers (''Follow-On Investments''), including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers. ''Co-Investment Transaction'' means any transaction in

[1] The term ''Independent Trustees'' refers to the independent directors, managers, or trustees of any Regulated Entity (defined below).

[2] ''Existing Adviser'' means StepStone Group or StepStone Conversus.

[3] ''Regulated Entity'' refers to any Existing Regulated Entity and any Future Regulated Entity. ''Future Regulated Entity'' means any closed-end management investment company formed in the future that is registered under the Act whose investment adviser (and sub-adviser(s), if any) is an Adviser. ''Future Adviser'' means any future investment adviser that controls, is controlled by, or is under common control with StepStone Conversus and is registered as an investment adviser under the Advisers Act.

[4] ''Affiliated Fund'' means any Existing Affiliated Fund or any Future Affiliated Fund. ''Future Affiliated Fund'' means any investment fund that would be an ''investment company'' but for section 3(c)(1) or 3(c)(7) of the Act, is formed in the future, and whose investment adviser (and sub-adviser(s), if any) is an Adviser. The term ''Adviser'' means any Existing Adviser or any Future Adviser. No Affiliated Fund is or will be a subsidiary of a Regulated Entity.

which a Regulated Entity (or its Wholly-Owned Investment Subsidiary, as defined below) participated together with one or more other Regulated Entities and/or Affiliated Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Entity (or its Wholly-Owned Investment Subsidiaries) could not participate together with one or more other Regulated Entities and/or one or more Affiliated Funds without obtaining and relying on the Order.[5]

6. Applicants state that a Regulated Entity may, from time to time, form one or more Wholly-Owned Investment Subsidiaries.[6] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any other Regulated Entity or Affiliated Fund because it would be a company controlled by its parent Regulated Entity for purposes of rule 17d–1. Applicants request that each Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of its parent Regulated Entity and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Entity were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for the Regulated Entity's investments and, therefore, no conflicts of interest could arise between the Regulated Entity and the Wholly-Owned Investment Subsidiary. The Regulated Entity's Board would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the Regulated Entity's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the Regulated Entity's place. If the Regulated Entity proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Entity and the Wholly-Owned Investment Subsidiary.

7. When considering Potential Co-Investment Transactions for any Regulated Entity, the relevant Adviser will consider only the Objectives and Strategies,[7] investment policies, investment positions, capital available for investment, and other pertinent factors applicable to that Regulated Entity. The Advisers expect that any portfolio company that is an appropriate investment for a Regulated Entity should also be an appropriate investment for one or more other Regulated Entities and/or one or more Affiliated Funds, with certain exceptions based on available capital or diversification.[8]

8. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the applicable Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote on that Co-Investment Transaction (the ''Eligible Trustees'')[9] and the majority of such directors of the Board who are Independent Trustees (a ''Required Majority'') will approve each Co-Investment Transaction prior to any investment by the participating Regulated Entity.

9. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Entity may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Entity and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Entity has approved that Regulated Entity's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Entity. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Entity's Eligible Trustees. The Board of any Regulated Entity may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Trustees.

10. No Independent Trustee of a Regulated Entity will have a direct or indirect financial interest in any Co-Investment Transaction (other than indirectly through share ownership in one of the Regulated Entities), including any interest in any company whose securities would be acquired in a Co-Investment Transaction.

11. Under condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Entity (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the condition. Applicants believe that this condition will ensure that the Independent Trustees will act independently in evaluating the co-investment program, because the ability of an Adviser or its principals to influence the Independent Trustees by a suggestion, explicit or implied, that the Independent Trustees can be removed will be limited significantly. Applicants represent that the Independent Trustees will evaluate and approve any such independent third party, taking into account its qualifications, reputation for independence, cost to the Regulated Entity's shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis:

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. In passing upon applications under rule 17d–1, the

[5] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[6] The term ''Wholly-Owned Investment Subsidiary'' means an entity: (a) That is wholly-owned by a Regulated Entity (with such Regulated Entity at all times holding, beneficially and of record, 100% of the voting and economic interests); (b) whose sole business purpose is to hold one or more investments on behalf of such Regulated Entity; (c) with respect to which the board of directors of such Regulated Entity has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (d) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. All subsidiaries participating in Co-Investment Transactions will be Wholly-Owned Investment Subsidiaries and will have Objectives and Strategies (as defined below) that are either the same as, or a subset of, their parent Regulated Entity's Objectives and Strategies.

[7] The term ''Objectives and Strategies'' means a Regulated Entity's investment objectives and strategies as described in the Regulated Entity's registration statement on Form N–2, other filings the Regulated Entity has made with the Commission under the Securities Act of 1933 (the ''Securities Act'') or the Securities Exchange Act of 1934, and the Regulated Entity's reports to shareholders.

[8] The Regulated Entities, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[9] Eligible Trustees may not have a financial interest in such transaction, plan, or arrangement.

Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Applicants state that in the absence of the requested relief, the Regulated Entities may be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants believe that the proposed terms and conditions will ensure that the Co-Investment Transactions are consistent with the protection of each Regulated Entity's shareholders and with the purposes intended by the policies and provisions of the Act. Applicants state that the Regulated Entities' participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions:

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for another Regulated Entity or an Affiliated Fund that falls within a Regulated Entity's then-current Objectives and Strategies, the Regulated Entity's Adviser will make an independent determination of the appropriateness of the investment for the Regulated Entity in light of the Regulated Entity's then-current circumstances.

2. (a) If the Adviser deems a Regulated Entity's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Entity, the Adviser will then determine an appropriate level of investment for the Regulated Entity.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the applicable Regulated Entity in the Potential Co-Investment Transaction together with the amount proposed to be invested by the other participating Regulated Entities and Affiliated Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Trustees of each participating Regulated Entity with information concerning each participating party's available capital to assist the Eligible Trustees with their review of the Regulated Entity's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each Regulated Entity and each Affiliated Fund) to the Eligible Trustees of each participating Regulated Entity for their consideration. A Regulated Entity will co-invest with another Regulated Entity or an Affiliated Fund only if, prior to the Regulated Entity's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Entity and its investors and do not involve overreaching in respect of the Regulated Entity or its investors on the part of any person concerned;

(ii) the Potential Co-Investment Transaction is consistent with:

(A) The interests of the Regulated Entity's investors; and

(B) the Regulated Entity's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Entities or any Affiliated Funds would not disadvantage the Regulated Entity, and participation by the Regulated Entity would not be on a basis different from or less advantageous than that of any other Regulated Entities or any Affiliated Funds; provided that, if any other Regulated Entity or any Affiliated Fund, but not the Regulated Entity itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Trustees will have the right to ratify the selection of such director or board observer, if any; and

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Board of the Regulated Entity with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Regulated Entity or any Affiliated Fund or any affiliated person of any Regulated Entity or any Affiliated Fund receives in connection with the right of a Regulated Entity or an Affiliated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Funds (who may each, in turn, share its portion with its affiliated persons) and the participating Regulated Entities in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Entity will not benefit any Adviser, the other Regulated Entities, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Entity has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Entity, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Entities or Affiliated Funds during the preceding quarter that fell within the Regulated Entity's then-current Objectives and Strategies that were not made available to the Regulated Entity, and an explanation of why the investment opportunities were not offered to the Regulated Entity. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Entity and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[10] a Regulated Entity will not invest in reliance on the Order in any issuer in which another Regulated Entity, Affiliated Fund, or any affiliated person of another Regulated Entity or Affiliated Fund is an existing investor.

6. A Regulated Entity will not participate in any Potential Co-

[10] This exception applies only to Follow-On Investments by a Regulated Entity in issuers in which that Regulated Entity already holds investments.

Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Entity and Affiliated Fund. The grant to another Regulated Entity or an Affiliated Fund, but not the Regulated Entity, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Regulated Entity or an Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Entity that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Entity in the disposition.

(b) Each Regulated Entity will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Regulated Entities and Affiliated Funds.

(c) A Regulated Entity may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Entity has approved as being in the best interests of the Regulated Entity the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Entity is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Entity's participation to the Regulated Entity's Eligible Trustees, and the Regulated Entity will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Entity's best interests.

(d) Each Regulated Entity and each Affiliated Fund will bear its own expenses in connection with any such disposition.

8. (a) If a Regulated Entity or an Affiliated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Adviser will:

(i) Notify each Regulated Entity that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Entity.

(b) A Regulated Entity may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Entity and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Entity has approved as being in the best interests of the Regulated Entity the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Entity's participation to the Eligible Trustees, and the Regulated Entity will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Entity's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of a Follow-On Investment is not based on the Regulated Entities' and the Affiliated Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to be invested by each Regulated Entity in the Follow-On Investment, together with the amount proposed to be invested by the participating Affiliated Funds in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each party's capital available for investment in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Independent Trustees of each Regulated Entity will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Entities and the Affiliated Funds that the Regulated Entity considered but declined to participate in, so that the Independent Trustees may determine whether all investments made during the preceding quarter, including those investments which the Regulated Entity considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Trustees will consider at least annually the continued appropriateness for the Regulated Entity of participating in new and existing Co-Investment Transactions.

10. Each Regulated Entity will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Entities were a business development company (as defined in section 2(a)(48) of the Act) and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Independent Trustee of a Regulated Entity will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of an Affiliated Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by an Adviser under the investment advisory agreements with the Regulated Entities and the Affiliated Funds, be shared by the Affiliated Funds and the Regulated Entities in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee [11] (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) of the Act, as applicable), received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Entities and Affiliated Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by the Adviser pending

[11] Applicants are not requesting and the staff is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Entities and Affiliated Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Funds, the Advisers, the other Regulated Entities or any affiliated person of the Regulated Entities or Affiliated Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Entities and Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of the Advisers, investment advisory fees paid in accordance with the agreements between the Advisers and the Regulated Entities or the Affiliated Funds).

14. The Advisers will each maintain policies and procedures reasonably designed to ensure compliance with the foregoing conditions. These policies and procedures will require, among other things, that the applicable Adviser will be notified of all Potential Co-Investment Transactions that fall within a Regulated Entity's then-current Objectives and Strategies and will be given sufficient information to make its independent determination and recommendations under conditions 1, 2(a), 7 and 8.

15. If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Entity, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) all other matters under either the Act or applicable State law affecting the Board's composition, size or manner of election.

16. Each Regulated Entity's chief compliance officer, as defined in Rule 38a–1(a)(4), will prepare an annual report for its Board that evaluates (and documents the basis of that evaluation) the Regulated Entity's compliance with the terms and conditions of the application and the procedures established to achieve such compliance.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–14122 Filed 6–30–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 0.88 percent for the July–September quarter of FY 2020.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

John Wade,

Chief, Secondary Market Division.

[FR Doc. 2020–14123 Filed 6–30–20; 8:45 am]

BILLING CODE P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36414]

Camp Chase Rail, LLC—Acquisition and Operation Exemption—Camp Chase Railway Company, LLC

Camp Chase Rail, LLC (Camp Chase Rail), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Camp Chase Railway Company, LLC (CCRY), and operate approximately 14 miles of rail line between milepost 141.4 in Columbus, Ohio, and milepost 155.4 in Lilly Chapel, Ohio (the Line).

Camp Chase Rail states that it is a newly established subsidiary of MB Rail IB, LLC (MB Rail), formed to acquire and operate the Line. The acquisition is part of a larger transaction between MB Rail and Indiana Boxcar Corporation (IBC) under which MB Rail will acquire all of the equity in two railroads currently owned by IBC; MB Rail's subsidiary, Camp Chase Rail, will acquire the Line and other assets of a third IBC railroad, CCRY; and another MB Rail subsidiary, Youngstown & Southeastern Railroad, LLC (YSR), will acquire a rail line and other assets of a fourth IBC railroad, Youngstown & Southeastern Railroad Co. (Y&S).

This transaction is related to two concurrently filed verified notices of exemption: *MB Rail IB, LLC—Acquisition & Continuance in Control Exemption—Chesapeake & Indiana Railroad, Vermilion Valley Railroad, Camp Chase Rail, & Youngstown & Southeastern Railroad,* Docket No. FD 36413, in which MB Rail seeks, among other things, to continue in control of Camp Chase Rail upon Camp Chase Rail's becoming a Class III rail carrier; and *Youngstown & Southeastern Railroad, LLC—Acquisition & Operation Exemption—Youngstown & Southeastern Railroad Co.,* Docket No. FD 36415, in which YSR seeks to acquire the rail line of Y&S.

Camp Chase Rail certifies that its projected annual revenues as a result of this transaction will not exceed $5 million or the threshold required to qualify as a Class III carrier. Camp Chase Rail also certifies that the proposed acquisition and operation of the Line do not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

The transaction may be consummated on or after July 15, 2020, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 8, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36414, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Camp Chase Rail's representative, Charles H. Montange, Law Offices of Charles H. Montange, 426 NW 162nd Street, Seattle, WA 98177.

According to Camp Chase Rail, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 25, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–14170 Filed 6–30–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36413]

MB Rail IB, LLC—Acquisition and Continuance in Control Exemption—Chesapeake & Indiana Railroad, Vermilion Valley Railroad, Camp Chase Rail, LLC, and Youngstown & Southeastern Railroad, LLC

MB Rail IB, LLC (MB Rail), a noncarrier holding company, has filed a verified notice of exemption under 49 1180.2(d)(2) to control four Class III railroads: Chesapeake & Indiana Railroad (CIR), Vermilion Valley Railroad (VVR), Camp Chase Rail, LLC (Camp Chase Rail), and Youngstown & Southeastern Railroad, LLC (YSR) (collectively, the Controlled Railroads).[1]

The verified notice states that MB Rail has established Camp Chase Rail and YSR as new noncarriers for the purpose of acquiring and operating the railroad assets currently owned by Camp Chase Railway Company, LLC (CCRY), and Youngstown & Southeastern Railroad Company (Y&S), respectively. The verified notice further states that Indiana Boxcar Corporation (IBC) currently owns and controls CIR, VVR, CCRY, and Y&S. According to MB Rail, it has entered into an agreement with IBC under which MB Rail will acquire from IBC all of the equity in CIR and VVR, and MB Rail's two newly formed non-carrier subsidiaries, Camp Chase Rail and YSR, will purchase and operate the rail lines and other assets of CCRY and Y&S, respectively.[2] Thus, MB Rail seeks to acquire control of CIR and VVR, and to continue in control of Camp Chase Rail and YSR when they become rail carriers upon acquiring the rail lines of CCRY and Y&S. MB Rail states that the proposed transaction will not impose any new interchange commitments.

This notice of exemption is related to two concurrently filed verified notices of exemption under which MB Rail's new subsidiaries, Camp Chase Rail and YSR, seek authority to purchase and operate the rail lines owned and operated by CCRY and Y&S, respectively. *See Camp Chase Rail—Acquis. & Operation Exemption—Camp Chase Ry.,* Docket No. FD 36414, and *Youngstown & Se. R.R., LLC—Acquis. & Operation Exemption—Youngstown & Se. R.R. Co.,* Docket No. FD 36415.

The verified notice states that: (1) The lines of the Controlled Railroads do not connect with each other; (2) the proposed transaction is not part of a series of anticipated transactions that would connect the Controlled Railroads; and (3) the proposed transaction does not involve a Class I rail carrier. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The earliest this transaction may be consummated is July 15, 2020, the effective date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than July 8, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36413, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on MB Rail's representative, Charles H. Montange, Law Offices of Charles H. Montange, 426 NW 162nd Street, Seattle, WA 98177.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 25, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2020–14168 Filed 6–30–20; 8:45 am]

BILLING CODE 4915–01–P

[1] On June 15, 2020, MB Rail also filed a motion for a protective order under 49 CFR 1104.14(b), which was granted on June 16, 2020.

[2] According to the verified notice, CIR's line is located in Indiana; VVR's line is located in Illinois and Indiana; Camp Chase Rail will operate over a line located in Ohio; and YSR will operate over a line located in Ohio and Pennsylvania.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36415]

Youngstown & Southeastern Railroad, LLC—Acquisition and Operation Exemption—Youngstown & Southeastern Railroad Company

Youngstown & Southeastern Railroad, LLC (YSR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Youngstown & Southeastern Railroad Company (Y&S) and operate approximately 35.7 miles of rail line between milepost 0.0 in Youngstown, Ohio, and milepost 35.7 in Darlington, Pa. (the Line), together with Y&S's rights over three miles of contiguous track segments, including incidental trackage rights, running from east of milepost 0.0 and connecting the Line to interchanges with Norfolk Southern Railway Company (NSR) and CSX Transportation, Inc. (CSXT).[1]

YSR states that it is a newly established subsidiary of MB Rail IB, LLC (MB Rail), formed to acquire and operate the Line. The acquisition is part of a larger transaction between MB Rail and Indiana Boxcar Corporation (IBC) under which MB Rail will acquire all of the equity in two railroads currently owned by IBC; MB Rail's subsidiary YSR will acquire the Line and other assets of a third IBC railroad, Y&S; and another MB Rail subsidiary, Camp Chase Rail, LLC (Camp Chase Rail) will acquire a rail line and other assets of a fourth IBC railroad, Camp Chase Railway Company, LLC (CCRY).

This transaction is related to two concurrently filed verified notices of exemption: *MB Rail IB, LLC—Acquisition & Continuance in Control Exemption—Chesapeake & Indiana Railroad, Vermilion Valley Railroad, Camp Chase Rail, & Youngstown & Southeastern Railroad,* Docket No. FD 36413, in which MB Rail seeks, among other things, to continue in control of YSR upon YSR's becoming a Class III

[1] According to the verified notice, Y&S acquired the Line and rights over the contiguous track segments from Mule Sidetracks, LLC (MSLLC). *See Youngstown & Se. R.R.—Acquis. & Operation Exemption—Mule Sidetracks, LLC,* FD 36342 (STB served Aug. 30, 2019). YSR states that the rights are found in various agreements, described in the verified notice, under which MSLLC had succeeded to the interests of the Line's previous owner, Columbiana County Port Authority.

rail carrier; and *Camp Chase Rail—Acquisition & Operation Exemption—Camp Chase Railway,* Docket No. FD 36414, in which Camp Chase Rail seeks to acquire the rail line of CCRY.

YSR certifies that its projected annual revenues as a result of this transaction will not exceed $5 million or the threshold required to qualify as a Class III carrier. YSR also certifies that the proposed acquisition and operation of the Line do not involve a provision or agreement that may limit future interchange with a third-party connecting carrier.

The transaction may be consummated on or after July 15, 2020, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than July 8, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36415, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on YSR's representative, Charles H. Montange, Law Offices of Charles H. Montange, 426 NW 162nd Street, Seattle, WA 98177.

According to YSR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 25, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–14144 Filed 6–30–20; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of the USMCA Tariff Rate Quota for Imports of Sugar Containing Products of Canada

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The tariff rate quota (TRQ) for sugar containing products (SCPs) of Canada established by the United States-Mexico-Canada Agreement (USMCA or the Agreement) will be administered using export certificates.

DATES: The changes made by this notice are applicable as of July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at *erin.h.nicholson@ustr.eop.gov* or at (202) 395–9419.

SUPPLEMENTARY INFORMATION: On June 12, 2017 (82 FR 23699), the President announced his intention to commence negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA). On November 30, 2018, the Governments of the United States, Mexico, and Canada (the Parties) signed the protocol replacing NAFTA with the USMCA. On December 10, 2019, the Parties signed the protocol of amendment to the USMCA. On January 29, 2020, the President signed into law the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113) (Implementation Act), through which Congress approved the USMCA.

Section 103(c)(4) of the Implementation Act authorizes the President to take necessary actions to implement the TRQs in the Schedule of the United States to Annex 2–B of the Agreement, to ensure the orderly marketing of commodities in the United States. Under a TRQ, the United States applies a tariff rate, known as the ''in-quota tariff rate,'' to imports of a product up to a particular amount, known as the ''in-quota quantity,'' and a different higher tariff rate, known as the ''over-quota tariff rate,'' to imports of the product in excess of that amount.

The Schedule of the United States to Annex 2–B of the Agreement establishes a TRQ for imports of SCPs from Canada, as set forth in paragraph 15 of Appendix 2. Canada has notified the Office of the United States Trade Representative (USTR) that it intends to require export certificates for the exportation of SCPs under the TRQ for these products.

Consistent with paragraph 15(c) of Appendix 2, the United States will administer the TRQ for SCPs through a certificate system substantially similar to that described in 15 CFR 2015.3.

Beginning July 1, 2020, and in any subsequent calendar year unless USTR issues a determination that export certificates will not be required for that year, consistent with 15 CFR 2015.3, no SCP that is the product of Canada will be permitted entry under the in-quota tariff rate established for imports of SCPs from Canada, unless at the time of entry the person entering the SCP makes a declaration to U.S. Customs and Border Protection (CBP), in the form and manner prescribed by CBP, that a valid export certificate is in effect for the SCP. The Government of Canada will issue the export certificates. A certificate that meets the requirements of 15 CFR 2015.3(b), will authorize entry into the United States, subject to the applicable in-quota quantity, at the in-quota tariff-rate established under the Agreement.

Daniel Watson,

Acting Assistant U.S. Trade Representative for the Western Hemisphere, Office of the United States Trade Representative.

[FR Doc. 2020–14172 Filed 6–30–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Additional Tariff-Rate Quota Volume for Refined Sugar From Canada Under the USMCA

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The calendar year 2020 in-quota quantity of the tariff-rate quota (TRQ) for imported refined sugar from Canada is increasing pursuant to the United States-Mexico-Canada Agreement (USMCA or Agreement) and the April 3, 2020 announcement by the U.S. Secretary of Agriculture (Secretary) to permit, at in-quota tariff rates, imports of refined sugar, other than specialty sugar, above the quantities made available at those rates pursuant to U.S. commitments under the World Trade Organization (WTO) Agreement and other trade agreements.

DATES: The changes made by this notice are applicable as of July 1, 2020.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at *erin.h.nicholson@ustr.eop.gov* or at (202) 395–9419.

SUPPLEMENTARY INFORMATION: On June 12, 2017 (82 FR 23699), the President announced his intention to commence negotiations with Canada and Mexico to modernize the North American Free Trade Agreement (NAFTA). On November 30, 2018, the Governments of the United States, Mexico, and Canada (the Parties) signed the protocol replacing NAFTA with the USMCA. On December 10, 2019, the Parties signed the protocol of amendment to the USMCA. On January 29, 2020, the President signed into law the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113) (Implementation Act), through which Congress approved the USMCA. On July

1, 2020, the USMCA will enter into force.

The Schedule of the United States to Annex 2–B of the Agreement establishes a TRQ for imports of refined sugar from Canada, set forth in paragraph 14 of Appendix 2. Paragraph 14(c) provides for an increase in the in-quota quantity of the TRQ for refined sugar in any year in which the Secretary makes a determination to permit the importation into the United States at in-quota tariff rates of additional quantities of refined sugar, other than specialty sugar, above the quantities made available at those rates pursuant to its commitments under the WTO Agreement and other trade agreements. According to paragraph 14(c), this increase for the refined sugar TRQ for Canada is equal to 20 percent of the additional quantities determined by the Secretary.

Pursuant to Note 9 to Subchapter XXIII of Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS), the Office of the U.S. Trade Representative (USTR) publishes a determination in the **Federal Register** of this additional quantity for any such year.

On April 3, 2020 (85 FR 18913), the Secretary announced an additional in-quota quantity of the TRQ for refined sugar for the remainder of fiscal year 2020 (ending September 30, 2020) in the amount of 181,437 metric tons raw value (MTRV). This quantity is in addition to the minimum amount to which the United States is committed under the WTO Uruguay Round Agreements and other trade agreements.

USTR is providing notice that the in-quota quantity of the USMCA TRQ for imported refined sugar from Canada for calendar year 2020 is increased by 36,287 MTRV, which may be supplied on a first-come, first-served basis. Refined sugar imported from Canada pursuant to this notice may be made from non-originating raw sugar. Only refined sugar with a sucrose content, by weight in the dry state, corresponding to a reading of 99.5 degrees polarity or more will be permitted. No certificate for quota eligibility is required for sugar entering under this additional in-quota quantity.

Daniel Watson,

Acting Assistant U.S. Trade Representative for the Western Hemisphere, Office of the United States Trade Representative.

[FR Doc. 2020–14173 Filed 6–30–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2020–0023]

Amendment To Review of Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute

AGENCY: Office of the United States Trade Representative.

ACTION: Amendment.

SUMMARY: This notice amends an annex to the notice published on June 26, 2020, which requested public comments in connection with a review of the action being taken in the Section 301 investigation involving the enforcement of U.S. World Trade

Organization (WTO) rights in the Large Civil Aircraft dispute. The amendment adds two products to Annex III that were inadvertently omitted.

FOR FURTHER INFORMATION CONTACT: For questions about the investigation, contact Associate General Counsel Megan Grimball at (202) 395–5725, or Director for Europe Michael Rogers at (202) 395–3320. For questions on customs classification of products identified in the annexes to this notice, contact *Traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: In a notice published on June 26, 2020 (85 FR 38488), the Office of United States Trade Representative invited comments with respect to the maintenance or imposition of additional duties on specific products of specific current or former EU member States. Annex III to the June 26 notice includes a list of 30 products of France, Germany, Spain, or the United Kingdom under consideration for increased duties. Two products were inadvertently omitted. This notice amends Annex III by adding the following two products of France, Germany, Spain or the United Kingdom:

2007.99.05 Lingonberry and raspberry jams

2007.99.10 Strawberry Jam

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–14209 Filed 6–30–20; 8:45 am]

BILLING CODE 3290–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2012–0033]

Notice of Intent To Grant a Buy America Exemption to Amtrak To Purchase Certain Non-Domestic Track Maintenance Equipment

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Amtrak Buy America exemption.

SUMMARY: FRA is issuing this notice to provide information to the public regarding its finding that it is appropriate to grant the National Railroad Passenger Corporation (Amtrak) an exemption from Amtrak's Buy America requirement for procurement of the following non-domestic track maintenance equipment as part of its state-of-good-repair (SOGR) program: One tunnel crane; one track laying machine; and eight two-man rail car movers.

DATES: Written comments on FRA's determination to grant a Buy America exemption to Amtrak should be provided to FRA on or before July 8, 2020.

ADDRESSES: Please submit your comments to the U.S. Government electronic docket site at *http://www.regulations.gov,* in docket number: FRA–2012–0033.

Note: All submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of the Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 493–0078, *John.Johnson@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide information to the public regarding FRA's finding that it is appropriate to grant Amtrak an exemption from Amtrak's Buy America requirement, pursuant to 49 U.S.C. 24305(f)(4)(A)(iii), to purchase the following non-domestic equipment as part of its SOGR program: Railbound Tunnel Crane; Track Laying Machine; and eight Two-Man Rail Car Movers with Heavy Duty Crane, Railgear, and Rail Car Couplers.

Background

Amtrak is the Nation's Federally chartered intercity passenger rail operator and rail infrastructure provider. Among its infrastructure assets, Amtrak owns 1,169 track miles of infrastructure on the Northeast Corridor (NEC), which connects Washington, DC; Philadelphia, Pennsylvania; New York, New York; and up to the Massachusetts/Rhode Island border. Amtrak provides the infrastructure for approximately 820,000 trips daily. Amtrak is designing a program to achieve a SOGR across its infrastructure assets, meaning that its assets perform safely, as designed, within their estimated service lives. Amtrak Engineering has assessed the SOGR backlog at $33.3 billion for infrastructure nationally.

Amtrak's infrastructure is divided into four categories: Track; Bridges and Buildings; Electric Traction; and Communications and Signals. The three components of track are rail, ties, and ballast. These components are integrated and if any are not in a SOGR, track geometry suffers, trains no longer travel at the desired speed, trip time is extended, and ride quality suffers. Each of these consequences negatively impacts revenue, ridership, and customer experience. Amtrak has set an aggressive 10-year schedule to eliminate the SOGR backlog. The equipment that is the subject of Amtrak's exemption request (one (1) Railbound Tunnel Crane, one (1) Track Laying Machine, and eight (8) Two-Man Rail Car Movers with Heavy Duty Crane, Railgear, and Rail Car Couplers), will be used to repair and maintain Amtrak's Track Infrastructure Assets.

On October 9, 2019, Amtrak requested an exemption [1] from the National Railroad Passenger Corporation (Amtrak) domestic buying preference requirement (49 U.S.C. 24305(f)) to purchase certain track maintenance equipment for its state-of-good-repair (SOGR) program. Amtrak seeks to purchase: One tunnel crane, one track laying machine, and eight two-man rail car movers with heavy duty crane, railgear, and rail car couplers (Car Movers). In its request, Amtrak states that products meeting its specifications are not available from a U.S. source. On March 31, 2020, FRA provided public notice of Amtrak's exemption request and a 20-day opportunity for comment. FRA also emailed the notice to over 6,000 recipients that requested Buy America notices through ''GovDelivery.'' For the reasons stated below, FRA grants a non-availability exemption to Amtrak.

Buy America Requirement

With certain exceptions, Amtrak's Buy America statute requires Amtrak to buy only ''(A) unmanufactured articles, material, and supplies mined or produced in the United States; or (B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.'' 49 U.S.C. 24305(f)(2). Amtrak's requirements apply without regard to the source of funds; if it does not receive an exemption, it may not acquire goods that are not consistent with Section 24305(f)(2), even if it does not propose to use Federal funds. However, FRA may exempt Amtrak from this requirement when one of the exemptions of 49 U.S.C. 24305(f)(4)(A) or (B) have been met. Section 24305(f)(4)(A)(iii) permits an exemption when, ''the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality.'' This is typically referred to as a ''non-availability exemption.''

In addition to the Buy America statute, FRA's action is subject to Executive Order 13788, *Buy American and Hire American* (April 18, 2017). Consistent with Executive Order 13788, FRA evaluated Amtrak's request to determine whether it had sought maximize the use of goods, products, and materials produced in the United States.

Findings

In its letter to FRA, dated October 9, 2019, Amtrak described in detail the need for equipment that met the technical specifications for its SOGR program, the steps taken to identify domestically-sourced equipment, and the harm that would result in the absence of an exemption. FRA evaluated the information Amtrak provided and made the following findings.

A. Railbound Tunnel Crane

New York Penn Station (PSNY) handles over 1,300 train moves carrying 350,000 people on Amtrak, New Jersey Transit (NJ Transit), and Long Island Railroad (LIRR) trains every day. The track structure consists of 87 turnouts, including 34 slip switches, each equivalent to four conventional turnouts, totaling 219 turnouts. It is Amtrak's busiest station on the Northeast Corridor with 21 tracks fed by seven tunnels serving Amtrak, NJ Transit, and LIRR.

Currently, Amtrak is replacing turnouts in PSNY with a 1994-built crane which is well-tested under the extreme production requirements of PSNY. However, after 25 years, its reliability has decreased significantly, and it lacks the remaining components of the system upon which Amtrak is relying to replace one turnout per 55-hour track possession window.

In May 2019, Amtrak issued a Request for Proposal (RFP) for one Railbound Tunnel Crane. In accordance with Amtrak's procurement process, the RFP was posted to the Procurement Portal on Amtrak's website. In addition, Amtrak solicited four companies that participated in a request for information process for similar equipment in the past to participate in the acquisition event; proposals were received from three offerors. Amtrak evaluated the proposals on compliance with the technical specifications, previous relevant and successful experience in providing similar supplies, pricing, and delivery. The Railbound Tunnel Crane consists of interrelated units that function as one complete system. Amtrak's Technical Evaluation Committee evaluated the three proposals in accordance with the terms of the RFP and concluded that only one offeror met the requirements of the specification. The sole successful offeror's tunnel crane does not meet the Amtrak Buy America requirements.

Amtrak maintains that not having the Railbound Tunnel Crane would have an adverse effect on the Penn Station turnout replacement plan. Over the past 2 years, Amtrak has only been able to replace 20 of the 219 turnouts, requiring forty-two 55-hour track outages, which impacted service to Amtrak, NJ Transit, and LIRR. According to Amtrak, the current crane system takes two 55-hour track outages to replace a turnout; whereas, the proposed crane system would permit the replacement of a turnout during one 55-hour track outage. According to Amtrak, the inability to replace more than 10 turnouts per year will increase the SOGR backlog, and prevent PSNY from ever achieving a SOGR.

FRA's engineering team accepts Amtrak's assertions that none of the Buy America-compliant bidders offered products meeting Amtrak's specification, and that not having the tunnel crane would have an adverse effect on Penn Station's SOGR program.

[1] Amtrak's exemption request is available at: *https://railroads.dot.gov/legislation-regulations/buy-america/amtrak-buy-america-maintenance-equipment-exemption-request.*

B. Track Laying Machine

The new Track Laying Machine is required to address the NEC's concrete tie condition. The NEC has three million concrete ties which are projected to have a 40 to 50-year life; one million Santa Fe San Vel concrete ties were installed between 1978 and 1982 and are now on the verge of needing replacement.

Furthermore, during the 1990s, Amtrak installed 1.4 million Rocla concrete ties that began failing at an accelerated rate in 2004, requiring replacement well before the end of the projected useful life. Neither the San Vel replacement nor the Rocla replacement can be achieved with Amtrak's current equipment.

In August 2018, Amtrak issued an RFP for one Track Laying Machine. In accordance with Amtrak's procurement process, the RFP was posted to the Procurement Portal on Amtrak's website. In addition, Amtrak solicited bids from three companies that were known to Amtrak and had previously supplied similar equipment to Amtrak.

Amtrak received proposals from two offerors, including the proposed awardee. The proposals were evaluated on compliance to the technical specifications, previous relevant and successful experience in providing similar supplies, pricing, and delivery. After an initial technical review of the unsuccessful offeror's proposal, Amtrak determined that it did not meet Amtrak's technical specification. Amtrak initiated discussions with the offeror to delineate deficiencies in the proposal and requested that the offeror submit a revised proposal that met the specification requirements.

Amtrak's Technical Evaluation Committee thoroughly evaluated the offeror's revised proposal and the proposed awardee's original proposal and determined that only the proposed awardee met the technical specification requirement. The sole successful offeror's Track Laying Machine does not meet the Amtrak Buy America requirements. The nine passenger railroads that rely on NEC infrastructure to provide rail service to the public all have a vested interest in ensuring the infrastructure can meet current and future service needs. If FRA denies Amtrak's request for an exemption, then Amtrak cannot acquire the Track Laying Machine. According to Amtrak, the new Track Laying machine will cut Amtrak's footprint of track outage in half. Further, Amtrak cannot achieve the annual steady state program for either the San Vel or Rocla replacement cycle with its current equipment. As a result, Amtrak maintains that not having the Track Laying Machine will have adverse effects on Amtrak's ability to reduce the SOGR backlog, and ultimately, negatively impact service and the ability to grow ridership.

FRA's engineering team accepts Amtrak's assertions that none of the Buy America-compliant bidders offered products meeting Amtrak's specification, and that not having the Track Laying Machine would have an adverse effect on Amtrak's ability to meet its SOGR goals.

C. Two-Man Rail Car Mover With Heavy Duty Crane, Railgear, and Rail Car Couplers

Amtrak's market research concluded that one company was the sole manufacturer of the Car Movers, which are utilized extensively by freight railroads. To create competition, Amtrak prepared a bidders list that included the known manufacturer and twelve other truck manufacturers to ascertain if any of these manufacturers had entered the market for Car Movers.

In March 2018, Amtrak issued an RFP for twelve different styles of trucks that are required to maintain a SOGR, which included the Car Movers. To ensure that there would be competition, Amtrak solicited thirteen providers of a variety of trucks, which included the provider of the Car Movers, that were known to Amtrak and had previously supplied similar equipment to Amtrak to participate in the acquisition event.

Of the proposals Amtrak received, only two offerors provided a proposal for the Car Movers. After a thorough technical review of the proposals, the Technical Evaluation Committee determined that only the known manufacturer's offering met the technical specification requirement of a truck having 50,000 lbs of tractive effort capability. The sole successful offeror's Car Movers do not meet the Amtrak Buy America requirements. If FRA denies Amtrak's request for an exemption, then Amtrak cannot acquire the Car Movers. Amtrak maintains that not having the Car Movers will prevent Amtrak from achieving a SOGR.

FRA's engineering team accepts Amtrak's assertions that none of the Buy America-compliant bidders offered products meeting Amtrak's specification, and that not having the Car Movers would have an adverse effect on Amtrak's ability to meet its SOGR goals.

D. Summary of Information That Amtrak Provided to FRA on Efforts To Identify Compliant Products and Maximize Domestic Content

As described above, although Amtrak did not identify compliant products, it provided information to FRA supporting its exemption request, including:

- Information describing the domestic content characteristics of the manufactured products needed, including the sources and assembly locations of the products offered by all bidders;
- Information supporting the technical necessity of these specific products for Amtrak's SOGR program, including details supporting Amtrak's determination that unsuccessful bidders' products did not satisfy technical specifications; and
- Information describing the effects of denying the request, including the relationship between these products, the SOGR backlog, and Amtrak's plan to eliminate that backlog.

On the basis of this information, FRA concludes that Amtrak's procurement was consistent with the policy in Executive Order 13788 to maximize ''the use of goods, products, and materials produced in the United States.'' FRA further concludes that denying the requested exemption would not increase the use of goods, products, and materials produced in the United States.

Determination Under 49 U.S.C. 24305

FRA has determined an exemption is appropriate under 49 U.S.C. 24305(f)(4)(A)(iii) for the track maintenance equipment because domestically produced equipment is not currently ''manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality.'' FRA bases this determination on the following:

- Amtrak competitively bid its requirements and found that there are no domestic solutions meeting Amtrak's specifications;
- FRA's engineering team concurs with Amtrak's specifications, due to the unique operating environment on the NEC. FRA also concurs with Amtrak's selection rationale and the effect on Amtrak's SOGR if it cannot purchase this equipment; and
- On March 31, 2020, FRA provided public notice of Amtrak's exemption request and a 20-day opportunity for comment. FRA also emailed the notice to over 6,000 recipients that requested Buy America notices through ''GovDelivery.'' FRA received 2 comments. However, the commenters

did not provide any information about domestic sources for Amtrak's specifications.

This exemption applies only to Amtrak's acquisition of the equipment described. FRA is providing notice of this finding and an opportunity for public comment, after which, this exemption will take effect. Questions about this Notice can be directed to, John Johnson, Attorney-Advisor, at *John.Johnson@dot.gov* or (202) 493–0078.

Issued in Washington, DC.

Quintin Kendall,

Deputy Administrator.

[FR Doc. 2020–14155 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for Magnetic Levitation Deployment Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO or notice).

SUMMARY: This notice details the application requirements and procedures to obtain grant funding for eligible projects under the Magnetic Levitation Technology Deployment Program (Maglev Grants Program). This notice solicits applications for $2,000,000 in Maglev Grants Program funds. The opportunity described in this notice is made available under Catalog of Federal Domestic Assistance (CFDA) number 20.318, ''Maglev Project Selection Program—SAFETEA–LU.''

DATES: Applications for funding under this solicitation are due no later than 5 p.m. ET July 31, 2020. Applications for funding, or supplemental material in support of an application, received after 5 p.m. ET on July 31, 2020 will not be considered for funding. Incomplete applications will not be considered for funding. See Section D of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *www.Grants.gov.* Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award. For any supporting application materials that an applicant is unable to submit via *www.Grants.gov,* an applicant may submit an original and two (2) copies to Ruthie Americus, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as courier service) to assure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: For further information related to this notice, please contact Ruthie Americus, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–403, Washington, DC 20590; email: *ruthie.americus@dot.gov;* phone: 202–493–0431.

SUPPLEMENTARY INFORMATION: Notice to applicants: FRA recommends that applicants read this notice in its entirety prior to preparing application materials. The definitions of key terms used throughout the NOFO are provided in Section 2(A). These key terms are capitalized throughout the NOFO. There are several administrative prerequisites and specific eligibility requirements described herein that applicants must comply with to submit an application. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

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A. Program Description

1. Overview

The purpose of this notice is to solicit applications for grants for eligible capital project costs and preconstruction planning activities for the deployment of magnetic levitation transportation projects, authorized under and funded in the Further Consolidated Appropriations Act, 2020, Div H, Tit I, Public Law 116–94 (2020 Appropriation), consistent with the language in section 1307(a) through (c) of Public Law 109–59 (SAFETEA–LU), as amended by section 102 of Public Law 110–244 (Technical Corrections Act) (23 U.S.C. 322 note).

2. Definitions of Key Terms

a. ''Full Project Cost'' means the total capital costs of a Maglev project including eligible project costs and the cost of stations, vehicles and equipment.

b. ''Magnetic Levitation'' or ''Maglev'' means transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.

c. ''National Environmental Policy Act (NEPA)'' is a Federal law that requires Federal agencies to analyze the environmental impacts of a proposed action, in consultation with appropriate Federal, State, and local authorities, and with the public. The NEPA class of action depends on the nature of the proposed action, its complexity, and the potential impacts. For purposes of this NOFO, NEPA also includes all related Federal laws and regulations including: the Clean Air Act, section 4(f) of the Department of Transportation Act, section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act. Additional information regarding FRA's environmental processes and requirements are located at *https://www.fra.dot.gov/environment.*

d. ''State'' has the meaning such term has under 23 U.S.C. 101(a).

B. Federal Award Information

1. Available Award Amount

The total funding available for awards under this NOFO is $2,000,000. Should additional Maglev funds become available after the release of this NOFO, FRA may elect to award such additional funds to applications received under this NOFO.

2. Award Size

There are no predetermined minimum or maximum dollar thresholds for awards. FRA may not be able to award grants to all eligible applications, or even those applications that meet or exceed the stated evaluation criteria (see Section E, Application Review Information).

Projects may require more funding than is available. FRA encourages applicants to propose projects or components of projects that have operational independence that can be completed and implemented with the level of funding available together with other sources.

FRA strongly encourages applicants to identify and include State, local, public, or private funding or financing to support the proposed project to maximize competitiveness.

3. Award Type

FRA will make awards for projects selected under this notice through grant

agreements and/or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight under 2 CFR 200.24. The term ''grant'' is used throughout this document and is intended to reference funding awarded through a grant agreement, as well as funding awarded through a cooperative agreement. The funding provided under this NOFO will be made available to grant recipients on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the grant recipient is expected to expend matching funds at the required percentage concurrent with Federal funds throughout the life of the project. See an example of standard terms and conditions for FRA grant awards at: *https://railroads.dot.gov/elibrary/notice-grant-award-example.* This template is subject to revision.

C. Eligibility Information

This section of the notice explains applicant eligibility, cost sharing and matching requirements, and project eligibility. Applications that do not meet the requirements in this section will be ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in Section D of this NOFO.

1. Eligible Applicants

Applicants must be a State, States, or an authority designated by one or more States.[1] If the proposed Maglev service would operate in more than one State, a single State or designated State authority should apply on behalf of all participating States. FRA encourages States to submit applications through their respective State Departments of Transportation. Eligible applicants may reference entities that are not eligible applicants in an application as a project partner.

2. Cost Sharing or Matching

The Federal share of Full Project Costs will not exceed 80 percent. The funds available under this NOFO are available only for eligible project costs of eligible Maglev projects. As a result, under this NOFO the Federal share of the estimated total eligible project costs will not exceed 80 percent. The estimated total cost of a project must be based on the best available information, including engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment and/or facilities. Additionally, in preparing estimates of total project costs, applicants should refer to FRA's cost estimate guidance documentation, ''Capital Cost Estimating: Guidance for Project Sponsors,'' which is available at: *https://www.fra.dot.gov/Page/P0926.*

The minimum 20 percent non-Federal share may be composed of public sector (*e.g.,* state or local) and/or private sector funding. FRA will not consider any Federal financial assistance, nor any non-Federal funds already expended (or otherwise encumbered) toward the matching requirement, unless compliant with 2 CFR 200.306. FRA will give preference to applications proposing cash contributions for the required 20 percent of the non-Federal share. Eligible in-kind contributions may also be accepted for any non-Federal matching beyond the required 20 percent. In-kind contributions, including the donation of services, materials, and equipment, may be credited as a project cost, in a uniform manner consistent with *2 CFR 200.306.* Moreover, FRA encourages applicants to broaden their funding table in applications. FRA will give preference to applications proposing a non-Federal share exceeding the required 20 percent, providing the required 20 percent non-Federal share as a cash contribution, and consisting of funding from multiple sources to demonstrate broad participation and cost sharing from affected stakeholders.

Before applying, applicants should carefully review the principles for cost sharing or matching in *2 CFR 200.306.* See Section D(2)(a)(iii) for required application information on non-Federal match and Section E for further discussion of FRA's consideration of matching funds in the review and selection process. FRA will only approve pre-award costs consistent with *2 CFR 200.458,* as applicable. See Section D(6).

3. Project Eligibility

Eligible Maglev projects must: (1) Involve a segment or segments of a high-speed ground transportation corridor; (2) result in an operating transportation facility that provides a revenue producing service; (3) and be approved by the Secretary based on an application submitted to the Secretary of Transportation by a State or authority designated by one or more States. With respect to the second criterion, Congress titled section 1307 of SAFETEA–LU ''Deployment of Magnetic Levitation Transportation Projects'' and provided funding through section 1101(a)(18) of SAFETEA–LU, as amended by the Technical Corrections Act, for the ''deployment of magnetic levitation projects.'' Congress also provided funding through the 2020 Appropriation for the ''deployment of magnetic levitation projects.'' FRA interprets this language to mean that the Federal funds be used to directly advance and result in the construction of a Maglev project.

Funding under this NOFO is available for eligible project costs for eligible Maglev projects. Eligible project costs are: (1) The capital cost of the fixed guideway infrastructure of a Maglev project including land, piers, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities and (2) preconstruction planning activities. Eligible project costs exclude new stations and rolling stock, as well as costs incurred solely for land or right-of-way acquisition (even if such acquisition is to secure operational right-of-way).

Funding under this NOFO may not be used for costs that are included in or used to meet cost sharing or matching requirements of, any other Federally-financed award or program. If the applicant is seeking additional funding for a project that has already received Federal financial assistance, costs associated with the scope of work for the existing Federal award are not eligible for funding under this NOFO. Only new scope (*e.g.,* new deliverables) is eligible for funding under this NOFO.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application. See Section D(2) for the application checklist. FRA welcomes the submission of other relevant supporting documentation that the applicant would like to submit, such as planning, environmental documentation, engineering and design documentation, letters of support, etc. that will not count against the Project Narrative 25-page limit. In particular, applications accompanied by completed feasibility studies and cost estimates

[1] See section D(2)(a)(iv) for supporting documentation required to demonstrate eligibility under this eligibility category.

may be more favorably considered during the evaluation process, as they demonstrate that an applicant has a greater understanding of the scope and cost of the project.

1. Address To Request Application Package

Applicants must submit all application materials in their entirety through *http://www.Grants.gov* no later than 5:00 p.m. ET, on July 31, 2020. Applicants are strongly encouraged to apply early to ensure that all materials are received before the application deadline. FRA reserves the right to modify this deadline. General information for submitting applications through *Grants.gov* can be found at: *https://www.fra.dot.gov/Page/P0270.* FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons who have a disability. If you require an alternative version of files provided, please contact Ruthie Americus, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–403, Washington, DC 20590; email: *ruthie.americus@dot.gov.*

Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding.

Required documents for an application package are outlined in the checklist below.

- Project Narrative (see D.2.a)
- Statement of Work (see D.2.b.i)
- SF424—Application for Federal Assistance
- Either: SF 424A—Budget Information for Non-Construction projects or SF 424C—Budget Information for Construction
- Either: SF 424B—Assurances for Non-Construction projects or SF 424D—Assurances for Construction
- FRA's Additional Assurances and Certifications
- SF LLL—Disclosure of Lobbying Activities

a. Project Narrative

This section describes the minimum content required in the Project Narrative of the grant application. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page	See D.2.a.i
II. Project Summary	See D.2.a.ii
III. Project Funding Summary.	See D.2.a.iii
IV. Applicant Eligibility Criteria.	See D.2.a.iv
V. Project Eligibility Criteria.	See D.2.a.v
VI. Detailed Project Description.	See D.2.a.vi
VII. Project Location	See D.2.a.vii
VIII. Evaluation and Selection Criteria.	See D.2.a.viii
IX. Project Implementation and Management.	See D.2.a.ix
X. Planning Readiness	See D.2.a.x
XI. Environmental Readiness.	See D.2.a.xi

The above content must be provided in a narrative statement submitted by the applicant. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). FRA will not review or consider Project Narratives beyond the 25-page limitation. If possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the page number of the relevant portion of the supporting documentation in the Project Narrative. The Project Narrative must adhere to the following outline.

i. *Cover Page:* Include a cover page that lists the following elements in either a table or formatted list:

Project Title.
Applicant.
The amount of Federal funding requested.
The amount of non-Federal match.
The total project cost.
City(ies), State(s) where the project is located.
Congressional district(s) where the project is located.

ii. *Project Summary:* Provide a brief 4–6 sentence summary of the proposed project and what the project will entail. Include challenges the proposed project aims to address, and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Project Funding Summary:* Indicate in table format the amount of Federal funding requested, the proposed non-Federal match, identifying contributions from the private sector if applicable, and total project cost. Describe the non-Federal funding arrangement, including multiple sources of non-Federal funding if applicable. Include funding commitment letters outlining funding agreements, as attachments or in an appendix. Identify any other sources of Federal funds committed to the project and any pending Federal requests. If Federal funding is proposed as match, demonstrate the applicant's determination of eligibility for such use and the legal basis for that determination. Also, note if the requested Federal funding must be obligated or spent by a certain date due to dependencies or relationships with other Federal or non-Federal funding sources, related projects, law, or other factors. Include funding commitment letters outlining funding agreements, as attachments or in an appendix. If applicable, provide the type and estimated value of any proposed in-kind contributions, and demonstrate how the in-kind contributions meet the requirements in *2 CFR 200.306.*

Example Project Funding Table:

Task No.	Task name/Project component		Cost	Percentage of total cost
1 2				
Total Project Cost Federal Funds Received from Previous Grants Maglev Federal Funding Request Non-Federal Funding/Match Portion of Non-Federal Funding from the Private Sector Portion of Non-Federal Funding from the Public Sector Pending Federal Funding Requests			Cash: ..... In-Kind:	

iv. *Applicant Eligibility Criteria:* Explain how the applicant meets the applicant eligibility criteria outlined in Section C of this notice. For authorities designated by one or more States, the explanation must include citations to the applicable enabling legislation and references to applicable documentation.

v. *Project Eligibility Criteria:* Explain how the project meets the project eligibility criteria in Section C(3) of this notice.

vi. *Detailed Project Description:* Include a detailed project description that expands upon the summary required above. This detailed description should provide, at a minimum: additional background on the transportation challenges the project aims to address, the expected users, beneficiaries, and outcomes of the project, and any other information the applicant deems necessary to justify the proposed project. Be specific regarding the relevance or relationship of the proposed project to other investments in the region along the corridor, as well as the operating changes that are anticipated to result from the introduction and integration of Maglev services within existing transportation corridors and assess the major risks (including safety risks) or obstacles to Maglev's successful deployment and operation. Provide a detailed summary of all work completed to date, including any preliminary engineering work, the project's previous accomplishments and funding history including Federal financial assistance, and a chronology of key documents produced and funding events (*e.g.,* grants and financing). An applicant should specify whether it is seeking funding for a project that has already received Federal financial assistance, and if applicable, explain how the new scope proposed to be funded under this NOFO relates to the previous scope. Consistent with the Department's R.O.U.T.E.S. Initiative (*https://www.transportation.gov/rural*), the Department encourages applicants to describe how activities proposed in their application would address the unique challenges facing rural transportation networks, regardless of the geographic location of those activities.

vii. *Project Location:* Include geospatial data for the project, as well as a map of the project's location. Include the Congressional districts in which the project will take place.

viii. *Evaluation and Selection Criteria:* Include a thorough discussion of how the proposed project meets all the evaluation and selection criteria, as outlined in section E of this notice. If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application. For the life-cycle cost selection criteria, applicants should demonstrate a credible plan to maintain their asset without having to rely on Federal funding including a description of the applicants' approach to ensuring operations and maintenance will not be underfunded in future years.

ix. *Project Implementation and Management:* Describe proposed project implementation and project management arrangements for the full Maglev corridor project, including the activities proposed in this application. Include descriptions of the expected arrangements for project contracting, contract oversight, change-order management, risk management, and conformance to Federal requirements for project progress reporting (see *https://www.fra.dot.gov/Page/P0274*). Identify key personnel involved in the implementation and management of the project and describe their qualifications and functional responsibilities associated with the project. Describe experience in managing and overseeing similar projects.

x. *Planning Readiness:* Provide information about the planning process that analyzed the investment needs and service objectives of the project. If applicable, cite sources of this information from a service development plan, State or regional rail plan, or similar planning document where the project has been identified for solving a specific existing transportation problem, and makes the case for investing in the proposed solution. Describe the plan to pay for any planning, land acquisition, buildout, testing, and implementation of the project, and specify long term financial plans to own, operate and maintain Maglev services.

xi. *Environmental Readiness:* Describe anticipated environmental or historic preservation impacts associated with the proposed project, any environmental or historic preservation analyses that have been prepared, and any ongoing progress toward completing environmental documentation or clearance required for the proposed project under NEPA as defined in this NOFO. Provide, as available, a schedule to complete these actions. Applicants are encouraged to contact FRA and obtain preliminary direction regarding the appropriate NEPA class of action and required environmental documentation. Generally, projects will be ineligible to receive funding if they have begun construction activities prior to the applicant/grant recipient receiving written approval from FRA that all environmental and historical analyses have been completed.

b. Additional Application Elements

Applicants must submit:

i. A Statement of Work (SOW) addressing the scope, schedule, and budget for the proposed project if it were selected for award. The SOW must contain sufficient detail so FRA, and the applicant, can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applicants must use FRA's standard SOW, schedule, and budget templates to be considered for award. The templates are located at *https://www.fra.dot.gov/Page/P0325.* When preparing the budget, the total cost of a project must be based on the best available information as indicated in cited references that include engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment or facilities

ii. SF424—Application for Federal Assistance.

iii. Either: SF 424A—Budget Information for Non-Construction projects or SF 424C—Budget Information for Construction.

iv. Either: SF 424B—Assurances for Non-Construction projects or SF 424D—Assurances for Construction.

v. FRA's Additional Assurances and Certifications; and

vi. SF LLL—Disclosure of Lobbying Activities.

vii. A statement that the lead applicant has a system for procuring property and services under a Federal award under this NOFO that supports the provisions in 2 CFR 200 Subpart D-Procurement Standards at 2 CFR 200.317–326 and 2 CFR 1201.317.

viii. A statement indicating whether the applicant or any of its principals:

a. Is presently suspended, debarred, voluntarily excluded, or disqualified;

b. has been convicted within the preceding 3 years of any of the offenses listed in 2 CFR 180.800(a); or had a civil judgment rendered against the organization or the individual for one of those offenses within that time period;

c. is presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with, commission of any of the offenses listed in 2 CFR 180.800(a); or,

d. has had one or more public transactions (Federal, state, or local) terminated within the preceding 3 years for cause or default (including material failure to comply).

Forms needed for the electronic application process are at *www.Grants.gov.*

c. Post-Selection Requirements

See Section F(2) of this notice for post-selection requirements.

3. Unique Entity Identifier, System for Award Management (SAM), and Submission Instructions

To apply for funding through *Grants.gov*, applicants must be properly registered in SAM before submitting an application, provide a valid unique entity identifier, and continue to maintain an active SAM registration all as described in detail below. Complete instructions on how to register and submit an application can be found at *www.Grants.gov.* Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date. Delayed registration is not an acceptable justification for an application extension.

FRA may not make a grant award to an applicant until the applicant has complied with all applicable Data Universal Numbering System (DUNS) and SAM requirements, and if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. (Please note that if a Dun & Bradstreet DUNS number must be obtained or renewed, this may take a significant amount of time to complete.) Late applications that are the result of a failure to register or comply with *Grants.gov* applicant requirements in a timely manner will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *Grants.gov*, applicants must:

a. Obtain a DUNS Number

A DUNS number is required for *Grants.gov* registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for the government in identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Applicants may obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dnb.com/us.*

b. Register With SAM at *www.SAM.gov*

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov*. The SAM database is the repository for standard information about Federal financial assistance applicants, recipients, and subrecipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award. Information about SAM registration procedures is available at *www.sam.gov.*

c. Create a *Grants.gov* Username and Password

Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Applicants must use the organization's DUNS number to complete this step. Additional information about the registration process is available at: *https://www.grants.gov/web/grants/applicants/organization-registration.html.*

d. Acquire Authorization for Your AOR From the E-Business Point of Contact (E-Biz POC)

The E-Biz POC at the applicant's organization must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

e. Submit an Application Addressing All Requirements Outlined in This NOFO

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html*

4. Submission Dates and Times

Applicants must submit complete applications in their entirety to *www.Grants.gov* no later than 5:00 p.m. ET, July 31, 2020. FRA reviews *www.Grants.gov* information on dates/times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered. Delayed registration is not an acceptable reason for late submission. Applicants are strongly encouraged to apply early to ensure that all materials are received before this deadline.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

If an applicant experiences difficulties at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *http://www.grants.gov/web/grants/applicants/apply-for-grants.html.*

5. Intergovernmental Review

Executive Order 12372 requires applicants from State and local units of government or other organizations providing services within a State to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if this program has been selected for review by the State. Applicants must contact their State SPOC to determine if the program has been selected for State review.

6. Funding Restrictions

Consistent with 2 CFR 200.458, FRA will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work. Under 2 CFR 200.458, grant recipients must seek written approval from FRA for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without written approval may not be eligible for reimbursement or included as a grant recipient's matching contribution. Cost sharing or matching may be used only for authorized Federal award purposes.

As stated in Section C(3), funding under this NOFO is not available for costs incurred for new stations and rolling stock, as well as costs incurred for land or right-of-way acquisition (even if such acquisition is to secure operational right-of-way).

7. Other Submission Requirements

For any supporting application materials that an applicant cannot submit via *Grants.gov*, an applicant may submit an original and two (2) copies to Ruthie Americus, Office of Policy and Planning, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W36–412, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, FRA advises applicants to use other means of conveyance (such as courier service) to assure timely receipt of materials before the application deadline. Additionally, if documents can be obtained online, providing instructions to FRA on how to access files on a referenced website may also be sufficient.

Note: Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp, in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

E. Application Review Information

1. Criteria

a. Eligibility, Completeness and Applicant Risk Review

FRA will first screen each application for eligibility (eligibility requirements are outlined in Section C of this notice), completeness (application documentation and submission requirements are outlined in Section D of this notice), applicant risk and the 20 percent minimum match in determining whether the application is eligible.

b. Evaluation Criteria

FRA subject-matter experts will evaluate all eligible and complete applications against the following evaluation criteria:

i. The extent to which the project would feasibly integrate Maglev systems with conventional rail systems, such as establishing efficient connections and transfers.

ii. The extent to which funds awarded under this section would result in investments that are beneficial not only to the Maglev project, but also to other current or near-term transportation projects.

iii. The degree to which the project demonstrates: (a) The potential for public-private partnerships and (b) that the project will stand alone as a complete, self-sustaining operation where fully allocated operating expenses of the Maglev service are projected to be offset by revenues attributable to the service.

iv. The extent of the demonstrated financial commitment to the construction of the proposed project from both non-Federal public and private sources.

v. The extent to which the project demonstrates coordination and consistency with any applicable ongoing or completed environmental and planning studies for passenger rail on or connecting to the geographic route segment being proposed for Maglev investment.

vi. The degree to which the project will successfully operate in the variety of Maglev operating conditions which are to be expected in the United States. For example, these conditions might include a variety of at-grade, elevated and depressed guideway structures, extreme temperatures, and intermodal connections at terminals.

vii. The feasibility of the project meeting a top speed of at least 240 miles per hour (MPH). FRA will also consider the ability to meet higher speeds as well as the duration that speeds of at least 240 MPH can be attained.

c. Selection Criteria

In addition to the eligibility and completeness review and the evaluation criteria outlined in this section, FRA will apply the following selection criteria.

i. FRA will take into account the following key Departmental objectives:

a. Supporting economic vitality at the national and regional level;

b. Leveraging Federal funding to attract other, non-Federal sources of infrastructure investment;

c. Preparing for future operations and maintenance costs associated with the project's life-cycle, as demonstrated by a credible plan to maintain assets without having to rely on future Federal funding;

d. Using innovative approaches to improve safety and expedite project delivery; and,

e. Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

ii. In determining the allocation of program funds, FRA may also consider geographic diversity, diversity in the size of the systems receiving funding, the applicant's receipt of other competitive awards, projects located in or that support transportation service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z–1, the percentage of non-Federal share provided, the percentage of non-Federal share provided as a cash contribution, and whether such non-Federal share is provided by multiple sources.

iii. Consistent with the Department's R.O.U.T.E.S. Initiative (*https://www.transportation.gov/rural*), the Department recognizes that rural transportation networks face unique challenges. To the extent that those challenges are reflected in the merit criteria listed in this section, the Department will consider how the activities proposed in the application will address those challenges, regardless of the geographic location of those activities.

2. Review and Selection Process

FRA will conduct a four-part application review process, as follows:

a. Screen applications for completeness and eligibility;

b. Evaluate eligible applications (completed by technical panels applying the evaluation criteria);

c. Review, apply selection criteria and recommend initial selection of projects for the FRA Administrator's review (completed by a non-career Senior Review Team, which includes senior leadership from the Office of the Secretary and FRA); and

d. Select awards for the Secretary's review and approval (completed by the FRA Administrator).

3. Reporting Matters Related to Integrity and Performance

Before making a Federal award with a total amount of Federal share greater

than the simplified acquisition threshold (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

F. Federal Award Administration Information

1. Federal Award Notice

FRA will announce applications selected for funding in a press release and on the FRA website after the application review period. FRA will contact applicants with successful applications after announcement with information and instructions about the award process. This notification is not an authorization to begin proposed project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the grant recipient and FRA, including an approved scope, schedule, and budget, to obligate the grant.

2. Administrative and National Policy Requirements

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, grant recipients must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, grant recipients must ensure that no concession agreements are denied or other contracting decisions made based on speech or other activities protected by the First Amendment. If the Department determines that a grant recipient has failed to comply with applicable Federal requirements, the Department may terminate the award of funds and disallow previously incurred costs, requiring the grant recipient to reimburse any expended award funds.

Examples of administrative and national policy requirements include: 2 CFR 200 Subpart D—Procurement Standards, 2 CFR 1207.317 and 2 CFR 200.401; compliance with Federal civil rights laws and regulations; disadvantaged business enterprises; debarment and suspension; drug-free workplace; FRA's and OMB's Assurances and Certifications; Americans with Disabilities Act; safety requirements; NEPA; environmental justice and the Buy American Act, 41 U.S.C. 8301–8305. Financial assistance made available under this NOFO, and projects assisted with such assistance, are subject to 49 U.S.C. 5333(a). Unless otherwise stated in statutory or legislative authority, or appropriations language, all financial assistance awards follow the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR 200 and 2 CFR 1201.

Grant recipients must comply with applicable appropriations act requirements and all relevant requirements of 2 CFR part 200. Rights to intangible property under grants awarded under this NOFO are governed in accordance with 2 CFR 200.315. Unless otherwise stated in the Federal award, FRA will not consider non-federal entities as that term is used in 2 CFR part 200 to include for-profit entities.

See an example of standard terms and conditions for FRA grant awards at *https://www.fra.dot.gov/eLib/details/L05285.* This template is subject to revision.

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically.

b. Additional Reporting

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350. See an example of standard terms and conditions for FRA grant awards at: *https://www.fra.dot.gov/eLib/details/L05285.*

If the Federal share of any Federal award under this NOFO may include more than $500,000 over the period of performance, applicants are informed of the post award reporting requirements reflected in 2 CFR part 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

c. Performance Reporting

Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by FRA and the grant recipient to assess progress in achieving strategic goals and objectives.

G. Federal Awarding Agency Contacts

For further information regarding this notice and the grants program, please contact Ruthie Americus, Office of Policy and Planning, Federal Railroad Administration,1200 New Jersey Avenue SE, Room W36–403, Washington, DC 20590; email: *ruthie.americus@dot.gov.*

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

The DOT regulations implementing the FOIA are found at 49 CFR 7 Subpart C—Availability of Reasonably Described Records under the Freedom of Information Act which sets forth rules for FRA to make requested materials, information and, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of application and proposals submitted by successful

applicants may be released in response to FOIA requests.

Quintin Kendall,

Deputy Administrator.

[FR Doc. 2020–14142 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system.

DATES: The webinar-based (online) public meeting will be held on Wednesday, July 15, 2020, from 1 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). Requests to speak during the public comment period of the meeting must submit a written copy of their remarks to DOT no later than by Wednesday, July 8, 2020. Requests to submit written materials to be reviewed during the meeting must be received by Wednesday, July 8, 2020.

ADDRESSES: The meeting will be held via webinar, accessible via most internet browsers. The website link to join the meeting will be posted on the MTSNAC website by Wednesday, July 8, 2020. Please visit the MTSNAC website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritimetransportation-system-national-advisory-O.*

FOR FURTHER INFORMATION CONTACT: Amanda Rutherford, Designated Federal Officer, at *MTSNAC@dot.gov* or at (202) 366–1332. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE W21–307, Washington, DC 20590. Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation through the Maritime Administrator on issues related to the marine transportation system. The MTSNAC was originally established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC is codified at 46 U.S.C. 55603 and operates in accordance with the provisions of the Federal Advisory Committee Act (FACA).

II. Agenda

The agenda will include: (1) Welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) refining recommendations for the maritime transportation system for the full MTSNAC committee to vote and adopt during the September 28–29, 2020 meeting. The agenda will include updates to the Committee on the subcommittee research, processes for developing their recommendations, and a second look at the subcommittee's draft implementation strategies to help achieve the recommendations; and (5) public comments. A detailed agenda will be posted on the MTSNAC internet website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritimetransportation-system-national-advisory-O* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public.

Services for Individuals with Disabilities: The public meeting is accessible to people with disabilities. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public Comments: A public comment period will commence at approximately 3 p.m. EST on July 15, 2020. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments: Persons who wish to submit written comments for consideration by the Committee must send them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR 1.93(a); 5 U.S.C. 552b; 41 CFR part 102–3; 5 U.S.C. app. Sections 1–16)

Dated: June 26, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–14204 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0027]

Denial of Motor Vehicle Defect Petition, DP19–003

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of a petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition, DP19–003, submitted by Mr. Kevin O'Brien to the Administrator of NHTSA (the ''Agency'') by a letter dated August 12, 2019. The petition requests that the agency initiate a safety defect investigation into an alleged ''excessive stalling problem'' experienced by operators of 2019 Model Year (MY) Volkswagen GTI, Jetta GLI, and Golf GTI manual transmission vehicles (the ''subject vehicles'') ''as the vehicles slow to a stop or prepare to make a turn across traffic with the clutch pressed in and the car in neutral.'' After conducting a technical review of: (1) Consumer complaints submitted by the petitioner; (2) consumer complaint information in NHTSA's databases; and (3) information provided by Volkswagen in response to our information requests regarding vehicle stalling and complaints received by Volkswagen, NHTSA's Office of Defect Investigations (ODI) has concluded that it is unlikely that additional investigation would result in a finding that a defect related to motor vehicle safety exists. As a result, no further investigation of the issue raised by the petition is warranted and the agency, accordingly, has denied the petition.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Yukevich, Vehicle Defect Division A, Office of Defects Investigation, NHTSA, 1200 New Jersey

Avenue SE, Washington, DC 20590. Telephone: 202–366–4925. Email: *sharon.yukevich@dot.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Interested persons may petition NHTSA requesting that the agency initiate an investigation to determine whether a motor vehicle or an item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162(a)(2); 49 CFR 552.1. Upon receipt of a properly filed petition, the agency conducts a technical review of the petition, material submitted with the petition and any additional information. 49 U.S.C. 30162(a)(2); 49 CFR 552.6. The technical review may consist solely of a review of information already in the possession of the agency or it may include the collection of information from the motor vehicle manufacturer and/or other sources. After conducting the technical review and considering appropriate factors, which may include, but are not limited to, the nature of the complaint, allocation of agency resources, agency priorities, the likelihood of uncovering sufficient evidence to establish the existence of a defect and the likelihood of success in any necessary enforcement litigation, the agency will grant or deny the petition. *See* 49 U.S.C. 30162(a)(2); 49 CFR 552.8.

Background Information

In a letter dated August 12, 2019, Mr. Kevin O'Brien (the petitioner) requested that NHTSA ''initiate a safety defect investigation into the excessive stalling problem'' experienced by operators of 2019 Model Year (MY) Volkswagen GTI, Jetta GLI, and Golf GTI manual transmission vehicles ''as the vehicles slow to a stop or prepare to make a turn across traffic with the clutch pressed in and the car in neutral.'' Mr. O'Brien based his request on his own experience and data found in the NHTSA Vehicle Owner Questionnaire (VOQ) database. NHTSA has based its decision on a review of the material cited by the petitioner, information submitted by Volkswagen in response to our Information Request letter, and other pertinent information in NHTSA's databases.

Summary of the Petition

The petitioner reported that his 2019 MY Volkswagen GTI experienced excessive stalling as the vehicle slowed to a stop or prepared to make a turn across traffic with the clutch pressed in and the vehicle in neutral on numerous occasions. The petitioner further noted that this issue is being experienced by operators of 2019 MY Volkswagen Golf GTI and Jetta GLI vehicles equipped with manual transmissions, as evidenced by additional complaints on NHTSA's website related to the same issue in the subject vehicle models.

Office of Defects Investigation Analysis

The hazard posed by a vehicle stalling event is manifested in the inability of the vehicle to move with the flow of surrounding traffic. The stalled vehicle, along with its operator and occupants, becomes a stationary target with traffic moving past the vehicle. Two factors have a major impact on the potential hazard to the vehicle, its occupants and surrounding vehicles, the surrounding traffic speed and the stalled vehicle's restart ability.

If the vehicle operator is able to restart the vehicle immediately or within a reasonable amount of time, the hazard is reduced and the vehicle can rejoin the flow of traffic. In the case of the vehicles that are the subject of this petition, restart is immediate, which substantially reduces the risk of harm to the vehicle, its occupants and surrounding vehicles.

If the surrounding traffic is not traveling at a significantly higher speed than the stalled vehicle, the surrounding traffic has sufficient time and ability to take evasive measures to avoid the road hazard imposed by the stalled vehicle. In the case of the vehicles that are the subject of this petition, the stall occurs when the vehicle is slowing to stop for a traffic signal or make a turn, or is completely stopped and at idle, further reducing the hazard due to the low speeds of all vehicles near the stalled vehicle.

As of March 2, 2020, out of the population of 11,333 subject vehicles, NHTSA has identified 214 consumer complaints with unique Vehicle Identification Numbers (VINs), in NHTSA's databases alleging engine stalling as vehicles are being brought to a stop and/or preparing to make a cross traffic turn, as cited in the petition. When combined with the warranty, field report and customer complaint data received from Volkswagen in response to the Information Request letter sent, NHTSA identified 413 unique VINs alleging low speed engine stalling with immediate restart. Of the allegations received by both NHTSA and Volkswagen, only two (2) resulted in minor collisions, neither of which had any injuries associated with the impact. One collision was a rear impact and the other was a curb swipe.

Volkswagen determined the low speed/idle engine stall was the result of unwanted gases remaining in the cylinder, caused by the intake valve camshaft not being in the correct position at idle. The intake camshaft is in an advanced position. This advanced position results in too much overlap with the position of the exhaust valve camshaft, allowing both the intake and exhaust valves to be open at the same time. The erroneous advanced position of the intake camshaft is a result of low oil pressure at idle and high oil temperatures, ≥110 °C/230 °F, combined with engine control algorithms in the Engine Control Module (ECM) that position the intake camshaft. Based on an examination of returned engines, only engines manufactured at the Silao Mexico plant were affected, due to a tolerance stack-up issue with the oil system of the engines.

In December of 2019, Volkswagen initiated a Service Action (24FD), with active customer notification, to remedy the stalling issue in the affected vehicles. The warranty for the affected vehicles was extended to December 31, 2025. The software in the ECM will be updated with a new calibration value for the adaptation nodes of the regulation valve to ensure the intake camshaft is in the proper position at idle and/or low speeds. In December 2019 letters were sent to vehicle owners, instructing them to bring their vehicles to their dealership to have the software update installed in their vehicle. NHTSA believes there is a high likelihood that many affected vehicles will be remedied with this action due to the vehicle age.

After thoroughly assessing the material submitted by the petitioner, information already in NHTSA's possession, information submitted by Volkswagen in response to an information request, and the potential risks to safety implicated by the petitioner's allegation, NHTSA does not believe that the stalling condition alleged by the petitioner indicates the likelihood of a safety related defect that would warrant a formal investigation. After full consideration of the potential for finding a safety related defect and in view of NHTSA's enforcement priorities, the petition is denied.

Jeffrey Mark Giuseppe,

Associate Administrator for Enforcement.

[FR Doc. 2020–14157 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0098; Docket No. NHTSA–2017–0101; Docket No. NTHSA–2019–0049; Notice 2]

FCA US, LLC and AGC Glass Company North America, Grant of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Grant of petitions.

SUMMARY: FCA US, LLC, f/k/a Chrysler Group, LLC (FCA) has determined that the rear liftgate privacy glass equipped in certain model year (MY) 2013–2017 Jeep Compass and certain MY 2018 Jeep Wrangler motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials.* Similarly, AGC Glass Company North America, d.b.a. AGC Automotive Americas Co. (AGC) determined that the same liftgate privacy glass sold as replacement parts for MY 2013–2017 Jeep Compass motor vehicles do not fully comply with FMVSS No. 205. The petitioners have requested that NHTSA deem the subject noncompliance inconsequential to motor vehicle safety. As the issues involved in both petitions are identical, NHTSA is addressing both petitions in this single notice, which announces the grant of both petitions.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5304, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION: *I. Overview:* FCA has determined that certain MY 2013–2017 Jeep Compass and MY 2018 Jeep Wrangler motor vehicles do not fully comply with paragraphs S5.1.1 and S5.1.2 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205). FCA filed noncompliance reports dated October 10, 2017, and April 25, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* FCA petitioned NHTSA on November 2, 2017, and May 15, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.* FCA later submitted supplemental petitions to their November 2, 2017, and May 15, 2019, petitions on June 3, 2019 and May 31, 2019, respectively. Notices of receipt of FCA's petitions were published with a 30-day public comment period on April 16, 2018, and September 12, 2019, in the **Federal Register** (83 FR 16430 and 84 FR 48209). No comments were received.

In addition, AGC has determined that the rear privacy glass manufactured as replacement glass for certain MY 2013–2017 Jeep Compass motor vehicles do not fully comply with paragraph S5.1.2 of FMVSS No. 205, *Glazing Materials.* AGC filed a report dated October 13, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* AGC also petitioned NHTSA on November 8, 2017, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.* Notice of receipt of AGC's petition was published with a 30-day public comment period on April 11, 2018, in the **Federal Register** (83 FR 15676). No comments were received.

II. Vehicles and Equipment Involved: Approximately 287,064 MY 2013–2017 Jeep Compass motor vehicles, manufactured between January 18, 2013, and December 23, 2016, and approximately 1,804 MY 2018 Jeep Wrangler motor vehicles, manufactured between October 13, 2018, and October 19, 2018, are potentially involved.

In addition, approximately 5,000 replacement privacy glass parts manufactured for replacement of the rear liftgate glass in MY 2013–2017 Jeep Compass motor vehicles, manufactured between January 16, 2013, and June 30, 2017, are potentially involved.

III. Noncompliance: The petitioners explain that the noncompliance is that the rear liftgate privacy glass equipped in or sold as replacement glass for certain MY 2013–2017 Jeep Compass and MY 2018 Jeep Wrangler motor vehicles do not fully comply with paragraphs S5.1.1 and S5.1.2 of FMVSS No. 205. Specifically, the liftgate glass has the AS2 glazing marking when it should have been marked with the AS3 glazing marking.

IV. Rule Requirements: Paragraphs S5.1.1 and S5.1.2 of FMVSS No. 205 include the requirements relevant to this petition. Except as otherwise specifically provided by FMVSS No. 205, glazing for use in multipurpose passenger vehicles shall conform to the requirements for glazing for use in trucks as specified in ANSI/SAE Z26.1–1996. Glazing intended for aftermarket replacement is required to meet the requirements of this standard or the requirements of 49 CFR 571.205(a) applicable to the glazing being replaced.

V. Summary of FCA's Petitions: FCA described the subject noncompliance and stated their belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

In support of their petition, FCA submitted the following arguments:

1. NHTSA recently described the glazing materials certification and marking requirements as follows: ''A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1–1996.'' American National Standard Institute (''ANSI''), standard ANSI/SAE Z26.1–1996, requires privacy glass to meet AS3 requirements for light transmissibility and requires labeling the glass with an AS3 marking.

2. FCA stated that the liftgate glass glazing of the affected vehicles otherwise meets all marking and performance requirements of FMVSS No. 205 and ANSI Z26.1–1996. FCA cited NHTSA as previously noting, ''The purpose of this standard (FMVSS No. 205) is to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.'' Since all transparent sections of the affected glazing fully meet all the applicable performance requirements, FCA does not believe the incorrect AS2 marking impacts the applicable performance requirements. FCA also does not believe that the incorrect AS2 marking impacts the ability of the glazing to satisfy the stated purpose or affect the performance of the glazing as required by FMVSS No. 205.

3. FCA also stated that the subject glazing meets all applicable performance requirements of FMVSS No. 205 and FCA believes there is no safety performance implication associated with this technical noncompliance.

4. In addition to meeting all the component level performance requirements of FMVSS No. 205, the subject glazing also fully meets the vehicle level installation requirements as specified by FMVSS No. 205. The subject glazing at 22% light transmissibility, is permitted in the liftgate glass location on the affected Jeep Compass and Jeep Wrangler vehicles.

5. The actual transmissibility of the subject liftgate glass glazing (approximately 22%) is consistent with

all the other glazing rearward of the driver (*i.e.* left and right side windows, and the left and right rear quarter window glazing) on the affected Jeep Compass and Jeep Wrangler vehicles. Accordingly, there is no reason for the customer, state inspection authorities, service personnel or anyone else to focus on or detect any distinction involving the subject liftgate glass.

6. In the extremely unlikely event that a glazing corresponding to the incorrect markings (*i.e.* solar glazing with 70% transmittance) was installed on the affected vehicles, this would also be fully compliant with all requirements of FMVSS No. 205, including component level and vehicle level marking requirements of the standard.

7. FCA is not aware of any crashes, injuries, or customer complaints associated with this condition.

8. NHTSA has previously granted similar inconsequential treatment for FMVSS No. 205 marking noncompliances. Examples of similar granted inconsequentiality petitions for incorrect markings related to glazing include:

○ Supreme Corporation, 81 FR 72850, (October 21, 2016).

○ Mitsubishi Motors North America, Inc., 80 FR 72482, (November 19, 2015).

○ Ford Motor Company, 80 FR 11259, (March 2, 2015).

○ Custom Glass Solutions Upper Sandusky Corp., 80 FR 3737, (January 23, 2015).

○ General Motors, LLC, 81 FR 23402, (April 28, 2014).

○ Fiji Heavy Industries U.S.A. Inc., 78 FR 59088, (September 25, 2013).

○ Ford Motor Company, 78 FR 32531, (May 30, 2013).

○ Pilkington North America, Inc., 78 FR 22942, (April 17, 2013).

○ Pilkington Glass of Canada LTD., 71 FR 39141, (July 11, 2006).

○ General Motors, 70 FR 49973, (August 25, 2005).

○ Freightliner LLC, 68 FR 65991, (November 24, 2003).

○ Toyota Motors North America Inc, 68 FR 10307, (March 4, 2003).

○ Guardian Ind. Corp., 67 FR 65185, (October 23, 2002).

○ Ford Motor Company, 64 FR 70115, (December 15, 1999).

○ Western Star Trucks Inc, 63 FR 66232, (December 1, 1998).

VI. Summary of AGC's Petition: AGC described the subject noncompliance and stated their belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, AGC submitted the following arguments:

1. The only error in the logo mark was including the incorrect AS standard. The logo and the parts were otherwise fully compliant. All other information was correct. The AS3 mark relates to meeting certain light transmission requirements for privacy glass. The glass met those requirements as confirmed by both AGC and its primary customer, FCA. The glass also met all other applicable Federal motor vehicle safety standards. This error did not change the character of the glass or its performance. It was a simple marking error and will not in any way impact or affect motor vehicle safety. AGC produced up to 5,000 parts to be installed as replacement glass over the relevant time period. As soon as AGC found the potential error, it was immediately corrected by replacing the print screen that included the incorrect AS2 mark and instead used a print screen which included the correct AS3 mark in the logo. No parts are produced today for these model vehicles for replacement glass without the correct AS3 mark in the logo. All parts, which AGC had in its possession and which were confirmed a customer still had that were not already installed, were destroyed or returned to AGC.

There is nothing that would affect or impact vehicle safety resulting from this erroneous AS2 mark being included in the logo and this error should be classified as inconsequential to motor vehicle safety.

2. The logo error will not mislead or affect consumers. Consumers would never look at a logo and know or understand that privacy glass with an AS2 logo should have an AS3 mark instead in that logo. Only someone trained in the intricate requirements of ANSI and the differences in light transmission between a part meeting the AS3 standard versus a part meeting the AS2 standard would know whether including the AS2 mark was an error or not. Therefore, the fact that there are vehicles on the road which have the incorrect AS2 mark in the logo will not be misleading, nor should it require any of those parts to be replaced since the consumer will not know the difference, will not be misled by looking at the logo mark for this part, there will be no confusion about the performance or compliance of the parts with all applicable FMVSSs, and the error does not affect the safety of the vehicle. Every consumer that had their rear liftgate replaced with privacy glass that included the logo with the incorrect AS2 mark still has exactly what they expected to receive and paid for regardless of this error as the rear privacy glass for their Jeep Compass does not pose any safety risk to them or others who may ride on their vehicle.

Both FCA and AGC concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that their petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

FCA and AGC's complete petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov* and following the online search instructions to locate the associated docket number listed in the title of this notice.

VII. NHTSA's Analysis: NHTSA has evaluated the merits of AGC and FCA's petitions for inconsequential noncompliance.

The purpose of FMVSS No. 205 is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.

The subject replacement glazing in AGC's petition and the subject vehicles in FCA's petition pertain to liftgate glass that was incorrectly marked as AS2 glazing material when it should have been marked as AS3 glazing material.

The difference in performance requirements between AS2 and AS3 glazing is that AS2 glazing is required to have a luminous transmittance of at least 70% while AS3 has no luminous transmittance requirement. Because AS3 glazing does not have a luminous transmittance requirement, it is typically darker in tint. The luminous transmittance for the subject glazing, which was incorrectly marked as AS2, is 22%.

The first factor NHTSA considered in its evaluation was if the liftgate glass sold as replacement glazing by AGC and equipped in the subject vehicles by FCA is compliant with FMVSS No. 205 requirements. Both AGC and FCA stated that the subject liftgate glass meets all marking and performance requirements for AS3 glazing in accordance with FMVSS No. 205, other than the incorrect AS marking. NHTSA reviewed the test data provided by the petitioners and believes the data supports the petitioners' statements that the subject glazing meets the applicable requirements for AS3 glazing stated in FMVSS No. 205.

Furthermore, NHTSA recognizes that FMVSS No. 205 allows AS2 glazing to be installed anywhere in motor vehicles

except windshields, and AS3 glazing to be installed anywhere in motor vehicles except windshields and certain specified locations. AS3 glazing is permitted to be installed in liftgates of the subject vehicles.

AGC believes that most consumers likely would not recognize the marking error while individuals highly trained in glazing standards would recognize the marking error. NHTSA does not find these arguments compelling and believes that it is reasonable for someone in the repair industry to rely on the incorrect AS markings located on the noncompliant glazing material and replace it with glazing material corresponding to those markings. This would mean that the individual making the vehicle repair would replace the liftgate with AS2 glazing instead of AS3 glazing.

However, because compliant AS2 glazing will always meet the performance requirements of compliant AS3 glazing, no impact to safety is anticipated.

VIII. NHTSA's Decision: In consideration of the foregoing analysis, NHTSA finds that FCA and AGC have met their burden of persuasion that the FMVSS No. 205 noncompliance is inconsequential to motor vehicle safety. Accordingly, the FCA and AGC petitions are hereby granted. FCA and AGC are exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles and equipment that FCA and AGC no longer controlled at the time it determined that the noncompliance existed. However, the granting of these petitions does not relieve vehicle and equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles and equipment under their control after FCA and AGC notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–14211 Filed 6–30–20; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0022; Notice 2]

Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen), has determined that certain MY 2017–2019 Audi A3 motor vehicles do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays.* Volkswagen filed a noncompliance report dated February 18, 2019, and later amended it on September 13, 2019. Volkswagen subsequently petitioned NHTSA on February 20, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Volkswagen's petition.

FOR FURTHER INFORMATION CONTACT: Neil Dold, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–7352, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Volkswagen has determined that certain MY 2017–2019 Audi A3 motor vehicles do not comply with paragraph S5.2.1 of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). Volkswagen filed a noncompliance report dated February 18, 2019, and later amended it on September 13, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen subsequently petitioned NHTSA on February 20, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 40 U.S.C. 30118 and 49 U.S.C. 30120, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Volkswagen's petition was published with a 30-day public comment period, on October 8, 2019, in the **Federal Register** (84 FR 53821). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0022.''

II. Vehicles Involved: Approximately 18,379 MY 2017–2019 Audi A3 sedan, Cabriolet, RS3, and e-Tron motor vehicles, manufactured between July 7, 2016, and January 7, 2019, are potentially involved.

III. Noncompliance: Volkswagen explains that the noncompliance is that the subject vehicles are equipped with speedometers that only display the vehicle's speed in units of either miles-per-hour (mph) or kilometers-per-hour (km/h) and therefore do not meet the requirements set forth in paragraph S5.2.1 and Table 1, Column 3 of FMVSS No. 101.

IV. Rule Requirements: Paragraphs S5.2.1 and Table 1, Column 3 of FMVSS No. 101 provides that each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 of FMVSS No. 101 must meet the requirements for the location, identification, color, and illumination of that control, telltale or indicator.

Each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2. Specifically, the speedometer must only allow the speed to be displayed in miles per hour (MPH) or km/h and MPH.

V. Summary of Volkswagen's Petition: The following views and arguments presented in this section, ''V. Summary of Volkswagen's Petition,'' are the views and arguments provided by Volkswagen. They do not reflect the views of the Agency.

Volkswagen described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. Volkswagen submitted the following views and arguments in support of the petition:

1. All affected Audi A3 vehicles are initially delivered for first-sale in the U.S. market in a compliant state (speed displayed in miles-per-hour). Only through driver interaction, within the settings menu, can the speedometer display be changed from mph to km/h.

The change between the display settings must be done intentionally and cannot be accomplished inadvertently.

2. In the affected 2017–2019 MY Audi A3 vehicles, the two speedometer scales are noticeably different. Were the previous driver to have changed the display, a subsequent driver would be able to tell at a glance that the scale is not in mph.

3. The indicated vehicle speed in km/h is 1.6 times greater than the speed in mph [in terms of numeric value displayed by the speedometer—1km/h is approximately 0.62 MPH]. Audi purports that if the vehicle operator changes the display to indicate km/h and later has not changed the display back to mph, the vehicle operator will clearly recognize that the vehicle is moving at a lower speed than intended and adjust their vehicle speed to match road and traffic conditions. Notice of the speed differential advises the vehicle operator to perform the necessary steps to adjust the speedometer back to mph (at the next appropriate opportunity).

4. The 2017–2019 MY Audi A3 Owner Manual contains information and instructions for changing the units displayed, via the Infotainment system, using the MMI Settings menu. Therefore, if a vehicle operator needs to change the display to indicate mph, instructions are available.

5. As of January 08, 2019, production has been corrected, vehicles withheld at the factory have been corrected and unsold units will be corrected prior to sale. The correction for these vehicles is a software fix that permits display of the speed in mph or in both mph and km/h simultaneously.

6. Additionally, Volkswagen is not aware of any field or customer complaints related to this condition, nor has it been made aware of any accidents or injuries that have occurred as a result of this issue.

Volkswagen concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis: NHTSA has reviewed Volkswagen's petition that the subject noncompliance is inconsequential to motor vehicle safety. Volkswagen explains the Audi A3/RS3 vehicles are initially delivered for first-sale in the U.S. market compliant with FMVSS No. 101 with the speedometer display factory-set to mph. The subject vehicles are noncompliant because the driver can select an alternative speedometer display in the menu setting of the ''virtual cockpit.''

Specifically, in Audi A3/RS3 vehicles equipped with a ''virtual cockpit,'' if the driver selects the alternative speedometer display in the settings menu, the speedometer displays only km/h without simultaneously indicating mph, as required by FMVSS No. 101. The purpose of FMVSS No. 101 is to reduce safety hazards caused by the diversion of the driver's attention from the driving task when using controls, telltales, and indicators.

Volkswagen further explains that all vehicles display mph from factory settings and cannot be changed inadvertently. Additionally, when displaying km/h, the scale of the speedometer is different so it would be visibly apparent to the driver that the units of measure are different. NHTSA agrees with Volkswagen that it is unlikely that the switch from mph to km/h could be done inadvertently because specific interactions with the menu-driven vehicle settings are required by the operator to make the change. We believe that if an operator were to make this change it would be done intentionally and with some understanding of the implications and would not cause any impact to vehicle safety. Also, if an operator were unaware that a speedometer had been changed to display speed in km/h, they would be likely to travel at a slower speed rather than faster speed that might impact safety because the indicated numeric value of the speed in km/h would be 1.6 times greater than the numeric value of the speed in mph. For example, a driver attempting to match a speed limit of 40mph using a speedometer reading ''40'' in km/h would be traveling approximately 25mph and have an opportunity to safely detect the difference between their speedometer reading and the speed of nearby traffic. Furthermore, we believe that the majority of the owners of these vehicles will continue to operate them using the factory-set display (with the speed identified in mph) and never attempt to change to the metric units.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Volkswagen has met its burden of persuasion that the subject FMVSS No. 101 noncompliance is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is hereby granted and Volkswagen is exempted from the obligation to provide notification of and free remedy for, the subject noncompliance in the affected vehicles under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–14212 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0040; Notice 2]

Kia Motors America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Kia Motors America, Inc., and Kia Motors Corporation (collectively ''Kia''), has determined that certain model year (MY) 2020 Kia Telluride motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* Kia filed a noncompliance report dated April 12, 2019, and subsequently petitioned NHTSA on April 18, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Kia's petition.

FOR FURTHER INFORMATION CONTACT: Kerrin Bressant, Office of Vehicle Safety

Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–1110, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. Overview

Kia has determined that certain MY 2020 Kia Telluride motor vehicles do not fully comply with paragraphs S4.3.3 of FMVSS No. 110, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less* (49 CFR 571.110). Kia filed a noncompliance report dated April 12, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA on

April 18, 2019, for an exemption from the notification and remedy requirement of 49 U.S.C Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Kia's petition was published with a 30-day public comment period, on August 21, 2019, in the **Federal Register** (84 FR 43661). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0040.''

II. Vehicles Involved

Approximately 8,773 MY 2020 Kia Telluride motor vehicles manufactured between January 10, 2019, and March 27, 2019, are potentially involved.

III. Noncompliance:

Kia explains that the noncompliance is that the subject vehicles are equipped with Part 567 certification labels that are missing the value for the rim size as required by paragraph S4.3.3 of FMVSS No. 110. Specifically, the subject vehicles are equipped with 7.5Jx20 or 7.5Jx18 rims, however, the Part 567 certification labels are missing the ''20'' or ''18'' after the ''7.5Jx.'' The certification labels also contain a typo. The ''i'' in ''psi'' is missing in the section of the label, which identifies the corresponding tire inflation pressure.

IV. Rule Requirements

Paragraphs S4.3.3 of FMVSS No. 110 provide the requirements relevant to this petition. Each vehicle must show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire and appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter. This information should be in English, letters block capitals and numerals not less than 2.4 millimeters high and in the following format (*Truck Example- Suitable Tire-Rim Choice*):

GVWR: 2,441 kilograms (5381 pounds).

GAWR: Front-1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16x8.0 rims at 248 kPa (36 psi) cold single.

GAWR: Rear-1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16x8.00 rims at 248 kPa (36 psi) cold single.

V. Summary of Petition

Kia described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Kia contends that the information missing from the label is a minor omission without any adverse safety implications because the information is readily available from other sources.

1. Kia states, FMVSS No. 110 paragraph S4.3(d), requires that the tire and loading information placard state the tire size designation for the tires installed on the vehicle at the time of first purchase. On the affected vehicles, the FMVSS No. 110 tire and loading label (which is located directly adjacent to the certification label on the ''B'' pillar), contains the correct tire size dimensions, recommended cold tire inflation pressure, and vehicle capacity weight.

2. FMVSS No. 110, paragraph S4.3(f), also requires the tire and loading placard to state ''See Owner's Manual for Additional Information.'' The Owner's Manual for the 2020 Telluride provides the wheel rim and tire information, which the owner can easily refer to to confirm the correct tire pressure.

3. The consumer can also check the tire rims installed on the vehicle to determine the correct wheel rim size needed. Kia noted that FMVSS No. 110, paragraph S.4.4.2(b), requires each rim to identify, the rim size designation. The affected vehicles meet the requirements of this section.

4. Kia is not aware of any accidents or injuries related to the omitted tire rim size information or any typos regarding ''psi'' on the certification label, nor has it received contact from vehicle owners regarding this issue.

5. NHTSA has previously granted similar petitions for inconsequential noncompliance with FMVSS No. 110, paragraph S4.3.3, with respect to missing or incorrect information on the certification label. *See e.g., Hyundai-Kia America Technical Center, Inc., Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 38445 (June 26, 2013) [granting petition where certification labels on certain MY 2012 Hyundai Veracruz vehicles were missing tire size designation information entirely]; *Chrysler Group, LLC, Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 38443 (June 26, 2013) [granting petition where certification labels in certain MY 2011 Chrysler Town and Country and Dodge Grand Caravan vehicles incorrectly identified tire size]; and *BMW of North America, LLC., Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 76408 (December 17, 2013) [granting petition were certification lab is in certain MY 2012 X3 SAV vehicles contained incorrect tire and rim information for the tires and rims installed as original equipment].

Kia concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

The intent of FMVSS No. 110 is to specify requirements for tire selection to prevent tire overloading. In addition, for vehicles other than passenger cars, each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer after each GAWR listed on the certification label required by 567.4 or 567.5 of this chapter.

The missing rim size information (specifically the ''rim diameter'') may readily be obtained from several additional sources typically found on and required to be furnished with the vehicle. The rim size is marked on the rims either impressed or embossed. The rim dimensions may also be found in the owners' manual which is referenced as an information source by the tire and loading information placard which is positioned adjacent to the certification

label and is yet another source for tire and rim dimension information.

FMVSS 110 S4.4.2(b) requires that each rim be marked with the rim size designation. By way of pictures taken of tire rims of affected vehicles, Kia shows that the affected vehicles are equipped with rims that are marked with the rim size and meet the requirements of this section.

The tire placard required by FMVSS 110 S4.3(d) requires that the tire size designation be provided for the tires installed at the time of the first purchase and FMVSS 110 S4.3(f) requires that the placard state ''See Owner's Manual for Additional Information.'' Based on supplied exemplar pictures submitted by Kia, the affected vehicles meet the requirements of FMVSS 110 S4.3

NHTSA has historically granted petitions for inconsequentiality for inaccurate tire placards where the grantee has supplied sufficient reasoning to support such a conclusion. In addition, Kia has informed NHTSA that it has corrected future production and that those vehicles will comply with FMVSS 110 S4.3.3.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Kia has met its burden of persuasion that the failure to provide the wheel size information and the ''i'' in psi, as required by paragraph S4.3 of FMVSS No. 110, is inconsequential to motor vehicle safety. Accordingly, Kia's petition is granted, and it is exempted from the obligation of providing the notification of, and a free remedy for, the noncompliance under 49 U.S.C. 30118, and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Kia no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles/wheels under their control after Kia notified them that the subject noncompliance existed.

(*Authority:* 49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–14213 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0079; Notice 2]

Nissan North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Nissan North America, Inc., (Nissan) has determined that certain model year (MY) 2019 Nissan Armada motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Nissan filed a noncompliance report dated July 1, 2019. Nissan also petitioned NHTSA on July 24, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Nissan's petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5304, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION: *I. Overview:* Nissan has determined that certain MY 2019 Nissan Armada motor vehicles do not fully comply with S7.4.13.1 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). Nissan filed a noncompliance report dated July 1, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Nissan also petitioned NHTSA on July 24, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Nissan's petition was published with a 30-day public comment period, on October 15, 2019, in the **Federal Register** (84 FR 55220). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0079.''

II. Vehicles Involved: Approximately 3,009 MY 2019 Nissan Armada motor vehicles, manufactured between September 13, 2018, and October 23, 2018, are potentially involved.

III. Noncompliance: Nissan explains that the noncompliance is that the subject vehicles are equipped with front combination lighting assemblies that do not meet the photometric intensity requirements as required by paragraph S7.4.13.1 of FMVSS No. 108. Specifically, the inner lens of the side marker lamp is not seated properly in the headlamp assembly, thus, creating a gap between the forward edge of the reflector and the extension portion of the headlamp assembly. When tested, the photometric intensity of the side marker lamp fell below the minimum photometric intensity required on one of the 20 headlamp assemblies tested.

IV. Rule Requirements: Paragraph S7.4.13.1 of FMVSS No. 108 includes the requirements relevant to this petition. Each side marker lamp must be designed to conform to the photometry requirements of Table X, when tested according to the procedure of S14.2.1, for the lamp color as specified by FMVSS No. 108.

V. Summary of Nissan's Petition: The following views and arguments presented in this section, V. Summary of Nissan's petition, are the views and arguments provided by Nissan.

Nissan described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety. Nissan submitted the following views and arguments in support of the petition:

1. Due to a manufacturing issue affecting only the driver's side marker lamp, the reflex reflector (which also serves as the inner lens for the side marker) may not be seated properly in the headlamp assembly, creating a gap between the forward edge of the reflector and the extension portion of the headlamp assembly. The reflector is restrained from further movement by the outer lens of the headlamp. The manufacturing issue has been corrected.

2. Even in the worst-case displaced position, the side marker lamp is only minimally below photometric intensity requirement at one test point. Nissan

has judged that the minimal difference in photometric intensity between the lamp that tested below standard and a lamp meeting the minimum standard is not perceptible to the human observer. (*See,* Subaru of America, Grant of Petition, 56 FR 59971 (Nov. 26, 1991); Hella, Inc., Grant of Petition, 55 FR 37601 (Sept. 12, 1990)).

3. Moreover, in the subject vehicles, the parking lamp wraps around the corners of the headlamp assembly and adds additional illumination in the region where testing showed the photometric intensity of the side marker lamp to be slightly below standard. On the affected MY 2019 Armada vehicles, the parking lamps are on the same circuit as the side marker lamps and therefore always illuminate in conjunction with the side marker lamps.

4. When tested as a unit in real-world conditions, the photometric intensity of the combined parking and side marker lamps is above the required 0.62 cd for all test points.

5. In the event the inner lens was to move out of position, the complimentary illumination from the parking lamp compensates for the slight reduction in photometric intensity of the side marker lamp over an exceedingly small range. Therefore, in actual usage conditions, the presence of an affected vehicle is conspicuous and in Nissan's judgment, there is no perceivable difference in the visibility of the subject vehicles compared to compliant vehicles to drivers and pedestrians on the road.

6. In similar situations, NHTSA has granted the applications of other petitioners in which a minor deviation from the standard was deemed imperceptible and therefore inconsequential to safety (*See, e.g.,* BMW of N.Am., LLC, Grant of Petition, 82 FR 55484 (Nov. 21, 2017); Osram Sylvania Prods., Inc., Grant of Petition, 78 FR 46000 (July 30, 2013)). While Nissan recognizes that NHTSA has denied petitions claiming complimentary illumination, those petitions are distinguishable due to the greater extent of the reduction in illumination over a wider affected area.

Nissan concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis: The intent of FMVSS No. 108 is to reduce traffic accidents and deaths and injuries resulting from traffic accidents, by providing adequate illumination on the roadway, and by enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility.

Nissan offers two main arguments supporting the notion that the noncompliance at issue here is inconsequential to safety. One contention relies on the proximity of the parking lamp to the side marker lamp and the fact that both will be illuminated simultaneously. As both will be lit, Nissan contends that the light from the parking lamp will offset the substandard output of the side marker lamp and result in no net loss of visibility. Another contention is that the condition causing the noncompliance results in a photometric intensity test result of 15% below the minimum requirement at 1 of 14 test points, a loss that cannot be detected by an unaided human eye.

NHTSA finds the former argument unpersuasive and the latter contention to be compelling. The purpose of the side marker is to aid in the visibility of a motor vehicle at night. Nissan's argument of complementary illumination from the parking lamp is not convincing since the parking lamp illumination is white, not amber and could cause a passing motorist to have difficulty determining what part of the vehicle is approaching. In contrast to the obvious difference between a white parking light and an amber side marker light, a small reduction in photometric intensity is imperceptible. Nissan cited multiple prior petitions where NHTSA conceded this fact and granted petitions for inconsequential noncompliance. The granting of Hella Inc.'s (55 FR 37601) and Subaru of America's (56 FR 59971) petitions, where the imperceptible difference in illumination directed the conclusion that a noncompliance was inconsequential, are applicable here. As the Agency explained when it granted the inconsequentiality petition filed by Hella, Inc. ''a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between the two lamps.''

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Nissan has met its burden of persuasion that the subject FMVSS No. 108 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Nissan's petition is hereby granted. Nissan is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Nissan no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Nissan notified them that the subject noncompliance existed.

(*Authority:* 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–14215 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0064; Notice 2]

Toyota Motor North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Toyota Motor North America, Inc., (Toyota) has determined that certain model year (MY) 2013–2019 Lexus motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Toyota filed a noncompliance report dated May 30, 2019. Toyota subsequently petitioned NHTSA on June 21, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Toyota's petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, the National Highway

Traffic Safety Administration (NHTSA), telephone (202) 366–5304, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview

Toyota has determined that certain MY 2013–2019 Lexus motor vehicles, do not fully comply with paragraph S8.1.11 and Table XVI-a of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). Toyota filed a noncompliance report for the motor vehicles dated May 30, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Toyota subsequently petitioned NHTSA on June 21, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Toyota's petition was published with a 30-day public comment period, on November 7, 2019, in the **Federal Register** (84 FR 60143). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0064.''

II. Vehicles Involved

Approximately 502,034 of the following MY 2013–2019 Lexus motor vehicles, manufactured between July 19, 2011, and May 21, 2019, are potentially involved:

- MY 2013–2018 Lexus ES350
- MY 2013–2018 Lexus ES300h
- MY 2013–2019 Lexus GS200t/300/350
- MY 2013–2018 Lexus GS450h
- MY 2016–2019 Lexus GS–F

III. Noncompliance

Toyota explains that the noncompliance is that the subject vehicles are equipped with rear reflectors that do not meet the minimum photometry requirements specified in paragraph S8.1.11 and Table XVI-a of FMVSS No. 108. Specifically, the reflex reflector in the subject vehicles may contain a photometry value 18 percent below the required minimum.

IV. Rule Requirements

Paragraph S8.1.11 and Table XVI-a of FMVSS No. 108 includes the requirements relevant to this petition. Each reflex reflector must be designed to conform to the photometry requirements of Table XVI-a, when tested according to the procedure in paragraph S14.2.3 of FMVSS No. 108, for the reflex reflector.

V. Summary of Toyota's Petition

The following views and arguments presented in this section, V. Summary of Toyota's petition, are the views and arguments provided by Toyota. They do not reflect the views of the Agency.

Toyota described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. Toyota submitted the following views and arguments in support of the petition:

1. The extent of the noncompliance for the subject reflex reflectors is such that the human eye is unable to differentiate the reflected light of noncompliant reflectors from the reflected light of those that are compliant.

The technical cause of the noncompliance is related to the annealing process at the end of a day when reflectors were left in the oven as the oven cooled down. An assessment was made of the maximum deviation from the standard that could result from this circumstance. Based on the 60 piece parts study using the worst-case annealing process, Toyota calculated at 4.2 standard deviations from the mean that no part would deviate below 8.1 percent from the FMVSS standard. Considering the tolerance interval calculation method, the worst possible deviation from the standard would be − 18 percent.

The NHTSA sponsored study ''Driver Perception of Just Noticeable Differences of Automotive Signal Lamp Intensities'' (DOT HS 808 209, September 1994) and The University of Michigan Transportation Research Institute (UMTRI) ''Just Noticeable Differences for Low-Beam Headlamp Intensities.'' (UMTRI–97–4, February 1997) found that a change in luminous intensity of 25 percent or less is not noticeable by most drivers. The agency noted in 1990 when it granted an inconsequentiality petition filed by Hella, Inc., ''a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps.'' *See* 55 FR 37601, 37602. In the Subaru petition, the Agency stated that the same considerations can be applied to reflectors as to lamps.

To verify that a deviation of − 18 percent is not detectable to the human eye, Toyota and the supplier conducted evaluations of the reflected light from the noncompliant part that was produced in the 60-piece study and another reflector that was approximately 20 percent higher in reflectivity. The reflectors were mounted in a dark tunnel and set up to simulate the FMVSS No. 108 test setup at 0.2 degrees. Ten panelists were instructed to stand at a specific location 100 feet from the reflectors at a height approximating at a 0.2-degree angle to the reflectors. They were asked if the reflector brightness was the same or different. After the ten panelists completed the survey, the same panelists were asked to repeat the activity; they were unaware that the parts and setup had not been changed. This survey activity was then repeated using two parts of equal reflectivity. In these surveys, none of the panelists were able to identify the noncompliant part or correctly identify differences in reflectivity.

In addition, Toyota installed the same two parts that were checked in the dark tunnel on a MY 2018 Lexus ES350. Using the headlamps from another vehicle that was aligned 100 feet behind the ES, Toyota members visually observed the reflectivity between the two parts at night and were unable to distinguish a difference between the two reflectors. They looked the same.

2. There are no known complaints related to the noncompliance.

Toyota conducted a search of consumer complaints, field reports, dealer reports, Vehicle Owner Questionnaires (VOQs), and legal claims for the subject vehicles and found no report alleging that the rear reflectors could not be seen or were not bright enough. This search is current as of May 29, 2019.

3. In similar situations, NHTSA has granted petitions for inconsequential noncompliance relating to the subject requirement of FMVSS No. 108.

NHTSA has previously granted at least two similar petitions for inconsequential noncompliance, one for a tail lamp and one for a side reflex reflector assembly. A brief summary of the decisions is provided below:

- Hella, 55 FR 37601, (September 12, 1990)

In the petition, Hella argued that industry experience and supporting studies have established that the human eye in the vast majority of cases cannot detect a change in luminescence unless it is more than a 25 percent increase or decrease. NHTSA stated that a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps. Of the noncompliant lamps tested, the greatest disparity reported between a compliant

lamp and a noncompliant lamp was 3.6 cd, which is a 20 percent higher luminous intensity than compliant lamps. According to the SAE Recommended Practice J576, this differential cannot be detected by the human eye. For this reason, the Hella petition was granted.

- Subaru, 56 FR 59971, (November 26, 1991)

Subaru submitted a petition for inconsequential noncompliance in 1991 concerning the failures of luminous intensity on the side reflex reflector. NHTSA considered the petitioner's statement that observers could not differentiate between the reflected light of complying and noncomplying reflectors at distances of 30m, 60m, and 100m. As the agency noted in 1990 when it granted an inconsequentiality petition filed by Hella, Inc., ''a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps.'' *See* 55 FR 37601, 37602. The agency applied the same considerations to reflectors as to lamps. The luminous transmittance failures of the Subaru reflectors were all less than 20 percent of the minimum values specified by the standard, and, therefore, they were undetectable by the naked eye. For this reason, the petition was granted.

Toyota concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

Reflex reflectors make a vehicle conspicuous to drivers of other vehicles at night and at other times when there is reduced ambient light including dawn and dusk. The advance warning provided by the rear reflex reflectors has the potential to enable drivers to avoid a collision when approaching from the rear.

Due to a production error, the reflex reflectors in the subject vehicles may be at most 18% below the required minimum. This error has been fixed in production, and Toyota has not had any complaints or reports of incidents due to this noncompliance. Toyota has cited multiple prior petitions where the Agency granted a petition for decision of inconsequential noncompliance regarding noncompliant photometric intensity. NHTSA concurs, particularly in the cases of the Hella (55 FR 37601) and Subaru (56 FR 59971) petitions, where the imperceptible difference in illumination makes this noncompliance inconsequential to motor vehicle safety.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Toyota has met its burden of persuasion that the subject FMVSS No. 108 noncompliance of the affected reflex reflectors is inconsequential to motor vehicle safety. Accordingly, Toyota's petition is hereby granted and Toyota is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Toyota no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Toyota notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–14214 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0142; Notice 2]

Hyundai Motor America, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Hyundai Motor America (Hyundai) has determined that certain model year (MY) 2012–2016 Hyundai Accent motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* Hyundai filed a noncompliance report dated December 12, 2016. Hyundai also petitioned NHTSA on December 16, 2016, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Hyundai's petition.

FOR FURTHER INFORMATION CONTACT: James A. Jones, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5294, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. Overview

Hyundai has determined that certain MY 2012–2016 Hyundai Accent motor vehicles do not fully comply with paragraph S4.1.5.5.2 of FMVSS No. 208, *Occupant Crash Protection* (49 CFR 571.208). Hyundai filed a noncompliance information report dated December 12, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Hyundai also petitioned NHTSA on December 16, 2016, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of Hyundai's petition was published, with a 30-day public comment period, on April 7, 2017, in the **Federal Register** (82 FR 17072). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management Systems (FDMS) website at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2016–0142.''

II. Vehicles Involved

Approximately 6,445 MY 2012–2016 Hyundai Accent motor vehicles manufactured between May 19, 2011, and July 7, 2016, are potentially involved. The affected vehicles are those equipped with a non-folding rear seat back and sold in the Puerto Rico and Guam markets.

III. Noncompliance

Hyundai explains that the noncompliance is that the affected vehicles are equipped with a non-folding rear seat back and a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point and therefore do not

meet the requirements of paragraph S4.1.5.5.2 of FMVSS No. 208. Under FMVSS No. 208, a detachable seat belt in the middle seat is allowed only in vehicles with a folding rear seat.

IV. Rule Requirements

Paragraph S4.1.5.5.2 of FMVSS No. 208 includes the requirements relevant to this petition. Any inboard designated seating position on a seat for which the entire seat back can be folded (including the head restraints and any other part of the vehicle attached to the seat back) such that no part of the seat back extends above a horizontal plane located 250 mm above the highest SRP located on the seat may meet the requirements of paragraph S4.1.5.5.1 by use of a belt incorporating a release mechanism that detaches both the lap and shoulder portion at either the upper or lower anchorage point, but not both. The means of detachment shall be a key or key-like object.

V. Summary of Hyundai's Petition

Hyundai described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Hyundai submitted the following reasoning:

1. The affected vehicles are equipped with a non-folding rear seat back and a center rear seat belt incorporating a release mechanism that detaches both the lap and shoulder portion at the lower anchorage point to allow improved assembly line procedures.

2. Hyundai first became aware of the possibility that the center rear seat belts of the subject vehicles may not comply with S4.1.5.5.2 of FMVSS No. 208 as a result of internal ''port inspections'' of certain model year 2016 Hyundai Accent vehicles. A subsequent investigation revealed previous model year ''RB'' platform Accent vehicles are similarly affected.

3. Hyundai pointed out that 5-door and 4-door Hyundai Accent vehicles equipped with rear folding seats are not affected.

4. The Accent vehicles in question fully comply with FMVSS No. 208 and FMVSS No. 209 requirements with the sole exception that the lap and shoulder portion of the rear center seat belt may be detached from the lower anchorage by use of a tool, such as a key or key-like object.

5. Hyundai states that if the rear seat back of the subject vehicles were capable of being folded (which Hyundai claims would have no effect on seat belt performance) the detachable aspect would not result in a compliance issue.

6. The Owner's Manual in the subject vehicles contains relevant information and illustrations to fasten, unfasten, and disconnect the rear center belt.

7. Hyundai states that it is clear from the intended difficulty in detaching the seat belt and the instructions contained in the Owner's Manual that the seat belt should not be detached. Further, in the Accent with a fixed rear seat back, there is no advantage or reason for the owner to detach the center rear seat belt from the lower anchorage.

8. Hyundai does not believe that it is appropriate to conduct a recall campaign to replace the center rear seat belts in vehicles that have been delivered to customers.

9. Hyundai stated that they are not aware of any accidents or injuries related to the subject noncompliance.

Hyundai concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

Anton's Law (Public Law 107–318) directed NHTSA to mandate 3-point belts (*i.e.,* Type 2 integral lap/shoulder belts) at each rear seating position, including center rear seat positions, in new passenger motor vehicles by September 1, 2007. To accomplish the mandate, NHTSA issued a final rule on December 8, 2004, amending applicable parts of Federal motor vehicle safety standard (FMVSS) No. 208, *Occupant Crash Protection* [69 FR 70904].

Prior to issuance of the final rule, FMVSS No. 208 allowed the installation of detachable shoulder belts on 3-point belts in swivel seats and outboard rear seats that are removable. In comments to the proposed final rule, vehicle manufacturers requested that the Agency extend the allowance for detachable belts to center rear seat positions of folding rear seats to ensure effective use of cargo carrying space. The Agency agreed.

Many vehicle manufacturers were already using detachable belts with ''mini-buckle'' designs that permit the entire belt to detach from the seat and retract into the upper shoulder anchorage. The Agency agreed that the mini-buckle design reduces the possibility for misuse since the lap belt is not independently available for use. Some of the existing mini-buckles had pushbutton release mechanisms similar to release mechanisms used for non-detachable belts. To address any safety concerns with inadvertent release of the mini-buckle during use, the Agency decided to require a key-like object to release the mini-buckle from the seat, eliminating installation of detachable belt designs that incorporate pushbutton releases. Consistent with the Agency's intent to maximize correct use of the belt, no provision was added to require the use of a tool to reattach the belt.

The subject vehicles have fixed, non-folding rear seats with detachable 3-point belts installed at the center rear seat positions. As these center seats do not fold, the installation of this detachable belt constitutes a violation of S4.1.5.5.1 of FMVSS No. 208. The detachable 3-point belts have mini-buckles that allow the entire belt to detach from the seat at the lower anchorage point located on the left-side of the seating position. The mini-buckle can only be operated through inserting a key or key-like object in a rectangular slot on the female buckle at the lower left anchorage point. Other than the presence of the slot, the outward appearance of the buckle does not reveal that there is a mini-buckle hidden within the female buckle assembly allowing detachment. The likelihood that the mini-buckle could or would be used casually to remove the female buckle appears to be quite small. As the purpose of the slot would not be clear or the presence and operation of the mini-buckle is not obvious, removing the buckle assembly requires a degree of knowledge and intent likely to eliminate inadvertent detachment.

Hyundai's data indicate that the nominal force required to release the buckle using a key or key-like object ranged from 13 to 20N (2.9 to 4.5 lbf) with an average of 13.6N (3.1 lbf).[1] Additionally, this key or object must be 2.9 mm (0.11 in) in length to reach the release mechanism and be capable of applying the release force noted above for an additional 4.8 mm (0.19 in) to release the buckle. Therefore, any object serving as a tool to release the buckle must fit in the available opening, apply the required force and do so without yielding over the required distance. These conditions indicate that an inadvertent release, or an intentional release by a child, would be unlikely.

Hyundai represents that, like non-detachable belts, these detachable belts meet all FMVSS No. 208 and FMVSS No. 209 performance requirements. Thus, we agree that a detachable 3-point belt with mini-buckle can be expected to provide an equivalent level of

[1] See Hyundai's Supplemental Response dated February 13, 2020.

protection to belted occupants as a non-detachable 3-point belt.

Because the rear seat is fixed, we agree with the petitioner that there is no advantage or reason for owners of subject vehicles to detach the belt. As noted above, the existence of the mini-buckle and the ability to detach the female buckle is not apparent from visual inspection. The purpose of the rectangular slot is explained in the owner's manual, which indicates that detaching the buckle requires insertion of a key-like object. Instructions in the owner's manual also indicate that no special tool is needed to reattach the belt. If for some reason the mini-buckle is detached, an occupant wishing to use the available safety belt upon entering the center rear seat of a subject vehicle can easily re-attach the mini-buckle to the lower anchorage by inserting ''the tongue plate into the open end of the [mini] buckle until an audible click is heard.''

The Agency has received no complaints indicating that the subject vehicle's detachable belt inadvertently released during use. Additionally, the petitioner has stated that there are no known accidents or injuries related to the subject noncompliance. For these reasons, we find the petition has merit and should be granted.

VII. NHTSA's Decision

NHTSA finds that Hyundai has met its burden of persuasion that the FMVSS No. 208 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, the petition is hereby granted and Hyundai is exempt from the obligation to provide notification of, and remedy for, the subject noncompliance in the affected vehicles under 49 U.S.C. 30018 and 30120.

This petition is granted solely on the Agency's decision that the noncompliance in the subject vehicles is inconsequential as it relates to motor vehicle safety. It is important that all other vehicles subject to these requirements continue to meet them.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Hyundai no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Hyundai notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–14217 Filed 6–30–20; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one entity that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this entity are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. OFAC is also publishing the name of this entity for being subject to Directives 2 and 4 under Executive Order 13662 that has been placed on OFAC's Sectoral Sanctions Identifications List.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*). A complete listing of persons determined to be subject to one or more directives under E.O. 13662, can be found in the Sectoral Sanctions Identifications List at *http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx.*

Notice of OFAC Actions

On March 12, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following entity is blocked pursuant to section 1(a)(i) of Executive Order 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela,'' 83 FR 55243, 3 CFR, 2019 Comp., p. 881 (E.O. 13850), as amended by Executive Order 13857 of January 25, 2019, ''Taking Additional Steps To Address the National Emergency With Respect to Venezuela,'' 84 FR 509 (E.O. 13857), for operating in the oil sector of the Venezuelan economy. In addition, OFAC also identified the entity as subject to the prohibitions of Directive 2 (as amended) and Directive 4 of September 12, 2014, pursuant to Executive Order 13662 of March 20, 2014, ''Blocking Property of Additional Persons Contributing to the Situation in Ukraine'' (E.O. 13662), 31 CFR 589.406, 589.802, and the July 16, 2014 Sectoral Determinations by the Secretary of the Treasury Pursuant to E.O. 13662, 79 FR 63024 (Oct. 21, 2014).

Entity

TNK TRADING INTERNATIONAL S.A., place du Lac 2, Geneve 1204, Switzerland; Executive Order 13662 Directive Determination—Subject to Directive 2; alt. Executive Order 13662 Directive Determination—Subject to Directive 4; V.A.T. Number CHE–267.936.404 (Switzerland); Business Registration Number CH–660.0.559.011–2 (Switzerland); For more information on directives, please visit the following link: *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives.* [UKRAINE–EO13662] [VENEZUELA–EO13850] (Linked To: OPEN JOINT–STOCK COMPANY ROSNEFT OIL COMPANY).

Dated: March 12, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Editorial note: This document was received for publication by the Office of the Federal Register on June 26, 2020.

[FR Doc. 2020–14218 Filed 6–30–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490, or; Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On June 25, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Entities<EXTRACT>

1. TARA STEEL TRADING GMBH, Grafenberger Allee 151, Dusseldorf, Nordrhein-Westfalen 40237, Germany; Website www.tarasteel.com; Additional Sanctions Information - Subject to Secondary Sanctions; National ID No. 40227B33411 (Germany); V.A.T. Number DE812137575 (Germany) [IRAN-EO13871] (Linked To: ESFAHAN'S MOBARAKEH STEEL COMPANY).

   Designated pursuant to section 1(a)(v) of Executive Order 13871, 84 FR 20761, of May 8, 2019, "Imposing Sanctions With Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran," ("E.O. 13871") for being owned or controlled by, directly or indirectly, ESFAHAN'S MOBARAKEH STEEL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13871.

2. METIL STEEL (a.k.a. METIL STEEL COMPANY (Arabic: شركت فولاد متيل)), No. 69, Vahid Dastgerdi Street, Shariati Avenue, Tehran 1911834713, Iran; Website www.metilsteel.ir; Additional Sanctions Information - Subject to Secondary Sanctions; Registration Number 85760 (Iran) [IRAN-EO13871] (Linked To: ESFAHAN'S MOBARAKEH STEEL COMPANY).

   Designated pursuant to section 1(a)(v) of E.O. 13871 for being owned or controlled by, directly or indirectly, ESFAHAN'S MOBARAKEH STEEL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13871.

3. PACIFIC STEEL FZE, Office Number LB16610, P.O. Box 261027, Jebel Ali Free Zone, Dubai 261027, United Arab Emirates; Lb16, Jebel Ali, Dubai, United Arab Emirates; P.O. Box 261027, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; License 4736 (United Arab Emirates); Registration Number 11444102 (United Arab Emirates); alt. Registration Number 87726 (United Arab Emirates) [IRAN-EO13871] (Linked To: ESFAHAN'S MOBARAKEH STEEL COMPANY).

   Designated pursuant to section 1(a)(v) of E.O. 13871 for being owned or controlled by, directly or indirectly, ESFAHAN'S MOBARAKEH STEEL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13871.

4. BETTER FUTURE GENERAL TRADING CO LLC, P.O. Box 4358, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; License 561490 (United Arab Emirates); Registration Number 90960 (United Arab Emirates) [IRAN-EO13871] (Linked To: ESFAHAN'S MOBARAKEH STEEL COMPANY).

Designated pursuant to section 1(a)(v) of E.O. 13871 for being owned or controlled by, directly or indirectly, ESFAHAN'S MOBARAKEH STEEL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13871.

5. TUKA METAL TRADING DMCC, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; License DMCC-30419 (United Arab Emirates) [IRAN-EO13871] (Linked To: ESFAHAN'S MOBARAKEH STEEL COMPANY).

Designated pursuant to section 1(a)(v) of E.O. 13871 for being owned or controlled by, directly or indirectly, ESFAHAN'S MOBARAKEH STEEL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13871.

6. SOUTH ALUMINUM COMPANY (Arabic: شركت مجتمع صنايع آلومينيوم جنوب) (a.k.a ALUMINIOM JONUB; a.k.a. SOUTH ALUMINUM; a.k.a. "SALCO"), Iran; No. 35, 13th, Asadabadi Av., Tehran, Iran; Lamerd Special Economic Zone for Energy Intensive Industries, 8th km, Lamerd-khonj Road, Lamerd City, Fars Province, Iran; Website http://salcocompany.com; Additional Sanctions Information - Subject to Secondary Sanctions [IRAN] [IRAN-EO13871] (Linked To: GHADIR INVESTMENT COMPANY.

Designated pursuant to section 1(a)(i) of E.O. 13871 for operating in the aluminum sector of Iran.

7. SIRJAN JAHAN STEEL COMPLEX (Arabic: شركت جهان فولاد سيرجان) (a.k.a. JAHAN FOOLAD SIRJAN; a.k.a. JAHAN FOOLAD STEEL COMPANY; a.k.a. SIRJAN JAHAN FOOLAD; a.k.a. "SJSCO"), 6th Bokharest Alley Bokharest Ave., Tehran, Iran; No. 2, Zhubin Alley, Shahidi Street, Haghani Highway, Vanak Square, Tehran, Iran; Cross of Gol Gohar Mining and Industrial Co. Shiraz Road 50 Km, Sirjan, Iran; Website www.sjsco.ir; Additional Sanctions Information - Subject to Secondary Sanctions; Commercial Registry Number 3191 (Iran) [IRAN-EO13871].

Designated pursuant to section 1(a)(i) of E.O. 13871 for operating in the iron and steel sectors of Iran.

8. IRAN CENTRAL IRON ORE COMPANY (Arabic: شركت سنگ آهن مركزى ايران) (a.k.a. "ICIOC"), Bafq Old Rd, Yazd 8975136748, Iran; Mohammad Dehestani Bafghi Boulevard, Yazd 8975136748, Iran; P.O. Box 1111, Tehran, Iran; Website www.icioc.ir; Additional Sanctions Information - Subject to Secondary Sanctions; Registration Number 49 (Iran) [IRAN-EO13871].</EXTRACT>

Designated pursuant to section 1(a)(i) of E.O. 13871 for operating in the iron sector of Iran.

Dated: June 25, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–14207 Filed 6–30–20; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2032

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Contract Coverage Under Title II of the Social Security Act.

DATES: Written comments should be received on or before August 31, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION: Title: Contract Coverage Under Title II of the Social Security Act.

OMB Number: 1545–0137.

Form Number: 2032.

Abstract: U.S. citizens and resident aliens employed abroad by foreign affiliates of American employers are exempt from social security taxes. Under Internal Revenue Code section 3121(1), American employers may file an agreement on Form 2032 to waive this exemption and obtain social security coverage for U.S. citizens and resident aliens employed abroad by their foreign affiliates. The American employers can later file Form 2032 to cover additional foreign affiliates as an amendment to their original agreement.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 26.

Estimated Time Per Respondent: 6 hrs.,4 mins.

Estimated Total Annual Burden Hours: 158.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103. REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 26, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020–14169 Filed 6–30–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nomination for Appointment to the Advisory Committee on the Readjustment of Veterans

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Readjustment Counseling Service (RCS), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee on the Readjustment of Veterans (''the Committee'') for the 2020 membership cycle.

DATES: Nominations for membership on the Committee must be received by August 12, 2020, no later than 4:00 p.m., eastern standard time. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nomination packages should be sent to the VA Readjustment Counseling Service, by email (recommended) or mail. Please see contact information below: VA Readjustment Counseling Service (10RCS), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, *VHA10RCSAction@va.gov.*

FOR FURTHER INFORMATION CONTACT: Sherry Moravy and/or Richard Barbato, Readjustment Counseling Service (10RCS), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, Telephone 734–222–4319.

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee responsibilities include, but are not limited to providing a Congressionally-mandated report to the Secretary each year, which includes:

(1) An assessment of the needs of Veterans with respect to readjustment to civilian life;

(2) A review of the programs and activities of the Department designed to meet such needs; and

(3) Such recommendations (including recommendations for administrative and legislative action) as the Committee considers appropriate.

The Committee may also submit to the Secretary such other reports and recommendations as the Committee considers appropriate. Management and support services for the Committee are provided by the VA Readjustment Counseling Service (RCS).

Authority: The Committee was established in accordance with 38 U.S.C. 545 and operates under the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. In accordance with 38 U.S.C. 545, the Committee advises the Secretary on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into special account the needs of Veterans who served in combat theaters of operation. In accordance with the Statute and the Committee's current charter, the majority of the membership ship consist on non-Federal employees appointed by the Secretary from the general public, serving as special government employees.

The Secretary appoints Committee members and determines the length of terms in which the Committee members serve. A term of service for any member may not exceed 2 years. However, the Secretary can reappoint members for additional terms. Each year, there are several vacancies on the Committee, as members' terms expire.

Membership Criteria: The Committee is currently composed of 12 members. By statute, Committee consists of members appointed by the Secretary from the general public, including individuals who have demonstrated civic or professional achievement; and have experience with the provision of Veterans benefits and services by VA.

The membership will include: (1) Individuals from a wide variety of geographic areas and ethnic backgrounds; (2) individuals from Veterans service organizations; (3) individuals with combat experience; and (4) women.

In addition to the criteria above, VA seeks—

(1) diversity in professional and personal qualifications;

(2) experience in military service and military deployments (please identify Branch of Service and Rank);

(3) current work with Veterans;

(4) committee subject matter expertise; and

(5) experience working in large and complex organizations.

The Committee meets at least two times annually, which may include a site visit to a VA field location. In accordance with Federal Travel Regulation, VA will cover travel expenses—to include per diem—for all members of the Committee, for any travel associated with official Committee duties. A copy of the Committee's most resent charter and a list of the current membership can be found at *https://www.va.gov/ADVISORY/Advisory_Committee_on_the_Readjusment_of_Veterans_Statutory.asp.*

In accordance with recently revised guidance regarding the ban on lobbyists serving as members of advisory boards and commissions, Federally-registered lobbyists are prohibited from serving on Federal advisory committees in an individual capacity. Additional information regarding this issue can be found at *www.federalregister.gov/articles/2014/08/13/2014-19140/revised-guidance-on-appointment-of-lobbyists-to-federal-advisory-committees-boardsand-commissions.*

Requirements for Nomination Submission

Nomination packages (one nomination per nominator) must be typed (12-point font) and include: (1) A cover letter from the nominee, and (2) a current resume that is *no more than four pages in length.* The cover letter must summarize: The nominees' interest in serving on the committee and contributions she/he can make to the work of the committee; any relevant Veterans service activities she/he is currently engaged in; the military branch affiliation and timeframe of military service (if applicable). To promote inclusion and demographic balance of membership, please include as much information related to the nominee's race, national origin, disability status, or any other factors that may give the individual a diverse perspective on Veteran readjustment Veterans. Finally, the cover letter *must* include the nominee's complete contact information (name, address, email address, and phone number); and a statement confirming that she/he is not a Federally-registered lobbyist. The resume should show professional and/or work experience, and Veterans service involvement—especially service that involves combat Veterans' and Active Duty service members' issues. Self-nominations are acceptable. Any letters of nomination from organizations or other individuals must accompany the package, when it is submitted. Letters of nomination submitted without a complete nomination package *will not* be considered. Do not submit a package, without the nominee's consent or awareness.

The Department makes every effort to ensure that the membership of its advisory committees is fairly balanced, in terms of points of view represented. In the review process, consideration is given to nominees' potential to address the Committee's demographic needs (regional representation, race/ethnicity representation, professional expertise, war era service, gender, former enlisted or officer status, branch of service, etc.). Other considerations to promote a balanced membership include longevity of military service, significant deployment experience, ability to handle complex issues, experience running large organizations, and ability to contribute to the gender-specific health care and benefits needs of combat Veterans and Active Duty service members.

Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Dated: June 26, 2020.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–14153 Filed 6–30–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Wednesday,

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Part II

Department of Homeland Security

U.S. Customs and Border Protection

Department of the Treasury

19 CFR Parts 181 and 182

Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Uniform Regulations Regarding Rules of Origin; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 181 and 182

[USCBP–2020–0036; CBP Dec. 20–11]

RIN 1515–AE55

Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) Uniform Regulations Regarding Rules of Origin

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the U.S. Customs and Border Protection (CBP) regulations to implement the rules of origin provisions for preferential tariff treatment of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA). This document sets forth the framework for our regulations that provides further guidance regarding the rules of origin for those seeking USMCA preferential tariff treatment and includes the text of the Uniform Regulations regarding rules of origin, as trilaterally agreed upon by the United States, the United Mexican States (Mexico), and Canada. Because the USMCA supersedes the North American Free Trade Agreement (NAFTA) when the USMCA enters into force on July 1, 2020, this document also amends the NAFTA regulations to reflect that the NAFTA provisions do not apply to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

DATES: This interim final rule is effective on July 1, 2020; comments must be received by August 31, 2020.

ADDRESSES: You may submit comments, identified by *docket number* [USCBP–2020–0036], by *one* of the following methods:

- *Federal eRulemaking Portal at http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Due to the relevant COVID–19-related restrictions, CBP has temporarily suspended on-site public inspection of the public comments. Please note that any submitted comments that CBP receives by mail will be posted on the above-referenced docket for the public's convenience.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Maya Kamar, Director, Textile and Trade Agreement Division, Office of Trade, U.S. Customs and Border Protection, (202) 945–7228 or *fta@cbp.dhs.gov.*

Audit Aspects: Amy Johnson, Senior Auditor, Regulatory Audit and Agency Advisory Services, U.S. Customs and Border Protection, (312) 983–5364 or *Amelia.K.Johnson@cbp.dhs.gov.*

Legal Aspects: Monika Brenner, Chief, Valuation & Special Programs Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, (202) 325–0038 or *monikarice.brenner@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on this interim final rule. As stated below, U.S. Customs and Border Protection (CBP) will not accept comments upon the Uniform Regulations regarding rules of origin trilaterally agreed upon and contained in Appendix A to part 182 of title 19 of the Code of Federal Regulations (CFR) (19 CFR part 182). CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments that will provide the most assistance to CBP will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

II. Background

On May 18, 2017, following consultations with the relevant Congressional committees, the Office of the United States Trade Representative (USTR) informed Congress of the President's intent to renegotiate the North American Free Trade Agreement (NAFTA). USTR announced this intention in a notice published in the **Federal Register** on May 23, 2017 (82 FR 23699), requesting public comments to assist in the development of the U.S. negotiating objectives on matters related to the modernization of NAFTA. The negotiations began on August 16, 2017, and concluded on September 30, 2018.

On November 30, 2018, USTR signed the ''Protocol Replacing the North American Free Trade Agreement with the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Protocol). The Agreement Between the United States of America, the United Mexican States (Mexico), and Canada (the USMCA) [1] is attached as an annex to the Protocol and was subsequently amended to reflect certain modifications and technical corrections in the ''Protocol of Amendment to the Agreement Between the United States of America, the United Mexican States, and Canada'' (the Amended Protocol), which USTR signed on December 10, 2019.

Pursuant to section 106 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4205) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the United States adopted the USMCA through the enactment of the United States-Mexico-Canada Agreement Implementation Act (USMCA Act), Public Law 116–113, 134 Stat. 11, on January 29, 2020. Mexico, Canada, and the United States certified their preparedness to implement the USMCA on December 12, 2019, March 13, 2020, and April 24, 2020, respectively. As a result, pursuant to paragraph 2 of the Protocol, which provides that the USMCA will take effect on the first day of the third month after the last signatory party provides written notification of the completion of the domestic implementation of the USMCA through the enactment of implementing legislation, the USMCA will enter into force on July 1, 2020.

A. U.S. Implementation of USMCA Uniform Regulations

Section 103(a)(1)(B) of the USMCA Act provides the authority for new or amended regulations to be issued to implement the USMCA, as of the date

[1] The Agreement between the United States of America, the United Mexican States, and Canada is the official name of the USMCA treaty. Please be aware that, in other contexts, the same document is also referred to as the United States-Mexico-Canada Agreement.

of its entry into force. Further, section 103(b)(2) of the USMCA Act requires that interim or initial regulations shall be prescribed not later than the date on which the USMCA enters into force to implement the Uniform Regulations regarding rules of origin. In accordance with section 103(b)(2) of the USMCA Act, CBP is adding to this new part 182, as Appendix A, the Uniform Regulations on rules of origin for Chapters 4 and 6 of the USMCA trilaterally agreed upon by the United States, Mexico, and Canada. Since the USMCA uniform regulations on rules of origin were trilaterally negotiated and may not be unilaterally altered, CBP is not requesting public comments in this interim final rule (IFR) with regard to Appendix A to part 182. CBP welcomes public comments on all other aspects of this IFR.

Claims for preferential tariff treatment under the USMCA may be made as of July 1, 2020. In addition to the regulations set forth in this document, those persons intending to make USMCA preference claims may refer to the CBP website at *https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA* for further guidance, including the U.S. USMCA Implementing Instructions. The United States International Trade Commission has modified the Harmonized Tariff Schedule of the United States (HTSUS) to include the addition of a new General Note 11, incorporating the USMCA rules of origin, and the insertion of the special program indicator ''S or S+'' for the USMCA in the HTSUS ''special'' rate of duty subcolumn.[2]

Pursuant to section 103(b) of the USMCA Act, CBP will issue initial regulations (new part 182 including Appendix A) regarding rules of origin, as provided for under Article 5.16 of the USMCA, not later than the date on which USMCA enters into force. CBP expects to publish additional regulations by July 1, 2021, one year from when the USMCA enters into force, to set forth any remaining USMCA implementing regulations, and to request public comments on those implementing regulations.

B. Impact on NAFTA

The USMCA supersedes NAFTA and its related provisions on USMCA's entry into force date. *See* Protocol, paragraph 1. NAFTA entered into force on January 1, 1994. Pursuant to section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the United States adopted NAFTA through the enactment of the North American Free Trade Agreement Implementation Act (NAFTA Implementation Act), Public Law 103–182, 107 Stat. 2057 (19 U.S.C. 3301), on December 8, 1993. Section 601 of the USMCA Act repeals the NAFTA Implementation Act, as of the date that the USMCA enters into force.

On December 30, 1993, the U.S. Customs Service [now CBP] published interim regulations (58 FR 69460) in a new part 181 of title 19 of the CFR (19 CFR part 181) to implement the preferential tariff treatment and other customs related provisions of NAFTA. Part 181 sets forth the relevant definitions, the requirements for filing a claim for preferential tariff treatment, post-importation duty refund claims, and the NAFTA uniform regulations on rules of origin, among others.

The general rules of origin in Chapter Four of NAFTA, as well as the specific rules of origin in Annex 401 of NAFTA, are set forth in General Note 12, HTSUS. The NAFTA provisions set forth in 19 CFR part 181 and General Note 12, HTSUS, continue to apply to goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020.

III. Amendments to the CBP Regulations

A. Section 181.0

Part 181 of title 19 of the CFR contains the NAFTA duty preference and other related CBP provisions. As the USMCA supersedes NAFTA upon the former's entry into force, CBP is adding a sentence to the scope provision in section 181.0 to indicate that part 181 is not applicable to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. The USMCA provisions, not the NAFTA provisions, are applicable to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

B. New Part 182

CBP is adding a new part 182 to title 19 of the CFR to establish the USMCA preferential tariff treatment and other customs related provisions. This document sets forth the scope of part 182, the rules of origin subpart, and Appendix A to part 182 containing the Uniform Regulations for Chapters 4 and 6 of the USMCA trilaterally agreed upon by the United States, Mexico, and Canada. These amendments are explained below.

This document also includes the structure and subparts for the entirety of part 182. CBP is reserving the remaining sections at this time. As discussed above, CBP will publish in separate subsequent IFRs, additional regulations to set forth the remaining USMCA implementing regulations, which will be in part 182, and also any other affected parts of title 19 of the CFR, as needed, to implement the USMCA (including the United States' implementation of additional Uniform Regulations on origin procedures, as needed, for Chapters 5, 6, and 7 of the USMCA).

Subpart A—General Provisions

Section 182.0 sets forth the scope of the new part 182. Section 182.0 provides the USMCA citations and parameters, and states that the part 181 NAFTA regulations are applicable for goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020. This section further clarifies that, except where the context otherwise requires, the requirements contained in part 182 are in addition to the general administrative and enforcement provisions set forth elsewhere in the CBP regulations.

Subpart F—Rules of Origin

Section 182.61 provides that the USMCA implementing regulations regarding rules of origin for preferential tariff treatment provisions of General Note 11, HTSUS, and Chapters Four and Six of the USMCA are contained in Appendix A to part 182.

Appendix A—Rules of Origin Regulations

The rules of origin regulations are set forth as Appendix A to part 182. The text contained in this appendix is as trilaterally negotiated by the United States, Mexico, and Canada. This appendix contains the uniform regulations for the interpretation, application, and administration of the rules of origin of Chapter Four of the USMCA and the rules of origin of Chapter Six of the USMCA related to textiles and apparel goods. The regulations contained in Appendix A may be cited as the ''USMCA Rules of Origin Regulations.''

Definitions and Currency Conversion

Appendix A sets forth the relevant definitions and interpretations that are applicable to the Uniform Regulations on rules of origin, and the methodology for currency conversion if necessary to determine the value of goods or materials.

[2] The S+ indicator is used for certain agricultural goods and textile tariff preference levels (TPLs).

General Rules of Origin

Appendix A contains the basic rules of origin established in Chapter Four of the USMCA. The provisions apply to the determination of the status of an imported good as an originating good for purposes of preferential tariff treatment and to the determination of the status of a material as an originating material used in a good which is subject to a determination under Appendix A. Specifically, this section identifies goods that are originating goods because they are wholly obtained or produced in one or more of the USMCA countries. This section also identifies goods that are originating goods because the good, which is produced entirely in the territory of one or more of the USMCA countries, is either made of exclusively originating materials or each of the non-originating materials used in the production of the good satisfies all applicable requirements of the regulations, including the product-specific rules of origin. This section also sets forth exceptions to the change in the tariff classification requirement and the special rule for certain goods, which provides that the goods listed in Schedule II of Appendix A to part 182 (Table 2.10.1 of Article 2.10 to Chapter 2 of the USMCA) are treated as originating goods regardless of whether they meet the applicable product-specific rule of origin, if they are imported from the territory of a USMCA country.

Treatment of Recovered Materials Used in the Production of a Remanufactured Good

Appendix A sets forth the treatment of a recovered material derived in one or more USMCA countries when it is used in the production of, and is incorporated into, a remanufactured good. This section provides the requirements and examples illustrating the treatment of recovered materials used in the production of a remanufactured good.

De Minimis

Appendix A sets forth the *de minimis* rules for goods to qualify as originating goods even when the goods would fail to qualify as such under the general rules of origin. Unless an exception applies, a good shall be considered to be an originating good where the value of all non-originating materials used in the production of the good is not more than ten percent of the transaction value of the good, or, if applicable, the total cost of the good, provided that the good satisfies any regional value content requirements and all other applicable regulations in Appendix A. The *de minimis* rules for textile goods established in Chapter Six of the USMCA and examples illustrating the application of the *de minimis* rules are also provided.

Sets of Goods, Kits or Composite Goods

A good is classified as a set as a result of the application of rule 3 of the General Rules for the Interpretation of the HTSUS. Under the general rule of origin for such goods, a set is an originating good only if each good in the set is originating, and both the set and the goods in the set meet the other applicable requirements in Appendix A. Several examples, including the application to textile sets, are provided to illustrate when a set is considered an originating good.

Regional Value Content

The appendix provides the basic rules that apply for purposes of determining whether an imported good satisfies any applicable regional value content requirement. With some exceptions, the regional value content of a good shall be calculated, at the choice of the importer, exporter or producer of the good, on the basis of either the transaction value method or the net cost method. The specifics of the transaction value method and the net cost method, including the formulas used to calculate each method, are also contained in Appendix A. Several examples of the calculations for the regional value content requirement are provided under both the transaction value method and the net cost method.

Materials

Appendix A sets forth the rules regarding the valuation of materials, the treatment of materials with regard to the change in tariff classification requirement, and the regional value content requirement. Additionally, this section identifies adjustments to the value of materials including certain costs that may be deducted from the value of non-originating material or material of undetermined origin. This section also allows for an optional designation as an intermediate material of self-produced material that is used in the production of the good, and provides the determinations on the value of such intermediate material. Furthermore, it includes provisions for the treatment and value of indirect materials, packaging materials and containers, fungible materials and fungible commingled goods, and accessories, spare parts, tools or instructional or other information materials in determining the originating status of a good. Numerous examples are provided illustrating the provisions on materials.

Accumulation

The appendix identifies the rules by which an importer, exporter or producer of a good has the option to accumulate the production, by one or more producers in the territory of one or more of the USMCA countries, of materials that are incorporated into that good for the determination of the origin of the good. Several examples of accumulation of production are provided to illustrate the process.

Transshipment

Generally, an originating good loses its originating status and is considered non-originating if the good is transported outside of the territories of the USMCA countries. Appendix A sets forth the rule that an originating good transported outside the territories of the USMCA countries retains its originating status if the good remains under customs control, and the good does not undergo further production or any other non-specified operation outside the territories of the USMCA countries.

Non-Qualifying Operations

Appendix A sets forth the rule that a good is not an originating good solely because of its dilution with water or another substance that does not materially alter the characteristics of the good, or by any other production method or pricing practice the purpose of which is to circumvent the rules of origin of Appendix A.

Automotive Goods

The Appendix to Annex 4–B of Chapter 4 of the USMCA includes additional rules of origin requirements that apply to automotive goods. Automotive goods are passenger vehicles, light trucks, heavy trucks, or other vehicles; or an applicable part, component, or material listed in Tables A.1, A.2, B, C, D, E, F, or G of the Appendix to Annex 4–B of Chapter 4 of the USMCA. In addition to the rules of origin requirements, a passenger vehicle, light truck, or heavy truck is originating only if, during the time period specified, at least seventy percent of a vehicle producer's purchases of steel and aluminum, by value, in the territories of the USMCA countries are originating. Furthermore, a passenger vehicle, light truck, or heavy truck is originating only if the vehicle producer certifies and can demonstrate that its production meets the applicable labor value content requirement.

Appendix A to part 182 sets forth the rules of origin related to automotive goods. Specifically, Appendix A provides the definitions that are applicable to automotive goods, the regional value content requirements specific to automotive goods, the steel and aluminum purchase requirement, and the labor value content requirement.

Schedules

Appendix A also contains Schedules I through X. These schedules set forth the most-favored-nation rates of duty on certain goods, and provide much more detail on the calculations of the value of goods and materials, the inventory management methods, the methods of calculating costs, and the Generally Accepted Accounting Principles.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on the proposed regulatory amendments, considers public comments in deciding on the content of the final amendments, and publishes the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard prior notice and comment procedures do not apply to an agency rulemaking to the extent that it involves a foreign affairs function of the United States. CBP has determined that these interim regulations involve a foreign affairs function of the United States because they implement preferential tariff treatment and customs related provisions of the USMCA, a specific international agreement. Therefore, the rulemaking requirements under the APA do not apply and this interim rule will be effective on July 1, 2020.

CBP also has determined that there is good cause pursuant to 5 U.S.C. 553(b)(B) to publish this rule without prior public notice and comment procedures. This rule is a nondiscretionary action as it sets forth the uniform regulations that the United States, Mexico, and Canada trilaterally agreed to implement without change. Given CBP's lack of discretion and that this rule sets forth the rules of origin that the public needs knowledge of to claim USMCA preferential tariff treatment, prior public notice and comment procedures for this rule are impracticable, unnecessary, and contrary to the public interest.

For the same reasons, a delayed effective date is not required under 5 U.S.C. 553(d)(3). Pursuant to section 103(b)(2) of the USMCA Act, regulations implementing the USMCA Uniform Regulations regarding rules of origin must be effective no later than the date the USMCA enters into force, which is July 1, 2020. Failure to implement the CBP regulations by the July 1, 2020 entry into force date would be in violation of the USMCA and the USMCA Act, and would result in undesirable international consequences.

B. Executive Orders 13563, 12866, and 13771

Executive Orders 13563 and 12866 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. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs, and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

Rules involving the foreign affairs function of the United States are exempt from the requirements of Executive Orders 13563, 12866, and 13771. Because this document involves a foreign affairs function of the United States by implementing a specific international agreement, it is not subject to the provisions of Executive Orders 13563, 12866, and 13771.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

V. Signing Authority

This rulemaking is being issued in accordance with 19 CFR 0.1(a)(1), pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 181

Administrative practice and procedure, Canada, Exports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 182

Administrative practice and procedure, Canada, Exports, Mexico, Reporting and recordkeeping requirements, Trade agreements.

For the reasons stated above, amend part 181 and add a new part 182 of title 19 of the Code of Federal Regulations (19 CFR parts 181 and 182) as set forth below.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 1. The general authority citation for part 181 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

* * * * *

§ 181.0 [Amended]

■ 2. In § 181.0, add a new second sentence.

The revision reads as follows:

§ 181.0 Scope.

* * * This part is not applicable to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

* * * * *

■ 3. Add part 182 to read as follows:

PART 182—UNITED STATES-MEXICO-CANADA AGREEMENT

Sec.

Subpart A—General Provisions

182.0 Scope.
182.1 [Reserved]

Subpart B—Import Requirements

182.11–182.16 [Reserved]

Subpart C—Export Requirements

182.21 [Reserved]

Subpart D—Post-Importation Duty Refund Claims

182.31–182.33 [Reserved]

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

182.41–182.54 [Reserved]

Subpart F—Rules of Origin

182.61 Rules of origin.
182.62 [Reserved]

Subpart G—Origin Verifications and Determinations

182.71–182.74 [Reserved]

Subpart H—Textile and Apparel Goods

182.81–182.82 [Reserved]
182.82 [Reserved]

Subpart I—Automotive Goods

182.91–182.93 [Reserved]

Subpart J—Commercial Samples and Goods Returned after Repair or Alteration

182.101–182.102 [Reserved]

Subpart K—Penalties

182.111–182.114 [Reserved]

Appendix A to Part 182—Rules of Origin Regulations

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and General Note 11, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 4513, 4535; Section 182.61 also issued under 19 U.S.C. 4531, 4532.

Subpart A—General Provisions

§ 182.0 Scope.

This part implements the duty preference and related customs provisions applicable to imported and exported goods under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA), signed on December 10, 2019, and entered into force on July 1, 2020, and under the United States-Mexico-Canada Agreement Implementation Act (134 Stat. 11) (the Act). For goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020, please see the NAFTA provisions in part 181 of this chapter. Except as otherwise specified in this part, the procedures and other requirements set forth in this part are in addition to the CBP procedures and requirements of general application contained elsewhere in this chapter.

§ 182.1 [Reserved]

Subpart B—Import Requirements

§§ 182.11–182.16 [Reserved]

Subpart C—Export Requirements

§ 182.21 [Reserved]

Subpart D—Post-Importation Duty Refund Claims

§§ 182.31–182.33 [Reserved]

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

§§ 182.41–182.54 [Reserved]

Subpart F—Rules of Origin

§ 182.61 Rules of origin.

The regulations, implementing the rules of origin provisions of General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and Chapters Four and Six of the USMCA, are contained in Appendix A to this part.

§ 182.62 [Reserved]

Subpart G—Origin Verifications and Determinations

§§ 182.71–182.74 [Reserved]

Subpart H—Textile and Apparel Goods

§§ 182.81–182.82 [Reserved]

Subpart I—Automotive Goods

§§ 182.91–182.93 [Reserved]

Subpart J—Commercial Samples and Goods Returned after Repair or Alteration

§§ 182.101–182.102 [Reserved]

Subpart K—Penalties

§§ 182.111–182.114 [Reserved]

Appendix A to Part 182—Rules of Origin Regulations

Uniform Regulations Regarding the Interpretation, Application, and Administration of Chapter 4 (Rules of Origin) and Related Provisions in Chapter 6 (Textile and Apparel Goods) of the Agreement Between the United States of America, the United Mexican States, and Canada [1]

Part I

Section 1. Definitions and Interpretations

(1) *Definitions.* The following definitions apply in these Regulations,

accessories, spare parts, tools, instructional or other information materials means goods that are delivered with a good, whether or not they are physically affixed to that good, and that are used for the transport, protection, maintenance or cleaning of the good, for instruction in the assembly, repair or use of that good, or as replacements for consumable or interchangeable parts of that good;

adjusted to exclude any costs incurred in the international shipment of the good means, with respect to the transaction value of a good, adjusted by

(a) deducting the following costs if those costs are included in the transaction value of the good:

(i) The costs of transporting the good after it is shipped from the point of direct shipment,

(ii) the costs of unloading, loading, handling and insurance that are associated with that transportation, and

(iii) the cost of packing materials and containers, and

(b) if those costs are not included in the transaction value of the good, adding

(i) the costs of transporting the good from the place of production to the point of direct shipment,

(ii) the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) the costs of loading the good for shipment at the point of direct shipment;

Agreement means the *United States-Mexico-Canada Agreement;* [2]

applicable change in tariff classification means, with respect to a non-originating material used in the production of a good, a change in tariff classification specified in a rule established in Schedule I (PSRO Annex) for the tariff provision under which the good is classified;

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings, or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

costs incurred in packing means, with respect to a good or material, the value of the packing materials and containers in which the good or material is packed for shipment and the labor costs incurred in packing it for shipment, but does not include the costs of preparing and packaging it for retail sale;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, set out in Annex 1A to the WTO Agreement;

customs value means

(a) in the case of Canada, value for duty as defined in the *Customs Act,* except that for the purpose of determining that value the reference in section 55 of that Act to ''in

[1] Please note that the citing conventions in Appendix A might not conform to the ordinary citing conventions in the Code of Federal Regulations (CFR) because the language is added pursuant to an international agreement without revision.

[2] Please be aware that, in other contexts, the United States-Mexico-Canada Agreement is referred to by its official name, the Agreement Between the United States of America, the United Mexican States, and Canada.

accordance with the regulations made under the *Currency Act*'' is to be read as a reference to ''in accordance with subsection 2(1) of these *CUSMA Rules of Origin Regulations*'',

(b) in the case of Mexico, the *valor en aduana* as determined in accordance with the *Ley Aduanera,* converted, if such value is not expressed in Mexican currency, to Mexican currency at the rate of exchange determined in accordance with subsection 2(1), and

(c) in the case of the United States, the value of imported merchandise as determined by the U.S. Customs and Border Protection in accordance with section 402 of the *Tariff Act of 1930,* as amended, converted, if that value is not expressed in United States currency, to United States currency at the rate of exchange determined in accordance with subsection 2(1);

days means calendar days, and includes Saturdays, Sundays and holidays;

direct labor costs means costs, including fringe benefits, that are associated with employees who are directly involved in the production of a good;

direct material costs means the value of materials, other than indirect materials and packing materials and containers, that are used in the production of a good;

direct overhead means costs, other than direct material costs and direct labor costs, that are directly associated with the production of a good;

enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

excluded costs means, with respect to net cost or total cost, sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs;

fungible goods means goods that are interchangeable for commercial purposes with another good and the properties of which are essentially identical;

fungible materials means materials that are interchangeable with another material for commercial purposes and the properties of which are essentially identical;

Harmonized System means the *Harmonized Commodity Description and Coding System,* including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes, as set out in

(a) in the case of Canada, the *Customs Tariff,*

(b) in the case of Mexico, the *Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación,* and

(c) in the case of the United States, the *Harmonized Tariff Schedule of the United States;*

identical goods means, with respect to a good, including the valuation of a good, goods that

(a) are the same in all respects as that good, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, if no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

identical materials means, with respect to a material, including the valuation of a material, materials that

(a) are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that material, and

(c) were produced

(i) by the producer of that material, or

(ii) by another producer, if no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

incorporated means, with respect to the production of a good, a material that is physically incorporated into that good, and includes a material that is physically incorporated into another material before that material or any subsequently produced material is used in the production of the good;

indirect material means a material used or consumed in the production, testing or inspection of a good but not physically incorporated into the good, or a material used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including

(a) fuel and energy,

(b) tools, dies, and molds,

(c) spare parts and materials used or consumed in the maintenance of equipment and buildings,

(d) lubricants, greases, compounding materials and other materials used or consumed in production or used to operate equipment and buildings,

(e) gloves, glasses, footwear, clothing, safety equipment, and supplies,

(f) equipment, devices and supplies used or consumed for testing or inspecting the goods,

(g) catalysts and solvents, and

(h) any other material that is not incorporated into the good but if the use in the production of the good can reasonably be demonstrated to be part of that production;

interest costs means all costs paid or payable by a person to whom credit is, or is to be advanced, for the advancement of credit or the obligation to advance credit;

intermediate material means a material that is self-produced and used in the production of a good, and designated as an intermediate material under subsection 8(6);

location of the producer means,

(a) the place where the producer uses a material in the production of the good; or

(b) the warehouse or other receiving station where the producer receives materials for use in the production of the good, provided that it is located within a radius of 75 km (46.60 miles) from the production site.

material means a good that is used in the production of another good, and includes a part or ingredient;

month means a calendar month;

national means a natural person who is a citizen or permanent resident of a USMCA country, and includes

(a) with respect to Mexico, a national or citizen according to Articles 30 and 34, respectively, of the Mexican Constitution, and

(b) with respect to the United States, a ''national of the United States'' as defined in the Immigration and Nationality Act on the date of entry into force of the Agreement;

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

net cost of a good means the net cost that can be reasonably allocated to a good using the method set out in subsection 7(3) (Regional Value Content);

net cost method means the method of calculating the regional value content of a good that is set out in subsection 7(3) (Regional Value Content);

non-allowable interest costs means interest costs incurred by a producer on the producer's debt obligations that are more than 700 basis points above the interest rate issued by the federal government for comparable maturities of the country in which the producer is located;

non-originating good means a good that does not qualify as originating under these Regulations;

non-originating material means a material that does not qualify as originating under these Regulations;

originating good means a good that qualifies as originating under these Regulations;

originating material means a material that qualifies as originating under these Regulations;

packaging materials and containers means materials and containers in which a good is packaged for retail sale;

packing materials and containers means materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers;

payments means, with respect to royalties and sales promotion, marketing and after-sales service costs, the costs expensed on the books of a producer, whether or not an actual payment is made;

person means a natural person or an enterprise;

person of a USMCA country means a national, or an enterprise constituted or organized under the laws of a USMCA country;

point of direct shipment means the location from which a producer of a good normally ships that good to the buyer of the good;

producer means a person who engages in the production of a good;

production means growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, breeding, extracting, manufacturing, processing, or assembling a good, or aquaculture;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

recovered material means a material in the form of one or more individual parts that results from:

(a) The disassembly of a used good into individual parts; and

(b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

related person means a person related to another person on the basis that

(a) they are officers or directors of one another's businesses,

(b) they are legally recognized partners in business,

(c) they are employer and employee,

(d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them,

(e) one of them directly or indirectly controls the other,

(f) both of them are directly or indirectly controlled by a third person, or

(g) they are members of the same family;

remanufactured good means a good classified in HS Chapters 84 through 90 or under heading 94.02 except goods classified under HS headings 84.18, 85.09, 85.10, and 85.16, 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

(a) Has a similar life expectancy and performs the same as or similar to such a good when new; and

(b) has a factory warranty similar to that applicable to such a good when new;

reusable scrap or by-product means waste and spoilage that is generated by the producer of a good and that is used in the production of a good or sold by that producer;

right to use, for the purposes of the definition of royalties, includes the right to sell or distribute a good;

royalties means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use of, or right to use, a copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, or secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as

(a) personnel training, without regard to where the training is performed, or

(b) if performed in the territory of one or more of the USMCA countries, engineering, tooling, die-setting, software design and similar computer services, or other services;

sales promotion, marketing, and after-sales service costs means the following costs related to sales promotion, marketing and after-sales service:

(a) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, or sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; or entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; or merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, or pension), travelling and living expenses, or membership and professional fees for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, if those costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, if those costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

self-produced material means a material that is produced by the producer of a good and used in the production of that good;

shipping and packing costs means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

similar goods means, with respect to a good, goods that

(a) although not alike in all respects to that good, have similar characteristics and component materials that enable the goods to perform the same functions and to be commercially interchangeable with that good,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, if no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

similar materials means, with respect to a material, materials that

(a) although not alike in all respects to that material, have similar characteristics and component materials that enable the materials to perform the same functions and to be commercially interchangeable with that material,

(b) were produced in the same country as that material, and

(c) were produced

(i) by the producer of that material, or

(ii) by another producer, if no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

subject to a regional value content requirement means, with respect to a good, that the provisions of these Regulations that are applied to determine whether the good is an originating good include a regional value content requirement;

tariff provision means a heading, subheading or tariff item;

territory means:

(a) For Canada, the following zones or waters as determined by its domestic law and consistent with international law:

(i) The land territory, air space, internal waters, and territorial sea of Canada,

(ii) the exclusive economic zone of Canada, and

(iii) the continental shelf of Canada;

(b) for Mexico,

(i) the land territory, including the states of the Federation and Mexico City,

(ii) the air space, and

(iii) the internal waters, territorial sea, and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the *United Nations Convention on the Law of the Sea,* done at Montego Bay on December 10, 1982; and

(c) for the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) the territorial sea and air space of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the *United Nations Convention on the Law of the Sea,* the United States may exercise sovereign rights or jurisdiction.

total cost means all product costs, period costs, and other costs incurred in the territory of one or more of the USMCA countries, where:

(a) Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overheads;

(b) period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses; and

(c) other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest.

Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

transaction value means the customs value as determined in accordance with the Customs Valuation Agreement, that is, the price actually paid or payable for a good or

material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of Articles 8(1), 8(3), and 8(4) of the Customs Valuation Agreement, regardless of whether the good or material is sold for export;

transaction value method means the method of calculating the regional value content of a good that is set out in subsection 7(2) (Regional Value Content);

used means used or consumed in the production of a good;

USMCA country means a Party to the Agreement;

value means the value of a good or material for the purpose of calculating customs duties or for the purpose of applying these Regulations.

verification of origin means a verification of origin of goods under

(a) in the case of Canada, paragraph 42.1(1)(a) of the *Customs Act,*

(b) in the case of Mexico, Article 5.9 of the Agreement, and

(c) in the case of the United States, section 509 of the Tariff Act of 1930, as amended.

(2) *Interpretation:* ''*similar goods*'' *and* ''*similar materials*''. For the purposes of the definitions of *similar goods* and *similar materials,* the quality of the goods or materials, their reputation and the existence of a trademark are among the factors to be considered for the purpose of determining whether goods or materials are similar.

(3) *Other definitions.* For the purposes of these Regulations,

(a) *chapter,* unless otherwise indicated, refers to a chapter of the Harmonized System;

(b) *heading* refers to any four-digit number set out in the ''Heading'' column in the Harmonized System, or the first four digits of any tariff provision;

(c) *subheading* refers to any six-digit number, set out in the ''H.S. Code'' column in the Harmonized System or the first six digits of any tariff provision;

(d) *tariff item* refers to the first eight digits in the tariff classification number under the Harmonized System as implemented by each USMCA country;

(e) any reference to a tariff item in Chapter Four of the Agreement or these Regulations that includes letters is to be reflected as the appropriate eight-digit number in the Harmonized System as implemented in each USMCA country; and

(f) *books* refers to,

(i) with respect to the books of a person who is located in a USMCA country,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule X with respect to the territory of the USMCA country in which the person is located, and

(B) financial statements, including note disclosures, that are prepared in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule X with respect to the territory of the USMCA country in which the person is located, and

(ii) with respect to the books of a person who is located outside the territories of the USMCA countries,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with generally accepted accounting principles applied in that location or, if there are no such principles, in accordance with the International Accounting Standards, and

(B) financial statements, including note disclosures, that are prepared in accordance with generally accepted accounting principles applied in that location or, if there are no such principles, in accordance with the International Accounting Standards.

(4) *Use of examples.* If an example, referred to as an ''Example'', is set out in these Regulations, the example is for the purpose of illustrating the application of a provision, and if there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency.

(5) *References to domestic laws.* Except as otherwise provided, references in these Regulations to domestic laws of the USMCA countries apply to those laws as they are currently in effect and as they may be amended or superseded.

(6) *Calculation of Total Cost.* For the purposes of subsections 5(11), 7(11) and 8(8),

(a) total cost consists of all product costs, period costs and other costs that are recorded, except as otherwise provided in subparagraphs (b)(i) and (ii), on the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made;

(b) in calculating total cost,

(i) the value of materials, other than intermediate materials, indirect materials and packing materials and containers, is the value determined in accordance with subsections 8(1) and 8(2),

(ii) the value of intermediate materials used in the production of the good or material with respect to which total cost is being calculated must be calculated in accordance with subsection 8(6),

(iii) the value of indirect materials and the value of packing materials and containers is to be the costs that are recorded on the books of the producer for those materials, and

(iv) product costs, period costs and other costs, other than costs referred to in subparagraphs (i) and (ii), is to be the costs thereof that are recorded on the books of the producer for those costs;

(c) total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(d) gains related to currency conversion that are related to the production of the good must be deducted from total cost, and losses related to currency conversion that are related to the production of the good must be included in total cost;

(e) the value of materials with respect to which production is accumulated under section 9 must be determined in accordance with that section; and

(f) total cost includes the impact of inflation as recorded on the books of the producer, if recorded in accordance with the Generally Accepted Accounting Principles of the producer's country.

(7) *Period for the calculation of total cost.* For the purpose of calculating total cost under subsections 5(11) and 7(11) and 8(8),

(a) if the regional value content of the good is calculated on the basis of the net cost method and the producer has elected under subsection 7(15), 16(1) or (3) to calculate the regional value content over a period, the total cost must be calculated over that period; and

(b) in any other case, the producer may elect that the total cost be calculated over

(i) a one-month period,

(ii) any consecutive three-month or six-month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year.

(8) *Election not modifiable.* An election made under subsection (7) may not be rescinded or modified with respect to the good or material, or the period, with respect to which the election is made.

(9) *Election considered made with respect to period.* If a producer chooses a one, three or six-month period under subsection (7) with respect to a good or material, the producer is considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to that good or material.

(10) *Election considered made with respect to cost.* With respect to a good exported to a USMCA country, an election to average is considered to have been made

(a) in the case of an election referred to in subsection 16(1) or (3), if the election is received by the customs administration of that USMCA country; and

(b) in the case of an election referred to in subsection 1(7), 7(15) or 16(10), if the customs administration of that USMCA country is informed in writing during the course of a verification of origin of the good that the election has been made.

Section 2. Conversion of Currency

2 (1) *Conversion of currency.* If the value of a good or a material is expressed in a currency other than the currency of the country where the producer of the good is located, that value must be converted to the currency of the country in which that producer is located, based on the following rates of exchange:

(a) In the case of the sale of that good or the purchase of that material, the rate of exchange used by the producer for the purpose of recording that sale or purchase, or

(b) in the case of a material that is acquired by the producer other than by a purchase,

(i) if the producer used a rate of exchange for the purpose of recording another transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, or

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by

the *Banco de Mexico* in the *Diario Oficial de la Federación,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la República Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

(2) *Information in other currency in statement.* If a producer of a good has a statement referred to in section 9 that includes information in a currency other than the currency of the country in which that producer is located, the currency must be converted to the currency of the country in which the producer is located based on the following rates of exchange:

(a) If the material was purchased by the producer in the same currency as the currency in which the information in the statement is provided, the rate of exchange must be the rate used by the producer for the purpose of recording the purchase; or

(b) if the material was purchased by the producer in a currency other than the currency in which the information in the statement is provided,

(i) and the producer used a rate of exchange for the purpose of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, the rate of exchange must be that rate, or

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange is the rate referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange is the rate published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange is the rate referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer; and

(c) if the material was acquired by the producer other than by a purchase,

(i) if the producer used a rate of exchange for the purpose of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, the rate of exchange must be that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange must be the rate referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange must be the rate published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange must be the rate referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

Part II

Section 3. Originating Goods

3(1) *Wholly obtained goods.* A good is originating in the territory of a USMCA country if the good satisfies all other applicable requirements of these Regulations and is:

(a) A mineral good or other naturally occurring substance extracted in or taken from the territory of one or more of the USMCA countries;

(b) a plant, plant good, vegetable, or fungus, grown, harvested, picked, or gathered in the territory of one or more of the USMCA countries;

(c) a live animal born and raised in the territory of one or more of the USMCA countries;

(d) a good obtained from a live animal in the territory of one or more of the USMCA countries;

(e) an animal obtained from hunting, trapping, fishing, gathering or capturing in the territory of one or more of the USMCA countries;

(f) a good obtained from aquaculture in the territory of one or more of the USMCA countries;

(g) fish, shellfish or other marine life taken from the sea, seabed or subsoil outside the territories of the USMCA countries and, under international law, outside the territorial sea of non-USMCA countries, by vessels that are registered, listed, or recorded with a USMCA country and entitled to fly the flag of that USMCA country;

(h) a good produced from goods referred to in paragraph (g) on board a factory ship where the factory ship is registered, listed, or recorded with a USMCA country and entitled to fly the flag of that USMCA country;

(i) a good, other than fish, shellfish or other marine life, taken by a USMCA country or a person of a USMCA country from the seabed or subsoil outside the territories of the USMCA countries, if that USMCA country has the right to exploit that seabed or subsoil;

(j) waste and scrap derived from:

(i) Production in the territory of one or more of the USMCA countries, or

(ii) used goods collected in the territory of one or more of the USMCA countries, provided the goods are fit only for the recovery of raw materials; or

(k) a good produced in the territory of one or more of the USMCA countries, exclusively from a good referred to in any of paragraphs (a) through (j), or from their derivatives, at any stage of production.

(2) *Goods produced from non-originating materials.* A good, produced entirely in the territory of one or more of the USMCA countries, is originating in the territory of a USMCA country if each of the non-originating materials used in the production of the good satisfies all applicable requirements of Schedule I (PSRO Annex), and the good satisfies all other applicable requirements of these Regulations.

(3) *Goods produced exclusively from originating materials.* A good is originating in the territory of a USMCA country if the good is produced entirely in the territory of one or more of the USMCA countries exclusively from originating materials and the good satisfies all other applicable requirements of these Regulations.

(4) *Exceptions to the change in tariff classification requirement.* Except in the case of a good of any of Chapters 61 through 63, a good is originating in the territory of a USMCA country if:

(a) One or more of the non-originating materials used in the production of that good cannot satisfy the change in tariff classification requirements set out in Schedule I (PSRO Annex) because both the good and its materials are classified in the same subheading or same heading that is not further subdivided into subheadings, and,

(i) the good is produced entirely in the territory of one or more of the USMCA countries;

(ii) the regional value content of the good, calculated in accordance with section 7 (Regional Value Content), is not less than 60 percent if the transaction value method is used, or not less than 50 percent if the net cost method is used; and

(iii) the good satisfies all other applicable requirements of these Regulations; or

(b) it was imported into the territory of a USMCA country in an unassembled or a disassembled form but classified as an assembled good in accordance with rule 2(a) of the General Rules of Interpretation for the Harmonized System and,

(i) the good is produced entirely in the territory of one or more of the USMCA countries;

(ii) the regional value content of the good, calculated in accordance with section 7 (Regional Value Content), is not less than 60 percent if the transaction value method is used, or not less than 50 percent if the net cost method is used; and

(iii) the good satisfies all other applicable requirements of these Regulations.

(5) *Interpretation of goods and parts of goods.* For the purposes of paragraph (4)(a),

(a) the determination of whether a heading or subheading provides for a good and its parts is to be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(b) if, in accordance with the Harmonized System, a heading includes parts of goods by application of a Section Note or Chapter Note of the Harmonized System and the subheadings under that heading do not include a subheading designated ''Parts'', a subheading designated ''Other'' under that heading is to be considered to cover only the goods and parts of the goods that are themselves classified under that subheading.

(6) *Requirement to meet one rule.* For the purposes of subsection (2), if Schedule I (PSRO Annex) sets out two or more alternative rules for the tariff provision under which a good is classified, if the good satisfies the requirements of one of those rules, it need not satisfy the requirements of another of the rules in order to qualify as an originating good.

(7) *Special rule for certain goods.* A good is originating in the territory of a USMCA country if the good is referred to in Schedule II and is imported from the territory of a USMCA country.

(8) *Self-produced material considered as a material.* For the purpose of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of that material, be considered as a material used in the production of a good into which the self-produced material is incorporated.

(9) *Each of the following examples is an ''Example'' as referred to in subsection 1(4).*

Example 1: Subsection 3(2) Regarding the 'component that determines the tariff classification' of a textile or apparel good)

Producer A, located in a USMCA country, produces women´s wool overcoats of subheading 6202.11 from two different fabrics, one for the body and another for the sleeves. Both fabrics are produced using originating and non-originating materials. The overcoat´s body is made of woven wool and silk fabric, and the sleeves are made of knit cotton fabric.

For the purpose of determining if the women´s wool overcoats are originating goods, Producer A must take into account Note 2 of Chapter 62 of Schedule I, which indicates that the applicable rule will apply only to the component that determines the tariff classification of the good and that the component must satisfy the tariff change requirements set out in the rule for that good.

The woven fabric (80% wool and 20% silk) used for the body is the component of the women´s wool overcoat that determines its tariff classification under subheading 6202.11, because it constitutes the predominant material by weight and makes up the largest surface area of the overcoat. This fabric is made by Producer A from originating wool yarn classified in heading 51.06 and non-originating silk yarn classified in heading 50.04.

Since the knit cotton fabric used in the sleeves is not the component that determines the tariff classification of the good, it does not need to meet the requirements set out in the rule for the good.

Producer A must determine whether the non-originating materials used in the production of the component that determines the tariff classification of the women´s wool overcoats (the woven fabric) satisfy the requirements established in the product-specific rule of origin, which requires both a change in tariff classification from any other chapter, except from some headings and chapters under which certain yarns and fabrics are classified, and a requirement that the good be cut or knit to shape and sewn or otherwise assembled in the territory of one or more of the USMCA countries. The non-originating silk yarn of heading 50.04 used by Producer A satisfies the change in tariff classification requirement, since heading 50.04 is not excluded under the product-specific rule of origin. Additionally, the overcoats are cut and sewn in the territory of one of the USMCA countries, and therefore the women´s wool overcoats would be considered to be originating goods.

Example 2: (Subsection 3(2))

Producer A, located in a USMCA country, produces T-shirts of subheading 6109.10 from knit cotton and polyester fabric (60% cotton and 40% polyester), which is also produced by Producer A using originating cotton yarn of heading 52.05 and polyester yarn made of non-originating filaments of heading 54.02.

As the t-shirt is made of a single fabric and classified under GRI 1 in subheading 6109.10, this fabric is the component that determines tariff classification. Therefore, to be considered originating by application of the tariff-shift rule for subheading 6109.10, each of the non-originating materials used in the production of the t-shirt must undergo the required change in tariff classification.

In this case, the non-originating polyester filaments of heading 54.02 used in the production of the T-shirts do not satisfy the change in tariff classification set out in the product-specific rule of origin. In addition, the weight of the non-originating polyester is over the ''de minimis'' allowance. Therefore, the T-shirts do not qualify as originating goods.

Example 3: (subsection 3(2))—Note 2 contained in Section XI—Textiles and Textile Articles (Chapter 50–63)

Producer A, located in a USMCA country, produces fabrics of subheading 5211.42 from originating cotton and polyester yarns, and non-originating rayon filament. For the purpose of determining if the fabrics are originating goods, Producer A must consider Note 2 of Section XI of Schedule I, which indicates a good of Chapter 50 through 63 is considered as originating, regardless of whether the rayon filaments used in its production are non-originating materials, provided that the good meets the requirements of the applicable product-specific rule of origin.

With the exception of the rayon filaments of heading 54.03, that Note 2 of Section XI of Schedule I allows, all of the materials used in the production of the fabrics are originating materials, and since General Interpretative Note (d) of Schedule I provides that a change in tariff classification of a product-specific rule of origin applies only to non-originating materials, the fabrics are considered to be originating goods.

Example 4: Subsection 3(2) Note 2 and 5 of Chapter 62 regarding the interpretation of the component that determines the tariff classification and the requirement for pockets.

Producer A, located in a USMCA country, produces men´s suits classified in subheading 6203.12, which are made of three fabrics: A non-originating fabric of subheading 5407.61 used to make a visible lining, an originating fabric of 5514.41 used to make the outer part of the suit and a non-originating fabric of subheading 5513.21 used to make pocket bags.

For the purpose of determining if the men´s suits are originating goods, Producer A should take into account Note 2 of Chapter 62 of Schedule I, which indicates that the applicable rule will only apply to the component that determines the tariff classification of the good and that the component must satisfy the tariff change requirements set out in the rule for that good.

The originating fabric used to make the outer part of the suit is the component of the suit that determines the tariff classification under subheading 6203.12, because it constitutes the predominant material by weight and is the largest surface area of the suit. The origin of the fabric used as visible lining is disregarded for the purpose of determining whether the suit is an originating good since that fabric is not considered the component that determines the tariff classification, and there are no Chapter notes related to visible lining for apparel goods.

Additionally, Producer A uses a non-originating fabric of subheading 5513.21 for the pocket bags of the suits, so it should take into account the second paragraph of Note 5 of Chapter 62 of Schedule I, which requires that the pocket bag fabric must be formed and finished in the territory of one or more USMCA countries from yarn wholly formed in one or more USMCA countries.

In this case, for the production of men´s suits, Producer A uses non-originating fabric for the pockets, and such fabric was not formed and finished in the territory of one or more Parties, therefore the suits would be considered to be non-originating goods.

Example 5 (subsection 3(7)): A wholesaler located in USMCA Country A imports non-originating storage units provided for in subheading 8471.70 from outside the territory of the USMCA countries. The wholesaler resells the storage units to a buyer in USMCA Country B. While in the territory of Country A, the storage units do not undergo any production and therefore do not meet the rule in Schedule I for goods of subheading 8471.70 when imported into the territory of USMCA Country B.

Notwithstanding the rule in Schedule I, the storage units of subheading 8471.70 are considered originating goods when they are imported to the territory of USMCA Country B because they are referred to in Schedule II and were imported from the territory of another USMCA country.

The buyer in USMCA Country B subsequently uses the storage units provided for in subheading 8471.70 as a material in the production of another good. For the purpose of determining whether the other good originates, the buyer in USMCA Country B may treat the storage units of subheading 8471.70 as originating materials.

Example 6 subsection 3(8): Self-produced Materials as Materials for the purpose of Determining Whether Non-originating Materials Undergo an Applicable Change in Tariff Classification

Producer A, located in a USMCA country, produces Good A. In the production process, Producer A uses originating Material X and non-originating Material Y to produce Material Z. Material Z is a self-produced

material that will be used to produce Good A.

The rule set out in Schedule I for the heading under which Good A is classified specifies a change in tariff classification from any other heading. In this case, both Good A and the non-originating Material Y are of the same heading. However, the self-produced Material Z is of a heading different than that of Good A.

For the purpose of determining whether the non-originating materials that are used in the production of Good A undergo the applicable change in tariff classification, Producer A has the option to consider the self-produced Material Z as the material that must undergo a change in tariff classification. As Material Z is of a heading different than that of Good A, Material Z satisfies the applicable change in tariff classification and Good A would qualify as an originating good.

Section 4. Treatment of Recovered Materials Used in the Production of a Remanufactured Good

4(1) *Treatment of recovered materials used in the production of remanufactured goods.* A recovered material derived in the territory of one or more of the USMCA countries, will be treated as originating, provided that:

(a) It is the result of a disassembly process of a used good into individual parts;

(b) It has undergone certain processing, such as cleaning, inspection, testing or other improvement processing, to sound working condition; and

(c) It is used in the production of, and incorporated into, a remanufactured good.

(2) *Recovered material not used in remanufactured good.* In the case that the recovered material is not used or incorporated in the production of a remanufactured good, it is originating only if it satisfies the requirements established in Section 3, and satisfies all other applicable requirements in these Regulations.

(3) *Requirements of Schedule I (PSRO Annex).* A remanufactured good is originating in the territory of a USMCA country only if it satisfies the applicable requirements established in Schedule I (PSRO Annex), and satisfies all other applicable requirements in these Regulations.

(4) Each of the following examples is an ''Example'' as referred to in subsection 1(4)

Example 1: (Section 4)

In July 2023, Producer A located in a USMCA country manufactures water pumps of subheading 8413.30 for use in automotive engines. In addition to selling new water pumps, Producer A also sells water pumps that incorporate used parts.

To obtain the used parts, Producer A disassembles used water pumps in a USMCA country and cleans, inspects, and tests the individual parts. Accordingly, these parts qualify as recovered materials.

The water pumps that Producer A manufactures incorporate the recovered materials, have the same life expectancy and performance as new water pumps, and are sold with a warranty that is similar to the warranty for new water pumps. The water pumps therefore qualify as remanufactured goods, and the recovered materials are treated as originating materials when determining whether the good qualifies as an originating good.

In this case, because the water pumps are for use in an automotive good, the provisions of Part VI apply. Because the water pump is a part listed in Table B, the RVC required is 70% under the net cost method or 80% under the transaction value method.

The producer chooses to calculate the RVC using net cost as follows:

Water pump net cost = $1,000
Value of recovered materials = $600
Value other originating materials = $20
Value of non-originating materials = $280
RVC = (NC − VNM)/NC × 100
RVC = (1,000 − 280)/1,000 × 100 = 72%

The remanufactured water pumps are originating goods because their regional value content exceeds the 70% requirement by net cost method.

Example 2: Section 4

Producer A located in a USMCA country, uses recovered materials derived in the territory of a USMCA country in the production of self-propelled ''bulldozers'' classified in subheading 8429.11.

In the production of the bulldozers, Producer A uses recovered engines, classified in heading 84.07. The engines are recovered materials because they are disassembled from used bulldozers in a USMCA country and then subject to cleaning, inspecting and technical tests to verify their sound working condition.

In addition to the recovered materials, other non-originating materials, classified in subheading 8413.91, are also used in the production of the bulldozers.

Producer A's bulldozers are considered a ''remanufactured good'' because they are classified in a tariff provision set out in the definition of a remanufactured good, are partially composed of recovered materials, have a similar life expectancy and perform the same as or similar to new self-propelled bulldozers, and have a factory warranty similar to new self-propelled bulldozers.

Once the recovered engines are used in the production of, and incorporated into, the remanufactured bulldozers, the recovered engines would be treated considered as originating materials for the purpose of determining if the remanufactured bulldozers are originating.

The rule of origin set out in in Schedule I for subheading 8429.11 specifies a change in tariff classification from any other subheading.

In this case, because the recovered engines are treated as originating materials, and the non-originating materials, classified in subheading 8413.91, satisfy the requirements set out in Schedule I, the remanufactured bulldozers are originating goods.

Section 5. De Minimis

5(1) *De minimis rule for non-originating materials.* Except as otherwise provided in subsection (3) (Exceptions), a good is originating in the territory of a USMCA country if

(a) the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the USMCA countries is not more than ten percent

(i) of the transaction value of the good, determined in accordance with Schedule III (Value of Goods), and adjusted to exclude any costs incurred in the international shipment of the good, or

(ii) of the total cost of the good;

(b) if the good is also subject to a regional content requirement under the rule in which the applicable change in tariff classification is specified, the value of those non-originating materials is to be taken into account in calculating the regional value content of the good in accordance with the method set out for that good; and

(c) the good satisfies all other applicable requirements of these Regulations.

(2) *Only one rule to satisfy.* If Schedule I (PSRO Annex) sets out two or more alternative rules for the tariff provision under which the good is classified, and the good is considered an originating good under one of those rules in accordance with subsection (1), it need not satisfy the requirements of any alternative rule to be originating.

(3) *Exceptions.* Subsections (1) and (2) do not apply to:

(a) A non-originating material of heading 04.01 through 04.06, or a non-originating material that is a dairy preparation containing over 10 percent by dry weight of milk solids of subheading 1901.90 or 2106.90, used in the production of a good of heading 04.01 through 04.06;

(b) a non-originating material of heading 04.01 through 04.06, or a non-originating material that is a dairy preparation containing over 10 percent by dry weight of milk solids of subheading 1901.90 or 2106.90, used in the production of a good of:

(i) Infant preparations containing over 10 percent by dry weight of milk solids of subheading 1901.10,

(ii) mixes and doughs, containing over 25 percent by dry weight of butterfat, not put up for retail sale of subheading 1901.20,

(iii) dairy preparations containing over 10 percent by dry weight of milk solids of subheading 1901.90 or 2106.90,

(iv) goods of heading 21.05,

(v) beverages containing milk of subheading 2202.90, or

(vi) animal feeds containing over 10 percent by dry weight of milk solids of subheading 2309.90;

(c) a non-originating material of any of heading 08.05 and subheadings 2009.11 through 2009.39 that is used in the production of a good of any of subheadings 2009.11 through 2009.39 or a fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, of subheading 2106.90 or 2202.90;

(d) a non-originating material of Chapter 9 that is used in the production of instant coffee, not flavored, of subheading 2101.11;

(e) a non-originating material of Chapter 15 that is used in the production of a good of any of headings 15.01 through 15.08, 15.12, 15.14 or 15.15;

(f) a non-originating material of heading 17.01 that is used in the production of a good of any of headings 17.01 through 17.03;

(g) a non-originating material of Chapter 17 or heading 18.05 that is used in the production of a good of subheading 1806.10;

(h) a non-originating material that is pears, peaches or apricots of Chapter 8 or 20 that is used in the production of a good of heading 20.08;

(i) a non-originating material that is a single juice ingredient of heading 20.09 that is used in the production of a good of any of subheading 2009.90, or tariff item 2106.90.cc or 2202.90.bb;

(j) a non-originating material of heading 22.03 through 22.08 that used in the production of a good provided for in any of heading 22.07 or 22.08;

(k) a non-originating material that is used in the production of a good of any of Chapters 1 through 27, unless the non-originating material is of a different subheading than the good for which origin is being determined under this section; or

(l) a non-originating material that is used in the production of a good of any of Chapters 50 through 63.

(4) *De minimis rule for regional value content requirement.* A good that is subject to a regional value content requirement is originating in the territory of a USMCA country and is not required to satisfy that requirement if

(a) the value of all non-originating materials used in the production of the good is not more than ten per cent

(i) of the transaction value of the good, determined in accordance with Schedule III (Value of the Good), and adjusted to exclude any costs incurred in the international shipment of the good, or

(ii) of the total cost of the good, and

(b) the good satisfies all other applicable requirements of these Regulations.

(5) *Value of non-originating materials for subsections (1) and (4).* For the purposes of subsections (1) and (4), the value of non-originating materials is to be determined in accordance with subsections 8(1) through (6).

(6) *De minimis rule for textile goods.* A good of any of Chapters 50 through 60 or heading 96.19, that contains non-originating materials that do not satisfy the applicable change in tariff classification requirements, will be considered originating in the territory of a USMCA country if:

(a) The total weight of all those non-originating materials is not more than ten per cent of the total weight of the good, of which the total weight of elastomeric content may not exceed seven per cent of the total weight of the good; and

(b) the good satisfies all other applicable requirements of these Regulations.

(7) A good of any of Chapters 61 through 63, that contains non-originating fibers or yarns in the component of the good that determines the tariff classification that do not undergo the applicable change in tariff classification requirements, will be considered originating in the territory of a USMCA country if:

(a) The total weight of all those non-originating materials is not more than ten per cent of the total weight of that component, of which the elastomeric content may not exceed seven per cent; and

(b) the good satisfies all other applicable requirements of these Regulations.

(8) For purposes of subsection (7),

(a) the component of a good that determines the tariff classification of that good is identified in accordance with the first of the following General Rules for the Interpretation of the Harmonized System under which the identification can be determined, namely, Rule 3(b), Rule 3(c) and Rule 4; and

(b) if the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component must be taken into account in determining the weight of fibers and yarns in that component.

(9) For the purpose of determining if a good of Chapter 61 through 63 is originating, the requirements set out in Schedule I (PSRO Annex) only apply to the component that determines the tariff classification of the good. Materials that are not part of the component that determines the tariff classification of the good are disregarded when determining if a good is originating. Similarly, for the purposes of Section 5 as applicable to a good of Chapters 61 through 63, only the materials used in the component that determines the tariff classification are taken into account in the de minimis calculation.

(10) Subsection (6) does not apply to sewing thread, narrow elastic bands, and pocket bag fabric subject to the requirements set out in Chapter 61 Notes 2 through 4, Chapter 62 Notes 3 through 5 or for coated fabric as set out in Chapter 63 Note 2 of Schedule I (PSRO Annex).

(11) *Calculation of ''Total Cost'', choice of methods.* For the purposes of paragraph (1)(a)(ii) and subparagraph (4)(a)(ii), the total cost of a good is, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that good in accordance with Schedule V; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that good that can be reasonably allocated to that good in accordance with Schedule V.

(12) *Calculation of total cost.* Total cost under subsection (11) consists of the costs referred to in subsection 1(6), and is calculated in accordance with that subsection and subsection 1(7).

(13) *Value of non-originating materials—other methods.* For the purpose of determining the value under subsection (1) of non-originating materials that do not undergo an applicable change in tariff classification, if an inventory management method either recognized in the Generally Accepted Accounting Principles (GAAP) of the USMCA country where the production was performed or a method set out in Schedule VIII, is not being used to determine the value of those non-originating materials, the following methods are to be used:

(a) If the value of those non-originating materials is being determined as a percentage of the transaction value of the good and the producer chooses under subsection 7(10) to use one of the methods recognized in the GAAP of the USMCA country where the material was produced, or a method set out in Schedule VII to determine the value of those non-originating materials for the purpose of calculating the regional value content of the good, the value of those non-originating materials must be determined in accordance with that method;

(b) if the following conditions are met and if the value of those non-originating materials is equal to the sum of the values of non-originating materials, determined in accordance with the election under subparagraph (iv), divided by the number of units of the goods with respect to which the election is made

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value content requirement and paragraph (5)(a) does not apply with respect to that good,

(iii) the regional value content of the good is calculated on the basis of the net cost method, and

(iv) the producer elects under subsection 7(15), 16(1) or (10) that the regional value content of the good be calculated over a period;

(c) if the conditions below are met the value of those non-originating materials is the sum of the values of non-originating materials divided by the number of units produced during the period under subparagraph (iii):

(i) The value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is not also subject to a regional value content requirement or paragraph (6)(a) applies with respect to that good, and

(iii) the producer elects under paragraph 1(7)(b) that, for the purposes of subsection 5(11), the total cost of the good be calculated over a period; and

(d) in any other case, the value of those non-originating materials may, at the choice of the producer, be determined in accordance with an inventory management method recognized in the GAAP of the USMCA country where the production was performed or one of the methods set out in Schedule VII.

(14) *Value of non-originating materials—production of the good.* For the purposes of subsection (4), the value of the non-originating materials used in the production of the good may, at the choice of the producer, be determined in accordance with an inventory management method recognized in the GAAP of the USMCA country where the production was performed or one of the methods set out in Schedule VII

(15) *Examples illustrating de minimis rules.* Each of the following examples is an ''Example'' as referred to in subsection 1(4).

Example 1: Subsection 5(1)

Producer A, located in a USMCA country, uses originating materials and non-originating materials in the production of aluminum powder of heading 76.03. The product-specific rule of origin set out in Schedule I for heading 76.03 specifies a change in tariff classification from any other

chapter. There is no applicable regional value content requirement for this heading. Therefore, in order for the aluminum powder to qualify as an originating good under the rule set out in Schedule I, Producer A may not use any non-originating material of Chapter 76 in the production of the aluminum powder.

All of the materials used in the production of the aluminum powder are originating materials, with the exception of a small amount of aluminum scrap of heading 76.02, that is in the same chapter as the aluminum powder. Under subsection 5(1), if the value of the non-originating aluminum scrap does not exceed ten per cent of the transaction value of the aluminum powder or the total cost of the aluminum powder, whichever is applicable, the aluminum powder would be considered an originating good.

Example 2: Subsection 5(2)

Producer A, located in a USMCA country, uses originating materials and non-originating materials in the production of fans of subheading 8414.59. There are two alternative rules set out in Schedule I for subheading 8414.59, one of which specifies a change in tariff classification from any other heading. The other rule specifies both a change in tariff classification from the subheading under which parts of the fans are classified and a regional value content requirement. In order for the fan to qualify as an originating good under the first of the alternative rules, all of the materials that are classified under the subheading for parts of fans and used in the production of the completed fan must be originating materials.

In this case, all of the non-originating materials used in the production of the fan satisfy the change in tariff classification set out in the rule that specifies a change in tariff classification from any other heading, with the exception of one non-originating material that is classified under the subheading for parts of fans. Under subsection 5(1), if the value of the non-originating material that does not satisfy the change in tariff classification specified in the first rule does not exceed ten per cent of the transaction value of the fan or the total cost of the fan, whichever is applicable, the fan would be considered an originating good. Therefore, under subsection 5(2), the fan would not be required to satisfy the alternative rule that specifies both a change in tariff classification and a regional value content requirement.

Example 3: Subsection 5(2)

Producer A, located in a USMCA country, uses originating materials and non-originating materials in the production of copper anodes of heading 74.02. The product-specific rule of origin set out in Schedule I for heading 74.02 specifies both a change in tariff classification from any other heading, except from heading 74.04, under which certain copper materials are classified, and a regional value content requirement. With respect to that part of the rule that specifies a change in tariff classification, in order for the copper anode to qualify as an originating good, any copper materials that are classified under heading 74.02 or 74.04 and that are used in the production of the copper anode must be originating materials.

In this case, all of the non-originating materials used in the production of the copper anode satisfy the specified change in tariff classification, with the exception of a small amount of copper materials classified under heading 74.04. Subsection 5(1) provides that the copper anode can be considered an originating good if the value of the non-originating copper materials that do not satisfy the specified change in tariff classification does not exceed ten per cent of the transaction value of the copper anode or the total cost of the copper anode, whichever is applicable. In this case, the value of those non-originating materials that do not satisfy the specified change in tariff classification does not exceed the ten per cent limit.

However, the rule set out in Schedule I for heading 74.02 specifies both a change in tariff classification and a regional value content requirement. Under paragraph 5(1)(b), in order to be considered an originating good, the copper anode must also, except as otherwise provided in subsection 5(4), satisfy the regional value content requirement specified in that rule. As provided in paragraph 5(1)(b), the value of the non-originating materials that do not satisfy the specified change in tariff classification, together with the value of all other non-originating materials used in the production of the copper anode, will be taken into account in calculating the regional value content of the copper anode.

Example 4: Subsection 5(4)

Producer A, located in a USMCA country, primarily uses originating materials in the production of shoes of heading 64.05. The product-specific rule of origin set out in Schedule I for heading 64.05 specifies both a change in tariff classification from any heading other than headings 64.01 through 64.05 or subheading 6406.10 and a regional value content requirement.

With the exception of a small amount of materials of Chapter 39, all of the materials used in the production of the shoes are originating materials.

Under subsection 5(4), if the value of all of the non-originating materials used in the production of the shoes does not exceed ten per cent of the transaction value of the shoes or the total cost of the shoes, whichever is applicable, the shoes are not required to satisfy the regional value content requirement specified in the rule set out in Schedule I in order to be considered originating goods.

Example 5: Subsection 5(4)

Producer A, located in a USMCA country, produces barbers' chairs of subheading 9402.10. The product-specific rule of origin set out in Schedule I for goods of subheading 9402.10 specifies a change in tariff classification from any other subheading. All of the materials used in the production of these chairs are originating materials, with the exception of a small quantity of non-originating materials that are classified as parts of barbers' chairs. These parts undergo no change in tariff classification because subheading 9402.10 provides for both barbers' chairs and their parts.

Although Producer A's barbers' chairs do not qualify as originating goods under the rule set out in Schedule I, paragraph 3(4)(a) provides, among other things, that, if there is no change in tariff classification from the non-originating materials to the goods because the subheading under which the goods are classified provides for both the goods and their parts, the goods will qualify as originating goods if they satisfy a specified regional value content requirement.

However, under subsection 5(4), if the value of the non-originating materials does not exceed ten per cent of the transaction value of the barbers' chairs or the total cost of the barbers' chairs, whichever is applicable, the barbers' chairs will be considered originating goods and are not required to satisfy the regional value content requirement set out in subparagraph 3(4)(a)(ii).

Example 6: Subsection 5(6):

Producer A, located in a USMCA country, manufactures an infant diaper, classified in heading 96.19, consisting of an outer shell of 94 percent nylon and 6 percent elastomeric fabric, by weight, and a terry knit cotton absorbent crotch. All materials used are produced in a USMCA country, except for the elastomeric fabric, which is from a non-USMCA country. The elastomeric fabric is only 6 percent of the total weight of the diaper. The product otherwise satisfies all other applicable requirements of these Regulations. Therefore, the product is considered originating from a USMCA country as per subsection (6).

Example 7: Subsection 5(6)

Producer A, located in a USMCA country, produces cotton fabric of subheading 5209.11 from cotton yarn of subheading 5205.11. This cotton yarn is also produced by Producer A.

The product-specific rule of origin set out in Schedule I for subheading 5209.11, under which the fabric is classified, specifies a change in tariff classification from any other heading outside 52.08 through 52.12, except from certain headings under which certain yarns are classified, including cotton yarn of subheading 5205.11.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the fabric to qualify as an originating good, the cotton yarn that is used by Producer A in the production of the fabric must be an originating material.

At one point Producer A uses a small quantity of non-originating cotton yarn in the production of the cotton fabric. Under subsection 5(6), if the total weight of the non-originating cotton yarn does not exceed ten per cent of the total weight of the cotton fabric, it would be considered an originating good.

Example 8: Subsections 5(7) and (8)

Producer A, located in a USMCA country, produces women's dresses of subheading 6204.41 from fine wool fabric of heading 51.12. This fine wool fabric, also produced by Producer A, is the component of the dress that determines its tariff classification under subheading 6204.41.

The product-specific rule of origin set out in Schedule I for subheading 6204.41, under which the dress is classified, specifies both a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and

fabrics, including combed wool yarn and wool fabric, are classified, and a requirement that the good be cut and sewn or otherwise assembled in the territory of one or more of the USMCA countries. In addition, narrow elastics classified in subheading 5806.20 or heading 60.02 and sewing thread classified in heading 52.04, 54.01 or 55.08 or yarn classified in heading 54.02 that is used as sewing thread, must be formed and finished in the territory of one or more of the USMCA countries for the dress to be originating. Furthermore, if the dress has a pocket, the pocket bag fabric must be formed and finished in the territory of one or more of the USMCA countries for the dress to be originating.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the dress to qualify as an originating good, the combed wool yarn and the fine wool fabric made therefrom that are used by Producer A in the production of the dress must be originating materials. In addition, the sewing thread, narrow elastics and pocket bags that are used by Producer A in the production of the dress must also be formed and finished in the territory of one or more of the USMCA countries.

At one point Producer A uses a small quantity of non-originating combed wool yarn in the production of the fine wool fabric. Under subsection 5(7), if the total weight of the non-originating combed wool yarn does not exceed ten per cent of the total weight of all the yarn used in the production of the component of the dress that determines its tariff classification, that is, the wool fabric, the dress would be considered an originating good.

Example 9: Subsection 5(7)

Producer A, located in a USMCA country, manufactures women's knit sweaters, which have knit bodies and woven sleeves. The knit body is composed of 95 percent polyester and 5 percent spandex, by weight. The sleeves are made of non-USMCA woven fabric that is 100 percent polyester. All materials of the knit body are from a USMCA country, except for the spandex, which is from a non-USMCA country. The sweater is cut and sewn in a USMCA country. Since the knit body gives the garment its essential character, the sweater is classified in subheading 6110.30. The product-specific rule of origin set out in Schedule I for subheading 6110.30 is that the product is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the USMCA countries. The sleeves are disregarded in determining whether the sweater originates in a USMCA country because only the component that determines the tariff classification of the good must be originating and the de minimis provision is applied to that component. Moreover, the total weight of the spandex is less than 10 percent of the total weight of the knit body fabric, which is the component that determines the tariff classification of the sweater, and the spandex does not exceed seven percent of the total weight of good. Assuming that the women's knit sweater satisfies all other applicable requirements of these Regulations, the women's knit sweater is originating from the USMCA country.

Example 10: Subsection 5(9)

A men's shirt of Chapter 61 is made using two different fabrics; one for the body and another for the sleeves. The component that determines the tariff classification of the men's shirt would be the fabric used for the body, as it constitutes the material that predominates by weight and makes up the largest surface area of the shirt's exterior. If this fabric is produced using non-originating fibers and yarns that do not satisfy a tariff change rule, the de minimis provision would be calculated on the basis of the total weight of the non-originating fibers or yarns used in the production of the fabric that makes up the body of the shirt. The weight of these non-originating fibers or yarns must be ten percent or less of the total weight of that fabric and any elastomeric content must be seven per cent or less of the total weight of that fabric.

Alternatively, if the shirt is made entirely of the same fabric, the component that determines the tariff classification of that shirt would be that fabric, as the shirt is made out of the same material throughout. Therefore, under this second scenario, the total weight of all non-originating fibers and yarns used in the production of the shirt that do not satisfy a tariff change rule, must be ten percent or less of the total weight of the shirt, and any elastomeric content must be seven per cent or less of the total weight of that shirt, for the shirt to be considered as an originating good.

Example 11: Subsection 5(9)

Producer A, located in a USMCA country, produces women´s blouses of subheading 6206.40 from a fabric also produced by Producer A using 90% by weight originating polyester yarns of subheading 5402.33, 3% by weight non-originating lyocell yarn of subheading 5403.49 and 7% by weight non-originating elastomeric filament yarn of subheading 5402.44. This fabric is the component of the women´s blouses that determines its tariff classification under subheading 6206.40.

The product-specific rule of origin of Schedule I applicable to the women´s blouses of subheading 6206.40 requires a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including polyester, lyocell and elastomeric filament yarns, are classified and a requirement that the good is cut and sewn or otherwise assembled in the territory of one or more of the USMCA countries.

In this case, the non-originating lyocell yarns of subheading 5403.49 and the non-originating elastomeric filament yarn of subheading 5402.44 do not satisfy the change in tariff classification required by the product-specific rule of origin of Schedule I, because the product specific rule of origin for heading 62.06 excludes a change from Chapter 54 to heading 62.06.''

However, according to subsection (7), a textile or apparel good classified in Chapters 61 through 63 of the Harmonized System that contains non-originating fibers or yarns in the component of the good that determines its tariff classification that do not satisfy the applicable change in tariff classification, will nonetheless be considered an originating good if the total weight of all those fibers or yarns is not more than 10 percent of the total weight of that component, of which the total weight of elastomeric content may not exceed 7 percent of the total weight of the component, and such good meets all the other applicable requirements of these Regulations.

Since the weight of the non-originating materials used by Producer A does not exceed 10 percent of the total weight of the component that determines the tariff classification of the women´s blouses, and the weight of elastomeric content also does not exceed 7 percent of such total weight, the women´s blouses qualify as originating goods.

Example 12: Subsection 5(10)

A producer located in a USMCA country manufactures boys' swimwear of subheading 6211.11 from fabric that has been woven in a USMCA country from yarn spun in a USMCA country; however, the producer uses non-originating narrow elastic of heading 60.02 in the waist-band of the swimwear. As a result of the use of non-originating narrow elastic of heading 60.02 in the waistband, and provided the garment is imported into a USMCA country at least 18 months after the Agreement enters into force, the swimwear is considered non-originating because it does not satisfy the requirement set out in Note 3 of Chapter 62. In addition, subsection 5(7) is not applicable regarding the narrow elastic of 60.02 and the good is therefore a non-originating good.

Section 6. Sets of Goods, Kits or Composite Goods

6 (1) This section applies to a good that is classified as a set as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System.

(2) *Requirements.* Except as otherwise provided in Schedule I (PSRO Annex), a set is originating in the territory of one or more of the USMCA countries only if each good in the set is originating and both the set and the goods meet the other applicable requirements of these Regulations.

(3) *Exceptions.* Notwithstanding, subsection 2, a set is only originating if the value of all the non-originating goods included in the set does not exceed 10 percent of the value of the set.

(4) *Value.* For the purposes of subsection 3, the value of non-originating goods in the set and the value of the set is to be calculated in the same manner as the value of non-originating materials determined in accordance with section 8 and the value of the good determined in accordance with section 7.

(5) *Examples. Each of the following examples is an ''Example'' as referred to in subsection 1(4).*

Example 1 (paint set)

Producer A assembles a paint set for arts and crafts. The set includes tubes of paint, paint brushes, and paper all presented in a reusable wooden box. The paint set for arts and crafts is classified in subheading 3210.00 as a result of the application of Rule 3 of the General Rules for the Interpretation of the Harmonized System and, as a result, Section 6 will apply with respect to such set. The paint, paper and wooden box are all originating as they each undergo the changes

required in the product-specific rules of origin in Schedule I. The paint brushes, which represent four percent of the value of the set, are produced in the territory of a non-USMCA country and are therefore non-originating. The set is nonetheless originating.

Example 2: Subsection 6(2)

Producer A, located in a USMCA country, uses originating materials and non-originating materials to assemble a manicure set of subheading 8214.20. The set includes a nail nipper, cuticle scissors, a nail clipper and a nail file with cardboard support, all presented in a plastic case with zipper. The items are not classified as a set as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System. The Harmonized System specifies that manicure sets are classified in subheading 8214.20. This means that the specific rule of origin set out in Schedule I is applied. This rule requires a change in tariff classification from any other chapter. In order for the manicure set to qualify as an originating good under the rule set out in Schedule I, Producer A may not use any non-originating material of Chapter 82 in the assembly of the manicure set.

In this case, Producer A, located in a USMCA country, produces the nail nipper, the cuticle scissors and the nail clipper included in the set, and all qualify as originating. Despite being classified in the same chapter as the manicure set (chapter 82), the originating nail nipper, the cuticle scissors and the nail clipper satisfy the change in tariff classification applicable to the manicure set. The nail file with cardboard support (6805.20) and the plastic case with zipper (4202.12) are imported from outside the territories of the USMCA countries; however, these items are not classified in chapter 82, so they satisfy the applicable change in tariff classification. Therefore, the manicure set is an originating good.

Example 3: Pants set Section 6(2)

Producer A makes a pants set, containing men's cotton denim trousers and a polyester belt, packed together for a retail sale. The trousers are made of cotton fabric formed and finished from yarn in a USMCA country. The sewing thread is formed and finished in a USMCA country. The pocket bag fabric is formed and finished in a USMCA country, of yarn wholly formed in a USMCA country. The trousers are cut and sewn in USMCA country A. A polyester webbing belt with a metal buckle is made in a non-USMCA country and shipped to USMCA country A, where it is threaded through the belt loops of the trousers. The value of the belt is 8% of the value of the trousers and belt combined.

The men's trousers are classified under subheading 6203.42. The rule of origin set out in Schedule I for subheading 6203.42 requires that the trousers be made from fabric produced in a USMCA country from yarn produced in a USMCA country. The trousers satisfy the product-specific rules provided in Schedule I and are considered originating. However, the belt does not satisfy the rules and would not be considered originating. The set is nonetheless an originating good if the belt value is 10% or less of the value of the set. Since the value of the belt is 8% of the value of the set, the men's trousers and belt set would be treated as an originating good under the USMCA.

Example 4: Shirt and Tie Set Section 6(2)

Producer A makes a boys' shirt and tie set in a USMCA country. The shirt is constructed from 55% cotton, 45% polyester, solid color, dyed, woven fabric, classified in subheading 5210.31. The fabric contains 73.2 total yarns per square centimeter and 76 metric yarns. The shirt is packaged in a retail polybag with a coordinating color, 100% polyester, woven fabric tie. The yarns used in the shirt fabric are spun in non-USMCA country and the fabric is woven and dyed in the same non-USMCA country. The shirt fabric is sent to the USMCA country where it is cut and sewn into finished garments. The coordinating tie is made in a non-USMCA country from fabric that is woven in that country from yarns that are spun in that country. The value of the coordinating tie is approximately 13% of the value of the set.

The shirt is classified under heading 62.05. The shirt satisfies the product-specific rule for subheading 62.05 set out in Schedule I and is considered originating because it is wholly made from fabric of heading 5210.31 (not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric) and cut and sewn into finished garments in the USMCA country. On the other hand, the tie does not satisfy the product specific rule for heading 62.15 and would not be considered originating. For purposes of the sets rule, provided the tie is valued at 10% or less of the value of the set, the set will be treated as originating. However, since the value of the coordinating tie is approximately 13% of the value of the set, the shirt and tie set would not be treated as an originating good under the USMCA.

Example 5: Chef set Section 6(2)

Producer A, located in a USMCA country, produces a chef set for retail sale using originating and non-originating materials. This set includes an apron, cooking gloves and a chef hat. The chef set is classified in heading 62.11 as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System. For this reason, subsection (3) applies to this set. Both the apron and cooking gloves meet the product-specific rules of origin for their respective product categories and are therefore considered to be originating. The chef hat, which represents 9.7 percent of the value of the set, is produced in the territory of a non-USMCA country and is therefore non-originating. The set is nonetheless an originating good because less than ten percent of the value of the set is non-originating.

Part III

Section 7. Regional Value Content

7 (1) *Calculation.* Except as otherwise provided in subsection (6), the regional value content of a good is to be calculated, at the choice of the importer, exporter or producer of the good, on the basis of either the transaction value method or the net cost method.

(2) *Transaction value method.* The transaction value method for calculating the regional value content of a good is as follows:

RVC = (TV − VNM)/TV * 100

Where

RVC is the regional value content of the good, expressed as a percentage;

TV is the transaction value of the good, determined in accordance with Schedule III with respect to the transaction in which the producer of the good sold the good, adjusted to exclude any costs incurred in the international shipment of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with section 8.

(3) *Net cost method.* The net cost method for calculating the regional value content of a good is as follows:

RVC = (NC − VNM)/NC * 100

Where

RVC is the regional value content of the good, expressed as a percentage;

NC is the net cost of the good, calculated in accordance with subsection (11); and

VNM is the value of non-originating materials used by the producer in the production of the good, determined, except as otherwise provided in sections 14 and 15 and, in accordance with section 8.

(4) *Non-originating materials—values not included.* For the purpose of calculating the regional value content of a good under subsection (2) or (3), the value of non-originating materials used by a producer in the production of the good must not include

(a) the value of any non-originating materials used by another producer in the production of originating materials that are subsequently acquired and used by the producer of the good in the production of that good; or

(b) the value of any non-originating materials used by the producer in the production of a self-produced material that is an originating material and is designated as an intermediate material.

(5) *Self-produced material.* For the purposes of subsection (4),

(a) in the case of any self-produced material that is not designated as an intermediate material, only the value of any non-originating materials used in the production of the self-produced material is to be included in the value of non-originating materials used in the production of the good; and

(b) if a self-produced material that is designated as an intermediate material and is an originating material is used by the producer of the good with non-originating materials (whether or not those non-originating materials are produced by that producer) in the production of the good, the value of those non-originating materials is to be included in the value of non-originating materials.

(6) *Net cost method—when required.* The regional value content of a good is to be calculated only on the basis of the net cost method if the rule set in Schedule I (PSRO Annex) does not provide a rule based on the transaction value method;

(7) *Net cost method—when change permitted.* If the importer, exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method and the customs administration of a USMCA country subsequently notifies that importer, exporter or producer in writing, during the course of a verification of origin, that

(a) the transaction value of the good, as determined by the importer, exporter or producer, is required to be adjusted under section 4 of Schedule III, or

(b) the value of any material used in the production of the good, as determined by the importer, exporter or producer, is required to be adjusted under section 5 of Schedule VI, the importer, exporter or producer may choose that the regional value content of the good be calculated on the basis of the net cost method, in which case the calculation must be made within 30 days after receiving the notification, or such longer period as that customs administration specifies.

(8) *Net cost method—no change permitted.* If the importer, exporter or producer of a good chooses that the regional value content of the good be calculated on the basis of the net cost method and the customs administration of a USMCA country subsequently notifies that importer, exporter or producer in writing, during the course of a verification of origin, that the good does not satisfy the applicable regional value content requirement, the importer, exporter or producer of the good may not recalculate the regional value content on the basis of the transaction value method.

(9) *Clarification.* Nothing in subsection (7) is to be construed as preventing any review and appeal under Article 5.15 of the Agreement, as implemented in each USMCA country, of an adjustment to or a rejection of

(a) the transaction value of the good; or

(b) the value of any material used in the production of the good.

(10) *Value of identical non-originating materials.* For the purposes of the transaction value method, if non-originating materials that are the same as one another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good, the value of those non-originating materials may, at the choice of the producer of the good, be determined in accordance with one of the methods set out in Schedule VII.

(11) *Calculating the net cost of a good.* For the purposes of subsection (3), the net cost of a good may be calculated, at the choice of the producer of the good, by

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any excluded costs that are included in that total cost, and reasonably allocating, in accordance with Schedule V, the remainder to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating, in accordance with Schedule V, that total cost to the good, and subtracting any excluded costs that are included in the amount allocated to that good; or

(c) reasonably allocating, in accordance with Schedule V, each cost that forms part of the total cost incurred with respect to the good so that the aggregate of those costs does not include any excluded costs.

(12) *Calculation of total cost.* Total cost under subsection (11) consists of the costs referred to in subsection 1(6), and is calculated in accordance with that subsection and subsection 1(7).

(13) *Calculation of net cost of a good.* For the purpose of calculating the net cost under subsection (11),

(a) excluded costs must be the excluded costs that are recorded on the books of the producer of the good;

(b) excluded costs that are included in the value of a material that is used in the production of the good must not be subtracted from or otherwise excluded from the total cost; and

(c) excluded costs do not include any amount paid for research and development services performed in the territory of a USMCA country.

(14) *Non-allowable interest.* For the purpose of calculating non-allowable interest costs, the determination of whether interest costs incurred by a producer are more than 700 basis points above the interest rate of comparable maturities issued by the federal government of the country in which the producer is located is to be made in accordance with Schedule IX.

(15) *Use of ''averaging'' over a period.* For the purposes of the net cost method, the regional value content of the good, other than a good with respect to which an election to average may be made under subsection 16(1) or (10), may be calculated, if the producer elects to do so, by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the good with respect to the good and identical goods or similar goods, or any combination thereof, produced in a single plant by the producer over

(i) a one-month period,

(ii) any consecutive three-month or six-month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year; and

(b) using the sums referred to in paragraph (a) as the net cost and the value of non-originating materials, respectively.

(16) *Application.* The calculation made under subsection (15) applies with respect to all units of the good produced during the period chosen by the producer under paragraph (15)(a).

(17) *No change to the goods or period.* An election made under subsection (15) may not be rescinded or modified with respect to the goods or the period with respect to which the election is made.

(18) *Period considered to be chosen.* If a producer chooses a one, three or six-month period under subsection (15) with respect to a good, the producer will be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to this good.

(19) *Method and period for remainder of fiscal year.* If the net cost method is required to be used or has been chosen and an election has been made under subsection (15), the regional value content of the good is to be calculated on the basis of the net cost method over the period chosen under that subsection and for the remainder of the producer's fiscal year.

(20) *Analysis of actual costs.* Except as otherwise provided in subsections 16(9), if the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under paragraph (15)(a), the producer must conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the good.

(21) *Option to treat any material as non-originating.* For the purpose of calculating the regional value content of a good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material.

(22) *Examples.* Each of the following examples is an ''Example'' as referred to in subsection 1(4).

Example 1: Example of point of direct shipment (with respect to adjusted to exclude any costs incurred in the international shipment of the good)

A producer has only one factory, at which the producer manufactures finished office chairs. Because the factory is located close to transportation facilities, all units of the finished good are stored in a factory warehouse 200 meters from the end of the production line. Goods are shipped worldwide from this warehouse. The point of direct shipment is the warehouse.

Example 2: Examples of point of direct shipment (with respect to adjusted to exclude any costs incurred in the international shipment of the good)

A producer has six factories, all located within the territory of one of the USMCA countries, at which the producer produces garden tools of various types. These tools are shipped worldwide, and orders usually consist of bulk orders of various types of tools. Because different tools are manufactured at different factories, the producer decided to consolidate storage and shipping facilities and ships all finished products to a large warehouse located near the seaport, from which all orders are shipped. The distance from the factories to the warehouse varies from 3 km to 130 km. The point of direct shipment for each of the goods is the warehouse.

Example 3: Examples of point of direct shipment (with respect to adjusted to exclude any costs incurred in the international shipment of the good)

A producer has only one factory, located near the center of one of the USMCA countries, at which the producer manufactures finished office chairs. The office chairs are shipped from that factory to three warehouses leased by the producer, one on the west coast, one near the factory and one on the east coast. The office chairs are shipped to buyers from these warehouses, the shipping location depending on the shipping

distance from the buyer. Buyers closest to the west coast warehouse are normally supplied by the west coast warehouse, buyers closest to the east coast are normally supplied by the warehouse located on the east coast and buyers closest to the warehouse near the factory are normally supplied by that warehouse. In this case, the point of direct shipment is the location of the warehouse from which the office chairs are normally shipped to customers in the location in which the buyer is located.

Example 4: Subsection 7(3), net cost method

A producer located in USMCA country A sells Good A that is subject to a regional value content requirement to a buyer located in USMCA country B. The producer of Good A chooses that the regional value content of that good be calculated using the net cost method. All applicable requirements of these Regulations, other than the regional value content requirement, have been met. The applicable regional value content requirement is 50 per cent.

In order to calculate the regional value content of Good A, the producer first calculates the net cost of Good A. Under paragraph 6(11)(a), the net cost is the total cost of Good A (the aggregate of the product costs, period costs and other costs) per unit, minus the excluded costs (the aggregate of the sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs) per unit. The producer uses the following figures to calculate the net cost:

Product costs:

Value of originating materials $30.00
Value of non-originating materials 40.00
Other product costs 20.00
Period costs 10.00
Other costs 0.00
Total cost of Good A, per unit $100.00

Excluded costs:

Sales promotion, marketing and after-sales service cost $5.00
Royalties 2.50
Shipping and packing costs 3.00
Non-allowable interest costs 1.50
Total excluded costs $12.00

The net cost is the total cost of Good A, per unit, minus the excluded costs.

Total cost of Good A, per unit: $100.00
Excluded costs:—12.00
Net cost of Good A, per unit: $ 88.00

The value for net cost ($88) and the value of non-originating materials ($40) are needed in order to calculate the regional value content. The producer calculates the regional value content of Good A under the net cost method in the following manner:

*RVC = (NC − VNM)/NC*100*
*= (88–40)/88*100*
= 54.5%

Therefore, under the net cost method, Good A qualifies as an originating good, with a regional value content of 54.5 per cent.

Example 5: Paragraph 7(11)(a)

A producer in a USMCA country produces Good A and Good B during the producer's fiscal year.

The producer uses the following figures, which are recorded on the producer's books and represent all of the costs incurred with respect to both Good A and Good B, to calculate the net cost of those goods:

Product costs:

Value of originating materials $2,000
Value of non-originating materials 1,000
Other product costs 2,400
Period costs: (including $1,200 in excluded costs) 3,200
Other costs: 400
Total cost of Good A and Good B: $9,000

The net cost is the total cost of Good A and Good B, minus the excluded costs incurred with respect to those goods.

Total cost of Good A and Good B: $9,000
Excluded costs:—1,200
Net cost of Good A and Good B: $7,800

The net cost must then be reasonably allocated, in accordance with Schedule V, to Good A and Good B.

Example 6: Paragraph 7(11)(b))

A producer located in a USMCA country produces Good A and Good B during the producer's fiscal year. In order to calculate the regional value content of Good A and Good B, the producer uses the following figures that are recorded on the producer's books and incurred with respect to those goods:

Product costs:

Value of originating materials $2,000
Value of non-originating materials 1,000
Other product costs 2,400
Period costs: (including $1,200 in excluded costs) 3,200
Other costs: 400
Total cost of Good A and Good B: $9,000

Under paragraph 6(11)(b), the total cost of Good A and Good B is then reasonably allocated, in accordance with Schedule VII, to those goods. The costs are allocated in the following manner:

Allocated to Good A 5,220
Allocated to Good B 3,780
Total cost ($9,000 for both Good A and Good B)

The excluded costs ($1,200) that are included in total cost allocated to Good A and Good B, in accordance with Schedule VII, are subtracted from that amount.

Total Excluded costs:

Sales promotion, marketing and after-sale service costs 500
Royalties 200
Shipping and packing costs 500

Excluded Cost Allocated to Good A:

Sales promotion, marketing and after-sale service costs 290
Royalties 116
Shipping and packing costs 290
Net cost (total cost minus excluded costs): $4,524

Excluded Cost Allocated to Good B:

Sales promotion, marketing and after-sale service costs 210
Royalties 84
Shipping and packing costs 210
Net cost (total cost minus excluded costs): $3,276

The net cost of Good A is thus $4,524, and the net cost of Good B is $3,276.

Example 7: Paragraph 7(11)(c)

A producer located in a USMCA country produces Good C and Good D. The following costs are recorded on the producer's books for the months of January, February and March, and each cost that forms part of the total cost are reasonably allocated, in accordance with Schedule VII, to Good C and Good D.

Total cost: Good C and Good D (in thousands of dollars)

Product costs:

Value of originating materials 100
Value of non-originating materials 900
Other product costs 500
Period costs: (including $420 in excluded costs) 5,679
Minus Excluded costs 420
Other costs: 0
Total cost (aggregate of product costs, period costs and other costs): 6,759

Allocated to Good C (in thousands of dollars):

Product costs:

Value of originating materials 0
Value of non-originating materials 800
Other product costs 300
Period costs: (including $420 in excluded costs) 3,036
Minus Excluded costs 300
Other costs: 0
Total cost (aggregate of product costs, period costs and other costs): 3,836

Allocated to Good D (in thousands of dollars):

Product costs:

Value of originating materials 100
Value of non-originating materials 100
Other product costs 200
Period costs: (including $420 in excluded costs) 2,643
Minus Excluded costs 120
Other costs: 0
Total cost (aggregate of product costs, period costs and other costs): 2,923

Example 8: Subsection 7(12)

Producer A, located in a USMCA country, produces Good A that is subject to a regional value content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a USMCA country. Material X is a non-originating material and is used in the production of Good A. Producer A provides Producer B, at no charge, with molds to be used in the production of Material X. The cost of the molds that is recorded on the books of Producer A has been expensed in the current year. Pursuant to subparagraph 4(1)(b)(ii) of Schedule VI, the value of the molds is included in the value of Material X. Therefore, the cost of the molds that is recorded on the books of Producer A and that has been expensed in the current year cannot be included as a separate cost in the net cost of Good A because it has already been included in the value of Material X.

Example 9: Subsection 7(12)

Producer A, located in a USMCA country, produces Good A that is subject to a regional value content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method and averages the calculation over the producer's fiscal year under subsection 7(15). Producer A determines that during that fiscal year Producer A incurred a gain on foreign currency conversion of $10,000 and a loss on foreign currency conversion of $8,000,

resulting in a net gain of $2,000. Producer A also determines that $7,000 of the gain on foreign currency conversion and $6,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A, and $3,000 of the gain on foreign currency conversion and $2,000 of the loss on foreign currency conversion is not related to the production of Good A. The producer determines that the total cost of Good A is $45,000 before deducting the $1,000 net gain on foreign currency conversion related to the production of Good A. The total cost of Good A is therefore $44,000. That $1,000 net gain is not included in the value of non-originating materials under subsection 8(1).

Example 10: Subsection 7(12)

Given the same facts as in example 9, except that Producer A determines that $6,000 of the gain on foreign currency conversion and $7,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A. The total cost of Good A is $45,000, which includes the $1,000 net loss on foreign currency conversion related to the production of Good A. That $1,000 net loss is not included in the value of non-originating materials under subsection 8(1).

Part IV

Section 8. Materials

8 (1) *Value of material used in production.* Except as otherwise provided for non-originating materials used in the production of a good referred to in section 14 or subsection 15(1), and except in the case of indirect materials, intermediate materials and packing materials and containers, for the purpose of calculating the regional value content of a good and for the purposes of subsection 5(1) and (4), the value of a material that is used in the production of the good is to be

(a) except as otherwise provided in subsection (4), if the material is imported by the producer of the good into the territory of the USMCA country in which the good is produced, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the material,

(b) if the material is acquired by the producer of the good from another person located in the territory of the USMCA country in which the good is produced

(i) the price paid or payable by the producer in the USMCA country where the producer is located,

(ii) the value as determined for an imported material in subparagraph (a), or (iii) the earliest ascertainable price paid or payable in the territory of the USMCA country where the good is produced, or

(c) for a material that is self-produced

(i) all the costs incurred in the production of the material, which includes general expenses, and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued provided that no self-produced material that has been used in its production has been valued including the amount equivalent or equal to the profit according to this paragraph.

(2) *Adjustments to the value of materials.* The following costs may be deducted from the value of a non-originating material or material of undetermined origin, if they are included under subsection (1):

(a) the costs of freight, insurance and packing and all other costs incurred in transporting the material to the location of the producer;

(b) duties and taxes paid or payable with respect to the material in the territory of one or more of the USMCA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(c) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the USMCA countries, and

(d) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

(3) *Documentary evidence required.* If the cost or expense listed in subsection (2) is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost or expense.

(4) *Transaction value not acceptable.* For the purposes of paragraph (1)(a), if the transaction value of the material referred to in that paragraph is not acceptable or if there is no transaction value in accordance with Schedule IV (Unacceptable Transaction Value), the value of the material must be determined in accordance with Schedule VI (Value of Materials) and, if the costs referred to in subsection (2) are included in that value, those costs may be deducted from that value.

(5) *Costs recorded on books.* For the purposes of subsection (1), the costs referred to in paragraph (1)(c) are to be the costs referred to in those paragraphs that are recorded on the books of the producer of the good.

(6) *Designation of self-produced material as an intermediate material.* For the purpose of calculating the regional value content of a good the producer of the good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that if an intermediate material is subject to a regional value content requirement, no other self-produced material that is subject to a regional value content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material.

(7) *Particulars.* For the purposes of subsection (6),

(a) in order to qualify as an originating material, a self-produced material that is designated as an intermediate material must qualify as an originating material under these Regulations;

(b) the designation of a self-produced material as an intermediate material is to be made solely at the choice of the producer of that self-produced material; and

(c) except as otherwise provided in subsection 9(4), the proviso set out in subsection (6) does not apply with respect to an intermediate material used by another producer in the production of a material that is subsequently acquired and used in the production of a good by the producer referred to in subsection (6).

(8) *Value of an intermediate material.* The value of an intermediate material will be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that intermediate material in accordance with Schedule V; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material in accordance with Schedule V.

(9) *Calculation of total cost.* Total cost under subsection (8) consists of the costs referred to in subsection 1(6), and is calculated in accordance with that subsection and subsection 1(7).

(10) *Rescission of a designation.* If a producer of a good designates a self-produced material as an intermediate material under subsection (6) and the customs administration of a USMCA country into which the good is imported determines during a verification of origin of the good that the intermediate material is a non-originating material and notifies the producer of this in writing before the written determination of whether the good qualifies as an originating good, the producer may rescind the designation, and the regional value content of the good must be calculated as though the self-produced material were not so designated.

(11) *Effect of a rescission.* A producer of a good who rescinds a designation under subsection (10) may, not later than 30 days after the customs administration referred to in subsection (10) notifies the producer in writing that the self-produced material referred to in paragraph (a) is a non-originating material, designate as an intermediate material another self-produced material that is incorporated into the good, subject to the provision set out in subsection (6).

(12) *Second rescission.* If a producer of a good designates another self-produced material as an intermediate material under subsection (6) and the customs administration referred to in subsection (10) determines during the verification of origin of the good that that self-produced material is a non-originating material,

(a) the producer may rescind the designation, and the regional value content of the good will be calculated as though the self-produced material were not so designated; and,

(b) the producer may not designate another self-produced material that is incorporated into the good as an intermediate material.

(13) *Indirect materials.* For the purpose of determining whether a good is an originating good, an indirect material that is used in the production of the good

(a) will be considered to be an originating material, regardless of where that indirect material is produced; and

(b) if the good is subject to a regional value content requirement, for the purpose of calculating the net cost under the net cost method, the value of the indirect material is to be the costs of that material that are recorded on the books of the producer of the good.

(14) *Packaging materials and containers.* Packaging materials and containers, if classified under the Harmonized System with the good that is packaged therein, will be disregarded for the purpose of

(a) determining whether all of the non-originating materials used in the production of the good undergo an applicable change in tariff classification;

(b) determining whether a good is wholly obtained or produced; and

(c) determining under subsection 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification.

(15) *Value of packaging materials and containers—cases where taken into account.* If packaging materials and containers in which a good is packaged for retail sale are classified under the Harmonized System with the good that is packaged therein and that good is subject to a regional value content requirement, the value of those packaging materials and containers will be taken into account as originating materials or non-originating materials, as the case may be, for the purpose of calculating the regional value content of the good.

(16) *Packaging materials and containers—self-produced.* For the purposes of subsection (15), if packaging materials and containers are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (6).

(17) *Packing materials and containers.* For the purpose of determining whether a good is an originating good, packing materials and containers are disregarded.

(18) *Fungible materials and fungible goods.* A fungible material or good is originating if:

(a) when originating and non-originating fungible materials

(i) are withdrawn from an inventory in one location and used in the production of the good, or

(ii) are withdrawn from inventories in more than one location in the territory of one or more of the USMCA countries and used in the production of the good at the same production facility, the determination of whether the materials are originating is made on the basis of an inventory management method recognized in the Generally Accepted Accounting Principles of, or otherwise accepted by, the USMCA country in which the production is performed or an inventory management method set out in Schedule VIII; or

(b) when originating and non-originating fungible goods are commingled and exported in the same form, the determination of whether the goods are originating is made on the basis of an inventory management method recognized in the Generally Accepted Accounting Principles of, or otherwise accepted by, the USMCA country from which the good is exported or an inventory management method set out in Schedule VIII.

(19) The inventory management method selected under subsection 18 must be used throughout the fiscal year of the producer or the person that selected the inventory management method.

(20) An importer may claim that a fungible material or good is originating if the importer, producer, or exporter has physically segregated each fungible material or good as to allow their specific identification.

(21) *Choice of inventory management method.* If fungible materials referred to in paragraph (18)(a) and fungible goods referred to in paragraph (18)(b) are withdrawn from the same inventory, the inventory management method used for the materials must be the same as the inventory management method used for the goods, and if the averaging method is used, the respective averaging periods for fungible materials and fungible goods are to be used.

(22) *Written notice.* A choice of inventory management methods under subsection (18) will be considered to have been made when the customs administration of the USMCA country into which the good is imported is informed in writing of the choice during the course of a verification of origin of the good.

(23) *Accessories, spare parts, tools or instructional or other information materials.* For the purposes of subsections (24) through (27), ''accessories, spare parts, tools, or instructional or other information materials'' are covered when

(a) they are classified with, delivered with, but not invoiced separately from the good, and

(b) their type, quantity and value are customary for the good, within the industry that produces the good.

(24) *Exclusion.* Accessories, spare parts, tools, or instructional or other information materials are to be disregarded for the purpose of determining

(a) whether a good is wholly obtained;

(b) whether all the non-originating materials used in the production of the good satisfy a process or applicable change in tariff classification requirement established in Schedule I (PSRO Annex); or,

(c) under subsection 5(1), the value of non-originating materials that do not undergo an applicable change in tariff classification.

(25) *Value for regional value content requirement.* If a good is subject to a regional value content requirement, the value of accessories, spare parts, tools, or instructional or other information materials is to be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the good.

(26) *Designation.* For the purposes of subsection (25), if accessories, spare parts, tools, or instructional or other information materials are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (6).

(27) *Originating status.* A good's accessories, spare parts, tools, or instructional or other information materials have the originating status of the good with which they are delivered.

(28) *Examples illustrating the provisions on materials.* Each of the following examples is an ''Example'' as referred to in subsection 1(4).

Example 1: Subsection 8(4), Transaction Value not Determined in a Manner Consistent with Schedule VI

Producer A, located in USMCA country A, imports a bicycle chainring into USMCA country A. Producer A purchased the chainring from a middleman located in country B. The middleman purchased the chainring from a manufacturer located in country B. Under the laws in USMCA country A that implement the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the customs value of the chainring was based on the price actually paid or payable by the middleman to the manufacturer. Producer A uses the chainring to produce a bicycle, and exports the bicycle to USMCA country C. The bicycle is subject to a regional value content requirement.

Under subsection 3(1) of Schedule VI (Value of Materials), the price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. Section 1 of that Schedule defines producer and seller for the purposes of the Schedule. A producer is the person who uses the material in the production of a good that is subject to a regional value content requirement. A seller is the person who sells the material being valued to the producer.

The transaction value of the chainring was not determined in a manner consistent with Schedule VI because it was based on the price actually paid or payable by the middleman to the manufacturer, rather than on the price actually paid or payable by Producer A to the middleman. Thus, subsection 8(4) applies and the chainring is valued in accordance with Schedule IV.

Example 2: Subsection 8(7), Value of Intermediate Materials

A producer located in a USMCA country produces a bicycle, which is subject to a regional value content requirement under section 3(2). The producer also produces a chain ring, which is used in the production of the bicycle. Both originating materials and non-originating materials are used in the production of the chainring. The chainring is subject to a change in tariff classification requirement under section 3(2). The costs to produce the chainring are the following:

Product costs:

Value of originating materials $ 1.00
Value of non-originating materials 7.50
Other product costs 1.50
Period costs (including $0.30 in royalties): 0.50
Other costs: 0.10
Total cost of the chainring: $10.60

The producer designates the chainring as an intermediate material and determines that, because all of the non-originating materials that are used in the production of the chainring undergo an applicable change in tariff classification set out in Schedule I, the chainring would, under section 3(2) qualify as an originating material. The cost

of the non-originating materials used in the production of the chainring is therefore not included in the value of non-originating materials that are used in the production of the bicycle for the purpose of determining its regional value content of the bicycle. Because the chainring has been designated as an intermediate material, the total cost of the chainring, which is $10.60, is treated as the cost of originating materials for the purpose of calculating the regional value content of the bicycle. The total cost of the bicycle is determined in accordance with the following figures:

Product costs:

Value of originating materials
—intermediate materials $10.60
—other materials 3.00
Value of non-originating materials 5.50
Other product costs 6.50
Period costs: 2.50
Other costs: 0.10
Total cost of the bicycle: $28.20

Example 3: Subsection 8(7), Effects of the Designation of Self-produced Materials on Net Cost

The ability to designate intermediate materials helps to put the vertically integrated producer who is self-producing materials that are used in the production of a good on par with a producer who is purchasing materials and valuing those materials in accordance with subsection 8(1). The following situations demonstrate how this is achieved:

Situation 1

A producer located in a USMCA country produces a bicycle, which is subject to a regional value content requirement of 50 per cent under the net cost method. The bicycle satisfies all other applicable requirements of these Regulations. The producer purchases a bicycle frame, which is used in the production of the bicycle, from a supplier located in a USMCA country. The value of the frame determined in accordance with subsection 8(1) is $11.00. The frame is an originating material. All other materials used in the production of the bicycle are non-originating materials.

The net cost of the bicycle is determined as follows:

Product costs:

Value of originating materials (bicycle frame) $11.00
Value of non-originating materials 5.50
Other product costs 6.50
Period costs: (including $0.20 in excluded costs) 0.50
Other costs: 0.10
Total cost of the bicycle: $23.60
Excluded costs: (included in period costs) 0.20
Net cost of the bicycle: $23.40

The regional value content of the bicycle is calculated as follows:

*RVC = (NC − VNM)/NC*100*
*= ($23.40 − $5.50)/$23.50*100*
= 76.5%

The regional value content of the bicycle is 76.5 per cent, and the bicycle, therefore, qualifies as an originating good.

Situation 2

A producer located in a USMCA country produces a bicycle, which is subject to a regional value content requirement of 50 per cent under the net cost method. The bicycle satisfies all other applicable requirements of these Regulations. The producer self-produces the bicycle frame which is used in the production of the bicycle. The costs to produce the frame are the following:

Product costs:

Value of originating materials $ 1.00
Value of non-originating materials 7.50
Other product costs 1.50
Period costs: (including $0.20 in excluded costs) 0.50
Other costs: 0.10
Total cost of the bicycle frame: $10.60

Additional costs to produce the bicycle are the following:

Product costs:

Value of originating materials $ 0.00
Value of non-originating materials 5.50
Other product costs 6.50
Period costs: (Including $0.20 in excluded costs) 0.50
Other costs: 0.10
Total additional costs: $12.60

The producer does not designate the bicycle frame as an intermediate material under subsection 8(4). The net cost of the bicycle is calculated as follows:

	Costs of the bicycle frame (not designated as an intermediate material)	Additional costs to produce the bicycle	Total
Product costs:			
Value of originating materials	$ 1.00	$ 0.00	$ 1.00
Value of non-originating materials	7.50	5.50	13.00
Other product costs	1.50	6.50	8.00
Period costs (including $0.20 in excluded costs)	0.50	0.50	1.00
Other costs	0.10	0.10	0.20
Total cost of the bicycle	10.60	12.60	23.20
Excluded costs (in period costs)	0.20	0.20	0.40
Net cost of the bicycle (total cost minus excluded costs):			22.80

The regional value content of the bicycle is calculated as follows:

RVC = (NC − VNM)/NC*100
*= ($22.80 − $13.00)/$22.80*100*
= 42.9%

The regional value content of the bicycle is 42.9 per cent, and the bicycle, therefore, does not qualify as an originating good.

Situation 3

A producer located in a USMCA country produces the bicycle, which is subject to a regional value content requirement of 50 per cent under the net cost method. The bicycle satisfies all other applicable requirements of these Regulations. The producer self-produces the bicycle frame, which is used in the production of the bicycle. The costs to produce the frame are the following:

Product costs:

Value of originating materials $ 1.00
Value of non-originating materials 7.50
Other product costs 1.50

Period costs: (Including $0.20 in excluded costs) 0.50

Other costs: 0.10
Total cost of the bicycle frame: $10.60
Additional costs to produce the bicycle are the following: Product costs: 0.10

Product costs:

Value of originating materials $ 0.00
Value of non-originating materials 5.50
Other product costs 6.50
Period costs: (including $0.20 in excluded costs) 0.50
Other costs: 0.10
Total additional costs: $12.60

The producer designates the frame as an intermediate material under subsection 8(6). The frame qualifies as an originating material under section 3(2). Therefore, the value of non-originating materials used in the production of the frame is not included in the value of non-originating materials for the purpose of calculating the regional value content of the bicycle. The net cost of the bicycle is calculated as follows:

	Costs of the bicycle frame (not designated as an intermediate material)	*Additional costs to produce the bicycle*	*Total*
Product costs:			
Value of originating materials	*$10.60*	*$0.00*	*$10.60*
Value of non-originating materials	.....	*5.50*	*5.50*
Other product costs	.....	*6.50*	*6.50*
Period costs (including $0.20 in excluded costs)	.....	*0.50*	*0.50*
Other costs	.....	*0.10*	*0.10*
Total cost of the bicycle	*10.60*	*12.60*	*23.20*
Excluded costs (in period costs)	.....	*0.20*	*0.20*
Net cost of the bicycle (total cost minus excluded costs):	.....	.....	*23.00*

The regional value content of the bicycle is calculated as follows:

RVC = (NC − VNM)/NC*100
= ($23.00 − $5.50)/$23.00*100
= 76.1%

The regional value content of the bicycle is 76.1 per cent, and the bicycle, therefore, qualifies as an originating good.

Example 4: Originating Materials Acquired from a Producer Who Produced Them Using Intermediate Materials

Producer A, located in USMCA country A, produces switches. In order for the switches to qualify as originating goods, Producer A designates subassemblies of the switches as intermediate materials. The subassemblies are subject to a regional value content requirement. They satisfy that requirement, and qualify as originating materials. The switches are also subject to a regional value content requirement, and, with the subassemblies designated as intermediate materials, are determined to have a regional value content of 65 per cent.

Producer A sells the switches to Producer B, located in USMCA country B, who uses them to produce switch assemblies that are used in the production of Good B. The switch assemblies are subject to a regional value content requirement. Producers A and B are not accumulating their production within the meaning of section 9. Producer B is therefore able, under subsection 8(6), to designate the switch assemblies as intermediate materials.

If Producers A and B were accumulating their production within the meaning of section 9, Producer B would be unable to designate the switch assemblies as intermediate materials, because the production of both producers would be considered to be the production of one producer.

Example 5: Single Producer and Successive Designations of Materials Subject to a Regional Value Content Requirement as Intermediate Materials

Producer A, located in USMCA country, produces Material X and uses Material X in the production of Good B. Material X qualifies as an originating material because it satisfies the applicable regional value content requirement. Producer A designates Material X as an intermediate material.

Producer A uses Material X in the production of Material Y, which is also used in the production of Good B. Material Y is also subject to a regional value content requirement. Under the proviso set out in subsection 8(6), Producer A cannot designate Material Y as an intermediate material, even if Material Y satisfies the applicable regional value content requirement, because Material X was already designated by Producer A as an intermediate material.

Example 6: Single Producer and Multiple Designations of Materials as Intermediate Materials

Producer X, who is located in USMCA country X, uses non-originating materials in the production of self-produced materials A, B and C. None of the self-produced materials are used in the production of any of the other self-produced materials.

Producer X uses the self-produced materials in the production of Good O, which is exported to USMCA country Y. Materials A, B and C qualify as originating materials because they satisfy the applicable regional value content requirements.

Because none of the self-produced materials are used in the production of any of the other self-produced materials, then even though each self-produced material is subject to a regional value content requirement, Producer X may, under subsection 8(6), designate all of the self-produced materials as intermediate materials. The proviso set out in subsection 8(6) only applies if self-produced materials are used in the production of other self-produced materials and both are subject to a regional value content requirement.

Example 7: Subsection 8(23) Accessories, Spare Parts, Tools, Instruction or Other Information Materials

The following are examples of accessories, spare parts, tools, instructional or other information materials that are delivered with a good and form part of the good's standard accessories, spare parts, tools, instructional or other information materials:

(a) Consumables that must be replaced at regular intervals, such as dust collectors for an air-conditioning system,

(b) a carrying case for equipment,

(c) a dust cover for a machine,

(d) an operational manual for a vehicle,

(e) brackets to attach equipment to a wall,

(f) a bicycle tool kit or a car jack,

(g) a set of wrenches to change the bit on a chuck,

(h) a brush or other tool to clean out a machine, and

(i) electrical cords and power bars for use with electronic goods.

Example 8: Value of Indirect Materials that are Assists

Producer A, located in a USMCA country, produces a well-water pump that is subject to a regional value content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys a mold-injected plastic water flow sensor from Producer B, located in the same USMCA country, and uses it in the production of the well-water pump. Producer A provides to Producer B, at no charge, molds to be used in the production of the water flow sensor. The molds have a value of $100 which is expensed in the current year by Producer A.

The water flow sensor is subject to a regional value content requirement which Producer B chooses to calculate using the net cost method. For the purpose of determining the value of non-originating materials in order to calculate the regional value content of the water flow sensor, the molds are considered to be an originating material because they are an indirect material. However, pursuant to subsection 8(13) they have a value of nil because the cost of the molds with respect to the water flow sensor is not recorded on the books of Producer B.

It is determined that the water flow sensor is a non-originating material. The cost of the molds that is recorded on the books of producer A is expensed in the current year. Pursuant to section 4 of Schedule VI (Value of Materials), the value of the molds (see subparagraph 4(1)(b)(ii) of Schedule VI) must be included in the value of the water flow sensor by Producer A when calculating the regional value content of the well-water pump. The cost of the molds, although recorded on the books of producer A, cannot be included as a separate cost in the net cost of the well-water pump because it is already included in the value of the water flow sensor. The entire cost of the water flow sensor, which includes the cost of the molds, is included in the value of non-originating materials for the purposes of the regional value content of the well-water pump.

Part V General Provisions

Section 9. Accumulation

(9) (1) Subject to subsections (2) through (5)

(a) a good is originating if the good is produced in the territory of one or more of the USMCA countries by one or more producers, provided that the good satisfies the requirements of section 3 and all other applicable requirements of these Regulations;

(b) an originating good or material of one or more of the USMCA countries is considered as originating in the territory of another USMCA country when used as a material in the production of a good in the territory of another USMCA country; and

(c) production undertaken on a non-originating material in the territory of one or more of the USMCA countries may contribute toward the originating status of a good, regardless of whether that production was sufficient to confer originating status to the material itself.

(2) *Accumulation using the net cost method.* If a good is subject to a regional value content requirement based on the net cost method and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that states

(a) the net cost incurred and the value of non-originating materials used by the producer of the material in the production of that material,

(i) net cost incurred by the producer of the good with respect to the material is to be the net cost incurred by the producer of the material plus, if not included in the net cost incurred by the producer of the material, the costs referred to in paragraphs 8(2)(a) through (c), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material is to be the value of non-originating materials used by the producer of the material; or

(b) any amount, other than an amount that includes any of the value of non-originating materials, that is part of the net cost incurred by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material is to be the value of the material, determined in accordance with subsection 8(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material is to be the value of the material, determined in accordance with subsection 8(1), minus the amount stated in the statement.

(3) *Accumulation using the transaction value method.* If a good is subject to a regional value content requirement based on the transaction value method and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that states the value of non-originating materials used by the producer of the material in the production of that material, the value of non-originating materials used by the producer of the good with respect to the material is the value of non-originating materials used by the producer of the material.

(4) *Averaging of costs—net cost method.* If a good is subject to a regional value content requirement based on the net cost method and an exporter or producer of the good does not have a statement described in subsection (2) but has a statement signed by a producer of a material that is used in the production of the good that

(a) states the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material is to be the sum of the net costs incurred by the producer of the material with respect to that material and the identical materials or similar materials, divided by the number of units of materials with respect to which the statement is made, plus, if not included in the net costs incurred by the producer of the material, the costs referred to in paragraphs 8(2)(a) through (c), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material is to be the sum of the values of non-originating materials used by the producer of the material with respect to that material and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made; or

(b) states any amount, other than an amount that includes any of the values of non-originating materials, that is part of the sum of the net costs incurred by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material is to be the value of the material, determined in accordance with subsection 8(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material is to be the value of the material, determined in accordance with subsection 8(1), minus the amount stated in the statement.

(5) *Averaging of costs—transaction value method.* If a good is subject to a regional value content requirement based on the transaction value method and an exporter or producer of the good does not have a statement described in subsection (3) but has a statement signed by a producer of a material that is used in the production of the good that states the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made, the value of non-originating materials used by the producer of the good with respect to the material is the sum of the values of non-originating materials used by the producer of the material with respect to that material and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made.

(6) *Single producer.* For the purposes of subsection 8(6), if a producer of the good chooses to accumulate the production of materials under subsection (1), that production will be considered to be the production of the producer of the good.

(7) *Particulars.* For the purposes of this section,

(a) in order to accumulate the production of a material,

(i) if the good is subject to a regional value content requirement, the producer of the good must have a statement described in subsection (2) through (5) that is signed by the producer of the material, and

(ii) if an applicable change in tariff classification is applied to determine whether the good is an originating good, the producer of the good must have a statement signed by the producer of the material that states the tariff classification of all non-originating materials used by that producer in the production of that material and that the production of the material took place entirely in the territory of one or more of the USMCA countries;

(b) a producer of a good who chooses to accumulate is not required to accumulate the production of all materials that are incorporated into the good; and

(c) any information set out in a statement referred to in subsection (2) through (5) that concerns the value of materials or costs is to be in the same currency as the currency of the country in which the person who provided the statement is located.

(8) *Examples of accumulation of production.*

Each of the following examples is an ''Example'' as referred to in subsection 1(4).

Example 1: Subsection 9(1)

Producer A, located in USMCA country A, imports unfinished bearing rings provided for in subheading 8482.99 into USMCA country A from a non-USMCA territory. Producer A further processes the unfinished bearing rings into finished bearing rings, which are of the same subheading. The finished bearing rings of Producer A do not satisfy an applicable change in tariff classification and therefore do not qualify as originating goods.

The net cost of the finished bearing rings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.15
Value of non-originating materials	0.75
Other product costs	0.35
Period costs: (including $0.05 in excluded costs)	0.15
Other costs:	0.05
Total cost of the finished bearing rings, per unit:	1.45
Excluded costs: (included in period costs)	0.05
Net cost of the finished bearing rings, per unit:	1.40

Producer A sells the finished bearing rings to Producer B who is located in USMCA country A for $1.50 each. Producer B further processes them into bearings, and intends to export the bearings to USMCA country B. Although the bearings satisfy the applicable change in tariff classification, the bearings are subject to a regional value content requirement.

Situation A:

Producer B does not choose to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials (value, per unit, of the bearing rings purchased from Producer A)	1.50
Other product costs	0.75
Period costs: (Including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit:	2.90
Excluded costs: (Included in period costs)	0.05
Net cost of the bearings, per unit:	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$1.50}{\$2.85} \times 100$$

$$= 47.4\%$$

Therefore, the bearings are non-originating goods.

Situation B:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides a statement described in paragraph 9(2)(a) to Producer B. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.15)	$0.60
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75
Other product costs ($0.75 + $0.35)	1.10
Period costs: (($0.15 + $0.15), including $0.10 in excluded costs)	0.30
Other costs: ($0.05 + $0.05)	0.10
Total cost of the bearings, per unit:	2.85
Excluded costs: (Included in period costs)	0.10
Net cost of the bearings, per unit:	2.75

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.75 - \$0.75}{\$2.75} \times 100$$

$$= 72.7\%$$

Therefore, the bearings are originating goods.

Situation C:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in paragraph 9(2)(b) that specifies an amount equal to the net cost minus the value of non-originating materials used to produce the finished bearing rings ($1.40 − 0.75 = $0.65). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.65)	$1.10
Value of non-originating materials ($1.50 − $0.65)	0.85
Other product costs	0.75
Period costs: (Including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit:	2.90
Excluded costs: (Included in period costs)	0.05
Net cost of the bearings, per unit:	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$0.85}{\$2.85} \times 100$$

$$= 70.2\%$$

Therefore, the bearings are originating goods.

Situation D:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in paragraph 9(2)(b) that specifies an amount equal to the value of other product costs used in the production of the finished bearing rings ($0.35). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials ($1.50 − $0.35)	1.15
Other product costs ($0.75 + $0.35)	1.10
Period costs: (Including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit:	2.90
Excluded costs: (Included in period costs)	0.05
Net cost of the bearings, per unit:	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$1.15}{\$2.85} \times 100$$

$$= 59.7\%$$

Therefore, the bearings are originating goods.

Example 2: Section 9(1)

Producer A, located in USMCA country A, imports non-originating cotton, carded or combed, provided for in heading 52.03 for use in the production of cotton yarn provided for in heading 52.05. Because the change from cotton, carded or combed, to cotton yarn is a change within the same chapter, the cotton does not satisfy the applicable change in tariff classification for heading 52.05, which is a change from any other chapter, with certain exceptions. Therefore, the cotton yarn that Producer A produces from non-originating cotton is a non-originating good.

Producer A then sells the non-originating cotton yarn to Producer B, also located in USMCA country A, who uses the cotton yarn in the production of woven fabric of cotton provided for in heading 52.08. The change from non-originating cotton yarn to woven fabric of cotton is insufficient to satisfy the applicable change in tariff classification for heading 52.08, which is a change from any heading outside headings 52.08 through 52.12, except from certain headings, under which various yarns, including cotton yarn provided for in heading 52.05, are classified.

Therefore, the woven fabric of cotton that Producer B produces from non-originating cotton yarn produced by Producer A is a non-originating good.

However, Producer B can choose to accumulate the production of Producer A. The rule for heading 52.08, under which the cotton fabric is classified, does not exclude a change from heading 52.03, under which carded or combed cotton is classified. Therefore, under section 15(1), the change from carded or combed cotton provided for in heading 52.03 to the woven fabric of cotton provided for in heading 52.08 would satisfy the applicable change of tariff classification for heading 52.08. The woven fabric of cotton would be considered as an originating good.

Producer B, in order to choose to accumulate Producer A's production, must have a statement described in subsection 9(7).

Situation E:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a signed statement described in subsection 9(3) that specifies the value of non-originating materials used in the production of the finished bearing rings ($0.75). Producer B chooses to calculate the regional value content of the bearings under the transaction value method. The regional value content of the bearings (per unit) is calculated as follows:

Transaction value of the bearings, per unit	$3.15
Costs incurred, per unit, in the international shipment of the good (included in transaction value of the bearings)	0.15
Transaction value, per unit, adjusted to exclude any costs incurred in the international shipment of the good	3.00
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75

Under the transaction value method, the regional value content of the bearings is

$RVC = (TV - VNM)/TV \times 100$
$= (\$3.00 - \$0.75)/\$3.00 \times 100$
$= 75\%$

Therefore, because the bearings have a regional value content of at least 60 percent under transaction value method, the bearings are originating goods.

Section 10. Transshipment

10 (1) *Transport requirements to retain originating status.* If an originating good is transported outside the territories of the USMCA countries, the good retains its originating status if

(a) the good remains under customs control outside the territories of the USMCA countries; and

(b) the good does not undergo further production or any other operation outside the territories of the USMCA countries, other than unloading; reloading; separation from a bulk shipment; storing; labeling or other marking required by the importing USMCA country; or any other operation necessary to transport the good to the territory of the importing USMCA country or to preserve the good in good condition, including:

(i) Inspection;

(ii) removal of dust that accumulates during shipment;

(iii) ventilation;

(iv) spreading out or drying;

(v) chilling;

(vi) replacing salt, sulphur dioxide or other aqueous solutions; or

(vii) replacing damaged packing materials and containers and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good.

(2) *Good entirely non-originating.* A good that is a non-originating good by application of subsection (1) is considered to be entirely non-originating for the purposes of these Regulations.

(3) *Exceptions for certain goods.* Subsection (1) does not apply with respect to

(a) a ''smart card'' of subheading 8523.52 containing a single integrated circuit, if any further production or other operation that that good undergoes outside the territories of the USMCA countries does not result in a change in the tariff classification of the good to any other subheading;

(b) a good of any of subheadings 8541.10 through 8541.60 or 8542.31 through 8542.39, if any further production or other operation that that good undergoes outside the territories of the USMCA countries does not result in a change in the tariff classification of the good to a subheading outside of that group;

(c) an electronic microassembly of subheading 8543.90, if any further production or other operation that that good undergoes outside the territories of the USMCA countries does not result in a change in the tariff classification of the good to any other subheading; or

(d) an electronic microassembly of subheading 8548.90, if any further production or other operation that that good undergoes outside the territories of the USMCA countries does not result in a change in the tariff classification of the good to any other subheading.

Section 11. Non-Qualifying Operations

11 A good is not an originating good merely by reason of

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice with respect to which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent these Regulations.

Part VI Automotive Goods

Section 12. Definitions and Interpretation

(1) For purposes of this part,

aftermarket part means a good that is not for use as original equipment in the production of passenger vehicles, light trucks or heavy trucks as defined in these Regulations;

all-terrain vehicle means a vehicle that does not meet United States federal safety and emissions standards permitting unrestricted on-road use or the equivalent Mexican and Canadian on-road standards;

annual purchase value (APV) means the sum of the values of high-wage materials purchased annually by a producer for use in the production of passenger vehicles, light trucks or heavy trucks in a plant located in the territory of a USMCA country;

average base hourly wage rate means the average hourly rate of pay based on all the hours performed on direct production work at a plant or facility, even if such workers performing that work are paid on a salary, piece-rate, or day-rate basis. This includes all hours performed by full-time, part time, temporary, and seasonal workers. The rate of pay does not include benefits, bonuses or shift-premiums, or premium pay for overtime, holidays or weekends. If a worker is paid by a third party, such as a temporary employment agency, only the wages received by the worker are included in the average base hourly wage rate calculation.

For direct production workers, the average base hourly wage rate of pay is calculated based on all their working hours. For other workers performing direct production work, the average base hourly rate is calculated based on the number of hours performing direct production work. The rate also does not include any hours worked by interns, trainees, students, or any worker that does not have an express or implied compensation agreement with the employer.

If any direct production worker or worker performing direct production work is compensated by a method other than hourly, such as a salary, piece-rate, or day-rate basis, the worker's hourly base wage rate-is calculated by converting the salary, piece-rate, or day-rate to an hourly equivalent. This hourly equivalent is then multiplied by the number of hours worked in direct production for purposes of calculating the average base hourly wage rate.

class of motor vehicles means one of the following categories of motor vehicles:

(a) Road tractors for semi-trailers of subheading 8701.20, vehicles for the transport of 16 or more persons of subheading 8702.10 or 8702.90, motor vehicles for the transport of goods of subheading 8704.10, 8704.22, 8704.23, 8704.32 or 8704.90, special purpose motor vehicles of heading 87.05, or chassis fitted with engines of heading 87.06;

(b) tractors of subheading 8701.10 or 8701.30 through 8701.90;

(c) vehicles for the transport of 15 or fewer persons of subheading 8702.10 or 8702.90, or light trucks of subheading 8704.21 or 8704.31; or

(d) passenger vehicles of subheading 8703.21 through 8703.90;

complete motor vehicle assembly process means the production of a motor vehicle from separate constituent parts, including the following:

(a) A structural frame or unibody
(b) body panels
(c) an engine, a transmission and a drive train
(d) brake components
(e) steering and suspension components
(f) seating and internal trim
(g) bumpers and external trim
(h) wheels and
(i) electrical and lighting components;

direct production work means work by any employee directly involved in the production of passenger vehicles, light trucks, heavy trucks, or parts used in the production of these vehicles in the territory of a USMCA country. It also includes work by an employee directly involved in the set-up, operation, or maintenance of tools or equipment used in the production of those vehicles or parts. Direct production work may take place on a production line, at a workstation, on the shop floor, or in another production area.

Direct production work also includes:

(a) Material handling of vehicles or parts;

(b) inspection of vehicles or parts, including inspections that are normally categorized as quality control and, for heavy trucks, pre-sale inspections carried out at the place where the vehicle is produced;

(c) work performed by skilled tradespeople, such as process or production engineers, mechanics, technicians and other employees responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts; and

(d) on-the-job training regarding the execution of a specific production task.

Direct production work does not include any work by executive or management staff that have the authority to make final decisions to hire, fire, promote, transfer and discipline employees; workers engaged in research and development, or work by engineering or other personnel that are not responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts. It also does not include any work by interns, trainees, students, or any worker that does not have an express or implied compensation agreement with the employer.

direct production worker means any worker whose primary responsibilities are direct production work, meaning at least 85% of the worker's time is spent performing direct production work.

first motor vehicle prototype means the first motor vehicle that

(a) is produced using tooling and processes intended for the production of motor vehicles to be offered for sale, and

(b) follows the complete motor vehicle assembly process in a manner not specifically designed for testing purposes;

heavy truck means a vehicle other than a vehicle that is solely or principally for off-road use of subheading 8701.20, 8704.22, 8704.23, 8704.32 or 8704.90, or a chassis fitted with an engine of heading 87.06 that is for use in such a vehicle;

high-wage assembly plant for passenger vehicle or light truck parts means a qualifying wage-rate production plant, operated by a corporate producer, or by a supplier with whom the producer has a contract of at least 3 years for the materials listed in sub-paragraphs (a) through (c), provided that the plant is located in the territory of a USMCA country and that it has a production capacity of:

(a) 100,000 or more engines of heading 84.07 or 84.08,

(b) 100,000 or more transmissions of subheading 8708.40, or

(c) 25,000 or more advanced battery packs;

Such engines, transmissions, or advanced battery packs are not required to qualify as originating;

high-wage assembly plant for heavy truck parts means a qualifying wage rate production plant, operated by a corporate producer, or by a supplier with whom the producer has a contract of at least 3 years for the materials listed in sub-paragraphs (a) through (c), provided that the plant is located in the territory of a USMCA country and that it has a production capacity of:

(a) 20,000 or more engines of heading 84.07 or 84.08,

(b) 20,000 or more transmissions of subheading 8708.40, or

(c) 20,000 or more advanced battery packs;

Such engines, transmissions, or advanced battery packs are not required to qualify as originating;

high-wage labor costs (HWLC) means the sum of wage expenditures, not including benefits, for workers who perform direct production work at a qualifying wage-rate vehicle assembly plant;

high-wage material (HWM) means a material that is produced in a qualifying wage-rate production plant;

high-wage technology expenditures means wage expenditures—expressed as a percentage of a passenger vehicle, light truck, or heavy truck producer's total production wage expenditures—at a corporate level in the territory of one or more of the USMCA countries on:

(a) Research and development, including prototype development, design, engineering, or testing operations and any work undertaken by a producer for the purpose of creating new, or improving existing, materials, parts, vehicles or processes, including incremental improvements thereto, and

(b) information technology, including software development, technology integration, vehicle communications, or information technology support operations,

Expenditures on capital or other non-wage costs for R&D or IT are not included. For greater certainty, there is no minimum wage rate associated with high-wage technology expenditures;

high-wage transportation or related costs for shipping means costs incurred by a producer for transportation, logistics, or material handling associated with the movement of high-wage parts or materials within the territories of the USMCA countries, provided that the transportation, logistics, or material handling provider pays an average base hourly wage rate to direct production employees performing these services of at least:

(a) US$16 in the United States;

(b) CA$20.88 in Canada; and

(c) MXN$294.22 in Mexico;

High-wage transportation or related costs for shipping may be included in high wage material and manufacturing expenses if those costs are not otherwise included;

light truck means a vehicle of subheading 8704.21 or 8704.31, except for a vehicle that is solely or principally for off-road use;

marque means the trade name used by a separate marketing division of a motor vehicle assembler;

model line means a group of motor vehicles having the same platform or model name;

model name means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler to:

(a) Differentiate the motor vehicle from other motor vehicles that use the same platform design,

(b) associate the motor vehicle with other motor vehicles that use different platform designs, or

(c) denote a platform design;

motorhome or entertainer coach means a vehicle of heading 87.02 or 87.03 built on a self-propelled motor vehicle chassis that is solely or principally designed as temporary living quarters for recreational, camping, entertainment, corporate or seasonal use;

motor vehicle assembler means a producer of motor vehicles and any related persons or joint ventures in which the producer participates;

new building means a new construction, including at least the pouring or construction of a new foundation and floor, the erection of a new structure and roof and installation of new plumbing, electrical and other utilities to house a complete vehicle assembly process;

passenger vehicle means a vehicle of subheading 8703.21 through 8703.90, except for:

(a) A vehicle with a compression-ignition engine of subheading 8703.31 through 8703.33 or a vehicle of subheading 8703.90 with both a compression-ignition engine and an electric motor for propulsion,

(b) a three- or four-wheeled motorcycle,

(c) an all-terrain vehicle,

(d) a motorhome or entertainer coach, or

(e) an ambulance, hearse or prison van;

plant means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of any of the following:

(a) Passenger vehicles, light trucks or heavy trucks,

(b) a good listed in Table A.1, A.2, B, C, D, E, F or G;

platform means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques;

qualifying wage-rate production plant means a plant that produces materials for passenger vehicles, light trucks or heavy trucks located in the territory of a USMCA country, at which the average base hourly wage rate is at least:

(a) US$16 in the United States;

(b) CA$20.88 in Canada; and

(c) MXN$294.22 in Mexico;

qualifying wage-rate vehicle assembly plant means a passenger vehicle, light truck or heavy truck assembly plant located in the territory of a USMCA country, at which the average base hourly wage rate is at least:

(a) US$16 in the United States;

(b) CA$20.88 in Canada; and

(c) MXN$294.22 in Mexico;

refit means a plant closure, for purposes of plant conversion or retooling, that lasts at least three months;

size category, with respect to a light-duty vehicle, means that the total of the interior volume for passengers and the interior volume for luggage is

(a) 85 cubic feet (2.38 m^3) or less,

(b) more than 85 cubic feet (2.38 m3) but less than 100 cubic feet (2.80 m3),

(c) 100 cubic feet (2.80 m3) or more but not more than 110 cubic feet (3.08 m3),

(d) more than 110 cubic feet (3.08 m3) but less than 120 cubic feet (3.36 m3), or

(e) 120 cubic feet (3.36 m3) or more;

super-core means the parts listed in column 1 of Table A.2 of this Part, which are considered as a single part for the purpose of performing a Regional Value Content calculation in accordance with subsections 14(10), 14(11), 14(13) and 16(10);

total vehicle plant assembly annual purchase value (TAPV) means the sum of the values of all parts or materials purchased, on an annual basis, for use in the production of passenger vehicles, light trucks or heavy

trucks in a plant located in the territory of a USMCA country;

underbody means a component, comprising a single part or two or more parts joined together, with or without additional stiffening members, that forms the base of a motor vehicle, beginning at the fire-wall or bulkhead of the motor vehicle and ending:

(a) If there is a luggage floor panel in the motor vehicle, at the place where that luggage floor panel begins, or

(b) if there is no luggage floor panel in the motor vehicle, at the place where the passenger compartment of the motor vehicle ends;

vehicle that is solely or principally for off-road use means a vehicle that does not meet U.S. federal safety and emissions standards permitting unrestricted on-road use or the equivalent Mexican and Canadian on-road standards.

Section 13: Product-Specific Rules of Origin for Vehicles and Certain Auto Parts

(1) Except as provided for in section 19 (Alternative Staging Regimes), the product-specific rule of origin for a good of heading 87.01 through 87.08 is:

8701.10 A change to a good of subheading 8701.10 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8701.20 A change to a good of subheading 8701.20 from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027; or

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

8701.30–8701.90 A change to a good of subheading 8701.30 through 8701.90 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8702.10–8702.90

(1) A change to a motor vehicle for the transport of 15 or fewer persons of subheading 8702.10 through 8702.90 from any other heading, provided there is a regional value content of not less than 62.5 percent under the net cost method; or

(2) A change to a motor vehicle for the transport of 16 or more persons of subheading 8702.10 through 8702.90 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8703.10 A change to subheading 8703.10 from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the transaction value method, or

(b) 50 percent under the net cost method.

8703.21–8703.90 (1) A change to a passenger vehicle of subheading 8703.21 through 8703.90 from any other heading, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter; or

(2) A change to any other good of subheading 8703.21 through 8703.90 from any other heading, provided there is a regional value content of not less than 62.5 percent under the net cost method.

8704.10 A change to a good of subheading 8704.10 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8704.21 (1) A change to a light truck of subheading 8704.21 from any other heading, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter; or

(2) A change to a vehicle that is solely or principally for off-road use subheading 8704.21 from any other heading, provided there is a regional value content of not less than 62.5 percent under the net cost method.

8704.22–8704.23 (1) A change to a heavy truck of subheading 8704.22 through 8704.23 from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter; or

(2) A change to a vehicle that is solely or principally for off-road use subheading 8704.22 through 8704.23 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8704.31 (1) A change to a light truck of subheading 8704.31 from any other heading, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter; or

(2) A change to a vehicle that is solely or principally for off-road use subheading 8704.31 from any other heading, provided there is a regional value content of not less than 62.5 percent under the net cost method.

8704.32–8704.90 (1) A change to a heavy truck of subheading 8704.32 through 8704.90 from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter; or

(2) A change to a vehicle that is solely or principally for off-road use of subheading 8704.32 through 8704.90 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

87.05 A change to heading 87.05 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

87.06 For a good of heading 87.06 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of heading 87.06 for use as original equipment in a heavy truck:

(2) No required change in tariff classification provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of heading 87.06 for use as original equipment in any other vehicle, or as an aftermarket part:

(3) No required change in tariff classification provided there is a regional value content of not less than 60 percent under the net cost method.

87.07 For a good of heading 87.07 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of heading 87.07 for use as original equipment in a heavy truck:

(2) A change to heading 87.07 from any other chapter; or

(3) No required change in tariff classification provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of heading 87.07 for use as original equipment in any other vehicle or as an aftermarket part:

(4) A change to heading 87.07 from any other chapter; or

(5) No required change in tariff classification provided there is a regional value content of not less than 60 percent under the net cost method.

8708.10 For a good of subheading 8708.10 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.10 from any other heading; or

(2) A change to subheading 8708.10 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.10 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.10 from any other heading; or

(4) A change to subheading 8708.10 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.10 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.10 from any other heading; or

(6) A change to subheading 8708.10 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.21 For a good of subheading 8708.21 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.21 from any other heading; or

(2) A change to subheading 8708.21 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.21 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.21 from any other heading; or

(4) A change to subheading 8708.21 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.21 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.10 from any other heading; or

(6) A change to subheading 8708.10 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.29 For a body stamping of subheading 8708.29 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to a body stamping of subheading 8708.29, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For any other good of subheading 8708.29 for use as original equipment in a passenger vehicle or light truck:

(2) A change to subheading 8708.29 from any other heading; or

(3) No required change in tariff classification to subheading 8708.29, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.29 for use as original equipment in a heavy truck:

(4) A change to subheading 8708.29 from any other heading; or

(5) No required change in tariff classification to subheading 8708.29, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.29 for use as original equipment in any other vehicle or as an aftermarket part:

(6) A change to subheading 8708.29 from any other heading; or

(7) No required change in tariff classification to subheading 8708.29, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.30 For a good of subheading 8708.30 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.30 from any other heading; or

(2) No required change in tariff classification to subheading 8708.30, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.30 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.30 from any other heading; or

(4) No required change in tariff classification to subheading 8708.30, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.30 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to mounted brake linings of subheading 8708.30 from any other heading; or

(6) A change to mounted brake linings of subheading 8708.30 from parts of mounted brake linings, brakes or servo-brakes of subheading 8708.30 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(7) A change to any other good of subheading 8708.30 from any other heading; or

(8) A change to any other good of subheading 8708.30 from mounted brake linings or parts of brakes or servo-brakes of subheading 8708.30, or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.40 For a good of subheading 8708.40 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.40, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.40 for use as original equipment in a heavy truck:

(2) A change to subheading 8708.40 from any other heading; or

(3) No required change in tariff classification to subheading 8708.40, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For a good of subheading 8708.40 for use as original equipment in any other vehicle or as an aftermarket part:

(4) A change to gear boxes of subheading 8708.40 from any other heading; or

(5) A change to gear boxes of subheading 8708.40 from any other good of subheading 8708.40 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(6) A change to any other good of subheading 8708.40 from any other heading; or

(7) No required change in tariff classification to any other good of subheading 8708.40, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.50 For a good of subheading 8708.50 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.50, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.50 for use as original equipment in a heavy truck:

(2) A change to drive-axles with differential, whether or not provided with other transmission components, for vehicles of heading 87.03, of subheading 8708.50 from any other heading, except from subheading 8482.10 through 8482.80; or

(3) A change to drive-axles with differential, whether or not provided with other transmission components, for vehicles of heading 87.03, of subheading 8708.50 from subheading 8482.10 through 8482.80 or parts of drive-axles of subheading 8708.50, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

(4) A change to other drive-axles with differential, whether or not provided with other transmission components, of subheading 8708.50 from any other heading; or

(5) A change to other drive-axles with differential, whether or not provided with other transmission components, of subheading 8708.50 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

(6) A change to non-driving axles and parts thereof, for vehicles of heading 87.03, of subheading 8708.50 from any other heading, except from subheading 8482.10 through 8482.80; or

(7) A change to non-driving axles and parts thereof, for vehicles of heading 87.03, of subheading 8708.50 from subheading 8482.10 through 8482.80 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter;

(8) A change to other non-driving axles and parts thereof of subheading 8708.50 from any other heading; or

(9) A change to other non-driving axles and parts thereof of subheading 8708.50 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

(10) A change to any other good of subheading 8708.50 from any other heading; or

(11) No required change in tariff classification to any other good of subheading 8708.50, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For a good of subheading 8708.50 for use as original equipment in any other vehicle or as an aftermarket part:

(12) A change to drive-axles with differential, whether or not provided with other transmission components, for vehicles of heading 87.03, of subheading 8708.50 from any other heading, except from subheading 8482.10 through 8482.80; or

(13) A change to drive-axles with differential, whether or not provided with other transmission components, for vehicles of heading 87.03, of subheading 8708.50 from subheading 8482.10 through 8482.80 or parts of drive-axles of subheading 8708.50, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(14) A change to other drive-axles with differential, whether or not provided with other transmission components, of subheading 8708.50 from any other heading; or

(15) A change to other drive-axles with differential, whether or not provided with other transmission components, of subheading 8708.50 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(16) A change to non-driving axles and parts thereof, for vehicles of heading 87.03, of subheading 8708.50 from any other heading, except from subheading 8482.10 through 8482.80; or

(17) A change to non-driving axles and parts thereof, for vehicles of heading 87.03, of subheading 8708.50 from subheading 8482.10 through 8482.80 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(18) A change to other non-driving axles and parts thereof of subheading 8708.50 from any other heading; or

(19) A change to other non-driving axles and parts thereof of subheading 8708.50 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(20) A change to any other good of subheading 8708.50 from any other heading; or

(21) No required change in tariff classification to any other good of subheading 8708.50, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.70 For a good of subheading 8708.70 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.70 from any other heading; or

(2) A change to subheading 8708.70 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.70 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.70 from any other heading; or

(4) A change to subheading 8708.70 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.70 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.70 from any other heading; or

(6) A change to subheading 8708.70 from subheading 8708.99, whether or not there is also a change from any other heading,

provided there is a regional value content of not less than 50 percent under the net cost method.

8708.80 For a good of subheading 8708.80 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.80, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.80 for use as original equipment in a heavy truck:

(2) A change to McPherson struts of subheading 8708.80 from parts thereof of subheading 8708.80 or any other subheading, provided there is a regional value content of not less than 50 percent under the net cost method;

(3) A change to any other good of subheading 8708.80 from any other heading; or

(4) A change to suspension systems (including shock absorbers) of subheading 8708.80 from parts thereof of subheading 8708.80 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter; or

(5) No required change in tariff classification to parts of suspension systems (including shock absorbers) of subheading 8708.80, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.80 for use as original equipment in any other vehicle or as an aftermarket part:

(6) A change to McPherson struts of subheading 8708.80 from parts thereof of subheading 8708.80 or any other subheading, provided there is a regional value content of not less than 50 percent under the net cost method;

(7) A change to subheading 8708.80 from any other heading;

(8) A change to suspension systems (including shock absorbers) of subheading 8708.80 from parts thereof of subheading 8708.80 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method; or

(9) No required change in tariff classification to parts of suspension system (including shock absorbers) of subheading 8708.80, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.91 For a good of subheading 8708.91 for use as original equipment in a passenger vehicle or light truck:

(1) A change to radiators of subheading 8708.91 from any other heading;

(2) A change to radiators of subheading 8708.91 from any other good of subheading 8708.91, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

(3) No required change in tariff classification to any other good of subheading 8708.91, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.91 for use as original equipment in a heavy truck:

(4) No required change in tariff classification to any other good of subheading 8708.91, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

(5) A change to radiators of subheading 8708.91 from any other heading;

(6) A change to radiators of subheading 8708.91 from any other good of subheading 8708.91, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.91 for use as original equipment in any other vehicle or as an aftermarket part:

(7) A change to radiators of subheading 8708.91 from any other heading;

(8) A change to radiators of subheading 8708.91 from any other good of subheading 8708.91, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method; or

(9) No required change in tariff classification to any other good of subheading 8708.91, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.92 For a good of subheading 8708.92 for use as original equipment in a passenger vehicle or light truck:

(1) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other heading;

(2) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other good of subheading 8708.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than; or

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

(3) No required change in tariff classification to any other good of subheading 8708.92, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.92 for use as original equipment in a heavy truck:

(4) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other heading;

(5) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other good of subheading 8708.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than; or

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

(6) No required change in tariff classification to any other good of subheading 8708.92, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For any other good of subheading 8708.92 for use as original equipment in any other vehicle or as an aftermarket part:

(7) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other heading;

(8) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other good of subheading 8708.92, whether or not there is also a change from any other heading, provided there is a

regional value content of not less than 50 percent under the net cost method; or

(9) No required change in tariff classification to any other good of subheading 8708.92, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.93 For a good of subheading 8708.93 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.93 from any other heading;

(2) A change to subheading 8708.93 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 70 percent under the net cost method; or

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.93 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.93 from any other heading;

(4) A change to subheading 8708.93 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 70 percent under the net cost method; or

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.93 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.93 from any other heading;

(6) A change to subheading 8708.93 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.94 For a good of subheading 8708.94 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.94, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.94 for use as original equipment in a heavy truck:

(2) A change to subheading 8708.94 from any other heading; or

(3) A change to steering wheels, steering columns or steering boxes of subheading 8708.94 from parts thereof of subheading 8708.94 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter;

(4) No required change in tariff classification to parts of steering wheels, steering columns or steering boxes of subheading 8708.94, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.94 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.94 from any other heading; or

(6) A change to steering wheels, steering columns or steering boxes of subheading 8708.94 from parts thereof of subheading 8708.94 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(7) No required change in tariff classification to parts of steering wheels, steering columns or steering boxes of subheading 8708.94, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.95 For a good of subheading 8708.95 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.95 from any other heading; or

(2) No required change in tariff classification to subheading 8708.95, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.95 for use as original equipment in a heavy truck:

(1) A change to subheading 8708.95 from any other heading; or

(2) No required change in tariff classification to subheading 8708.95, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.95 for use as original equipment in any other vehicle or as an aftermarket part:

(3) A change to subheading 8708.95 from any other heading; or

(4) No required change in tariff classification to subheading 8708.95, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.99 For a chassis frame of subheading 8708.99 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a chassis of subheading 8708.99 for use as original equipment in a heavy truck:

(2) No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.99 for use as original equipment in a passenger vehicle or light truck:

8708.99.aa A change to tariff item 8708.99.aa from any other subheading, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

8708.99.bb A change to tariff item 8708.99.bb from any other heading, except from subheading 8482.10 through 8482.80 or tariff item 8482.99.aa; or

A change to tariff item 8708.99.bb from subheadings 8482.10 through 8482.80 or tariff item 8482.99.aa, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

8708.99 A change to subheading 8708.99 from any other heading; or

No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For any other good of subheading 8708.99 for use as original equipment in a heavy truck:

8708.99.aa A change to tariff item 8708.99.aa from any other subheading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

8708.99.bb A change to tariff item 8708.99.bb from any other heading, except from subheading 8482.10 through 8482.80 or tariff item 8482.99.aa; or

A change to tariff item 8708.99.bb from subheadings 8482.10 through 8482.80 or tariff item 8482.99.aa, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

8708.99 A change to subheading 8708.99 from any other heading; or

No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.99 for use as original equipment in any other vehicle or as an aftermarket part:

8708.99.aa A change to tariff item 8708.99.aa from any other subheading, provided there is a regional value content of not less than 50 per cent under the net cost method.

8708.99.bb A change to tariff item 8708.99.bb from any other heading, except from subheading 8482.10 through 8482.80 or tariff item 8482.99.aa; or

A change to tariff item 8708.99.bb from subheadings 8482.10 through 8482.80 or tariff item 8482.99.aa, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 per cent under the net cost method.

8708.99 A change to subheading 8708.99 from any other heading; or

No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than 50 percent under the net cost method.

Section 14: Further Requirements Related to the Regional Value Content for Passenger Vehicles, Light Trucks, and Parts Thereof

Roll-Up of Originating Materials

(1) The value of non-originating materials used by the producer in the production of a passenger vehicle, light truck and parts thereof must not, for the purpose of calculating the regional value content of the good, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good. For greater certainty, if the production undertaken on non-originating materials results in the production of a good that qualifies as originating, no account is to be taken of the non-originating material contained therein if that good is used in the subsequent production of another good.

Requirements Related to Core Parts Listed in Table A.1

(2) A part listed in Table A.1 that is for use as original equipment in the production of a passenger vehicle or light truck, except for batteries of subheading 8507.60 that are used as the primary source of electrical power for the propulsion of an electric passenger vehicle or an electric light truck, is originating only if it satisfies the regional value content requirement in sections 13 or 14 or Schedule I (PSRO Annex).

(3) A battery of subheading 8507.60 that is used as the primary source of electrical power for the propulsion of an electric passenger vehicle or an electric light truck is originating if it meets the applicable requirements set out in section 14 or Schedule I (PSRO Annex).

Parts Listed in Column 1 of Table A.2 Must Be Originating for Passenger Vehicle or Light Truck To Be Originating

(4) In addition to other applicable requirements set out in these Regulations, a passenger vehicle or light truck is only originating if the parts listed in column 1 of Table A.2 used in its production are originating. The value of non-originating materials (VNM) for such parts must be calculated in accordance with subsections 14(7) through 14(8), or, at the choice of the vehicle producer or exporter, subsections 14(9) through 14(11). The net cost of a part must be calculated in accordance with section 7 (Regional Value Content), without regard to the VNM calculation method chosen.

Parts Listed in Column 1 of Table A.2 Must Meet an RVC Requirement; Advanced Batteries May Meet an RVC or Tariff Shift Requirement

(5) Except for an advanced battery of subheading 8507.60, a part listed in column 1 of Table A.2, that is for use in a passenger vehicle or light truck, must meet the regional value content requirement of section 13 or Schedule I (PSRO Annex) to be considered originating.

(6) An advanced battery of subheading 8507.60, that is for use in a passenger vehicle or light truck, is originating if it meets the applicable change in tariff classification or regional value content requirements set out in Schedule I (PSRO Annex).

VNM for Core Parts May Include All Non-Originating Materials, or Only Materials Listed in Column 2 of Table A.2

(7) For the purpose of satisfying the requirement specified in subsections (4) through (6), the regional value content of a part listed in column 1 of Table A.2, the value of non-originating materials (VNM) may be determined, at the choice of the vehicle producer or exporter, taking into consideration:

(a) The value of all non-originating materials used in the production of the part; or

(b) the value of non-originating components that are listed in column 2 of Table A.2 that are used in the production of the part.

(8) For the purposes of a regional value content calculation for a good listed in column 1 of Table A.2, based on paragraph (7)(b), any non-originating materials used in the production of the good that are not listed in column 2 of Table A.2 may be disregarded. For greater certainty, any non-originating parts listed in column 2 of Table A.2 must be included in the VNM calculation. Any parts not listed in column 2 of Table A.2 or materials or components used to produce such parts should also not be part of the VNM calculation.

(9) Subsections (7) and (8) do not apply when calculating the regional value content of a part listed in Column 1 of Table A.2 traded on its own. The rules for such parts are listed in section 13 or Schedule I of these Regulations.

Parts Listed in Column 1 of Table A.2 May Be Treated as a Single, Super-Core Part

(10) For the purpose of satisfying the requirement specified in subsections (4) through (6) and as an alternative to determining the VNM based on the method in subsection (7), the regional value content of the parts listed in column 1 of Table A.2 of these Regulations may be determined, at the choice of the vehicle producer or exporter, by treating these parts as a single part, which may be referred to as a super-core part, using the sum of the net cost of each part listed under column 1 of Table A.2 of these Regulations, and when calculating the VNM taking into consideration:

(a) The sum of the value of all non-originating materials used in the production of the parts listed under column 1 of table A.2; or

(b) the sum of the value of the non-originating components that are listed in column 2 of Table A.2 that are used in the production of the parts listed in column 1 of Table A.2.

(11) If a non-originating material used in the production of a component listed in column 2 of Table A.2 undergoes further production such that it satisfies the requirements of these Regulations, the component is treated as originating when determining the originating status of the subsequently produced part listed in column 1 of Table A.2, regardless of whether that component was produced by the producer of the part.

(12) The regional value content requirement for the parts listed in column 1 of Table A.2 may be averaged in accordance with the provisions in Section 16. Such an average may be calculated using the average regional value content for each individual parts category in the left hand column of Table A.2, or by calculating the average regional value content for all parts in the left hand column of Table A by treating them as a single part, defined as a super-core. Once

this average, by either methodology, exceeds the required thresholds listed in subsection (13), all parts used to calculate this average are considered originating.

RVC Requirements Related to Parts Listed in Tables A.1 and A.2

(13) Further to subsections (2), (7) and (10), the following regional value content thresholds apply to parts for use as original equipment listed under Table A.1 and column 1 of Table A.2:

(a) 66 percent under the net cost method or 76 percent under the transaction value method beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method or 79 percent under the transaction value method beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method or 82 percent under the transaction value method, beginning on July 1, 2022 until June 30, 2023; or

(d) 75 percent under the net cost method or 85 percent under the transaction value method, beginning on July 1, 2023, and thereafter.

Requirements Related to Principal and Complementary Parts Listed in Tables B and C

(14) Notwithstanding the regional value content requirements set out in Schedule I (PSRO Annex), a material listed in Table B is considered originating if it satisfies the applicable change in tariff classification requirement or the applicable regional value-content requirement provided in Schedule I (PSRO Annex).

(15) Further to subsection (14), the following regional value content thresholds apply to parts for use as original equipment listed under Table B:

(a) 62.5 percent under the net cost method or 72.5 percent under the transaction value method beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method or 75 percent under the transaction value method beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method or 77.5 percent under the transaction value method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method or 80 percent under the transaction value method, beginning on July 1, 2023, and thereafter.

(16) Notwithstanding the regional value content requirements set out in Schedule I (PSRO Annex), a material listed in Table C is originating if it meets the applicable change in tariff classification requirement or the applicable regional value-content requirement provided in Schedule I (PSRO Annex).

(17) Further to subsection (16), the following regional value content thresholds apply to parts for use as original equipment listed under Table C:

(a) 62 percent under the net cost method or 72 percent under the transaction value method beginning on July 1, 2020 until June 30, 2021;

(b) 63 percent under the net cost method or 73 percent under the transaction value method beginning on July 1, 2021 until June 30, 2022;

(c) 64 percent under the net cost method or 74 percent under the transaction value method, beginning on July 1, 2022 until June 30, 2023; or

(d) 65 percent under the net cost method or 75 percent under the transaction value method, beginning on July 1, 2023, and thereafter.

(18) For greater certainty, subsections (13), (15) or (17) do not apply to aftermarket parts.

Section 15: Further Requirements Related to the Regional Value Content for Heavy Trucks and Parts Thereof

(1) The value of non-originating materials used by the producer in the production of a heavy truck and parts thereof must not, for the purpose of calculating the regional value content of the good, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

(2) Notwithstanding the Product-Specific Rules of Origin in Schedule I (PSRO Annex), the regional value content requirement for a part listed in Table D that is for use in a heavy truck is:

(a) 60 percent under the net cost method or 70 percent under the transaction value method, if the corresponding rule includes a transaction value method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method or 74 percent under the transaction value method, if the corresponding rule includes a transaction value method beginning on July 1, 2024 until June 30, 2027; or

(c) 70 percent under the net cost method or 80 percent under the transaction value method, if the corresponding rule includes a transaction value method, beginning on July 1, 2027, and thereafter.

(3) Notwithstanding the Product-Specific Rules of Origin in Schedule I (PSRO Annex), the regional value content requirement for a part listed in Table E that is for use in a heavy truck is:

(a) 50 percent under the net cost method or 60 percent under the transaction value method, if the corresponding rule includes a transaction value method, beginning on July 1, 2024 until June 30, 2027; or

(b) 54 percent under the net cost method or 64 percent under the transaction value method, if the corresponding rule includes a transaction value method beginning on July 1, 2024 until June 30, 2027; or

(c) 60 percent under the net cost method or 70 percent under the transaction value method, if the corresponding rule includes a transaction value method, beginning on July 1, 2027, and thereafter.

(4) Notwithstanding section 13 (Product-Specific Rules of Origin for Vehicles) or Schedule I (PSRO Annex), an engine of heading 84.07 or 84.08, or a gear box (transmission) of subheading 8708.40, or a chassis classified in 8708.99, that is for use in a heavy truck, is originating only if it satisfies the applicable regional value content requirement in subsection (2).

Section 16: Averaging for Passenger Vehicles, Light Trucks and Heavy Trucks

(1) For the purpose of calculating the regional value content of a passenger vehicle, light truck, or heavy truck, the calculation may be averaged over the producer's fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other USMCA countries:

(a) The same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a USMCA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a USMCA country;

(c) the same model line or same class of motor vehicles produced in the territory of a USMCA country; or

(d) any other category as the USMCA countries may decide.

(2) For the purposes of paragraph (1)(c), vehicles within the same model line or class may be averaged separately if such vehicles are subject to different regional value content requirements.

(3) If a producer chooses to use averaging for the purpose of calculating regional value content, the producer must state the category it has chosen, and:

(a) If the category referred to in paragraph (1)(a) is chosen, state the model line, model name, class of passenger vehicle, light truck, or heavy truck and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(b) if the category referred to in paragraph (1)(b) is chosen, state the model name, class of passenger vehicle, light truck, or heavy truck and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(c) if the category referred to in paragraph (1)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the passenger vehicle, light truck, or heavy truck in that category, and the locations of the plants at which the motor vehicles are produced,

(d) if the category referred to in paragraph (1)(d) is chosen, state the model lines, model names, classes of motor vehicles and tariff classifications of the passenger vehicles, light trucks, or heavy trucks, and the location of the plants at which the motor vehicles are produced, or

(e) if the category referred to in paragraph (1)(e) is chosen, state the model lines, model names, classes of motor vehicles and tariff classifications of the passenger vehicles, light trucks, or heavy trucks, the location of the plants at which the motor vehicles are produced and the party or parties to which the vehicles are exported;

Averaging Period

(4) If the fiscal year of a producer begins after July 1, 2020, but before July 1, 2021, the producer may calculate its regional value content for passenger vehicles, light trucks, heavy trucks, other vehicles, core parts listed

in Table A.2 used in the production of passenger vehicles, light trucks or heavy trucks, an automotive good listed in Tables A.1, B, C, D or E, steel and aluminum purchasing requirement and labor value content, for the period beginning on July 1, 2020 and ending at the end of the following fiscal year.

Averaging After Entry Into Force + D133

(5) For the period July 1, 2020 to June 30, 2023, the producer may calculate its regional value content for passenger vehicles, light trucks, heavy trucks, other vehicles, core parts listed in Table A.2 used in the production of passenger vehicles, light trucks or heavy trucks, an automotive good listed in Tables A.1, B, C, D or E, steel and aluminum purchasing requirement and labor value content, for the following periods:

(a) July 1, 2020 to June 30, 2021

(b) July 1, 2021 to June 30, 2022

(c) July 1, 2022 to June 30, 2023, and

(d) July 1, 2023 to the end of the producer's fiscal year.

Additionally, a producer may calculate its regional value content for heavy trucks and parts listed in Table D or E, steel and aluminum purchasing requirement and labor value content, for the following periods:

(a) July 1, 2023 to June 30, 2024

(b) July 1 2024 to June 30, 2025

(c) July 1 2025 to June 30, 2026

(d) July 1 2026 to June 30, 2027 and

(e) July 1, 2027 to the end of the producer's fiscal year.

Timely Filing of Choice to Average

(6) If a producer chooses to average its regional value content calculations the producer must notify the customs administration of the USMCA country to which passenger vehicles, light trucks, heavy trucks or other vehicles are to be exported, by July 31, 2020 and subsequently at least 10 days before the first day of the producer's fiscal year during which the vehicles will be exported, or such shorter period as the customs administration may accept.

Choice to Average May Not Be Rescinded

(7) The producer may not modify or rescind the category of passenger vehicles, light trucks, heavy trucks or other vehicles or the period that they have notified the customs authority they intend to use for their averaged regional value calculation.

Averaged Net Cost and VNM Included in Calculation of RVC on the Basis of Producer's Option To Include All Vehicles of Category or Only Certain Exported Vehicles of Category

(8) For purposes of sections 13 through 15, if a producer chooses to average its net cost calculation, the net costs incurred and the values of non-originating materials used by the producer, with respect to

(a) all passenger vehicles, light trucks, or heavy trucks that fall within the category chosen by the producer and that are produced during the fiscal year, or partial fiscal year if the producer's fiscal year begins after July 1, 2020, or

(b) those passenger vehicles, light trucks, or heavy trucks to be exported to the territory of one or more of the USMCA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, or partial fiscal year if the producer's fiscal year begins after July 1, 2020, must be included in the calculation of the regional value content under any of the categories set out in subsection (1).

Year-End Analysis Required if Averaging Based of Estimated Costs; Obligation To Notify of Change in Status

(9) If the producer of a passenger vehicle, light truck, heavy truck or other vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer must conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the passenger vehicle, light truck, or heavy truck does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

(10) For the purpose of calculating the regional value content for an automotive good listed in Tables A.1, B, C, D, or E, produced in the same plant, a core part listed in Table A.2, or when treating the parts listed in column 1 of Table A.2 as a super-core, for use in a passenger vehicle or light truck, the calculation may be averaged:

(a) Over the fiscal year of the motor vehicle producer to whom the good is sold;

(b) over any quarter or month;

(c) over the fiscal year of the producer of the automotive material; or

(d) over any of the categories in paragraph (1)(a) through (d), provided that the good was produced during the fiscal year, quarter, or month forming the basis for the calculation, in which:

(i) The average in paragraph (9)(a) is calculated separately for those goods sold to one or more passenger vehicle, light truck, or heavy truck producer, or

(ii) the average in paragraph (9)(a) or (d) is calculated separately for those goods that are exported to the territory of another USMCA country.

Example Relating to the Fiscal Year of a Producer Not Coinciding With the Entry Into Force of The Agreement

(11) The following example is an ''Example'' as referred to in subsection 1(4).

Example: Subsection (4)

The agreement enters into force on July 1, 2020. A producer's fiscal year begins on January 1, 2021. The producer may calculate their regional value content over the 18-month period beginning on July 1, 2020 and ending on December 31, 2021.

Section 17: Steel and Aluminum

(1) In addition to meeting the requirements of sections 13 through 16 or Schedule I (PSRO Annex), a passenger vehicle, light truck, or heavy truck is originating only if, during a time period provided for in subsection (2), at least 70 percent, by value, of the vehicle producer's purchases at the corporate level in the territories of one or more of the USMCA countries of:

(a) Steel listed in Table S; and

(b) aluminum listed in Table S;

are of originating goods.

(2) For the purposes of subsection (1), only the value of the steel or aluminum listed in Table S that is used in the production of the part will be taken into consideration for a part of subheading 8708.29 or 8708.99 listed in Table S.

(3) The requirement set out in subsection (1) applies to steel and aluminum purchases made by the producer of passenger vehicles, light trucks or heavy trucks, including purchases made directly by the vehicle producer from a steel producer, purchases by the vehicle producer from a steel service center or a steel distributor. Subsection (1) also applies to steel or aluminum covered by a contractual arrangement in which a producer of passenger vehicles, light trucks, or heavy trucks negotiates the terms under which steel or aluminum will be supplied to a parts producer by a steel producer or supplier selected by the vehicle producer, for use in the production of parts that are supplied by the parts producer to a producer of passenger vehicles, light trucks, or heavy trucks. Such purchases must also include steel and aluminum purchases for major stampings that form the ''body in white'' or chassis frame, regardless of whether the vehicle producer or parts producer makes such purchases.

(4) The requirement set out in subsection (1) applies to steel and aluminum purchased for use in the production of passenger vehicles, light trucks or heavy trucks. Subsection (1) does not apply to steel and aluminum purchased by a producer for other uses, such as the production of other vehicles, tools, dies or molds.

(5) For the purpose subsection (1), as it applies to a steel good set out in Table S, a good is originating if:

(a) Beginning on July 1, 2020 until June 30, 2027 the good satisfies the applicable requirements established in Schedule I (PSRO Annex) or section 13 and all other applicable requirements of these Regulations; or

(b) beginning on July 1, 2027 the good satisfies all other applicable requirements of these Regulations, and provided that all steel manufacturing processes occur in one or more of the USMCA countries, except for metallurgical processes involving the refinement of steel additives. Such steel manufacturing processes include the initial melting and mixing and continues through the coating stage. This requirement does not apply to raw materials of used in the steel manufacturing process, including iron ore or reduced, processed, or pelletized iron ore of heading 26.01, pig iron of heading 72.01, raw alloys of heading 72.02 or steel scrap of heading 72.04.

(6) The vehicle producer may calculate the value of steel and aluminum purchases in subsection (1) by the following methods:

(a) For steel or aluminum imported or acquired in the territory of a USMCA country:

(i) The price paid or payable by the producer in the USMCA country where the producer is located;

(ii) the net cost of the material at the time of importation; or

(iii) the transaction value of the material at the time of importation.

(b) For steel or aluminum that is self-produced:

(i) All costs incurred in the production of materials, which includes general expenses, and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

(7) For the purpose of determining the vehicle producer's purchases of steel or aluminum in subsection 17(1), the producer may calculate the purchases:

(a) Over the previous fiscal year of the producer;

(b) over the previous calendar year;

(c) over the quarter or month to date in which the vehicle is exported;

(d) over the producer's fiscal year to date in which the vehicle is exported; or

(e) over the calendar year to date in which the vehicle is exported.

(8) If the producer chooses to base a steel or aluminum calculation on paragraph (7)(c), (d) or (e), that calculation may be based on the producer's estimated purchases for the applicable period.

(9) For the purpose of determining the vehicle producer's purchases of steel or aluminum in subsection (1), the producer may calculate the purchases on the basis of:

(a) All motor vehicles produced in one or more plants in the territory of one or more USMCA countries;

(b) all motor vehicles exported to the territory of one or more USMCA countries;

(c) all motor vehicles in a category set out in subsection 16(1) that are produced in one or more plants in the territory of one or more USMCA countries; or,

(d) all motor vehicles in a category set out in subsection 16(1) exported to the territory of one or more USMCA countries.

(10) The producer may choose different periods for the purpose of its steel and aluminum calculations.

(11) If the producer of a passenger vehicle, light truck, or heavy truck has calculated steel or aluminum purchases on the basis of estimates before or during the applicable period, the producer must conduct an analysis at the end of the producer's fiscal year of the actual purchases made over the period with respect to the production of the vehicle, and, if the passenger vehicle, light truck, or heavy truck does not satisfy the steel or aluminum requirement on the basis of the actual purchases, immediately inform any person to whom the producer has provided a certification of origin for the vehicle, or a written statement that the vehicle is an originating good, that the vehicle is a non-originating good.

Section 18: Labor Value Content

Labor Value Content Requirements for Passenger Vehicles

(1) In addition to the requirements in sections 13 through 17 and Schedule I (PSRO Annex), a passenger vehicle is originating only if the vehicle producer certifies that the passenger vehicle meets a Labor Value Content (LVC) requirement of:

(a) 30 percent, consisting of at least 15 percentage points of high-wage material and labor expenditures, no more than 10 percentage points of technology expenditures, and no more than 5 percentage points of high-wage assembly expenditures, beginning on July 1, 2020 until June 30, 2021;

(b) 33 percent, consisting of at least 18 percentage points of high-wage material and labor expenditures, no more than 10 percentage points of technology expenditures, and no more than 5 percentage points of high-wage assembly expenditures, beginning on July 1, 2021 until June 30, 2022;

(c) 36 percent, consisting of at least 21 percentage points of high-wage material and labor expenditures, no more than 10 percentage points of technology expenditures, and no more than 5 percentage points of high-wage assembly expenditures, beginning on July 1, 2022 until June 30, 2023; or

(d) 40 percent, consisting of at least 25 percentage points of high-wage material and labor expenditures, no more than 10 percentage points of technology expenditures, and no more than 5 percentage points of high-wage assembly expenditures, beginning on July 1, 2023, and thereafter.

LVC Requirement Related to Light Trucks or Heavy Trucks

(2) In addition to the requirements set out in sections 13 through 17 and Schedule I (PSRO Annex), a light truck or heavy truck is originating only if the vehicle producer certifies that the truck meets an LVC requirement of 45 percent, consisting of at least 30 percentage points based on high-wage material and labor expenditures, no more than 10 percentage points based on technology expenditures, and no more than 5 percentage points based on high-wage assembly expenditures.

Calculation of LVC Requirement

(3) For purposes of an LVC calculation for a passenger vehicle, light truck or heavy truck, a producer may include:

(a) An amount for high-wage materials used in production;

(b) an amount for high-wage labor costs incurred in the assembly of the vehicle;

(c) an amount for high-wage transportation or related costs for shipping materials to the location of the vehicle producer, if not included in the amount for high-wage materials;

(d) a credit for technology expenditures; and

(e) a credit for high-wage assembly expenditures.

(4) *High wage materials.* The amount that may be included for high-wage materials used in production is the net cost or the annual purchase value of materials that undergo production in a qualifying-wage-rate production plant and that are used in the production of passenger vehicles, light trucks or heavy trucks in a plant located in the territory of a USMCA country.

(5) A plant engaged in the production of vehicles or parts may be certified as a qualifying wage-rate vehicle assembly plant or a qualifying-wage-rate production plant based on the average wage paid to direct production workers at the plant for July 1 to December 31, 2020, or for July 1 to June 30, 2021. In subsequent periods, the certification of a qualifying-wage-rate production plant based on period less than 12 months is valid for the following period of the same length. The certification of a qualifying-wage-rate production plant based on a 12-month period is valid for the following 12 months.

(6) For the purpose of meeting the Labor Value Content requirement a producer may use one of the following formulas:

(a) Formula based on net cost

$$LVC = \frac{((HWLC + HWM) \times 100)}{NC} + HWTC + HWAC$$

(b) Formula based on total annual purchase value

$$LVC = \frac{((APV + HWLC^*) \times 100)}{(TAPV + HWLC^*)} + HWTC + HWAC$$

*HWLC is included in the numerator at the choice of the producer and, if included, must also be included in the denominator

Where:

APV is the annual purchase value of high-wage material expenditures

HWAC is the credit for high-wage assembly expenditures;

HWLC is the sum of the high-wage labor costs incurred in the assembly of the vehicle;

HWM is the sum or the high-wage material expenditures used in production;

HWTC is the credit for high-wage technology expenditures;

HWT is the high-wage transportation or related costs for shipping materials used in production, if not included in the amount for HWM;

NC is the net cost of the vehicle, and

TAPV is the total vehicle plant assembly annual purchase value of parts and materials for use in the production of the vehicle

High Wage Material Expenditures

(7) The high wage material expenditures may be calculated as sum of the following values:

(a) The annual purchase value (APV) or net cost, depending on the formula used, of a self-produced high-wage material used in the production of a vehicle;

(b) the APV or net cost, depending on the formula used, of an imported or acquired high-wage material used in the production of a vehicle;

(c) the APV or net cost, depending on the formula used, of a high-wage material used in the production of a part or material that is used in the production of an intermediate or self-produced part that is subsequently used in the production of a vehicle; and

(d) the APV or net cost depending on the formula used of a high wage material used in the production of a part or material that is subsequently used in the production of a vehicle.

(8) It is suggested, but not required, that the vehicle producer calculate the high-wage material and labor expenditures in the order described in paragraph (7). A vehicle producer need not calculate the elements in paragraphs 7(b) to (d) if the previous element or elements is sufficient to meet the LVC requirement.

High-Wage Technology Expenditures Credit

(9) The high-wage technology expenditures credit (HWTC) is based on annual vehicle producer expenditures at the corporate level in one or more USMCA countries on wages paid by the producer for research and development (R&D) or information technology (IT), calculated as a percentage of total annual vehicle producer expenditures on wages paid to direct production workers in one or more USMCA countries. Expenditures on capital or other non-wage costs for R&D or IT are not included.

(10) To determine the high-wage technology expenditures credit (HWTC), the following formula may be used:

$$\text{HWTC} = \frac{\text{Annual producer expenditures for R\&D or IT}}{\text{Total annual vehicle production expenditures}} \times 100$$

Where

HWTC is the credit for high-wage technology expenditures, expressed as a percentage;

(11) For the purposes of subsection 14(10), expenditures on wages for R&D include wage expenditures on research and development including prototype development, design, engineering, testing, or certifying operations.

High-Wage Assembly Credit

(12) A high-wage assembly credit of five percentage points may be included in the LVC for passenger vehicles or light trucks produced by a producer that operates a high-wage assembly plant for passenger vehicle or light truck parts or has a long-term supply contract for those parts (*i.e.* a contract with a minimum of three years) with such a plant.

(13) A high-wage assembly credit of five percentage points may be included in the LVC for heavy trucks produced by a producer that operates a high-wage assembly plant for heavy truck parts or has a long-term supply contract (*i.e.,* a contract with a minimum of three years) for those parts with such a plant.

(14) A high-wage assembly plant for passenger vehicle, light truck, or heavy truck parts need only have the capacity to produce the minimum amount of originating parts specified in the definition. There is no need to maintain or provide records or other documents that certify such parts are originating, as long as information demonstrating the capacity to produce these minimum amounts is maintained and can be provided.

Averaging for LVC Requirement

(15) For the purpose of calculating the LVC of a passenger vehicle, light truck or heavy truck, the producer may elect to average the calculation using any one of the following categories, on the basis of either all vehicles in the category or only those vehicles in the category that are exported to the territory of one or more of the other USMCA countries:

(a) The same model line of vehicles in the same class of vehicles produced in the same plant in the territory of a USMCA country;

(b) the same class of vehicles produced in the same plant in the territory of a USMCA country;

(c) the same model line of vehicles or same class of vehicles produced in the territory of a USMCA country;

(d) any other category as the USMCA countries may decide.

(16) An election made under subsection (15) must

(a) state the category chosen by the producer, and

(i) if the category referred to in paragraph (15)(a) is chosen, state the model line, model name, class of vehicle and tariff classification of the vehicles in that category, and the location of the plant at which the vehicles are produced,

(ii) if the category referred to in paragraph (15)(b) is chosen, state the model name, class of vehicle and tariff classification of the vehicles in that category, and the location of the plant at which the vehicles are produced, and

(iii) if the category referred to in paragraph (15)(c) is chosen, state the model line, model name, class of vehicle and tariff classification of the vehicles in that category, and the locations of the plants at which the vehicles are produced;

(b) state whether the basis of the calculation is all vehicles in the category or only those vehicles in the category that are exported to the territory of one or more of the other USMCA countries;

(c) state the producer's name and address;

(d) state the period with respect to which the election is made, including the starting and ending dates;

(e) state the estimated labor value content of vehicles in the category on the basis stated under paragraph (b);

(f) be dated and signed by an authorized officer of the producer; and

(g) be filed with the customs administration of each USMCA country to which vehicles in that category are to be exported during the period covered by the election, by July 31, 2020, and subsequently at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

(17) An election filed for the vehicles referred to in subsection (16) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

(18) For purposes of this section, if a producer files an election under paragraph (16)(a), it must include the labor value content and the net cost of the producer's passenger vehicles, light trucks or heavy trucks, calculated under one of the categories set out in subsection (15), with respect to

(a) all vehicles that fall within the category chosen by the producer, or

(b) those vehicles to be exported to the territory of one or more of the USMCA countries that fall within the category chosen by the producer.

LVC Periods

(19) For the purposes of determining the LVC in this section, the producer may base the calculation on the following periods:

(a) The previous fiscal year of the producer;

(b) the previous calendar year;

(c) the quarter or month to date in which the vehicle is produced or exported;

(d) the producer's fiscal year to date in which the vehicle is produced or exported; or

(e) the calendar year to date in which the vehicle is produced or exported.

Transportation and Related Costs

(20) High-wage transportation or related costs for shipping may be included in a producer's LVC calculation, if not included in the amount for high-wage materials. Alternatively, a producer may aggregate such costs within the territories of one or more of the USMCA countries. Based on this aggregate amount, the producer may attribute an amount for transportation or related costs for shipping for purposes of the LVC calculation. Transportation or related costs for shipping incurred in transporting a material from outside the territories of the USMCA countries to the territory of a USMCA country are not included in this calculation.

Value of Materials for LVC Purposes

(21) The value of both originating and non-originating materials must be taken into account for the purpose of calculating the labor value content of a good. For greater certainty, the full value of a non-originating material that has undergone production in a qualifying-wage-rate production plant may be included in the HWM described in subsection 6.

Excess LVC May Be Used Towards RVC Requirement for Heavy Trucks

(22) For the period ending July 1, 2027, if a producer certifies a Labor Value Content for a heavy truck that is higher than 45 percent by increasing the amount of high wage material and manufacturing expenditures above 30 percentage points, the producer may use the points above 30 percentage points as a credit towards the regional value content percentages under section 13, provided that the regional value content percentage is not below 60 percent.

Section 19: Alternative Staging Regime

(1) For the purposes of this section, eligible vehicles means passenger vehicles or light trucks for which an alternative staging regime has been approved by the USMCA countries.

(2) Notwithstanding sections 13 through 18, eligible vehicles are subject to the requirements set forth in subsection (4) from July 1, 2020 to June 30, 2025, or any other period provided for in the producer's approved alternative staging regime. Eligible vehicles are also subject to any other applicable requirements established in these Regulations.

(3) Passenger vehicles or light trucks that are not eligible vehicles may qualify as originating under the rules of origin established in sections 13 through 18, and any other applicable requirements established in these Regulations.

(4) Eligible vehicles are considered originating if they meet the following requirements:

(a) A regional value content of not less than 62.5 percent, under the net cost method;

(b) for parts listed in Table A.1, except lithium ion batteries of subheading 8507.60, a regional value content of not less than:

(i) 62.5 percent where the net cost method is used; or

(ii) 72.5 percent where the transaction value method is used if the corresponding rule includes a transaction value method; and

(iii) for lithium-ion batteries of 8507.60, a change from within subheading 8507.60 or from any other subheading for lithium-ion batteries of 8507.60

(c) at least 70 percent of a vehicle producer's purchases of steel and at least 70 percent of a vehicle producer's purchases of aluminum, by value, must qualify as originating under the rules of origin established in Schedule I (PSRO Annex). This requirement will not apply to vehicle producers that have an exemption under an approved alternative staging regime from having to satisfy this requirement; and

(d) a labor value content of at least 25 percent, consisting of at least ten percentage points of high-wage material and manufacturing expenditures, no more than ten percentage points of high-wage technology expenditures, and no more than five percentage points of high-wage assembly expenditures.

(5) Eligible vehicles are exempt from the core parts requirement set out in section 14.

(6) All methods and calculations for the requirements applicable to eligible vehicles must be based on the applicable provisions in these Regulations.

(7) Vehicles that are presently covered under the alternative staging regime described in Article 403.6 of the NAFTA Agreement as of November 30, 2019, may continue to use this regime, including any regulations that were effect prior to entry into force of the USMCA, according to each USMCA country's approval process for use of the alternative staging regime. After the expiration of the period under the Article 403.6 alternative staging period, such vehicles will be eligible for preferential treatment under the requirements described in subsection (4), until the end of the USMCA alternative staging period described in subsection (2). For greater certainty, such vehicles will also be eligible for preferential tariff treatment under the other rules of origin set forth in these regulations.

Section 20: Regional Value Content for Other Vehicles

(1) The value of non-originating materials used by the producer in the production of other vehicles and parts thereof must not, for the purpose of calculating the regional value content of the good, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

(2) Notwithstanding section 13 and Schedule I (PSRO Annex), the regional value content requirement is 62.5 percent under the net cost method for:

(a) A motor vehicle for the transport of 15 or fewer persons of subheading 8702.10 or 8702.90;

(b) a passenger vehicle with a compression-ignition engine as the primary motor of propulsion of subheading 8703.21 through 8703.90,

(c) a three or four-wheeled motorcycle of subheading 8703.21 through 8703.90,

(d) a motorhome or entertainer coach of subheading 8703.21 through 8703.90;

(e) an ambulance, a hearse, a prison van of subheading 8703.21 through 8703.90;

(f) a vehicle solely principally for off-road use of subheading 8703.21 through 8703.90; or

(g) a vehicle of subheading 8704.21 or 8704.31 that is solely or principally for off-road use; and

(h) a good of heading 84.07 or 84.08, or subheading 8708.40, that is for use in a motor vehicle in paragraphs (a) through (g).

(3) Notwithstanding section 13 and Schedule I (PSRO Annex), the regional value content requirement is 60 percent under the net cost method for:

(a) A good that is:

(i) A motor vehicle of heading 87.01, except for subheading 8701.20;

(ii) a motor vehicle for the transport of 16 or more persons of subheading 8702.10 or 8702.90;

(iii) a motor vehicle of subheading 8704.10;

(iv) a motor vehicle of subheading 8704.22, 8704.23, 8704.32, or 8704.90 that is solely or principally for off-road use;

(v) a motor vehicle of heading 87.05; or,

(vi) a good of heading 87.06 that is not for use in a passenger vehicle, light truck, or heavy truck;

(b) a good of heading 84.07 or 84.08, or subheading 8708.40, that is for use in a motor vehicle in paragraph (3)(a); or

(c) except for a good in paragraph (3)(b) or of subheading 8482.10 through 8482.80, 8483.20, or 8483.30, a good in Table F that is subject to a regional value content requirement and that is for use in a motor vehicle in paragraphs (2)(a) through (g) or (3)(a).

(4) For the purpose of calculating the regional value content under the net cost method for a good that is a motor vehicle provided for in paragraphs (2)(a) through (g) or (3)(a), a good listed in Table F for use as original equipment in the production of a good in paragraphs (2)(a) through (g), or a component listed in Table G for use as original equipment in the production of the motor vehicle in paragraph (3)(a), the value of non-originating materials used by the producer in the production of the good must be the sum of:

(a) For each material used by the producer listed in Table F or Table G, whether or not produced by the producer, at the choice of the producer and determined in accordance with section 7 (Regional Value Content), either

(i) the value of such material that is non-originating, or

(ii) the value of non-originating materials used in the production of such material; and

(b) the value of any other non-originating material used by the producer that is not listed in Table F or Table G, determined in accordance with section 7 (Regional Value Content).

(5) For greater certainty, notwithstanding subsection (4), for purposes of a good that is a motor vehicle provided for in paragraphs

(2)(a) through (g) or (3)(a), the value of non-originating materials is the sum of the values of all non-originating materials used by the producer in the production of the vehicle.

(6) For the purpose of calculating the regional value content of a motor vehicle covered by subsections (2) or (3), the producer may average its calculation over its fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other USMCA countries:

(a) The same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a USMCA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a USMCA country; or

(c) the same model line of motor vehicles produced in the territory of a USMCA country.

(7) For the purpose of calculating the regional value content for a good listed in Table F, or a component or material listed in Table G, produced in the same plant, the producer of the good may:

(a) Average its calculation:

(i) Over the fiscal year of the motor vehicle producer to whom the good is sold,

(ii) over any quarter or month, or

(iii) over its fiscal year, if the good is sold as an aftermarket part;

(b) calculate the average referred to in paragraph (a) separately for a good sold to one or more motor vehicle producers; or

(c) with respect to any calculation under this subsection, calculate the average separately for goods that are exported to the territory of one or more of the USMCA countries.

(8) The regional value content requirement for a motor vehicle identified in subsection (2) or (3) is:

(a) 50 percent for five years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if:

(i) It is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in subsection (3), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the USMCA countries,

(ii) the plant consists of a new building in which the motor vehicle is assembled, and

(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or

(b) 50 percent for two years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a different motor vehicle of a class, or marque, or, except for a motor vehicle identified in subsection (3), size category and underbody, that was assembled by the motor vehicle assembler in the plant before the refit.

Note: The Regional Value Content requirements set out in sections 13 or 14 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a passenger vehicle or light truck. For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or 14 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE A.1—CORE PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS

HS 2012	Description
8407.31	Reciprocating piston engines of a kind used for the propulsion of passenger vehicles of Chapter 87, of a cylinder capacity not exceeding 50 cc.
8407.32	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 50 cc but not exceeding 250 cc.
8407.33	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 250 cc but not exceeding 1,000 cc.
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc.
Ex 8408.20	Compression-ignition internal combustion piston engines of a kind used for the propulsion of vehicles of subheading 8704.21 or 8704.31.
8409.91	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, suitable for use solely or principally with spark-ignition internal combustion piston engines.
8409.99	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, other.
8507.60	Lithium-ion batteries that are used as the primary source of electrical power for the propulsion of an electric passenger vehicle or electric light truck.
8706.00	Chassis fitted with engines, for the motor vehicles of heading 87.03 or subheading 8704.21 or 8704.31.
8707.10	Bodies for the vehicles of heading 87.03.
8707.90	Bodies for the vehicles of subheading 8704.21 or 8704.31.
Ex 8708.29	Body stampings.
8708.40	Gear boxes and parts thereof.
8708.50	Drive axles with differential, whether or not provided with other transmission components, and non-driving axles; parts thereof.
8708.80	Suspension systems and parts thereof (including shock absorbers).
8708.94	Steering wheels, steering columns, and steering boxes; parts thereof.
Ex 8708.99	Chassis frames.

The following table sets out the parts and components applicable to Table A.2 and their related tariff provisions, to facilitate implementation of the core parts requirement pursuant to Article 3.7 of the Appendix to the Annex 4–B of the Agreement.

These parts, and components used to produce such parts, are for the production of a passenger vehicle or light truck in order to meet the requirements under Section 14. The prefix ''ex'' is used to indicate that only the parts described in the components column and used in the production of parts for use as original equipment in a passenger vehicle or light truck are taken into consideration when performing the calculation.

TABLE A.2—PARTS AND COMPONENTS FOR DETERMINING THE ORIGIN OF PASSENGER VEHICLES AND LIGHT TRUCKS UNDER SECTIONS 13 OR 14 OR SCHEDULE I (PSRO ANNEX)

Column 1 *(the parts listed in this column may be referred to collectively as a super-core part)*	Column 2	
Parts	Components	6-Digit HS Subheading
Engines	Spark-ignition reciprocating or rotary internal combustion piston engines and Compression-ignition internal combustion piston engines (diesel or semi-diesel engines).	ex 8407.33, ex 8407.34, ex 8408.20.
	Heads	ex 8409.91, ex 8409.99.
	Blocks	ex 8409.91, ex 8409.99.
	Crankshafts	ex 8483.10.
	Crankcases	ex 8409.91, ex 8409.99.
	Pistons	ex 8409.91.
	Rods	ex 8409.91, ex 8409.99.
	Head subassembly	ex 8409.91, ex 8409.99.
Transmissions	Gear boxes	ex 8708.40.
	Transmission cases	ex 8708.40.
	Torque converters	ex 8708.40, ex 8483.90.
	Torque converter housings	ex 8708.40, ex 8483.90.
	Gears and gear blanks	ex 8708.40, ex 8483.90.
	Clutches, including continuously variable transmissions, but not parts thereof.	ex 8708.93.
	Valve body assembly	ex 8481.90, ex 8708.40.
Body and Chassis	Major stampings that form the ''body in white'' or chassis frame	ex 8707.10, ex 8707.90, ex 8708.29, ex 8708.99.
	Major body panel stampings	ex 8708.10, ex 8708.29.
	Secondary panel stampings	ex 8708.29.
	Structural panel stampings	ex 8708.29, ex 8708.99.
	Stamped Frame components	ex 8708.29, ex 8708.99.
Axles	Drive-axles with differential, whether or not provided with other transmission components, and non-driving axles.	ex 8708.50.
	Axle shafts	ex 8708.50.
	Axle housings	ex 8708.50.
	Axle hubs	ex 8482.10, ex 8482.20, ex 8708.50, ex 8708.99.
	Carriers	ex 8708.50.
	Differentials	ex 8708.50.
Suspension Systems	Suspension systems (including shock absorbers)	ex 8708.80.
	Shock absorbers	ex 8708.80.
	Struts	ex 8708.80.
	Control arms	ex 8708.80.
	Sway bars	ex 8708.80.
	Knuckles	ex 8708.80.
	Coil springs	ex 7320.20.
	Leaf springs	ex 7320.10.
Steering Systems	Steering wheels, steering columns and steering boxes	ex 8708.94.
	Steering columns	ex 8708.94.
	Steering gears/racks	ex 8708.94.
	Control units	ex 8537.10, ex 8537.90, ex 8543.70.
Advanced Batteries	Batteries of a kind used as the primary source for the propulsion of electrical power for electrically powered vehicles for passenger vehicles and light trucks.	ex 8507.60, ex 8507.80.
	Cells	ex 8507.60, ex 8507.80, ex 8507.90.
	Modules/arrays	ex 8507.60, ex 8507.80, ex 8507.90.
	Assembled packs	ex 8507.60, ex 8507.80.

Note: The Regional Value Content requirements set out in section 13 or 14 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a passenger vehicle or light truck.

For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or 14 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE B—PRINCIPAL PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS

HS 2012	Description
8413.30	Fuel, lubricating or cooling medium pumps for internal combustion piston engines.
8413.50	Other reciprocating positive displacement pumps.
8414.59	Other fans.
8414.80	Other air or gas pumps, compressors and fans.
8415.20	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which humidity cannot be separately regulated, of a kind used for persons, in motor vehicles.
Ex 8479.89	Electronic brake systems, including ABS and ESC systems.
8482.10	Ball bearings.
8482.20	Tapered roller bearings, including cone and tapered roller assemblies.
8482.30	Spherical roller bearings.
8482.40	Needle roller bearings.
8482.50	Other cylindrical roller bearings.
8482.80	Other ball or roller bearings, including combined ball/roller bearings.
8483.10	Transmission shafts (including cam shafts and crank shafts) and cranks.
8483.20	Bearing housings, incorporating ball or roller bearings.
8483.30	Bearing housings, not incorporating ball or roller bearings; plain shaft bearings.
8483.40	Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters.
8483.50	Flywheels and pulleys, including pulley blocks.
8483.60	Clutches and shaft couplings (including universal joints).
8501.32	Other DC motors and generators of an output exceeding 750 W but not exceeding 75 kW.
8501.33	Other DC motors and generators of an output exceeding 75 kW but not exceeding 375 kW.
8505.20	Electro-magnetic couplings, clutches and brakes.
8505.90	Other electro-magnets; electro-magnetic or permanent magnet chucks, clamps and similar holding devices; electro-magnetic lifting heads; including parts.
8511.40	Starter motors and dual purpose starter-generators of a kind used for spark-ignition or compression-ignition internal combustion engines.
8511.50	Other generators.
8511.80	Other electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines.
Ex 8511.90	Parts of electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines.
8537.10	Electric controls for a voltage not exceeding 1,000 V.
8708.10	Bumpers and parts thereof.
8708.21	Safety seat belts.
Ex 8708.29	Other parts and accessories of bodies (including cabs) of motor vehicles (excluding body stampings).
8708.30	Brakes and servo-brakes; parts thereof.
8708.70	Road wheels and parts and accessories thereof.
8708.91	Radiators and parts thereof.
8708.92	Silencers (mufflers) and exhaust pipes; parts thereof.
8708.93	Clutches and parts thereof.
8708.95	Safety airbags with inflator system; parts thereof.
Ex 8708.99	Other parts and accessories of motor vehicles of headings 87.01 to 87.05 (excluding chassis frames).
9401.20	Seats of a kind used for motor vehicles.

Note: The Regional Value Content requirements set out in sections 13 or 14 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a passenger vehicle or light truck. For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or 14 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE C—COMPLEMENTARY PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS

HS 2012	Description
4009.12	Tubes, pipes and hoses of vulcanised rubber other than hard rubber, not reinforced or otherwise combined with other materials, with fittings.
4009.22	Tubes, pipes and hoses of vulcanised rubber other than hard rubber, reinforced or otherwise combined only with metal, with fittings.
4009.32	Tubes, pipes and hoses of vulcanised rubber other than hard rubber, reinforced or otherwise combined only with textile materials, with fittings.
4009.42	Tubes, pipes and hoses of vulcanised rubber other than hard rubber, reinforced or otherwise combined with other materials, with fittings.
8301.20	Locks of a kind used for motor vehicles.
Ex 8421.39	Catalytic converters.
8481.20	Valves for oleohydraulic or pneumatic transmissions.
8481.30	Check (nonreturn) valves.
8481.80	Other taps, cocks, valves and similar appliances, including pressure-reducing valves and thermostatically controlled valves.
8501.10	Electric motors of an output not exceeding 37.5 W.
8501.20	Universal AC/DC motors of an output exceeding 37.5 W.
8501.31	Other DC motors and generators of an output not exceeding 750 W.

TABLE C—COMPLEMENTARY PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS—Continued

HS 2012	Description
Ex 8507.20 ...	Other lead-acid batteries of a kind used for the propulsion of motor vehicles of Chapter 87.
Ex 8507.30 ...	Nickel-cadmium batteries of a kind used for the propulsion of motor vehicles of Chapter 87.
Ex 8507.40 ...	Nickel-iron batteries of a kind used for the propulsion of motor vehicles of Chapter 87.
Ex 8507.80 ...	Other batteries of a kind used for the propulsion of motor vehicles of Chapter 87.
8511.30	Distributors; ignition coils.
8512.20	Other lighting or visual signalling equipment.
8512.40	Windshield wipers, defrosters and demisters.
Ex 8519.81 ...	Cassette decks.
8536.50	Other electrical switches, for a voltage not exceeding 1,000 V.
Ex 8536.90 ...	Junction boxes.
8539.10	Sealed beam lamp units.
8539.21	Tungsten halogen filament lamp.
8544.30	Ignition wiring sets and other wiring sets of a kind used in motor vehicles.
9031.80	Other measuring and checking instruments, appliances & machines.
9032.89	Other automatic regulating or controlling instruments and apparatus.

Note: The Regional Value Content requirements set out in sections 13 or 15 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a heavy truck. For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE D—PRINCIPAL PARTS FOR HEAVY TRUCKS

8407.31	Reciprocating piston engines of a kind used for the propulsion of passenger vehicles of Chapter 87, of a cylinder capacity not exceeding 50 cc.
8407.32	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 50 cc but not exceeding 250 cc.
8407.33	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 250 cc but not exceeding 1,000 cc.
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc.
8408.20	Compression-ignition internal combustion piston engines of a kind used for the propulsion of vehicles of Chapter 87.
8409.91	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, suitable for use solely or principally with spark-ignition internal combustion piston engines.
8409.99	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, other.
8413.30	Fuel, lubricating or cooling medium pumps for internal combustion piston engines.
Ex 8414.59	Turbochargers and superchargers.
8414.80	Other air or gas pumps, compressors and fans.
8415.20	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which humidity cannot be separately regulated, of a kind used for persons, in motor vehicles.
8483.10	Transmission shafts (including cam shafts and crank shafts) and cranks.
8483.40	Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters.
8483.50	Flywheels and pulleys, including pulley blocks.
Ex 8501.32	Other DC motors and generators of an output exceeding 750 W but not exceeding 75 kW, of a kind used for the propulsion of motor vehicles of Chapter 87.
8511.40	Starter motors and dual purpose starter-generators of a kind used for spark-ignition or compression-ignition internal combustion engines.
8511.50	Other generators.
8537.10	Electric controls for a voltage not exceeding 1,000 V.
8706.00	Chassis fitted with engines, for the motor vehicles of heading 87.01 through 87.05.
8707.90	Bodies for the vehicles of heading 87.01, 87.02, 87.04 or 87.05.
8708.10	Bumpers and parts thereof.
8708.21	Safety seat belts.
8708.29	Other parts and accessories of bodies (including cabs) of motor vehicles.
8708.30	Brakes and servo-brakes; parts thereof.
8708.40	Gear boxes and parts thereof.
8708.50	Drive axles with differential, whether or not provided with other transmission components, and non-driving axles; and parts thereof.
8708.70	Road wheels and parts and accessories thereof.
8708.80	Suspension systems and parts thereof (including shock absorbers).
8708.91	Radiators and parts thereof.
8708.92	Silencers (mufflers) and exhaust pipes; parts thereof.
8708.93	Clutches and parts thereof.
8708.94	Steering wheels, steering columns and steering boxes; parts thereof.
8708.95	Safety airbags with inflator system; parts thereof.
8708.99	Other parts and accessories of motor vehicles of headings 87.01 to 87.05.
9401.20	Seats of a kind used for motor vehicles.

Note: The Regional Value Content requirements set out in sections 13 or 15 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a heavy truck. For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE E—COMPLEMENTARY PARTS FOR HEAVY TRUCKS

8413.50	Other reciprocating positive displacement pumps.
Ex 8479.89	Electronic brake systems, including ABS and ESC systems.
8482.10	Ball bearings.
8482.20	Tapered roller bearings, including cone and tapered roller assemblies.
8482.30	Spherical roller bearings.
8482.40	Needle roller bearings.
8482.50	Other cylindrical roller bearings.
8483.20	Bearing housings, incorporating ball or roller bearings.
8483.30	Bearing housings, not incorporating ball or roller bearings; plain shaft bearings.
8483.60	Clutches and shaft couplings (including universal joints).
8505.20	Electro-magnetic couplings, clutches and brakes.
8505.90	Other electro-magnets; electro-magnetic or permanent magnet chucks, clamps and similar holding devices; electro-magnetic lifting heads; including parts.
8507.60	Lithium-ion batteries.
8511.80	Other electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines.
8511.90	Parts of electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines or generators and cut-outs of a kind used in conjunction with such engines.

Note: The Regional Value Content requirements set out in section 20 or Schedule I (PSRO Annex) apply to a good for use in a vehicle specified in subsections 20(2) and 20(3).

TABLE F—PARTS FOR OTHER VEHICLES

HS 2012	Description
40.09	Tubes, pipes and hoses.
4010.31	Endless transmission belts (V-belts), V-ribbed, of an outside circumference exceeding 60 cm but not exceeding 180 cm.
4010.32	Endless transmission belts (V-belts), other than V-ribbed, of an outside circumference exceeding 60 cm but not exceeding 180 cm.
4010.33	Endless transmission belts (V-belts), V-ribbed, of an outside circumference exceeding 180 cm but not exceeding 240 cm.
4010.34	Endless transmission belts (V-belts), other than V-ribbed, of an outside circumference exceeding 180 cm but not exceeding 240 cm.
4010.39.aa	Other endless transmission belts (V-belts).
40.11	New pneumatic tires, of rubber.
4016.93.aa	Gaskets, washers and other seals of vulcanised rubber other than hard rubber.
4016.99.aa	Vibration control goods.
7007.11	Toughened (tempered) safety glass of a size and shape suitable for incorporation in vehicles.
7007.21	Laminated safety glass of a size and shape suitable for incorporation in vehicles.
7009.10	Rearview mirrors for vehicles.
8301.20	Locks of a kind used for motor vehicles.
8407.31	Reciprocating piston engines of a kind used for the propulsion of passenger vehicles of Chapter 87, of a cylinder capacity not exceeding 50 cc.
8407.32	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 50 cc but not exceeding 250 cc.
8407.33	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 250 cc but not exceeding 1,000 cc.
8407.34.aa	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc but not exceeding 2,000 cc.
8407.34.bb	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 2,000 cc.
8408.20	Compression-ignition internal combustion piston engines of a kind used for the propulsion of vehicles of Chapter 87.
84.09	Parts suitable for use solely or principally with spark-ignition internal combustion piston engines.
8413.30	Fuel, lubricating or cooling medium pumps for internal combustion piston engines.
8414.80.aa	Other air or gas pumps, compressors and fans (turbochargers and superchargers for motor vehicles, where not provided for under subheading 8414.59).
8414.59.aa	Other fans (turbochargers and superchargers for motor vehicles, where not provided for under subheading 8414.80).
8415.20	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which humidity cannot be separately regulated, of a kind used for persons, in motor vehicles.
8421.39.aa	Catalytic converters.
8481.20	Valves for oleohydraulic or pneumatic transmissions.
8481.30	Check (nonreturn) valves.

TABLE F—PARTS FOR OTHER VEHICLES—Continued

HS 2012	Description
8481.80	Other taps, cocks, valves and similar appliances, including pressure-reducing valves and thermostatically controlled valves.
8482.10 through 8482.80	Ball or roller bearings.
8483.10	Transmission shafts (including cam shafts and crank shafts) and cranks.
8483.20	Bearing housings, incorporating ball or roller bearings.
8483.30	Bearing housings; not incorporating ball or roller bearings; plain shaft bearings.
8483.40	Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changes, including torque converters.
8483.50	Flywheels and pulleys, including pulley blocks.
8501.10	Electric motors and generators of an output not exceeding 37.5 W.
8501.20	Universal AC/DC motors of an output exceeding 37.5 W.
8501.31	Other DC motors and generators of an output not exceeding 750 W.
8501.32.aa	Other DC motors and generators of an output exceeding 750 W but not exceeding 75 kW of a kind used for the propulsion of vehicles of Chapter 87.
8507.20.aa, 8507.30.aa, 8507.40.aa and 8507.80.aa.	Batteries that provide primary source for electric cars.
8511.30	Distributors; ignition coils.
8511.40	Starter motors and dual purpose starter-generators of a kind used for spark-ignition or compressing-ignition internal combustion engines.
8511.50	Other generators.
8512.20	Other lighting or visual signalling equipment.
8512.40	Windshield wipers, defrosters and demisters.
ex 8519.81	Cassette decks.
8527.21	Radios combined with cassette players.
8527.29	Radios.
8536.50	Other electrical switches, for a voltage not exceeding 1,000 V.
8536.90	Junction boxes.
8537.10.bb	Motor control centers.
8539.10	Sealed beam lamp units.
8539.21	Tungsten halogen filament lamp.
8544.30	Ignition wiring sets and other wiring sets of a kind used in vehicles.
87.06	Chassis fitted with engines, for the motor vehicles of heading 87.01 through 87.05.
87.07	Bodies (including cabs) for the motor vehicles of headings 87.01 to 87.05.
8708.10.aa	Bumpers (but not parts thereof).
8708.21	Safety seat belts.
8708.29.aa	Body stampings.
8708.29.cc	Door assemblies.
8708.30	Brakes and servo-brakes; parts thereof.
8708.40	Gear boxes and parts thereof.
8708.50	Drive axles with differential, whether or not provided with other transmission components, and non-driving axles.
8708.70.aa	Road wheels, but not parts or accessories thereof.
8708.80	Suspension systems and parts thereof (including shock absorbers).
8708.91	Radiators and parts thereof.
8708.92	Silencers (mufflers) and exhaust pipes; parts thereof.
8708.93.aa	Clutches (but not parts thereof).
8708.94	Steering wheels, steering columns and steering boxes; parts thereof.
8708.95	Safety airbags with inflator systems, and parts thereof.
8708.99.aa	Vibration control goods containing rubber.
8708.99.bb	Double flanged wheel hub units incorporating ball bearings.
8708.99.ee	Other parts for powertrains.
8708.99.hh	Other parts and accessories not provided for elsewhere in subheading 8708.99.
9031.80	Other measuring and checking instruments, appliances & machines.
9032.89	Other automatic regulating or controlling instruments and apparatus.
9401.20	Seats of a kind used for motor vehicles.

TABLE G—LIST OF COMPONENTS AND MATERIALS FOR OTHER VEHICLES

1. Component: Engines provided for in heading 84.07 or 84.08

Materials: Cast block, cast head, fuel nozzle, fuel injector pumps, glow plugs, turbochargers and superchargers, electronic engine controls, intake manifold, exhaust manifold, intake/exhaust valves, crankshaft/camshaft, alternator, starter, air cleaner assembly, pistons, connecting rods and assemblies made therefrom (or rotor assemblies for rotary engines), flywheel (for manual transmissions), flexplate (for automatic transmissions), oil pan, oil pump and pressure regulator, water pump, crankshaft and camshaft gears, and radiator assemblies or charge-air coolers.

2. Component: Gear boxes (transmissions) provided for in subheading 8708.40

Materials: (a) For manual transmissions—transmission case and clutch housing; clutch; internal shifting mechanism; gear sets, synchronizers and shafts; and (b) for torque convertor type transmissions—transmission case and convertor housing; torque convertor assembly; gear sets and clutches; and electronic transmission controls.

The following table lists the HS subheadings for steel and aluminum subject to the USMCA steel and aluminum purchasing requirements set out in Section 17 to facilitate implementation of the steel and aluminum purchasing requirement, pursuant to Article 6.3 of the Appendix to Annex 4–B of the Agreement.

The prefix ''ex'' is used to indicate that only goods described in the ''Description'' column are taken into consideration when performing the calculation.

These descriptions cover structural steel or aluminum purchases by vehicle producers used in the production of passenger vehicles, light trucks, or heavy trucks, including all steel or aluminum purchases used for the production of major stampings that form the ''body in white'' or chassis frame as defined in Table A.2 (Parts and Components for Passenger Vehicles and Light Trucks). The descriptions do not cover structural steel or aluminum purchased by parts producers or suppliers used in the production of other automotive parts.

TABLE S—STEEL AND ALUMINUM

S	Description	6-Digit HS subheading(s)
Steel	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:	
	Other, in coils, not further worked than hot-rolled, pickled	7208.25, 7208.26, 7208.27.
	Other, in coils, not further worked than hot-rolled	7208.36, 7208.37, 7208.38, 7208.39.
	Other, not in coils, not further worked than hot-rolled	7208.51, 7208.52, 7208.53, 7208.54.
	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated:	
	In coils, not further worked than cold-rolled (cold-reduced):	7209.15, 7209.16, 7209.17, 7209.18.
	Not in coils, not further worked than cold-rolled (cold-reduced):	7209.25, 7209.26, 7209.27, 7209.28, 7209.90.
	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated:	
	Electrolytically plated or coated with zinc	7210.30.
	Otherwise plated or coated with zinc, Other (Not Corrugated)	7210.49.
	Other plated or coated with aluminum	7210.69.
	Other: Clad; Other: Electrolytically coated or plated with base metal, Other.	7210.90.
	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated:	
	Other, of a thickness of 4.75 mm or more	7211.14.
	Other:	7211.19.
	Not further worked than cold-rolled (cold-reduced), Containing by weight less than 0.25 percent of carbon:	7211.23.
	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, clad, plated or coated:	
	Electrolytically plated or coated with zinc	7212.20.
	Otherwise plated or coated with zinc	7212.30.
	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel.	
	Other, of free-cutting steel	7213.20.
	Other: Other	7213.99.
	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling	
	Other, of free-cutting steel	7214.30.
	Of rectangular (other than square) cross-section	7214.91.
	Other: Other	7214.99.
	Flat-rolled products of other alloy steel, of a width of 600 mm or more	
	Other, not further worked than hot-rolled, in coils:	7225.30.
	Other, not further worked than hot-rolled, not in coils:	7225.40.
	Other, not further worked than cold-rolled (cold-reduced):	7225.50.
	Electrolytically plated or coated with zinc	7225.91.
	Other: Otherwise plated or coated with zinc	7225.92.
	Other: Other	7225.99.
	Flat-rolled products of other alloy steel, of a width of less than 600 mm:	
	Other: Not further worked than hot-rolled: Of tool steel (other than high-speed steel):.	7226.91.
	Not further worked than cold-rolled (cold-reduced):	7226.92.
	Other:	7226.99.
	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel.	
	Of silico-manganese steel	7227.20.
	Other	7227.90.
	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel.	
	Bars and rods, of high speed steel	7228.10.
	Bars and rods, of silico-manganese steel	7228.20.

TABLE S—STEEL AND ALUMINUM—Continued

S	Description	6-Digit HS subheading(s)
	Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded.	7228.30.
	Other bars and rods	7228.60
	Other tubes, pipes and hollow profiles (for example, open seamed or welded, riveted or similarly closed), of iron or steel:.	
	Other, welded, of circular cross section, of iron or nonalloy steel:	7306.30.
	Other, welded, of circular cross section, of other alloy steel:	7306.50.
	Other, welded, of noncircular cross section:	7306.61, 7306.69, ≤7306.90.
	Parts and accessories of the motor vehicles of headings 8701 to 8705:.	
	Major, secondary, and structural body panel stampings, that form the ''body in white''.	ex 8708.29.
	Stamped frame components that form the chassis frame	ex 8708.99.
		HS heading or subheading
Aluminum.		
	Unwrought aluminum	76.01.
	Aluminum waste and scrap	76.02.
	Aluminum bars, rods and profiles	76.04.
	Aluminum wire	76.05.
	Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm:	76.06.
	Aluminum tubes and pipes	76.08.
	Parts and accessories of the motor vehicles of headings 8701 to 8705:.	
	Major, secondary, and structural body panel stampings, that form the ''body in white''.	ex 8708.29.
	Stamped frame components that form the chassis frame	ex 8708.99.

Schedule I (PSRO Annex)

1. This schedule is deemed to be the contents of Sections A, B and C of Annex 4–B of the Agreement, as implemented in General Note 11 of the Harmonized Tariff Schedule of the United States,[3] except that the following rules of interpretation apply:

(a) For the purpose of Chapter 61, Note 2 or Chapter 62, Note 3 of Annex 4–B, a fabric of subheading 5806.20 or heading 60.02 is considered formed from yarn and finished in the territory of one or more Parties if all production processes and finishing operations, starting with the weaving, knitting, needling, tufting, or other process, and ending with the fabric ready for cutting or assembly without further processing, took place in the territories of one or more of the USMCA countries, even if non-originating yarn is used in the production of the fabric of subheading 5806.20 or heading 60.02;

(b) for the purposes of Chapter 61, Note 3 and Chapter 62, Note 4 of Annex 4–B, sewing thread is considered formed and finished in the territory of one or more Parties if all production processes and finishing operations, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with the finished single or plied thread ready for use for sewing without further processing, took place in the territories of one or more of the USMCA countries even if non-originating fibre is used in the production of sewing thread of heading 52.04, 54.01 or 55.08, or yarn of heading 54.02 used as sewing thread referred to in the Notes;

(c) for the purpose of Chapter 61, Note 4 or Chapter 62, Note 5 of Annex 4–B, pocket bag fabric is considered formed and finished in the territory of one or more of the Parties if all production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling, or other process, and ending with the fabric ready for cutting or assembly without further processing, took place in the territories of one or more of the USMCA countries, even if non-originating fiber is used in the production of the yarn used to produce the pocket bag fabric;

(d) for the purpose of Chapter 61, Note 4 or Chapter 62, Note 5 of Annex 4–B, pocket bag fabric is considered a pocket or pockets if the pockets in which fabric is shaped to form a bag is not visible as the pocket is in the interior of the garment (*i.e.* pockets consisting of ''bags'' in the interior of the garment). Visible pockets such as patch pockets, cargo pockets, or typical shirt pockets are not subject to these notes;

(e) for the purpose of Chapter 61, Note 4 or Chapter 62, Note 5 of Annex 4–B, yarn is considered wholly formed in the territory of one or more Parties if all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished single or plied yarn, took place in the territory of one or more of the USMCA countries, even if non-originating fiber is used in the production of the yarn used to produce the pocket bag fabric; and,

(f) for the purpose of Chapter 63, Note 2 of Annex 4–B, a fabric of heading 59.03 is considered formed and finished in the territory of one or more Parties if all production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling, or other process, including coating, covering, laminating, or impregnating, and ending with the fabric ready for cutting or assembly without further processing, took place in the territories of one or more of the USMCA countries, even if non-originating fiber or yarn is used in the production of the fabric of heading 5903;

[3] The language ''in General Note 11 of the Harmonized Tariff Scheduled of the United States'' differs from the trilaterally agreed upon uniform regulations because the Parties contemplated that the language ''by each USMCA country'' would be replaced with the specific Party's reference to the location of the rules of origin under domestic law.

Schedule II (Most-Favored-Nation Rates of Duty on Certain Goods set out in Table 2.10.1 of the Agreement)

A. Automatic Data Processing Machines (ADP):		
	8471.30.	
	8471.41.	
	8471.49.	
B. Digital Processing Units:		
	8471.50.	
C. Input or Output Units:		
Combined Input/Output Units.		
Canada	8471.60.00.	
Mexico	8471.60.02.	
United States	8471.60.10.	
Display Units.		
Canada	8528.42.00, 8528.52.00, 8528.62.00.	
Mexico	8528.41.99, 8528.51.01, 8528.51.99, 8528.61.01.	
United States	8528.42.00, 8528.52.00, 8528.62.00.	
Other Input or Output Units.		
Canada	8471.60.00.	
Mexico	8471.60.03, 8471.60.99	
United States	8471.60.20, 8471.60.70, 8471.60.80, 8471.60.90.	
D. Storage Units:		
	8471.70.	
E. Other Units of Automatic Data Processing Machines:		
	8471.80.	
F. Parts of Computers:		
	8443.99	parts of machines of subheading 8443.31 and 8443.32, excluding facsimile machines and teleprinters.
	8473.30	parts of ADP machines and units thereof.
	8517.70	parts of LAN equipment of subheading 8517.62.
Canada	8529.90.19, 8529.90.50, 8529.90.90	parts of monitors and projectors of subheading 8528.42, 8528.52, and 8528.62.
Mexico	8529.90.01, 8529.90.06	parts of monitors or projectors of subheadings 8528.41, 8528.51, and 8528.61.
United States	8529.90.22, 8529.90.75, 8529.90.99	parts of monitors and projectors of subheading 8528.42, 8528.52, and 8528.62.
G. Computer Power Supplies:		
Canada	8504.40.30, 8504.40.90, 8504.90.10, 8504.90.20, 8504.90.90.	
Mexico	8504.40.12, 8504.40.14, 8504.90.02, 8504.90.07, 8504.90.08.	parts of goods classified in tariff item 8504.40.12.
United States	8504.40.60, 8504.40.70, 8504.90.20, 8504.90.41.	

Schedule III (Value of Goods)

1 Unless otherwise stated, the following definitions apply in this Schedule.

buyer refers to a person who purchases a good from the producer;

buying commissions means fees paid by a buyer to that buyer's agent for the agent's services in representing the buyer in the purchase of a good;

producer refers to the producer of the good being valued.

2 For purposes of subsection 7(2) of these Regulations, the transaction value of a good is the price actually paid or payable for the good, determined in accordance with section 3 and adjusted in accordance with section 4.

3 (1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the producer. The payment need not necessarily take the form of a transfer of money. It may be made by letters of credit or negotiable instruments. The payment may be made directly or indirectly to the producer. For an illustration of this, the settlement by the buyer, whether in whole or in part, of a debt owed by the producer is an indirect payment.

(2) Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in section 4, must not be considered to be an indirect payment, even though the activities may be regarded as being for the benefit of the producer. For an illustration of this, the buyer, by agreement with the producer, undertakes activities relating to the marketing of the good. The costs of such activities must not be added to the price actually paid or payable.

(3) The transaction value must not include the following charges or costs, provided that they are distinguished from the price actually paid or payable:

(a) Charges for construction, erection, assembly, maintenance or technical assistance related to the good undertaken after the good is sold to the buyer; or

(b) duties and taxes paid in the country in which the buyer is located with respect to the good.

(4) The flow of dividends or other payments from the buyer to the producer that do not relate to the purchase of the good are not part of the transaction value.

4 (1) In determining the transaction value of a good, the following must be added to the price actually paid or payable:

(a) To the extent that they are incurred by the buyer, or by a related person on behalf of the buyer, with respect to the good being valued and are not included in the price actually paid or payable

(i) commissions and brokerage fees, except buying commissions,

(ii) the costs of transporting the good to the producer's point of direct shipment and the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) where the packaging materials and containers are classified with the good under the Harmonized System, the value of the packaging materials and containers;

(b) the value, reasonably allocated in accordance with subsection (13), of the

following elements if they are supplied directly or indirectly to the producer by the buyer, free of charge or at reduced cost for use in connection with the production and sale of the good, to the extent that the value is not included in the price actually paid or payable:

(i) A material, other than an indirect material, used in the production of the good,

(ii) tools, dies, molds and similar indirect materials used in the production of the good,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition indirect material set out in subsection 1(1) of these Regulations, used in the production of the good, and

(iv) engineering, development, artwork, design work, and plans and sketches necessary for the production of the good, regardless of where performed;

(c) the royalties related to the good, other than charges with respect to the right to reproduce the good in the territory of one or more of the USMCA countries, that the buyer must pay directly or indirectly as a condition of sale of the good, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer.

(2) The additions referred to in subsection (1) must be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) If objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2.

(4) Additions must not be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subparagraphs (1)(a)(i) and (ii) are:

(a) Those amounts that are recorded on the books of the buyer; or

(b) if those amounts are costs incurred by a related person on behalf of the buyer and are not recorded on the books of the buyer, those amounts that are recorded on the books of that related person.

(6) The value of the packaging materials and containers referred to in subparagraph (1)(a)(iii) and the value of the elements referred to in subparagraph (1)(b)(i) are

(a) if the packaging materials and containers or the elements are imported from outside the territory of the USMCA country in which the producer is located, the customs value of the packaging materials and containers or the elements,

(b) if the buyer, or a related person on behalf of the buyer, purchases the packaging materials and containers or the elements from a person who is not a related person in the territory of the USMCA country in which the producer is located, the price actually paid or payable for the packaging materials and containers or the elements,

(c) if the buyer, or a related person on behalf of the buyer, acquires the packaging materials and containers or the elements from a person who is not a related person in the territory of the USMCA country in which the producer is located other than through a purchase, the value of the consideration related to the acquisition of the packaging materials and containers or the elements, based on the cost of the consideration that is recorded on the books of the buyer or the related person, or

(d) if the packaging materials and containers or the elements are produced by the buyer, or by a related person, in the territory of the USMCA country in which the producer is located, the total cost of the packaging materials and containers or the elements, determined in accordance with subsection (8),

(7) The value referred to in subsection (6), to the extent that such costs are not included under paragraphs 6(a) through (d), must include the following costs that are recorded on the books of the buyer or the related person supplying the packaging materials and containers or the elements on behalf of the buyer:

(a) The costs of freight, insurance, packing, and all other costs incurred in transporting the packaging materials and containers or the elements to the location of the producer,

(b) duties and taxes paid or payable with respect to the packaging materials and containers or the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(c) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the packaging materials and containers or the elements, and

(d) the cost of waste and spoilage resulting from the use of the packaging materials and containers or the elements in the production of the good, less the value of renewable scrap or by-product.

(8) For purposes of paragraph (6)(d), the total cost of the packaging materials and containers referred to in subparagraph (1)(a)(iii) or the elements referred to in subparagraph (1)(b)(i) are

(a) if the packaging materials and containers or the elements are produced by the buyer, at the choice of the buyer:

(i) The total cost incurred with respect to all goods produced by the buyer, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule V, or

(ii) the aggregate of each cost incurred by the buyer that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule V; and

(b) if the packaging materials and containers or the elements are produced by a person who is related to the buyer, at the choice of the buyer:

(i) The total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule V, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule V.

(9) Except as provided in subsections (11) and (12), the value of the elements referred to in subparagraphs (1)(b)(ii) through (iv) are

(a) the cost of those elements that is recorded on the books of the buyer; or

(b) if such elements are provided by another person on behalf of the buyer and the cost is not recorded on the books of the buyer, the cost of those elements that is recorded on the books of that other person.

(10) If the elements referred to in subparagraphs (1)(b)(ii) through (iv) were previously used by or on behalf of the buyer, the value of the elements must be adjusted downward to reflect that use.

(11) Where the elements referred to in subparagraphs (1)(b)(ii) and (iii) were leased by the buyer or a person related to the buyer, the value of the elements are the cost of the lease as recorded on the books of the buyer or that related person.

(12) An addition must not be made to the price actually paid or payable for the elements referred to in subparagraph (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(13) The producer must choose the method of allocating to the good the value of the elements referred to in subparagraphs (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the good. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a buyer provides the producer with a mold to be used in the production of the good and contracts with the producer to buy 10,000 units of that good. By the time the first shipment of 1,000 units arrives, the producer has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but must not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of a good only if that single shipment comprises all of the units of the good acquired by the buyer under the contract or commitment for that number of units of the good between the producer and the buyer.

(14) The addition for the royalties referred to in paragraph (1)(c) is the payment for the royalties that is recorded on the books of the buyer, or if the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(15) The value of the proceeds referred to in paragraph (1)(d) is the amount that is recorded for such proceeds on the books of the buyer or the producer.

Schedule IV Unacceptable Transaction Value

1 Unless otherwise stated, the following definitions apply in this Schedule.

buyer refers to a person who purchases a good from the producer;

producer refers to the producer of the good being valued.

2 (1) There is no transaction value for a good if the good is not the subject of a sale.

(2) The transaction value of a good is unacceptable if:

(a) There are restrictions on the disposition or use of the good by the buyer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the USMCA country in which the buyer is located,

(ii) limit the geographical area in which the good may be resold, or

(iii) do not substantially affect the value of the good;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(c) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the producer, and an appropriate addition to the price actually paid or payable cannot be made in accordance with paragraph 4(1)(d) of Schedule III; or

(d) the producer and the buyer are related persons and the relationship between them influenced the price actually paid or payable for the good.

(3) The cases or considerations referred to in paragraph (2)(b) include the following:

(a) The producer establishes the price actually paid or payable for the good on condition that the buyer will also buy other goods in specified quantities;

(b) the price actually paid or payable for the good is dependent on the price or prices at which the buyer sells other goods to the producer of the good; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the good, such as where the good is a semi-finished good that is provided by the producer to the buyer on condition that the producer will receive a specified quantity of the finished good from the buyer.

(4) For purposes of paragraph (2)(b), conditions or considerations relating to the production or marketing of the good must not render the transaction value unacceptable, such as if the buyer undertakes on the buyer's own account, even though by agreement with the producer, activities relating to the marketing of the good.

(5) If objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection 4(1) of Schedule III, the transaction value cannot be determined under the provisions of section 2 of that Schedule. For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a litre of a particular good that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased good and partially on other factors that have nothing to do with that good, such as when the purchased good is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the producer and the buyer, it would be inappropriate to add the royalty and the transaction value of the good could not be determined. However, if the amount of the royalty is based only on the purchased good and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

Schedule V (Reasonable Allocation of Costs)

Definitions and Interpretation

1 of the following definitions apply in this Schedule,

costs means any costs that are included in total cost and that can or need to be allocated in a reasonable manner under to subsections 5(11), 7(11) and 8(8) of these Regulations, subsection 4(8) of Schedule III and subsections 4(8) and 9(3) of Schedule VI;

discontinued operation, in the case of a producer located in a USMCA country, has the meaning set out in that USMCA country's Generally Accepted Accounting Principles;

indirect overhead means period costs and other costs;

internal management purpose means any purpose relating to tax reporting, financial reporting, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement;

overhead means costs, other than direct material costs and direct labor costs.

2 (1) In this Schedule, reference to ''producer'', for purposes of subsection 4(8) of Schedule III, is to be read as a reference to ''buyer''.

(2) In this Schedule, a reference to ''good'',

(a) for purposes of subsection 7(15) of these Regulations, is to be read as a reference to ''identical goods or similar goods, or any combination thereof'';

(b) for purposes of subsection 8(8) of these Regulations, is to be read as a reference to ''intermediate material'';

(c) for purposes of section 16 of these Regulations, is to be read as a reference to ''category of vehicles that is chosen pursuant to subsection 16(1) of these Regulations'';

(d) for purposes of subsection 4(8) of Schedule III, be read as a reference to ''packaging materials and containers or the elements''; and

(e) for purposes of subsection 4(8) of Schedule VI, be read as a reference to ''elements''.

Methods to Reasonably Allocate Costs

3 (1) If a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct material costs, or part thereof, and that method reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear, that method must be used to reasonably allocate the costs to the good.

(2) If a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct labor costs, or part thereof, and that method reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear, that method must be used to reasonably allocate the costs to the good.

(3) If a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good overhead, or part thereof, and that method is based on the criterion of benefit, cause or ability to bear, that method must be used to reasonably allocate the costs to the good.

4 If costs are not reasonably allocated to a good under section 3, those costs are reasonably allocated to the good if they are allocated:

(a) With respect to direct material costs, on the basis of any method that reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear;

(b) with respect to direct labor costs, on the basis of any method that reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear; and

(c) with respect to overhead, on the basis of any of the following methods:

(i) The method set out in Appendix A, B or C,

(ii) a method based on a combination of the methods set out in Appendices A and B or Appendices A and C, and

(iii) a cost allocation method based on the criterion of benefit, cause or ability to bear.

5 Notwithstanding sections 3 and 8, if a producer allocates, for an internal management purpose, costs to a good that is not produced in the period in which the costs are expensed on the books of the producer (such as costs with respect to research and development, and obsolete materials), those costs must be considered reasonably allocated if:

(a) For purposes of subsection 7(11) of these Regulations, they are allocated to a good that is produced in the period in which the costs are expensed, and

(b) the good produced in that period is within a group or range of goods, including identical goods or similar goods, that is produced by the same industry or industry sector as the goods to which the costs are expensed.

6 Any cost allocation method referred to in section 3, 4 or 5 that is used by a producer for the purposes of these Regulations must be used throughout the producer's fiscal year.

Costs Not Reasonably Allocated

7 The allocation to a good of any of the following is considered not to be reasonably allocated to the good:

(a) Costs of a service provided by a producer of a good to another person where the service is not related to the good;

(b) gains or losses resulting from the disposition of a discontinued operation, except gains or losses related to the production of the good;

(c) cumulative effects of accounting changes reported in accordance with a

specific requirement of the applicable Generally Accepted Accounting Principles; and

(d) gains or losses resulting from the sale of a capital asset of the producer.

8 Any costs allocated under section 3 on the basis of a cost allocation method that is used for an internal management purpose that is solely for the purpose of qualifying a good as an originating good are considered not to be reasonably allocated.

Appendix A—Cost Ratio Method

Calculation of Cost Ratio

For the overhead to be allocated, the producer may choose one or more allocation bases that reflect a relationship between the overhead and the good based on the criterion of benefit, cause or ability to bear.

With respect to each allocation base that is chosen by the producer for allocating overhead, a cost ratio is calculated for each good produced by the producer as determined by the formula:

CR = AB ÷ TAB

where

CR is the cost ratio with respect to the good;
AB is the allocation base for the good; and
TAB is the total allocation base for all the goods produced by the producer.

Allocation to a Good of Costs Included in Overhead

The costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

CAG = CA × CR

where

CAG is the costs allocated to the good;
CA is the costs to be allocated; and
CR is the cost ratio with respect to the good.

Excluded Costs

Under paragraph 7(11)(b) of these Regulations, where excluded costs are included in costs to be allocated to a good, the cost ratio used to allocate that cost to the good is used to determine the amount of excluded costs to be subtracted from the costs allocated to the good.

Allocation Bases for Costs

The following is a non-exhaustive list of allocation bases that may be used by the producer to calculate cost ratios:

- Direct labor hours
- Direct labor costs
- Units produced
- Machine-hours
- Sales dollars or pesos
- Floor space

"*Examples*"

The following examples illustrate the application of the cost ratio method to costs included in overhead.

Example 1: Direct Labor Hours

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor hours spent to produce Good A and Good B. A total of 8,000 direct labor hours have been spent to produce Good A and Good B: 5,000 hours with respect to Good A and 3,000 hours with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the ratios:

Good A: 5,000 hours/8,000 hours = .625
Good B: 3,000 hours/8,000 hours = .375

Allocation of overhead to Good A and Good B:

Good A: $6,000,000 × .625 = $3,750,000
Good B: $6,000,000 × .375 = $2,250,000

Example 2: Direct Labor Costs

A producer who produces Good A and Good B may allocate overhead on the basis of direct labour costs incurred in the production of Good A and Good B. The total direct labor costs incurred in the production of Good A and Good B is $60,000: $50,000 with respect to Good A and $10,000 with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the ratios:

Good A: $50,000/$60,000 = .833
Good B: $10,000/$60,000 = .167

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 × .833 = $4,998,000
Good B: $6,000,000 × .167 = $1,002,000

Example 3: Units Produced

A producer of Good A and Good B may allocate overhead on the basis of units produced. The total units of Good A and Good B produced is 150,000: 100,000 units of Good A and 50,000 units of Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the ratios:

Good A: 100,000 units/150,000 units = .667
Good B: 50,000 units/150,000 units = .333

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 × .667 = $4,002,000
Good B: $6,000,000 × .333 = $1,998,000

Example 4: Machine-Hours

A producer who produces Good A and Good B may allocate machine-related overhead on the basis of machine-hours utilized in the production of Good A and Good B. The total machine-hours utilized for the production of Good A and Good B is 3,000 hours: 1,200 hours with respect to Good A and 1,800 hours with respect to Good B. The amount of machine-related overhead to be allocated is $6,000,000.

Calculation of the ratios:

Good A: 1,200 machine-hours/3,000 machine-hours = .40
Good B: 1,800 machine-hours/3,000 machine-hours = .60

Allocation of machine-related overhead to Good A and Good B:

Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

Example 5: Sales Dollars or Pesos

A producer who produces Good A and Good B may allocate overhead on the basis of sales dollars. The producer sold 2,000 units of Good A at $4,000 and 200 units of Good B at $3,000. The amount of overhead to be allocated is $6,000,000.

Total sales dollars for Good A and Good B:

Good A: $4,000 × 2,000 units = $8,000,000
Good B: $3,000 × 200 units = $600,000
Total sales dollars: $8,000,000 + $600,000 = $8,600,000

Calculation of the ratios:

Good A: $8,000,000/$8,600,000 = .93
Good B: $600,000/$8,600,000 = .07

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 × .93 = $5,580,000
Good B: $6,000,000 × .07 = $420,000

Example 6: Floor Space

A producer who produces Good A and Good B may allocate overhead relating to utilities (heat, water and electricity) on the basis of floor space used in the production and storage of Good A and Good B. The total floor space used in the production and storage of Good A and Good B is 100,000 square feet: 40,000 square feet with respect to Good A and 60,000 square feet with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: 40,000 square feet/100,000 square feet = .40
Good B: 60,000 square feet/100,000 square feet = .60

Allocation of overhead (utilities) to Good A and Good B:

Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

Appendix B—Direct Labor and Direct Material Ratio Method

Calculation of Direct Labor and Direct Material Ratio

For each good produced by the producer, a direct labor and direct material ratio is calculated by the formula:

DLDMR = (DLC + DMC) ÷ (TDLC + TDMC)

where

DLDMR is the direct labor and direct material ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
TDLC is the total direct labor costs of all goods produced by the producer; and
TDMC is the total direct material costs of all goods produced by the producer.

Allocation of Overhead to a Good

Overhead is allocated to a good by the formula:

OAG = O × DLDMR

where

OAG is the overhead allocated to the good;
O is the overhead to be allocated; and
DLDMR is the direct labor and direct material ratio for the good.

Excluded Costs

Under paragraph 7(11)(b) of these Regulations, if excluded costs are included in overhead to be allocated to a good, the direct labor and direct material ratio used to allocate overhead to the good is used to determine the amount of excluded costs to be subtracted from the overhead allocated to the good.

"Examples"

Example 1

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with paragraph 7(11)(a) of these Regulations. A producer produces Good A and Good B. Overhead (O) minus excluded costs (EC) is $30 and the other relevant costs are set out in the following table:

	Good A ($)	Good B ($)	Total ($)
Direct labor costs (DLC)	5	5	10
Direct material costs (DMC)	10	5	15
Totals	15	10	25

Overhead Allocated to Good A

OAG (Good A) = O ($30) × DLDMR ($15/$25)
OAG (Good A) = $18.00

Overhead Allocated to Good B

OAG (Good B) = O ($30) × DLDMR ($10/$25)
OAG (Good B) = $12.00

Example 2

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with paragraph 7(11)(b) of these Regulations and where excluded costs are included in overhead.

A producer produces Good A and Good B. Overhead (O) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Overhead Allocated to Good A

OAG (Good A) = [O ($50) × DLDMR ($15/$25)] – [EC ($20) × DLDMR ($15/$25)]
OAG (Good A) = $18.00

Overhead Allocated to Good B

OAG (Good B) = [O ($50) × DLDMR ($10/$25)] – [EC ($20) × DLDMR ($10/$25)]
OAG (Good B) = $12.00

Appendix C—Direct Cost Ratio Method

Direct Overhead

Direct overhead is allocated to a good on the basis of a method based on the criterion of benefit, cause or ability to bear.

Indirect Overhead

Indirect overhead is allocated on the basis of a direct cost ratio.

Calculation of Direct Cost Ratio

For each good produced by the producer, a direct cost ratio is calculated by the formula:

DCR = (DLC + DMC + DO) ÷ (TDLC + TDMC + TDO)

where

DCR is the direct cost ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
DO is the direct overhead of the good;
TDLC is the total direct labor costs of all goods produced by the producer;
TDMC is the total direct material costs of all goods produced by the producer; and
TDO is the total direct overhead of all goods produced by the producer.

Allocation of Indirect Overhead to a Good

Indirect overhead is allocated to a good by the formula:

IOAG = IO × DCR

where

IOAG is the indirect overhead allocated to the good;
IO is the indirect overhead of all goods produced by the producer; and
DCR is the direct cost ratio of the good.

Excluded Costs

Under paragraph 7(11)(b) of these Regulations, if excluded costs are included in

(a) direct overhead to be allocated to a good, those excluded costs are subtracted from the direct overhead allocated to the good; and

(b) indirect overhead to be allocated to a good, the direct cost ratio used to allocate indirect overhead to the good is used to determine the amount of excluded costs to be subtracted from the indirect overhead allocated to the good.

"Examples"

Example 1

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer chooses to calculate the net cost of the good in accordance with paragraph 7(11)(a) of these Regulations. A producer produces Good A and Good B. Indirect overhead (IO) minus excluded costs (EC) is $30. The other relevant costs are set out in the following table:

	Good A ($)	Good B ($)	Total ($)
Direct labor costs (DLC)	5	5	10
Direct material costs (DMC)	10	5	15
Direct overhead (DO)	8	2	10
Totals	23	12	35

Indirect Overhead Allocated to Good A

IOAG (Good A) = IO ($30) × DCR ($23/$35)
IOAG (Good A) = $19.71

Indirect Overhead Allocated to Good B

IOAG (Good B) = IO ($30) × DCR ($12/$35)
IOAG (Good B) = $10.29

Example 2

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead if the producer has chosen to calculate the net cost of the good in accordance with paragraph 7(11)(b) of these Regulations and where excluded costs are included in indirect overhead.

A producer produces Good A and Good B. The indirect overhead (IO) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Indirect Overhead Allocated to Good A

IOAG (Good A) = [IO ($50) × DCR ($23/$35)] – [EC ($20) × DCR ($23/$35)]
IOAG (Good A) = $19.72

Indirect Overhead Allocated to Good B

IOAG (Good B) = [IO ($50) × DCR ($12/$35)] – [EC ($20) × DCR ($12/$35)]
IOAG (Good B) = $10.28

Schedule VI Value of Materials

1 (1) Unless otherwise stated, the following definitions apply in this Schedule.

buying commissions means fees paid by a producer to that producer's agent for the agent's services in representing the producer in the purchase of a material;

materials of the same class or kind means, with respect to materials being valued,

materials that are within a group or range of materials that

(a) is produced by a particular industry or industry sector, and

(b) includes identical materials or similar materials;

producer refers to the producer who used the material in the production of a good that is subject to a regional value-content requirement;

seller refers to a person who sells the material being valued to the producer.

2 (1) Except as provided under subsection (2), the transaction value of a material under paragraph 8(1)(b) of these Regulations is the price actually paid or payable for the material determined in accordance with section 3 and adjusted in accordance with section 4.

(2) There is no transaction value for a material if the material is not the subject of a sale.

(3) The transaction value of a material is unacceptable if:

(a) there are restrictions on the disposition or use of the material by the producer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the USMCA country in which the producer of the good or the seller of the material is located,

(ii) limit the geographical area in which the material may be used, or

(iii) do not substantially affect the value of the material;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the material;

(c) part of the proceeds of any subsequent disposal or use of the material by the producer will accrue directly or indirectly to the seller, and an appropriate addition to the price actually paid or payable cannot be made in accordance with paragraph 4(1)(d); or

(d) the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material.

(4) The cases or considerations referred to in paragraph (3)(b) include the following:

(a) the seller establishes the price actually paid or payable for the material on condition that the producer will also buy other materials or goods in specified quantities;

(b) the price actually paid or payable for the material is dependent on the price or prices at which the producer sells other materials or goods to the seller of the material; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the material, such as where the material is a semi-finished material that is provided by the seller to the producer on condition that the seller will receive a specified quantity of the finished material from the producer.

(5) For purposes of paragraph (3)(b), conditions or considerations relating to the use of the material will not render the transaction value unacceptable, such as where the producer undertakes on the producer's own account, even though by agreement with the seller, activities relating to the warranty of the material used in the production of a good.

(6) If objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection 4(1), the transaction value cannot be determined under the provisions of subsection 2(1). For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a litre of a particular good that is produced by using a material that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased material and partially on other factors that have nothing to do with that material, such as when the purchased material is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the seller and the producer, it would be inappropriate to add the royalty and the transaction value of the material could not be determined. However, if the amount of the royalty is based only on the purchased material and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

3 (1) The price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. The payment need not necessarily take the form of a transfer of money. It may be made by letters of credit or negotiable instruments. Payment may be made directly or indirectly to the seller. For an illustration of this, the settlement by the producer, whether in whole or in part, of a debt owed by the seller, is an indirect payment.

(2) Activities undertaken by the producer on the producer's own account, other than those for which an adjustment is provided in section 4, must not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the seller.

(3) The transaction value must not include charges for construction, erection, assembly, maintenance or technical assistance related to the use of the material by the producer, provided that they are distinguished from the price actually paid or payable.

(4) The flow of dividends or other payments from the producer to the seller that do not relate to the purchase of the material are not part of the transaction value.

4 (1) In determining the transaction value of the material, the following must be added to the price actually paid or payable:

(a) To the extent that they are incurred by the producer with respect to the material being valued and are not included in the price actually paid or payable,

(i) commissions and brokerage fees, except buying commissions, and

(ii) the costs of containers which, for customs purposes, are classified with the material under the Harmonized System;

(b) the value, reasonably allocated in accordance with subsection (13), of the following elements if they are supplied directly or indirectly to the seller by the producer free of charge or at reduced cost for use in connection with the production and sale of the material, to the extent that the value is not included in the price actually paid or payable:

(i) A material, other than an indirect material, used in the production of the material being valued,

(ii) tools, dies, mold and similar indirect materials used in the production of the material being valued,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition *indirect material* in subsection 1(1) of these Regulations, used in the production of the material being valued, and

(iv) engineering, development, artwork, design work, and plans and sketches made outside the territory of the USMCA country in which the producer is located that are necessary for the production of the material being valued;

(c) the royalties related to the material, other than charges with respect to the right to reproduce the material in the territory of the USMCA country in which the producer is located that the producer must pay directly or indirectly as a condition of sale of the material, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent disposal or use of the material that accrues directly or indirectly to the seller.

(2) The additions referred to in subsection (1) must be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) If objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under subsection 2(1).

(4) Additions must not be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under paragraph (1)(a) must be those amounts that are recorded on the books of the producer.

(6) The value of the elements referred to in subparagraph (1)(b)(i) must be:

(a) Where the elements are imported from outside the territory of the USMCA country in which the seller is located, the customs value of the elements,

(b) where the producer, or a related person on behalf of the producer, purchases the elements from a person who is not a related person in the territory of the USMCA country in which the seller is located, the price actually paid or payable for the elements,

(c) where the producer, or a related person on behalf of the producer, acquires the elements from a person who is not a related person in the territory of the USMCA country in which the seller is located other than through a purchase, the value of the consideration related to the acquisition of the elements, based on the cost of the consideration that is recorded on the books of the producer or the related person, or

(d) where the elements are produced by the producer, or by a related person, in the territory of the USMCA country in which the seller is located, the total cost of the

elements, determined in accordance with subsection (8),

(7) Those elements must include the following costs, that are recorded on the books of the producer or the related person supplying the elements on behalf of the producer, to the extent that such costs are not included under paragraphs (6)(a) through (d):

(a) The costs of freight, insurance, packing, and all other costs incurred in transporting the elements to the location of the seller,

(b) duties and taxes paid or payable with respect to the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(c) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the elements, and

(d) the cost of waste and spoilage resulting from the use of the elements in the production of the material, minus the value of reusable scrap or by-product.

(8) For the purposes of paragraph (6)(d), the total cost of the elements referred to in subparagraph (1)(b)(i) are:

(a) Where the elements are produced by the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule V, or

(ii) the aggregate of each cost incurred by the producer that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule V; and

(b) if the elements are produced by a person who is related to the producer, at the choice of the producer:

(i) The total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule V, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule V.

(9) Except as provided in subsections (11) and (12), the value of the elements referred to in subparagraphs (1)(b)(ii) through (iv) are:

(a) The cost of those elements that is recorded on the books of the producer; or

(b) if such elements are provided by another person on behalf of the producer and the cost is not recorded on the books of the producer, the cost of those elements that is recorded on the books of that other person.

(10) If the elements referred to in subparagraphs (1)(b)(ii) through (iv) were previously used by or on behalf of the producer, the value of the elements must be adjusted downward to reflect that use.

(11) If the elements referred to in subparagraphs (1)(b)(ii) and (iii) were leased by the producer or a person related to the producer, the value of the elements are the cost of the lease that is recorded on the books of the producer or that related person.

(12) An addition must not be made to the price actually paid or payable for the elements referred to in subparagraph (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(13) The producer must choose the method of allocating to the material the value of the elements referred to in subparagraphs (1)(b)(ii) through (iv), provided that the value is reasonably allocated. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a producer provides the seller with a mold to be used in the production of the material and contracts with the seller to buy 10,000 units of that material. By the time the first shipment of 1,000 units arrives, the seller has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but must not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of material only where that single shipment comprises all of the units of the material acquired by the producer under the contract or commitment for that number of units of the material between the seller and the producer.

(14) The addition for the royalties referred to in paragraph (1)(c) is the payment for the royalties that is recorded on the books of the producer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(15) The value of the proceeds referred to in paragraph (1)(d) is the amount that is recorded for those proceeds on the books of the producer or the seller.

5 (1) If there is no transaction value under subsection 2(2) or the transaction value is unacceptable under subsection 2(3), the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, is the transaction value of identical materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of identical materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. If no such sale is found, the transaction value of identical materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, must be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only identical materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of identical materials is found, the lowest such value must be used to determine the value of the material under this section.

6 (1) If there is no transaction value under subsection 2(2) or the transaction value is unacceptable under subsection 2(3), and the value of the material cannot be determined under section 5, the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, is the transaction value of similar materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of similar materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued must be used to determine the value of the material. Where no such sale is found, the transaction value of similar materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, must be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only similar materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of similar materials is found, the lowest of those

values must be used to determine the value of the material under this section.

7 If there is no transaction value under subsection 2(2) or the transaction value is unacceptable under subsection 2(3), and the value of the material cannot be determined under section 5 or 6, the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, must be determined under section 8 or, when the value cannot be determined under that section, under section 9 except that, at the request of the producer, the order of application of sections 8 and 9 must be reversed.

8 (1) Under this section, if identical materials or similar materials are sold in the territory of the USMCA country in which the producer is located, in the same condition as the material was in when received by the producer, the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, must be based on the unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity by the producer or, where the producer does not sell those identical materials or similar materials, by a person at the same trade level as the producer, at or about the same time as the material being valued is received by the producer, to persons located in that territory who are not related to the seller, subject to deductions for the following:

(a) Either the amount of commissions usually earned or the amount generally reflected for profit and general expenses, in connection with sales, in the territory of that USMCA country, of materials of the same class or kind as the material being valued; and

(b) taxes, if included in the unit price, payable in the territory of that USMCA country, which are either waived, refunded or recoverable by way of credit against taxes actually paid or payable.

(2) If neither identical materials nor similar materials are sold at or about the same time the material being valued is received by the producer, the value must, subject to the deductions provided for under subsection (1), be based on the unit price at which identical materials or similar materials are sold in the territory of the USMCA country in which the producer is located, in the same condition as the material was in when received by the producer, at the earliest date within 90 days after the day on which the material being valued was received by the producer.

(3) The expression ''unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity'' in subsection (1) means the price at which the greatest number of units is sold in sales between persons who are not related persons. For an illustration of this, materials are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	100	10 sales of 5 units 5 sales of 3 units	65
11–25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a particular price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another illustration of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this illustration, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

(4) Any sale to a person who supplies, directly or indirectly, free of charge or at reduced cost for use in connection with the production of the material, any of the elements specified in paragraph 4(1)(b), must not be taken into account in establishing the unit price for the purposes of this section.

(5) The amount generally reflected for profit and general expenses referred to in paragraph (1)(a) must be taken as a whole. The figure for the purpose of deducting an amount for profit and general expenses must be determined on the basis of information supplied by or on behalf of the producer unless the figures provided by the producer are inconsistent with those usually reflected in sales, in the country in which the producer is located, of materials of the same class or kind as the material being valued. If the figures provided by the producer are inconsistent with those figures, the amount for profit and general expenses must be based on relevant information other than that supplied by or on behalf of the producer.

(6) For the purposes of this section, general expenses are the direct and indirect costs of marketing the material in question.

(7) In determining either the commissions usually earned or the amount generally reflected for profit and general expenses under this section, the question as to whether certain materials are materials of the same class or kind as the material being valued must be determined on a case-by-case basis with reference to the circumstances involved. Sales in the country in which the producer is located of the narrowest group or range of materials of the same class or kind as the material being valued, for which the necessary information can be provided, must be examined. For the purposes of this section, ''materials of the same class or kind'' includes materials imported from the same country as the material being valued as well as materials imported from other countries or acquired within the territory of the USMCA country in which the producer is located.

(8) For the purposes of subsection (2), the earliest date is the date by which sales of identical materials or similar materials are made, in sufficient quantity to establish the unit price, to other persons in the territory of the USMCA country in which the producer is located.

9 (1) Under this section, the value of a material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, is the sum of:

(a) The cost or value of the materials used in the production of the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material,

(b) the cost of producing the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material, and

(c) an amount for profit and general expenses equal to that usually reflected in sales

(i) where the material being valued is imported by the producer into the territory of the USMCA country in which the producer is located, to persons located in the territory of the USMCA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced, and

(ii) where the material being valued is acquired by the producer from another person located in the territory of the USMCA country in which the producer is located, to persons located in the territory of the USMCA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the producer is located.

(2) This value of a material, to the extent it is not are not already included under paragraph (a) or (b) must include the following costs and where the elements are supplied directly or indirectly to the producer of the material being valued by the producer free of charge or at a reduced cost for use in the production of that material,

(a) the value of elements referred to in subparagraph 4(1)(b)(i), determined in accordance with subsections 4(6) and (7), and

(b) the value of elements referred to in subparagraphs 4(1)(b)(ii) through (iv), determined in accordance with subsection 4(9) and reasonably allocated to the material in accordance with subsection 4(13).

(3) For purposes of paragraphs (1)(a) and (b), if the costs recorded on the books of the producer of the material relate to the production of other goods and materials as well as to the production of the material being valued, the costs referred to in paragraphs (1)(a) and (b) with respect to the material being valued must be those costs recorded on the books of the producer of the material that can be reasonably allocated to that material in accordance with Schedule V.

(4) The amount for profit and general expenses referred to in paragraph (1)(c) must be determined on the basis of information supplied by or on behalf of the producer of the material being valued unless the profit and general expenses figures that are supplied with that information are inconsistent with those usually reflected in sales by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced or the producer is located, as the case may be. The information supplied must be prepared in a manner consistent with generally accepted accounting principles of the country in which the material being valued is produced. If the material is produced in the territory of a USMCA country, the information must be prepared in accordance with the Generally Accepted Accounting Principles set out in the authorities listed for that USMCA country in Schedule X.

(5) For purposes of paragraph (1)(c) and subsection (4), general expenses means the direct and indirect costs of producing and selling the material that are not included under paragraphs (1)(a) and (b).

(6) For purposes of subsection (4), the amount for profit and general expenses must be taken as a whole. If, in the information supplied by or on behalf of the producer of a material, the profit figure is low and the general expenses figure is high, the profit and general expense figures taken together may nevertheless be consistent with those usually reflected in sales of materials of the same class or kind as the material being valued. If the producer of a material can demonstrate that it is taking a nil or low profit on its sales of the material because of particular commercial circumstances, its actual profit and general expense figures must be taken into account, provided that the producer of the material has valid commercial reasons to justify them and its pricing policy reflects usual pricing policies in the branch of industry concerned. For an illustration of this, such a situation might occur if producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or if the producers sell the material to complement a range of materials and goods being produced in the country in which the material is sold and accept a low profit to maintain competitiveness. A further illustration is if a material was being launched and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

(7) If the figures for the profit and general expenses supplied by or on behalf of the producer of the material are not consistent with those usually reflected in sales of materials of the same class or kind as the material being valued that are made by other producers in the country in which that material is sold, the amount for profit and general expenses may be based on relevant information other than that supplied by or on behalf of the producer of the material.

(8) Whether certain materials are of the same class or kind as the material being valued will be determined on a case-by-case basis with reference to the circumstances involved. For purposes of determining the amount for profit and general expenses usually reflected under the provisions of this section, sales of the narrowest group or range of materials of the same class or kind, which includes the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, the materials of the same class or kind must be from the same country as the material being valued.

10 (1) If there is no transaction value under subsection 2(2) or the transaction value is unacceptable under subsection 2(3), and the value of the material cannot be determined under sections 5 through 9, the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, must be determined under this section using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the country in which the producer is located.

(2) The value of the material determined under this section must not be determined on the basis of

(a) a valuation system which provides for the acceptance of the higher of two alternative values;

(b) a cost of production other than the value determined in accordance with section 9;

(c) minimum values;

(d) arbitrary or fictitious values;

(e) if the material is produced in the territory of the USMCA country in which the producer is located, the price of the material for export from that territory; or

(f) if the material is imported, the price of the material for export to a country other than to the territory of the USMCA country in which the producer is located.

(3) To the greatest extent possible, the value of the material determined under this section must be based on the methods of valuation set out in sections 2 through 9, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of this section. For an illustration of this, under section 5, the requirement that the identical materials should be sold at or about the same time as the time the material being valued is shipped to the producer could be flexibly interpreted. Similarly, identical materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of identical materials already determined under section 8 could be used. For another illustration, under section 6, the requirement that the similar materials should be sold at or about the same time as the material being valued are shipped to the producer could be flexibly interpreted. Likewise, similar materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of similar materials already determined under the provisions of section 8 could be used. For a further illustration, under section 8, the ninety days requirement could be administered flexibly.

Schedule VII (Methods for Determining the Value of Non-Originating Materials That Are Identical Materials and That Are Used in the Production of a Good)

Definitions

1 The following definitions apply in this Schedule.

FIFO method means the method by which the value of non-originating materials first received in materials inventory, determined in accordance with section 8 of these Regulations, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

identical materials means, with respect to a material, materials that are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance;

LIFO method means the method by which the value of non-originating materials last received in materials inventory, determined in accordance with section 8 of these Regulations, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

materials inventory means, with respect to a single plant of the producer of a good, an inventory of non-originating materials that are identical materials and that are used in the production of the good;

rolling average method means the method by which the value of non-originating materials used in the production of a good that is shipped to the buyer of the good is based on the average value, calculated in accordance with section 4, of the non-originating materials in materials inventory.

General

2 For purposes of subsections 5(13) and (14) and 7(10) of these Regulations, the following are the methods for determining the value of non-originating materials that are identical materials and are used in the production of a good:

(a) FIFO method;

(b) LIFO method; and

(c) rolling average method.

3 (1) If a producer of a good chooses, with respect to non-originating materials that are identical materials, any of the methods referred to in section 2, the producer may not use another of those methods with respect to any other non-originating materials that are identical materials and that are used in the production of that good or in the production of any other good.

(2) If a producer of a good produces the good in more than one plant, the method chosen by the producer must be used with respect to all plants of the producer in which the good is produced.

(3) The method chosen by the producer to determine the value of non-originating

materials may be chosen at any time during the producer's fiscal year and may not be changed during that fiscal year.

Average Value for Rolling Average Method

4 (1) The average value of non-originating materials that are identical materials and that are used in the production of a good that is shipped to the buyer of the good is calculated by dividing:

(a) The total value of non-originating materials that are identical materials in materials inventory prior to the shipment of the good, determined in accordance with section 8 of these Regulations, by

(b) the total units of those non-originating materials in materials inventory prior to the shipment of the good.

(2) The average value calculated under subsection (1) is applied to the remaining units of non-originating materials in materials inventory.

Appendix ''Examples'' Illustrating the Application of the Methods for Determining the Value of Non-Originating Materials That Are Identical Materials and That Are Used in the Production of a Good

The following examples are based on the figures set out in the table below and on the following assumptions:

(a) Materials A are non-originating materials that are identical materials that are used in the production of Good A;

(b) one unit of Materials A is used to produce one unit of Good A;

(c) all other materials used in the production of Good A are originating materials; and

(d) Good A is produced in a single plant.

Materials Inventory (Receipts of Materials A)			Sales (Shipments of Good A)	
Date (M/D/Y)	Quantity (units)	Unit cost ($)	Quantity (units)
01/01/21	200	1.05	
01/03/21	1,000	1.00	
01/05/21	1,000	1.10	
01/08/21			500
01/09/21			500
01/10/21	1,000	1.05	
01/14/21			1,500
01/16/21	2,000	1.10	
01/18/21			1,500

* Unit cost is determined in accordance with section 8 of these Regulations.

Example 1: FIFO method

By applying the FIFO Method:

(1) The 200 units of Materials A received on 01/01/21 and valued at $1.05 per unit and 300 units of the 1,000 units of Material A received on 01/03/21 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/21; therefore, the value of the non-originating materials used in the production of those goods is considered to be $510 [(200 units × $1.05) + (300 units × $1.00)];

(2) 500 units of the remaining 700 units of Materials A received on 01/03/21 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/21; therefore, the value of the non-originating materials used in the production of those goods is considered to be $500 (500 units × $1.00);

(3) the remaining 200 units of the 1,000 units of Materials A received on 01/03/21 and valued at $1.00 per unit, the 1,000 units of Materials A received on 01/05/21 and valued at $1.10 per unit, and 300 units of the 1,000 units of Materials A received on 01/10/21 and valued at $1.05 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(200 units × $1.00) + (1,000 units × $1.10) + (300 units x $1.05)]; and

(4) the remaining 700 units of the 1,000 units of Materials A received on 01/10/21 and valued at $1.05 per unit and 800 units of the 2,000 units of Materials A received on 01/16/21 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(700 units × $1.05) + (800 units × $1.10)].

Example 2: LIFO Method

By applying the LIFO method:

(1) 500 units of the 1,000 units of Materials A received on 01/05/21 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/21; therefore, the value of the non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(2) the remaining 500 units of the 1,000 units of Materials A received on 01/05/21 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(3) the 1,000 units of Materials A received on 01/10/21 and valued at $1.05 per unit and 500 units of the 1,000 units of Material A received on 01/03/21 and valued at $1.00 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,550 [(1,000 units × $1.05) + (500 units × $1.00)]; and

(4) 1,500 units of the 2,000 units of Materials A received on 01/16/21 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,650 (1,500 units × $1.10).

Example 3: Rolling Average Method

The following table identifies the average value of non-originating Materials A as determined under the rolling average method. For purposes of this example, a new average value of non-originating Materials A is calculated after each receipt.

Materials inventory	Date (M/D/Y)	Quantity (units)	Unit cost* ($)	Total value ($)
Beginning Inventory	01/01/21	200	1.05	210
Receipt	01/03/21	1,000	1.00	1,000
AVERAGE VALUE		1,200	1.008	1,210
Receipt	01/05/21	1,000	1.10	1,100
AVERAGE VALUE		2,200	1.05	2,310
Shipment	01/08/21	500	1.05	525
AVERAGE VALUE		1,700	1.05	1,785
Shipment	01/09/21	500	1.05	525
AVERAGE VALUE		1,200	1.05	1,260
Receipt	01/16/21	2,000	1.10	2,200
AVERAGE VALUE		3,200	1.08	3,460

* Unit cost is determined in accordance with section 8 of these Regulations.

By applying the rolling average method:

(1) The value of non-originating materials used in the production of the 500 units of Good A shipped on 01/08/21 is considered to be $525 (500 units × $1.05); and

(2) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/09/21 is considered to be $525 (500 units × $1.05).

Schedule VIII (Inventory Management Methods)

Part I Fungible Materials

Definitions

1 The following definitions apply in this Part,

average method means the method by which the origin of fungible materials withdrawn from materials inventory is based on the ratio, calculated under section 5, of originating materials and non-originating materials in materials inventory;

FIFO method means the method by which the origin of fungible materials first received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;

LIFO method means the method by which the origin of fungible materials last received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;

materials inventory means,

(a) with respect to a producer of a good, an inventory of fungible materials that are used in the production of the good, and

(b) with respect to a person from whom the producer of the good acquired those fungible materials, an inventory from which fungible materials are sold or otherwise transferred to the producer of the good;

opening inventory means the materials inventory at the time an inventory management method is chosen;

origin identifier means any mark that identifies fungible materials as originating materials or non-originating materials.

General

2 The following inventory management methods may be used for determining whether fungible materials referred to in paragraph 8(18)(a) of these Regulations are:

(a) Specific identification method;

(b) FIFO method;

(c) LIFO method; and

(d) average method.

3 A producer of a good, or a person from whom the producer acquired the fungible materials that are used in the production of the good, may choose only one of the inventory management methods referred to in section 2, and, if the averaging method is chosen, only one averaging period in each fiscal year of that producer or person for the materials inventory.

Specific Identification Method

4 (1) Except as otherwise provided under subsection (2), if the producer or person referred to in section 3 chooses the specific identification method, the producer or person must physically segregate, in materials inventory, originating materials that are fungible materials from non-originating materials that are fungible materials.

(2) If originating materials or non-originating materials that are fungible materials are marked with an origin identifier, the producer or person need not physically segregate those materials under subsection (1) if the origin identifier remains visible throughout the production of the good.

Average Method

5 If the producer or person referred to in section 3 chooses the average method, the origin of fungible materials withdrawn from materials inventory is determined on the basis of the ratio of originating materials and non-originating materials in materials inventory that is calculated under sections 6 through 8.

6 (1) Except as otherwise provided in sections 7 and 8, the ratio is calculated with respect to a month or three-month period, at the choice of the producer or person, by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period, by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the preceding month or three-month period.

7 (1) If the good is subject to a regional value-content requirement and the regional value content is calculated under the net cost method and the producer or person chooses to average over a period under subsections 7(15), 16(1) or (10) of these Regulations, the ratio is calculated with respect to that period by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period, by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that period.

(2) The ratio calculated with respect to a period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the period.

8 (1) If the good is subject to a regional value-content requirement and the regional value content of that good is calculated under the transaction value method or the net cost method, the ratio is calculated with respect to each shipment of the good by dividing

(a) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory prior to the shipment, by

(b) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory prior to the shipment.

(2) The ratio calculated with respect to a shipment of a good under subsection (1) is applied to the fungible materials remaining in materials inventory after the shipment.

Manner of Dealing With Opening Inventory

9 (1) Except as otherwise provided under subsections (2) and (3), if the producer or person referred to in section 3 has fungible materials in opening inventory, the origin of those fungible materials is determined by

(a) identifying, in the books of the producer or person, the latest receipts of fungible materials that add up to the amount of fungible materials in opening inventory;

(b) identifying the origin of the fungible materials that make up those receipts; and

(c) considering the origin of those fungible materials to be the origin of the fungible materials in opening inventory.

(2) If the producer or person chooses the specific identification method and has, in opening inventory, originating materials or non-originating materials that are fungible materials and that are marked with an origin identifier, the origin of those fungible materials is determined on the basis of the origin identifier.

(3) The producer or person may consider all fungible materials in opening inventory to be non-originating materials.

Part II Fungible Goods

Definitions

10 The following definitions apply in this Part,

average method means the method by which the origin of fungible goods withdrawn from finished goods inventory is based on the ratio, calculated under section 14, of originating goods and non-originating goods in finished goods inventory;

FIFO method means the method by which the origin of fungible goods first received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

finished goods inventory means an inventory from which fungible goods are sold or otherwise transferred to another person;

LIFO method means the method by which the origin of fungible goods last received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

opening inventory means the finished goods inventory at the time an inventory management method is chosen;

origin identifier means any mark that identifies fungible goods as originating goods or non-originating goods.

General

11 The following inventory management methods may be used for determining whether fungible goods referred to in paragraph 8(18)(b) of these Regulations are originating goods:

(a) Specific identification method;

(b) FIFO method;

(c) LIFO method; and

(d) average method.

12 An exporter of a good, or a person from whom the exporter acquired the fungible good, may choose only one of the inventory management methods referred to in section 11, including only one averaging period in the case of the average method, in each fiscal year of that exporter or person for each finished goods inventory of the exporter or person.

Specific Identification Method

13 (1) Except as provided under subsection (2), if the exporter or person referred to in section 12 chooses the specific identification method, the exporter or person must physically segregate, in finished goods inventory, originating goods that are fungible goods from non-originating goods that are fungible goods.

(2) If originating goods or non-originating goods that are fungible goods are marked with an origin identifier, the exporter or person need not physically segregate those goods under subsection (1) if the origin identifier is visible on the fungible goods.

Average Method

14 (1) If the exporter or person referred to in section 12 chooses the average method, the origin of each shipment of fungible goods withdrawn from finished goods inventory during a month or three-month period, at the choice of the exporter or person, is determined on the basis of the ratio of originating goods and non-originating goods in finished goods inventory for the preceding one-month or three-month period that is calculated by dividing

(a) the sum of

(i) the total units of originating goods or non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods or non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period, by

(b) the sum of

(i) the total units of originating goods and non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods and non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible goods remaining in finished goods inventory at the end of the preceding month or three-month period.

Manner of Dealing With Opening Inventory

15 (1) Except as otherwise provided under subsections (2) and (3), if the exporter or person referred to in section 12 has fungible goods in opening inventory, the origin of those fungible goods is determined by

(a) identifying, in the books of the exporter or person, the latest receipts of fungible goods that add up to the amount of fungible goods in opening inventory;

(b) determining the origin of the fungible goods that make up those receipts; and

(c) considering the origin of those fungible goods to be the origin of the fungible goods in opening inventory.

(2) If the exporter or person chooses the specific identification method and has, in opening inventory, originating goods or non-originating goods that are fungible goods and that are marked with an origin identifier, the origin of those fungible goods is determined on the basis of the origin identifier.

(3) The exporter or person may consider all fungible goods in opening inventory to be non-originating goods.

Appendix A

''Examples'' Illustrating the Application of the Inventory Management Methods To Determine the Origin of Fungible Materials

The following examples are based on the figures set out in the table below and on the following assumptions:

(a) Originating Material A and non-originating Material A that are fungible materials are used in the production of Good A;

(b) one unit of Material A is used to produce one unit of Good A;

(c) Material A is only used in the production of Good A;

(d) all other materials used in the production of Good A are originating materials; and

(e) the producer of Good A exports all shipments of Good A to the territory of a USMCA country.

Materials inventory (Receipts of Material A)				Sales (Shipments of Good A)
Date (M/D/Y)	Quantity (units)	Unit cost *	Total value	Quantity (units)
12/18/20	100 (O [1])	$1.00	$ 100	
12/27/20	100 (N [2])	1.10	110	
01/01/21	200 (OI [3])			
01/01/21	1,000 (O)	1.00	1,000	
01/05/21	1,000 (N)	1.10	1,100	
01/10/21				100
01/10/21	1,000 (O)	1.05	1,050	
01/15/21				700
01/16/21	2,000 (N)	1.10	2,200	
01/20/21				1,000

Materials inventory (Receipts of Material A)				Sales (Shipments of Good A)
Date (M/D/Y)	Quantity (units)	Unit cost *	Total value	Quantity (units)
01/23/21				900

* Unit cost is determined in accordance with section 8 of these Regulations.
[1] "O" denotes originating materials.
[2] "N" denotes non-originating materials.
[3] "OI" denotes opening inventory.

Example 1: FIFO Method

Good A is subject to a regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A.

By applying the FIFO method:

(1) The 100 units of originating Material A in opening inventory that were received in materials inventory on 12/18/20 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $0;

(2) the 100 units of non-originating Material A in opening inventory that were received in materials inventory on 12/27/20 and 600 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/21 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $110 (100 units × $1.10);

(3) the remaining 400 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/21 and 600 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/21 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $660 (600 units × $1.10); and

(4) the remaining 400 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/21 and 500 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/21 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $440 (400 units × $1.10).

Example 2: LIFO Method

Good A is subject to a change in tariff classification requirement and the non-originating Material A used in the production of Good A does not undergo the applicable change in tariff classification. Therefore, if originating Material A is used in the production of Good A, Good A is an originating good and, if non-originating Material A is used in the production of Good A, Good A is a non-originating good.

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/21 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/21;

(2) 700 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/21 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/21;

(3) 1,000 units of the 2,000 units of non-originating Material A that were received in materials inventory on 01/16/21 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/21; and

(4) 900 units of the remaining 1,000 units of non-originating Material A that were received in materials inventory on 01/16/21 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/21.

Example 3: Average Method

Good A is subject to an applicable regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A. Producer A determines the average value of non-originating Material A and the ratio of originating Material A to total value of originating Material A and non-originating Material A in the following table.

Material inventory			Sales					
(Receipts of Material A)			(Non-originating material)				(Shipments of Good A)	
	Date (M/D/Y)	Quantity (units)	Total value	Unit cost *	Quantity (units)	Total value	Ratio	Quantity (units)
Receipt	12/18/20	100 (O[1])	$ 100	$1.00				
Receipt	12/27/20	100 (N[2])	110	1.10	100	$ 110.00		
New AVG INV Value		200 (OI[3])	210	1.05	100	105.00	0.50	
Receipt	01/01/21	1,000 (O)	1,000	1.00				
New AVG INV Value		1,200	1,210	1.01	100	101.00	0.08	
Receipt	01/05/21	1,000 (N)	1,100	1.10	1,000	1,100.00		
New AVG INV Value		2,200	2,310	1.05	1,100	1,155.00	0.50	
Shipment	01/10/21	(100)	(105)	1.05	(50)	(52.50)		100
Receipt	01/10/21	1,000 (O)	1,050	1.05				
New AVG INV Value		3,100	3,255	1.05	1,050	1,102.50	0.34	
Shipment	01/15/21	(700)	(735)	1.05	(238)	(249.90)		700
Receipt	01/16/21	2,000 (N)	2,200	1.10	2,000	2,200.00		
New AVG INV Value		4,400	4,720	1.07	2,812	3,008.84	0.64	
Shipment	01/20/21	(1,000)	(1,070)	1.07	(640)	(684.80)		1,000
Shipment	01/23/21	(900)	(963)	1.07	(576)	(616.32)		900
New AVG INV Value		2,500	2,687	1.07	1,596	1,707.24	0.64	

* Unit cost is determined in accordance with section 8 of these Regulations.
[1] "O" denotes originating materials.
[2] "N" denotes non-originating materials.
[3] "OI" denotes opening inventory.

By applying the average method:

(1) Before the shipment of the 100 units of Material A on 01/10/21, the ratio of units of originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units);

based on those ratios, 50 units (100 units × .50) of originating Material A and 50 units (100 units × .50) of non-originating Material A are considered to have been used in the production of the 100 units of Good A shipped on 01/10/21; therefore, the value of non-originating Material A used in the production of those goods is considered to be $52.50 [100 units × $1.05 (average unit value) × .50];

the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,050 units (2,100 units × .50) are considered to be originating materials and 1,050 units (2,100 units × .50) are considered to be non-originating materials;

(2) before the shipment of the 700 units of Good A on 01/15/21, the ratio of units of originating Material A to total units of Material A in materials inventory was 66% (2,050 units/3,100 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 34% (1,050 units/3,100 units);

based on those ratios, 462 units (700 units × .66) of originating Material A and 238 units (700 units × .34) of non-originating Material A are considered to have been used in the production of the 700 units of Good A shipped on 01/15/21; therefore, the value of non-originating Material A used in the production of those goods is considered to be $249.90 [700 units × $1.05 (average unit value) × 34%];

the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,584 units (2,400 units × .66) are considered to be originating materials and 816 units (2,400 units × .34) are considered to be non-originating materials;

(3) before the shipment of the 1,000 units of Material A on 01/20/21, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,584 units/4,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,816 units/4,400 units);

based on those ratios, 360 units (1,000 units × .36) of originating Material A and 640 units (1,000 units × .64) of non-originating Material A are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/21; therefore, the value of non-originating Material A used in the production of those goods is considered to be $684.80 [1,000 units × $1.07 (average unit value) × 64%];

those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,224 units (3,400 units × .36) are considered to be originating materials and 2,176 units (3,400 units × .64) are considered to be non-originating materials;

(4) before the shipment of the 900 units of Good A on 01/23/21, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,224 units/3,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,176 units/3,400 units);

based on those ratios, 324 units (900 units × .36) of originating Material A and 576 units (900 units × .64) of non-originating Material A are considered to have been used in the production of the 900 units of Good A shipped on 01/23/21; therefore, the value of non-originating Material A used in the production of those goods is considered to be $616.32 [900 units × $1.07 (average unit value) × 64%];

those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 900 units (2,500 units × .36) are considered to be originating materials and 1,600 units (2,500 units × .64) are considered to be non-originating materials.

Example 4: Average Method

Good A is subject to an applicable regional value-content requirement. Producer A is using the net cost method and is averaging over a period of one month under paragraph 7(15)(a) of these Regulations to determine the regional value content of Good A.

By applying the average method:

The ratio of units of originating Material A to total units of Material A in materials inventory for January 2021 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,091 units (2,700 units × .404) of originating Material A and 1,609 units (2,700 units—1,091 units) of non-originating Material A are considered to have been used in the production of the 2,700 units of Good A shipped in January 2021; therefore, the value of non-originating materials used in the production of those goods is considered to be $0.64 per unit [$5,560 (total value of Material A in materials inventory)/5,200 (units of Material A in materials inventory) = $1.07 (average unit value) × (1 − .404)] or $1,728 ($0.64 × 2,700 units); and

that ratio is applied to the units of Material A remaining in materials inventory on January 31, 2021: 1,010 units (2,500 units × .404) are considered to be originating materials and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating materials.

Appendix B

''Examples'' Illustrating the Application of the Inventory Management Methods to Determine the Origin of Fungible Goods

The following examples are based on the figures set out in the table below and on the assumption that Exporter A acquires originating Good A and non-originating Good A that are fungible goods and physically combines or mixes Good A before exporting those goods to the buyer of those goods.

Finished goods inventory (Receipts of Good A)		Sales (Shipments of Good A)
Date (M/D/Y)	Quantity (units)	Quantity (units)
12/18/20	100 (O [1])	
12/27/20	100 (N [2])	
01/01/21	200 (OI [3])	
01/01/21	1,000 (O)	
01/05/21	1,000 (N)	
01/10/21		100
01/10/21	1,000 (O)	
01/15/21		700
01/16/21	2,000 (N)	
01/20/21		1,000
01/23/21		900

[1] ''O'' denotes originating goods.
[2] ''N'' denotes non-originating goods.
[3] ''OI'' denotes opening inventory.

Example 1: FIFO Method

By applying the FIFO method:

(1) The 100 units of originating Good A in opening inventory that were received in finished goods inventory on 12/18/20 are

considered to be the 100 units of Good A shipped on 01/10/21;

(2) the 100 units of non-originating Good A in opening inventory that were received in finished goods inventory on 12/27/20 and 600 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/21 are considered to be the 700 units of Good A shipped on 01/15/21;

(3) the remaining 400 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/21 and 600 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/21 are considered to be the 1,000 units of Good A shipped on 01/20/21; and

(4) the remaining 400 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/21 and 500 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/21 are considered to be the 900 units of Good A shipped on 01/23/21.

Example 2: LIFO Method

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/21 are considered to be the 100 units of Good A shipped on 01/10/21;

(2) 700 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/21 are considered to be the 700 units of Good A shipped on 01/15/21;

(3) 1,000 units of the 2,000 units of non-originating Good A that were received in finished goods inventory on 01/16/21 are considered to be the 1,000 units of Good A shipped on 01/20/21; and

(4) 900 units of the remaining 1,000 units of non-originating Good A that were received in finished goods inventory on 01/16/21 are considered to be the 900 units of Good A shipped on 01/23/21.

Example 3: Average Method

Exporter A chooses to determine the origin of Good A on a monthly basis. Exporter A exported 3,000 units of Good A during the month of February 2021. The origin of the units of Good A exported during that month is determined on the basis of the preceding month, that is January 2021.

By applying the average method:

The ratio of originating goods to all goods in finished goods inventory for the month of January 2021 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,212 units (3,000 units × .404) of Good A shipped in February 2021 are considered to be originating goods and 1,788 units (3,000 units − 1,212 units) of Good A are considered to be non-originating goods; and

that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 2021: 1,010 units (2,500 units × .404) are considered to be originating goods and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating goods.

Schedule IX (Method for Calculating Non-Allowable Interest Costs)

Definitions and Interpretation

1 For purposes of this Schedule,

fixed-rate contract means a loan contract, instalment purchase contract or other financing agreement in which the interest rate remains constant throughout the life of the contract or agreement;

linear interpolation means, with respect to the interest rate issued by the federal government, the application of the following mathematical formula:

$$A + [((B - A) \times (E - D))/(C - D)]$$

where

A is the interest rate issued by the federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of the payment schedule under the fixed-rate contract or variable-rate contract to which they are being compared,

B is the interest rate issued by the federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

C is the maturity of federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

D is the maturity of federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of that payment schedule, and

E is the weighted average principal maturity of that payment schedule;

payment schedule means the schedule of payments, whether on a weekly, bi-weekly, monthly, yearly or other basis, of principal and interest, or any combination thereof, made by a producer to a lender in accordance with the terms of a fixed-rate contract or variable-rate contract;

variable-rate contract means a loan contract, instalment purchase contract or other financing agreement in which the interest rate is adjusted at intervals during the life of the contract or agreement in accordance with its terms;

weighted average principal maturity means, with respect to fixed-rate contracts and variable-rate contracts, the numbers of years, or portion thereof, that is equal to the number obtained by

(a) dividing the sum of the weighted principal payments,

(i) in the case of a fixed-rate contract, by the original amount of the loan, and

(ii) in the case of a variable-rate contract, by the principal balance at the beginning of the interest rate period for which the weighted principal payments were calculated, and

(b) rounding the amount determined under paragraph (a) to the nearest single decimal place and, if that amount is the midpoint between two such numbers, to the greater of those two numbers;

weighted principal payment means,

(a) with respect to fixed-rate contracts, the amount determined by multiplying each principal payment under the contract by the number of years, or portion thereof, between the date the producer entered into the contract and the date of that principal payment, and

(b) with respect to variable-rate contracts

(i) the amount determined by multiplying each principal payment made during the current interest rate period by the number of years, or portion thereof, between the beginning of that interest rate period and the date of that payment, and

(ii) the amount equal to the outstanding principal owing, but not necessarily due, at the end of the current interest rate period, multiplied by the number of years, or portion thereof, between the beginning and the end of that interest rate period;

interest rate issued by the federal government means

(a) in the case of a producer located in Canada, the weekly average of the yield for federal government debt obligations set out in the Bank of Canada's *Daily Digest*

(i) if the interest rate is adjusted at intervals of less than one year, under the title ''Treasury Bills—1 Month'', and

(ii) in any other case, under the title ''Government of Canada benchmark bond yields—3 Year'', for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract,

(b) in the case of a producer located in Mexico, the yield for federal government debt obligations set out in *La Seccion de Indicadores Monetarios, Financieros, y de Finanzas Publicas, de los Indicadores Economicos,* published by the Banco de Mexico under the title ''*Certificados de la Tesoreria de la Federacion*'' for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract, and

(c) in the case of a producer located in the United States, the yield for federal government debt obligations set out in the Federal Reserve statistical release (H.15) *Selected Interest Rates*

(i) if the interest rate is adjusted at intervals of less than one year, under the title ''U.S. government securities, Treasury bills, Secondary market'', and

(ii) in any other case, under the title ''U.S. Government Securities, Treasury constant maturities'', for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract.

General

2. For purposes of calculating non-allowable interest costs

(a) with respect to a fixed-rate contract, the interest rate under that contract must be compared with the interest rate issued by the federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, if necessary);

(b) with respect to a variable-rate contract

(i) in which the interest rate is adjusted at intervals of less than or equal to one year, the interest rate under that contract must be compared with the interest rate issued by the federal government on debt obligations that have maturities closest in length to the interest rate adjustment period of the contract, and

(ii) in which the interest rate is adjusted at intervals of greater than one year, the interest rate under the contract must be compared with the interest rate issued by the federal government on debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, if necessary); and

(c) with respect to a fixed-rate or variable-rate contract in which the weighted average principal maturity of the payment schedule under the contract is greater than the maturities offered on federal government debt obligations, the interest rate under the contract must be compared to the interest rate issued by the federal government on debt obligations that have maturities closest in length to the weighted average principal maturity of the payment schedule under the contract.

Appendix ''Example'' Illustrating the Application of the Method for Calculating Non-Allowable Interest Costs in the Case of a Fixed-Rate Contract

The following example is based on the figures set out in the table below and on the following assumptions:

(a) *A producer in a USMCA country borrows $1,000,000 from a person of the same USMCA country under a fixed-rate contract;*

(b) *under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 per cent per year on the declining principal balance;*

(c) *the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.36 over the life of the contract;*

(d) *there are no federal government debt obligations that have maturities equal to the 6-year weighted average principal maturity of the contract; and*

(e) *the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are of 5- and 7-year maturities, and the yields on them are 4.7 per cent and 5.0 per cent, respectively.*

Years of loan	Principal balance [1]	Interest payment [2]	Principal payment [3]	Payment schedule	Weighted principal payment [4]
1	$924,132.04	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	843,712.00	55,447.92	80,420.04	135,867.96	160,840.08
3	758,466.76	50,622.72	85,245.24	135,867.96	255,735.72
4	668,106.81	45,508.01	90,359.95	135,867.96	361,439.82
5	572,325.26	40,086.41	95,781.55	135,867.96	478,907.76
6	470,796.81	34,339.52	101,528.44	135,867.96	609,170.67
7	363,176.66	28,247.81	107,620.15	135,867.96	753,341.06
8	249,099.30	21,790.60	114,077.36	135,867.96	912,618.88
9	128,177.30	14,945.96	120,922.00	135,867.96	1,088,298.02
10	(0.00)	7,690.66	128,177.32	135.867.96	1,281,773.22
					$5,977,993.19

[1] The principal balance represents the loan balance at the end of each full year the loan is in effect and is calculated by subtracting the current year's principal payment from the prior year's ending loan balance.

[2] Interest payments are calculated by multiplying the prior year's ending loan balance by the contract interest rate of 6 per cent.

[3] Principal payments are calculated by subtracting the current year's interest payments from the annual payment schedule amount.

[4] The weighted principal payment is determined by, for each year of the loan, multiplying that year's principal payment by the number of years the loan had been in effect at the end of that year.

[5] The weighted average principal maturity of the contract is calculated by dividing the sum of the weighted principal payments by the original loan amount and rounding the amount determined to the nearest decimal place.

Weighted Average Principal Maturity

$5,977,993.19/$1,000,000 = 5.977993 or 6 years[5]

By applying the above method,

(1) the weighted average principal maturity of the payment schedule under the 6 per cent contract is 6 years;

(2) the yields on the closest maturities for comparable federal government debt obligations of 5 years and 7 years are 4.7 per cent and 5.0 per cent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the contract is 4.85 per cent. This number is calculated as follows:

$4.7 + [((5.0 - 4.7) \times (6 - 5))/(7 - 5)]$

$= 4.7 + 0.15$

$= 4.85\%$; *and*

(3) the producer's contract interest rate of 6 per cent is within 700 basis points of the 4.85 per cent yield on the comparable federal government debt obligation; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition non-allowable interest costs in subsection 1(1) of these Regulations.

''Example'' Illustrating the Application of the Method for Calculating Non-allowable Interest Costs in the Case of a Variable-Rate Contract

The following example is based on the figures set out in the tables below and on the following assumptions:

(a) *a producer in a USMCA country borrows $1,000,000 from a person of the same USMCA country under a variable-rate contract;*

(b) *under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 per cent per year for the first two years and 8 per cent per year for the next two years on the principal balance, with rates adjusted each two years after that;*

(c) *the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.96 for the first two years of the loan, and of $146,818.34 for the next two years of the loan;*

(d) *there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the first two years of the contract;*

(e) *there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the third and fourth years of the contract; and*

(f) *the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 per cent and 3.5 per cent respectively.*

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	*924,132.04*	6.00	55,447.92	80,420.04	135,867.96	1,848,264.08
						$1,924,132.04

Weighted Average Principal Maturity

$1,924,132.04/$1,000,000 = 1.92413204 or 1.9 years

By applying the above method:

(1) The weighted average principal maturity of the payment schedule of the first two years of the contract is 1.9 years;

(2) the yield on the closest maturities of federal government debt obligations of 1 year and 2 years are 3.0 and 3.5 per cent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 per cent. This amount is calculated as follows:

3.0 + [((3.5 − 3.0) × (1.9 − 1.0))/(2.0 − 1.0)];
= 3.0 + 0.45
= 3.45%; and

(3) the producer's contract rate of 6 per cent for the first two years of the loan is within 700 basis points of the 3.45 per cent interest rate issued by the federal government on debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule of the first two years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition non-allowable interest costs in subsection 1(1) of these Regulations.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	.....
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	.....
3	843,712.01	8.00	67,496.96	79,321.38	146,818.34	$79,321.38
4	764,390.62	8.00	61,151.25	85,667.09	146,818.34	1,528,781.24
						$1,608,102.62

Weighted Average Principal Maturity

$1,608,102.62/$843,712.01 = 1.905985 or 1.9 years

By applying the above method:

(1) The weighted average principal maturity of the payment schedule under the first two years of the contract is 1.9 years;

(2) the federal government debt obligations that are nearest in maturities to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 and 3.5 per cent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 per cent. This amount is calculated as follows:

3.0 + [((3.5 − 3.0) × (1.9 − 1.0))/(2.0 − 1.0)];
= 3.0 + 0.45
= 3.45%

(3) the producer's contract interest rate, for the third and fourth years of the loan, of 8 per cent is within 700 basis points of the 3.45 per cent interest rate issued by the federal government on debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule under the third and fourth years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition non-allowable interest costs in subsection 1(1) of these Regulations.

Schedule X (Generally Accepted Accounting Principles)

1. Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a USMCA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

2. For purposes of Generally Accepted Accounting Principles, the recognized consensus or authoritative support are referred to or set out in the following publications:

(a) With respect to the territory of Canada, *The Chartered Professional Accountants of Canada Handbook,* as updated from time to time;

(b) with respect to the territory of Mexico, *Los Principios de Contabilidad Generalmente Aceptados,* issued by the *Instituto Mexicano de Contadores Públicos A.C. (IMCP),* including the *boletines complementarios,* as updated from time to time; and

(c) with respect to the territory of the United States, Financial Accounting Standards Board (FASB) Accounting Standards Codification and any interpretive guidance recognized by the American Institute of Certified Public Accountants (AICPA).

Dated: June 23, 2020.

Robert E. Perez,

Deputy Commissioner, U.S. Customs and Border Protection.

Approved:

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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Part III

Department of the Treasury

Comptroller of the Currency

12 CFR Part 45

Federal Reserve System

12 CFR Part 237

Federal Deposit Insurance Corporation

12 CFR Part 349

Farm Credit Administration

12 CFR 624

Federal Housing Finance Agency

12 CFR Part 1221

Margin and Capital Requirements for Covered Swap Entities; Direct-Interim-Final Rule-Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2019–0023]

RIN 1557–AE69

FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1682]

RIN 7100–AF62

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AF08

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AD38

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AB03

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (each, an agency, and collectively, the agencies) are adopting a final rule that amends the agencies' regulations requiring swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule). The Swap Margin Rule as adopted in 2015 takes effect under a phased compliance schedule spanning from 2016 through 2020, and the entities covered by the rule continue to hold swaps in their portfolios that were entered into before the effective dates of the rule. Such swaps are grandfathered from the Swap Margin Rule's requirements until they expire according to their terms. The final rule permits swaps entered into prior to an applicable compliance date (legacy swaps) to retain their legacy status in the event that they are amended to replace an interbank offered rate (IBOR) or other discontinued rate, modifies initial margin requirements for non-cleared swaps between affiliates, introduces an additional compliance date for initial margin requirements, clarifies the point in time at which trading documentation must be in place, permits legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, and makes technical changes to relocate the provision addressing amendments to legacy swaps that are made to comply with the Qualified Financial Contract Rules, as defined in the Supplementary Information section. In addition, the final rule addresses comments received in response to the agencies' publication of the interim final rule that would preserve the status of legacy swaps meeting certain criteria if the United Kingdom withdraws from the European Union (hereafter ''Brexit) without a negotiated settlement agreement.

DATES: The final rule is effective August 31, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Chris McBride, Director for Market Risk, Treasury and Market Risk Policy, (202) 649–6402, or Allison Hester-Haddad, Counsel, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance Horsley, Deputy Associate Director, (202) 452–5239, Lesley Chao, Lead Financial Institution Policy Analyst, (202) 974–7063, or John Feid, Principal Economist, (202) 452–2385, Division of Supervision and Regulation; Patricia Yeh, Senior Counsel, (202) 452–3089, or Justyna Bolter, Senior Attorney, (202) 452–2686, Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

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FCA: Jeremy R. Edelstein, Associate Director, Timothy T. Nerdahl, Senior Policy Analyst, Clayton D. Milburn, Senior Financial Analyst, Finance and Capital Markets Team, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FHFA: Christopher Vincent, Senior Financial Analyst, Office of Financial Analysis, Modeling & Simulations, (202) 649–3685, *Christopher.Vincent@fhfa.gov,* or James P. Jordan, Associate General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th St. SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

The agencies are adopting the recently proposed amendments to the agencies' regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule or Rule), with certain adjustments (final rule). As discussed in detail below, the final rule (1) permits swaps entered into prior to an applicable compliance date (legacy swaps) to retain their legacy status in the event that they are amended to replace an interbank offered rate (IBOR) or other discontinued rate, (2) modifies initial margin requirements for non-cleared swaps between covered swap entities and their affiliates, (3) introduces an additional compliance date for initial margin requirements, (4) clarifies the point in time at which trading documentation must be in place, (5) permits legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, (6) makes technical changes to relocate the provision within the rule addressing amendments to legacy swaps that are made to comply with the qualified financial contract rules (QFC Rules),[1] and (7) addresses comments received in response to the agencies' publication of

[1] 83 FR 50805 (October 10, 2018). The QFC Rules are codified as follows: 12 CFR part 47 (OCC's QFC Rule); 12 CFR part 252, subpart I (Board's QFC Rule); 12 CFR part 382 (FDIC's QFC Rule).

the interim final rule dealing with Brexit-related issues.

A. Background on the Swap Margin Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the agencies to jointly adopt rules that establish capital and margin requirements for swap entities that are prudentially regulated by one of the agencies (covered swap entities).[2] These capital and margin requirements apply to swaps that are not cleared by a registered derivatives clearing organization or a registered clearing agency (non-cleared swaps).[3] For the remainder of this preamble, the term ''non-cleared swaps'' refers to non-cleared swaps and non-cleared security-based swaps unless the context requires otherwise.

The Basel Committee on Banking Supervision (BCBS) and the Board of the International Organization of Securities Commissions (IOSCO) established an international framework for margin requirements on non-cleared derivatives in September 2013 (BCBS/IOSCO Framework).[4] Following the establishment of the BCBS/IOSCO Framework, on November 30, 2015, the agencies published the Swap Margin Rule, which includes many of the principles and other aspects of the BCBS/IOSCO Framework.[5] In particular, the Swap Margin Rule adopted the implementation schedule set forth in the BCBS/IOSCO Framework, including the revised implementation schedule adopted on March 18, 2015.[6]

The Swap Margin Rule established an effective date of April 1, 2016, with a phased-in compliance schedule for the initial and variation margin requirements.[7] On or after March 1, 2017, all covered swap entities were required to comply with the variation margin requirements for transactions with other swap entities and financial end user counterparties. The Swap Margin Rule presently requires all covered swap entities to comply with the initial margin requirements for non-cleared swaps with all financial end users with a material swaps exposure and with all swap entities by September 1, 2020.

B. Overview of the Notice of Proposed Rulemaking and General Summary of Comments

On November 7, 2019, the agencies sought comment on a proposal to revise certain parts of the Swap Margin Rule to facilitate the implementation of prudent risk management strategies at covered swap entities (proposed rule or proposal).[8] The proposed amendments permitted legacy swaps to retain their legacy status in the event that they are amended to replace an interbank offered rate (IBOR) or other discontinued rate, introduced an additional compliance date for initial margin requirements, clarified the point in time at which trading documentation must be in place, and permitted legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises. The proposal would also have made technical changes to relocate the provision within the rule addressing amendments to legacy swaps that are made to comply with the QFC Rules.

The proposal would also have no longer required covered swap entities to collect initial margin for non-cleared swaps with affiliates. However, inter-affiliate transactions would have continued to be subject to variation margin requirements. Inter-affiliate transactions of covered swap entities regulated by the FDIC, the OCC, and the Board also would continue to be subject to other applicable rules and regulations.

The agencies received approximately 20 comments on the proposal, from U.S. financial institutions, public interest groups, trade associations, academic institutions, and other interested parties. Agency staff also met with some commenters at those commenters' request to discuss their comments on the proposal.[9]

Most commenters supported the proposal's relief to amend certain legacy swaps for certain reasons and the proposal's addition of a compliance phase for smaller entities, as a meaningful way to assist market participants in managing and prioritizing their resources, mitigating potential trading disruptions related to the transition of IBORs to other interest rates, complying with documentation requirements, and engaging in certain trade life-cycle events.

With respect to removing the initial margin requirement for inter-affiliate transactions, some commenters supported the proposal while others expressed the view that the proposal would increase risks to covered swap entities individually and financial stability more broadly. For example, a few commenters shared their view that collateralization (in the form of initial margin collected from a covered swap entity's affiliate) is a highly effective tool for reducing closeout risk.[10] These commenters were concerned that the proposed rule would eliminate an estimated $40 billion in collateral held by covered swap entities, which, in their view, is necessary for closeout risk-absorption. Some of the commenters also expressed the view that banking organizations are using inter-affiliate swaps for the primary purpose of concentrating the risks of the organizations' world-wide derivatives activities onto the books of the covered

[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Sections 731 and 764 of the Dodd-Frank Act added a new section 4s to the Commodity Exchange Act of 1936, as amended, and a new section, section 15F, to the Securities Exchange Act of 1934, as amended, respectively, which require registration with the Commodity Futures Trading Commission (CFTC) of swap dealers and major swap participants and the U.S. Securities and Exchange Commission (SEC) of security-based swap dealers and major security-based swap participants (each a swap entity and, collectively, swap entities). Section 1a(39) of the Commodity Exchange Act of 1936, as amended, defines the term ''prudential regulator'' for purposes of the margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. *See* 7 U.S.C. 1a(39).

[3] A ''swap'' is defined in section 721 of the Dodd-Frank Act to include, among other things, an interest rate swap, commodity swap, equity swap, and credit default swap, and a security-based swap is defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based security index. *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

[4] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), available at *https://www.bis.org/publ/bcbs261.pdf.*

[5] 80 FR 74840 (November 30, 2015).

[6] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (March 2015), available at *https://www.bis.org/bcbs/publ/d317.pdf.*

[7] The applicable compliance date for a covered swap entity is based on the average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps of the covered swap entity and its counterparty (accounting for their respective affiliates) for each business day in March, April, and May of that year. The applicable compliance dates for initial margin requirements that are currently in place, and the corresponding average daily aggregate notional amount thresholds, are: September 1, 2016, $3 trillion; September 1, 2017, $2.25 trillion; September 1, 2018, $1.5 trillion; September 1, 2019, $0.75 trillion; and September 1, 2020, all swap entities and counterparties. *See* § __.1(e) of the Swap Margin Rule. In this final rule, the agencies are also adding one additional year to this schedule for certain counterparties.

[8] 84 FR 59970 (Nov. 7, 2019).

[9] Summaries of these meetings may be found at the internet sites where the agencies' have posted public comments on the NPR. *See, e.g., https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

[10] Closeout risk is the risk associated with the period following a confirmed default wherein the defaulting counterparty is unable to perform on the swap contract and the cost of legally closing out the existing swap and establishing a replacement swap with a new counterparty is unknown.

swap entities subject to the Swap Margin Rule, *i.e.,* U.S. insured depository institutions.

By contrast, commenters supporting the removal of the initial margin requirement for inter-affiliate transactions asserted that the proposal would align the Swap Margin Rule with the margin requirements of some other domestic and foreign jurisdictions and facilitate more balanced and effective risk management practices across the spectrum of risks faced within banking organizations that engage in non-cleared swaps.

As discussed below in this **SUPPLEMENTARY INFORMATION** section, the final rule adopts, with certain adjustments in response to the comments received, the proposal that (1) permits swaps entered into prior to an applicable compliance date (legacy swaps) to retain their legacy status in the event that they are amended to replace an IBOR or other discontinued rate, (2) modifies the initial margin requirement for non-cleared swaps between covered swap entities and their affiliates, (3) introduces an additional compliance date for initial margin requirements, (4) clarifies the point in time at which trading documentation must be in place, (5) permits legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, (6) makes technical changes to relocate the provision within the rule addressing amendments to legacy swaps that are made to comply with the qualified financial contract rules (QFC Rules),)[11] and (7) addresses comments received in response to the agencies' publication of the interim final rule dealing with Brexit-related issues.

II. Interbank Offered Rates

A. Summary of Proposed Rule

Due to the potential discontinuation of LIBOR at the end of 2021, covered swap entities face uncertainty about the way their swap contracts that include an interest rate based on LIBOR and other IBORs will operate after a permanent discontinuation. An interest rate is a critical term for calculating payments under a swap contract, be it an interest rate swap or another type of swap that includes a reference interest rate as one of the mechanisms for determining payments or premiums. In many instances, covered swap entities may decide to amend existing swap contracts to replace an IBOR before the IBOR becomes discontinued. Such amendments may also trigger follow-on amendments that the counterparties determine are necessary to maintain the economics of the contract.[12] Absent revisions to the Swap Margin Rule, an amendment to a legacy swap could affect the legacy status of such a swap and make it subject to the margin requirements of the rule. In order to enable covered swap entities and their counterparties to minimize disturbance to the financial markets, the agencies proposed to provide relief to permit covered swap entities to amend the interest rates in a legacy swap contract, based on certain conditions of eligibility, and to adopt necessary follow-on amendments, without the swap losing its legacy status.

B. Method of Amendment

1. Proposal

In recognition of the ongoing efforts to transition away from certain IBORs due to their potential discontinuation, the agencies proposed to amend the Swap Margin Rule to remove impediments that would limit the ability of covered swap entities to replace certain interest rates in their legacy non-cleared swaps. Proposed § __.1(h) recognized that these replacements could be carried out using a variety of legal mechanisms by permitting amendments accomplished by the parties' adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract (*i.e.,* tear-up), subject to certain limitations found in § __ .1(h)(3).

2. Final Rule

Commenters were supportive of the flexibility that the agencies provided regarding the method of amendment, particularly the flexibility to make amendments to an individual non-cleared swap or on a netting set level. Several commenters requested a technical change to the language in proposed § __.1(h) to clarify that the method of adherence to a protocol is itself a contractual amendment. To make this clarification, the agencies are replacing the language ''contractual amendment of an agreement or confirmation'' with ''other amendment of a contract or confirmation'' to make clear that both an adherence to a protocol as well as other amendments are permissible methods of amendment to a legacy swap, and also to maintain consistency in using the term ''contract'' rather than ''agreement'' in § __.1(h). The agencies are also making non-substantive parallel changes to the rule text to clarify that the execution of a new contract or confirmation in replacement of and immediately upon termination of an existing contract or confirmation is a permitted method of amendment.

A few commenters also requested that the agencies expand § __.1(h) to include new, non-legacy swaps entered into solely for managing the transition away from IBORs, or new, non-legacy swaps designed to transition an existing swap away from an IBOR even if the swap may not be amended or terminated. These commenters suggested this expansion would facilitate use of basis swaps to offset IBOR exposure from legacy swaps against new exposure to a risk-free rate (RFR). One commenter argued this would be roughly economically equivalent to directly amending one or more existing swaps to eliminate the IBOR exposure and replacing it with an RFR.

The agencies are not expanding the regulation beyond the methods that were proposed in § __.1(h).) The alternative suggested by the commenters would be ineffective in resolving the problem the agencies seek to address. As long as covered swap entities hold existing swaps contractually obligating them to exchange payments based on IBORs, they bear the risk that those IBORs will be discontinued. If a covered swap entity hedges that IBOR exposure to another benchmark by executing a new basis swap, one leg of that swap will necessarily be linked to the IBOR. While the agencies believe there may be certain circumstances in which sound risk management by a covered swap entity would include new trading activity between IBOR and non-IBOR market exposures (with contract dates ending by December 2021), these activities go beyond the scope of relief the agencies are providing with this rule.

C. Purpose of Amendments

1. Proposal

The proposed rule described the type of interest rate that can be replaced and the accompanying changes that would be permitted. Proposed §§ __ .1(h)(3)(i)(A) and (B) would permit amendments that are made solely to accommodate the replacement of an IBOR or of any other non-IBOR interest rate that a covered swap entity

[11] 83 FR 50805 (October 10, 2018). The QFC Rules are codified as follows: 12 CFR part 47 (OCC's QFC Rule); 12 CFR part 252, subpart I (Board's QFC Rule); 12 CFR part 382 (FDIC's QFC Rule).

[12] Follow-on amendments may include, for example, spread adjustments resulting from the move from a term rate to an overnight rate, from an unsecured rate to a secured rate, or from a change in tenor.

reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment with an alternate interest rate.

2. Final Rule

The agencies did not receive any comments on this part of the proposed rule and are adopting it as proposed.

D. Permitted Interest Rates

1. Proposal

The proposed rule provided that an IBOR could be replaced, including but not limited to LIBOR, TIBOR, BBSW, SIBOR, CDOR, EURIBOR, and HIBOR. Although the current uncertainty surrounding interest rates is tied to IBORs, the agencies also proposed a second, more subjective standard that would be applicable to other categories of interest rates, should the need arise in the future. This forward-looking standard was designed to encourage covered swap entities to resolve critical uncertainties before an interest rate is discontinued, or loses its market relevance, in order to minimize disturbance to the markets.

The proposed rule (§ __.1(h)(3)(i)(C)) also contemplated that an interest rate may need to be replaced more than one time. For example, an IBOR may first be replaced with fallback provisions at a time when a permanent alternative interest rate is not yet available or not yet agreed upon by the swap participants, or amendment documentation has not yet been developed. Subsequently, fallback provisions may be replaced with permanent alternative interest rates. If the original interest rate that is being replaced is an IBOR or any other non-IBOR interest rate that otherwise met the requirements of the proposed rule and that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment, the non-cleared swap may be amended more than once to accommodate ongoing developments toward a permanent replacement interest rate. The proposed rule did not limit the number of amendments that could take place, as long as the interest rate that was originally present in the non-cleared swap met the criteria in either proposed § __.1(h)(3)(i)(A) or § __.1(h)(3)(i)(B). The proposed rule would not permit subsequent amendments that change interest rates or other terms of the non-cleared swap for any purpose other than for those purposes explicitly set out in § __.1(h), without triggering application of the margin requirements.

To benefit from the treatment of this new legacy swap provision, a covered swap entity must make the amendments to the non-cleared swap solely to accommodate the replacement of an interest rate described in the proposed rule. The proposed rule was flexible as to the incoming replacement interest rate by leaving it up to the counterparties to select a mutually agreeable replacement interest rate. The proposed rule provided examples of the Secured Overnight Funding Rate (SOFR), the AMERIBOR and the Overnight Bank Funding Rate as some potential alternatives suggested by some market participants. The agencies expected that any replacement interest rate, including any successor replacement interest rate, would be agreed upon by the parties after assessing its complexity, safety and soundness, and taking into consideration associated risk management practices.[13]

2. Final Rule

The agencies received several comments expressing concern that the proposed rule could be read as applying to interest rate swaps only and requesting similar relief for all other asset categories of swaps, including foreign exchange, equity, commodity, and credit default swaps. The agencies are clarifying that amendments to the rule permit amendments to interest rates but do not restrict the categories of swaps where those interest rates appear and thus do not restrict the categories of swaps in which those amendments could be made. Interest rates could be used in a variety of different categories of swaps, such as an underlying interest rate index in an interest rate swap or as a discounting interest rate for collateral or payment calculations in a commodity, foreign exchange, equity, or credit swap. In other words, the relief provided applies to all categories of non-cleared swaps that include or refer to an IBOR or any other interest rate described in paragraphs (h)(3)(i)(A)–(C) of the final rule.

One commenter requested that the agencies extend the relief in the Proposal to cover amendments made solely to accommodate the replacement of any reference instrument (*e.g.,* iTraxx) reasonably expected to be discontinued or reasonably determined to have lost its relevance as a reliable benchmark due to a significant impairment. The agencies note that there is no current expectation or indication that any major non-interest rate reference instrument is expected to be discontinued. Moreover, the expected discontinuation of IBORs place these interest rates in a special position that does not extend to periodic revisions of underlying reference instruments in commodity, foreign exchange, credit, equity, or other swaps. The agencies are not modifying the final rule to allow the replacement of a non-interest rate reference instrument while retaining the legacy status of the swap. If any expectation of discontinuation arises in the future, the agencies may reconsider their position.

One commenter requested clarification that any new intermediate or permanent interest rate does not necessarily have to be viewed by the market as a ''successor'' to the IBOR or other discontinued rate, but that the counterparties to the swap contract simply have to agree on the appropriate replacement interest rate. The agencies confirm this understanding.

Commenters expressed concern that changes to the discounting methods to adopt RFRs used by some central counterparties (CCPs) would require conforming changes to over-the-counter swaptions that may be presented to these CCPs for clearing. The agencies have modified the proposed rule to allow legacy swaps to be amended to reflect these changes to the discount interest rate and remain legacy swaps.

The agencies did not receive any other comments on this part of the proposed rule and are adopting it largely as proposed.

E. Follow-On Amendments

1. Proposal

In the proposed rule, the agencies acknowledged that replacing an interest rate could require other contractual changes to maintain the economics of the non-cleared swap and to preserve the relative economic values to the parties after incorporating changes to the interest rate. The proposed rule would permit changes that incorporate spreads and other adjustments that accompany and implement the replacement interest rate amendment. The proposed rule would also permit other, more administrative and technical changes necessary to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates. These types of

[13] The replacement rate is also expected to be consistent with international standards, such as the IOSCO Principles for Financial Benchmarks. *See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.*

administrative changes may be necessary to adjust computations and operational provisions to reflect the differences between an IBOR and the replacement interest rate or rates. The agencies envisioned that a number of contractual changes could be necessary to maintain the economics of the non-cleared swap, and for this reason, the proposed rule would permit these changes. However, the agencies did not believe that the relief being provided for interest rate replacement purposes should be expansively applied to encompass all changes to a legacy swap. Accordingly, the proposed rule text clarified that the proposed safe harbor for legacy swaps would be unavailable if the amendments extend the maturity or increase the total effective notional amount of the non-cleared swap, irrespective of the reason for those changes.

2. Final Rule

The agencies received several comments requesting reconsideration of the restriction on extending the maturity or increasing the total effective notional amount of the non-cleared swap. Day count conventions or other factors such as final settlement or final payment occurring on the 30th of the month versus the 15th of the month may result in an extension of the remaining maturity of a swap. Since the counterparty to a non-cleared swap may not know the size of the final payment until the end of the interest period, the swap may incorporate a payment delay, with the final maturity shifting as a result. Commenters also explained that the replacement of an IBOR may increase the total effective notional amount of the non-cleared swap under a few scenarios. For example, a fixed-for-floating IBOR swap may use a 30/360 day count fraction market convention, but the market standard for a replacement reference benchmark rate swap may use an actual/360 day count fraction market convention. Under this scenario, the notional amount would need to be adjusted to ensure that the payment amounts on the fixed leg of the replacement reference benchmark rate swap are the same compared to the IBOR swap.

In response to these comments, the agencies understand that certain differences in market conventions may not yet be well established or expected. The agencies are preserving the proposal's restriction on extensions of maturity and increases of total effective notional amount, but adding language allowing extensions and increases as necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement. Market conventions could include changes in day count conventions, settlement date, or final payment date.

Several commenters also explained that counterparties may employ portfolio compression to effectuate amendments to legacy swaps for the purpose of eliminating IBORs, and that differences between market conventions for an outgoing interest rate and its replacement in this context could also affect the remaining maturity and total effective notional amount of portfolios of IBOR swaps. The agencies are adding new paragraph (h)(3)(iii) to accommodate portfolio compression exercises that are driven by the sole purpose of replacing an interest rate described in paragraph (h)(3)(i). In such a case, portfolio compression would not be subject to the limitations in paragraph (h)(4), but may not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap beyond what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

Commenters also expressed a concern that changes associated with the liquidity of specific maturities of swaps with a replacement interest rate may result in an increase in the remaining maturity of the non-cleared swap. For example, a swap with a four-year remaining maturity may not be as liquid as a swap with a five-year remaining maturity. Given that this rationale for an extension of maturity can significantly increase the remaining maturity of a legacy swap, the agencies believe that it could lead to inappropriate extensions or evasion of the requirements of the rule. Accordingly, the agencies are not permitting an extension of the remaining maturity for liquidity or similar reasons.

F. End Date

The proposed rule did not specify an end date by which IBOR-related amendments must be completed, but requested comment on that issue. Several commenters agreed with the agencies' approach to not specify an end date, explaining that amendments related to fallbacks or other transitions to replacement interest rates may not be completed in one step or within a given time frame. Accordingly, the agencies are not adopting any specific end date by which IBOR-related amendments must be completed.

G. Exemptions for Commercial and Cooperative End Users

One commenter requested that the agencies clarify how the Swap Margin Rule treats post-compliance date non-cleared swaps that qualified for the commercial/cooperative end user exemption from the rule under § __ .1(d)(1), if such swaps are amended to accommodate changes to referenced benchmark interest rates. The commenter expressed concern that post-compliance date non-cleared swaps originally exempted under § __.1(d)(1) will need to be amended by commercial end users or cooperatives to remove an IBOR benchmark interest rate. Specifically, the commenter noted that the amended swaps might become subject to temporary mismatches between the rate referenced by such swaps and the commercial arrangements being hedged, thereby raising questions about their exempt status.

The commenter's request is based on two no-action letters that the CFTC issued pertaining to non-cleared swaps in which the counterparty qualified for an exemption or exception from mandatory clearing and/or non-cleared margin requirements under the Commodity Exchange Act (CEA) or CFTC regulations.[14]

The scope of the agencies' exemption for commercial and cooperative end users in § __.1(d)(1) is, by its terms, tied to the scope of the commercial end user exemptions in the CEA and their implementing regulations. No-action letters are not included under the agencies' regulations. However, for the same reasons the agencies are amending § __.1(h) to preserve the legacy status of swaps during the IBOR transition, the agencies will treat commercial and cooperative end user swaps originally exempted under § __.1(d)(1) as remaining within the scope of § __.1(d)(1) if those swaps are effectuated under the terms of the two applicable CFTC no-action letters.[15]

[14] *See* CFTC Letter No. 19–28 (December 17, 2019), in section V.A., providing regulatory relief from the mandatory clearing requirement, and CFTC Letter 19–26 (December 17, 2019), in section E.1., which granted relief from the CFTC's margin requirements for non-cleared swaps. In both situations, the counterparties previously relied on the end-user exemptions end-user exemptions in the CEA and applicable CFTC regulations.

[15] *Id.* The agencies' determination is specific to these two CFTC no-action letters, and more specifically to section V.A. of CFTC Letter No. 19–28 and section E.1. of CFTC Letter No. 19–26. The agencies are not applying CFTC no-action letters to modify the terms of the Swap Margin Rule in any other regard.

III. Non-Cleared Swaps Between Covered Swap Entities and an Affiliate

The agencies proposed to amend the treatment of affiliate transactions in the Swap Margin Rule by creating an exemption from the initial margin requirements for non-cleared swaps between affiliates. The agencies also proposed, however, to retain the requirement that affiliates exchange variation margin. Twenty-two interested persons submitted public comments to the agencies on the proposal, including individuals, banking and securities trade groups, public interest advocacy groups, and one custodian bank.

After consideration of these public comments, as discussed below, the agencies are adopting the rule as proposed with a modification (1) requiring a covered swap entity to calculate and monitor the amount of inter-affiliate initial margin that would otherwise be required to be collected by such covered swap entity under the Swap Margin Rule; and (2) requiring a covered swap entity to collect initial margin from its affiliates on all new non-cleared swaps if the aggregate initial margin calculation amount exceeds 15 percent of the covered swap entity's Tier 1 capital (''15% Tier 1 Threshold''). This requirement will apply to inter-affiliate swaps executed on any business day the 15% Tier 1 Threshold is exceeded and remain in place as long as the 15%Tier 1 threshold has been exceeded. A covered swap entity will not be required to collect initial margin from its affiliates if the aggregate inter-affiliate initial margin calculation amount is 15 percent or less of the covered swap entity's Tier 1 capital. For purposes of the calculation described above and as further discussed below, a covered swap entity will treat non-cleared swaps between a subsidiary of the covered swap entity and an affiliate as if the non-cleared swaps were its own. Additionally, the agencies are also clarifying one aspect of the initial margin requirement for affiliates. The final rule clarifies that non-cleared swaps between affiliates remain subject to § __.3(d), which describes the initial margin requirements that apply to non-cleared swaps between a covered swap entity and counterparties that are not subject to the Swap Margin Rule's requirement to calculate and exchange initial margin on a daily basis. That section provides that a covered swap entity shall collect initial margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately addresses the credit risk posed by the counterparty and the risks of such non-cleared swap.

A. Main Proposal

The agencies proposed to amend § __.11 of the Swap Margin Rule, which currently establishes a special set of six regulatory requirements for swap transactions between a covered swap entity and an affiliate. Five of these provisions concern the requirement for a covered swap entity to collect initial margin for covered swap transactions with an affiliate. Each of these five provisions focuses on a particular aspect of the Swap Margin Rule's initial margin requirements as they generally apply to non-affiliated counterparties, and provides corresponding exemptions from or reductions to that particular aspect of the Swap Margin Rule's requirements whenever the counterparty is an affiliate of the covered swap entity.[16] The agencies proposed to replace this set of five exemptive provisions with a single exemption from the initial margin exchange requirement contained in § __.3 of the Swap Margin Rule. The agencies proposed to retain the sixth regulatory requirement in § __.11, which is the requirement for covered swap entities to collect and post variation margin for affiliate swap transactions pursuant to § __.4 of the Swap Margin Rule.[17]

B. Comments and Considerations for the Final Rule

Twelve commenters representing the views of covered swap entities and their counterparties expressed support for the proposed rule. Commenters in this group generally expressed the view that inter-affiliate swaps are an important risk management tool, the use of which would be facilitated by the proposed rule. Several of these commenters further expressed the view that the risks of inter-affiliate swaps are better addressed by other means, such as capital, credit risk limits, and variation margin. Many also noted the inter-affiliate provisions of the current Swap Margin Rule are inconsistent with those of the CFTC and most G20 regulators. One commenter estimates that $39.4 billion of inter-affiliate initial margin collateral was held at year-end 2018 by the group of covered swap entities that first became subject to the Swap Margin Rule in 2016.

Eight commenters, including public interest advocacy groups and individuals, expressed opposition to the agencies' proposal, and provided several different grounds for their objections. These views are grounded on similar core concerns, which the agencies have evaluated as follows.

One concern centers on some commenters' view that initial margin serves a special loss-absorbing function in the inter-affiliate context, and the agencies' proposal would increase risks to covered swap entities individually and financial stability more broadly by removing this protection. One commenter discussed the specific function of initial margin and contrasted it with variation margin.

Initial margin is a risk management tool designed to mitigate a covered swap entity's exposure to market risk associated with a counterparty's default by requiring a counterparty to obtain and provide financial collateral equal to the potential future exposure (PFE) the covered swap entity would face if the counterparty defaults. Under the Swap Margin Rule, a covered swap entity accordingly collects high-quality collateral from its counterparty equal to this PFE, placed in third-party custody to provide a source of payment to offset this risk. This PFE is the measurement of the exposure due to the defaulting counterparty's inability to continue performing on the swap contracts during the period after the counterparty's default but before the covered swap entity closes out its positions with the defaulting counterparty and establishes similar trades with a new counterparty.

In practice, it can take a varying number of days after default for the covered swap entity to establish new trades with new counterparties as necessary to replace or re-hedge the defaulted swaps.[18] The process of

[16] Swap Margin Rule §§ __.11(b)(1) (posting initial margin); (b)(2) (initial margin threshold amount); (d) (custody of margin); (e) (margin model holding period); and (f) (standardized margin amounts).

[17] Swap Margin Rule § __.11(c). This subsection creates no variations from the generally-applicable requirements of § __.4. Accordingly, the agencies proposed to remove it, and § __.4 directly applies to covered swap entities engaging in swap transactions with affiliates on the same terms as it applies with any other counterparty.

[18] If the net value to the covered swap entity of the portfolio with the counterparty (the current exposure amount) was positive at the time of the default, the covered swap entity already holds variation margin—collected from the counterparty on a daily basis as required by the Swap Margin Rule—to cover that amount. The Swap Margin Rule's variation margin provisions require covered swap entities to recalculate the monetary value of the portfolio of swaps with each counterparty every business day. If the monetary value of the portfolio to the covered swap entity has increased, the covered swap entity is required to collect additional variation margin collateral from the counterparty. If the monetary value has decreased, the covered swap entity is required to return an equivalent amount of variation margin collateral to the counterparty. §§ __.2 ''variation margin'' and

Continued

obtaining new swaps contracts with new counterparties creates additional costs that can vary depending on prevailing market conditions at the time default occurs and in the subsequent days needed to obtain the new contracts. This potential *range* of costs represents the covered swap entity's PFE.

As the commenter noted, because these costs will vary depending on whatever market conditions actually exist at the unknown future time when the counterparty defaults, the Swap Margin Rule requires covered swap entities to calculate PFE based on the premise that its market costs will be on the high end of the expected range, statistically speaking. Because of this uncertainty, the amount of initial margin collateral a covered swap entity will collect under the Swap Margin Rule is significantly higher than the daily amount of variation margin exchanged, which is based on current and known changes in the market conditions that change the value of the portfolio of swaps.

Commenters expressing concern about PFE risk asserted that collateralization (in the form of initial margin collected from the covered swap entity's affiliate) is an effective tool for reducing the close-out and re-hedging risk described above. These commenters objected that the proposed rule would eliminate an estimated $40 billion in collateral held by covered swap entities that, in the commenters' views, is necessary for mitigating PFE risk. However, it is incumbent on supervisors to evaluate multiple approaches to controlling the overall risk of inter-affiliate swaps exposures, and to consider which of the available approaches to deploy depending on how those risks occur (and evolve) in the industry. Inter-affiliate counterparty credit risk, in the form of PFE, is one of several risks that affiliated banking organizations need to manage. The nature of these risks, their potential severity, and the mechanisms to manage them in tandem vary such that no single approach to address all risks in isolation is appropriate. Supervisors have a variety of tools at their disposal to ensure protection of a banking organization's financial integrity, in light of the banking organization's particular scope of activities (both financial and geographic).[19] Initial margin can be effective in addressing the PFE risks of inter-affiliate transactions within a banking organization, but viewing it as a comprehensive solution is a simplistic approach.

Some of these commenters also expressed the view that banking organizations are using inter-affiliate swaps for the primary purpose of concentrating the risks of the organizations' world-wide derivatives activities onto the books of the covered swap entities covered by the prudential regulators' Swap Margin Rule, *i.e.,* U.S. insured depository institutions (IDIs). These views are not consistent with the agencies' supervisory experience since the rule took effect. As described in greater detail below, the agencies observe that internationally active banking organizations that have a cross-border organizational structure relying on separate legal entities must use inter-affiliate swaps to manage the risks of the overall banking organization's outward-facing derivatives exposures. Other internationally active banks, operating cross-border through branching structures, do not have the need to use inter-affiliate swaps for risk management.

As the agencies discussed in the proposal, actual supervisory experience in the years since the agencies imposed the Swap Margin Rule's current requirements has raised two inter-related concerns at the institution-specific level and the systemic level about the utility of initial margin to address exposures arising from inter-affiliate swap transactions. These concerns surround impediments to a banking organization's best management practices for cross-border swap risks, and whether these risks are more appropriately addressed through other regulatory and supervisory mechanisms as discussed below, and limitations on the effectiveness of inter-affiliate margin to address systemic cross-border market risks, also discussed below.

1. Effects of the Inter-Affiliate Initial Margin Requirement on Banking Organizations

Some covered swap entities covered by the Swap Margin Rule are internationally active banking organizations and their swaps activities are carried out in a cross-border marketplace. Some commenters perceive that U.S. banking organizations use inter-affiliate swaps primarily to transfer the risks of all their foreign derivatives activities into the U.S. insured depository institution. However, the agencies observe a redistribution of risk based instead on the international scope of the banking organization's business.

In the market for non-cleared derivatives, inter-dealer trading activity for certain types of derivatives is heavily concentrated in one geographic location, while the marketplace for other types of derivatives takes place in a different geographic location. An internationally active U.S. banking organization participates as a covered swap entity in a number of these marketplaces by establishing a place of business in each, such as a locally incorporated business entity, or a foreign branch of the main U.S. bank. The banking organization also has swap customers at home and abroad and services them by establishing a place of business in the same geographic locations as the customers.

If a customer in one market (*e.g.,* the U.K.) needs a non-cleared swap that is traded in the local market (*e.g.,* a sterling interest rate swap), the U.K. operation of the banking organization handles the entire transaction locally. On the other hand, if a U.S. customer needs the same sterling interest rate swap, the U.S.-based establishment of the banking organization enters into the swap with the customer (collecting margin and exchanging periodic payments on the swap) while the banking organization uses its U.K establishment to execute on the market-facing sterling interest rate swap (also exchanging margin with its counterparty in that market). Best safety and soundness practices in risk management dictate that the banking organization's personnel with the expertise in a class of derivatives be located in the relevant

"variation margin amount," __.4. It is generally industry practice to use cash as variation margin collateral; however, if non-cash financial collateral is used, the covered swap entity must re-value it each day and adjust the daily variation margin collection or return amounts to reflect those changes as well. § __.6(e). If the event triggering the counterparty's default under a swap is the counterparty's failure to provide additional collateral in response to a margin call, then the dealer's current credit exposure will be undercollateralized by the amount of the day's changes in current exposure and/or collateral value.

[19] For example, internationally-active banking organizations face the financial risks of each location in which they operate, and one important tool is the coordination by international supervisors to ensure equivalent supervisory requirements are implemented across jurisdictions, normalizing market conditions in each location. For any banking organization with important sources of revenue spread across more than one entity, the strength of the banking organization could be materially affected in the absence of successful strategic management of all the business components. Supervisors play an important role in assessing whether the organization's management maintains an effective process for identifying, measuring, and managing all key risks in this regard. Organization-wide capital, leverage, and liquidity considerations are important supervisory considerations. Other measures include amount limits, concentration limits, collateral amount and quality, qualitative transaction restrictions, or market equivalency standards. Even matters such as addressing market concerns about ring-fencing available assets can have a significant benefit in reducing a U.S. bank's foreign exposures.

market location, where they can obtain the most advantageous swap terms, such as best pricing or a wider range of maturities. On the customer side, market expectations are that the banking organization will locate personnel in the same location as the customer.

As a result, international banking organizations using inter-affiliate swaps as a risk management tool under this business model are hedging market risk arising from the nature of their world-wide customer needs (*e.g.,* dollar swaps, euro swaps) and managing it in the corresponding market location. A foreign customer's need for a U.S. dollar swap product would engage the involvement of the U.S. banking organization's U.S. bank affiliate, due not to the depository institution status of the U.S. bank or some bias in favor of the banking organization's home market, but rather to its place as the banking organization's locus of market activity in the dollar market. As in the example above, if a U.S. customer of the U.S. bank sought a sterling swap product, the opposite occurs. Moreover, if a non-U.S. customer in one location needs a type of swap traded in another non-U.S. location, the risk can be transferred between them without any direct U.S. intermediation.[20]

For internationally-active banking organizations, U.S. supervisors consider this arrangement a better risk management practice than using the U.S. location to manage the market-facing risk of the swap through local trading (in a less liquid market for that that type of exposure), or U.S. personnel endeavoring to make trades with foreign dealers in the relevant market (through cross-border communication and contracts).[21] As discussed below, this is occurring in the context of supervisory oversight of the banking organization aimed at ensuring the affiliates are in good financial standing, utilizing an appropriate system of market and credit risk limits, and the affiliates themselves obtain robust initial margin from their counterparties, to protect the affiliates from PFE risk if their counterparties should default.[22]

Also, as the agencies discussed in the proposal, some internationally active U.S. banking organizations utilize the same arrangement without creating inter-affiliate PFE, because they set up their foreign establishments as a foreign branch of the U.S. bank. From an entity and accounting standpoint, the U.S. bank can transact with the customer and hedge its cross-border swap risk through foreign swap contracts, all within the same entity (and without the need to create an internal swap).

The risk presented to the U.S. bank by the foreign-market swaps themselves is identical under both structural alternatives, whether the banking organization uses a foreign branch or a foreign affiliate. That risk is managed through several tools, including the banking organization's board-approved system of risk limits governing its participation in the foreign swap market; the banking organization's underwriting and ongoing monitoring of the credit risk of the counterparties it faces through swap transactions in the foreign swap market; and the collection of variation margin and initial margin requirements from those foreign market counterparties, under margin regulations developed on a coordinated basis by U.S. and foreign regulators through an established, formal process.

The addition of an affiliated entity instead of a branch may have the effect of creating other regulatory and risk issues to be considered, but these are separate from the risks of the foreign swap itself and are addressed under separate supervisory and regulatory frameworks.

The participation of U.S. banking organizations in the derivatives markets abroad is substantial, making attempts to ''compartmentalize'' the exposures of significant market affiliates on the basis of legal separation and collateral exclusively challenging.[23] Sound risk management for banking organizations necessitates ongoing assessments of financial performance across the organization and corrective incremental responses to undesirable changes in key risk metrics.

The agencies' structural concerns described above have arisen with the benefit of hindsight in the time since the Rule was finalized. In 2014 and 2015, the future structure of the cross-border non-cleared swaps market was potentially subject to significant change in response to key factors such as growth in the cleared derivatives market (reducing non-cleared activity), industry acclamation to significant expected cost increases attributable to the robust world-wide margin regimes about to take effect, and new regulatory resolution planning requirements, causing internal restructuring within banking organizations in response to these factors. These unknowns, and the costs of the inter-affiliate initial margin requirement, could have reasonably been expected to curtail existing use of

[20] When a non-bank affiliate enters into a non-cleared swap with its counterparty, and then enters into an inter-affiliate swap with a U.S. institution to manage the market risk component, commenters also expressed the view that the affiliate thereby ''transfers the risk'' of the non-cleared swap into the U.S. institution. The agencies have considered this viewpoint and note that the affiliate continues to face the counterparty, actively managing the counterparty credit risk and exchanging margin in accordance with the same margin standards as the U.S. has imposed pursuant to the BCBS–IOSCO framework. To the extent these counterparties are also financial intermediaries, they are themselves subject to the same margin standards, buttressing their financial resiliency. Because the prudential regulators' margin rules apply to covered swap entities that are foreign banks, in many instances those margin rules are, in fact, identical.

[21] Commenters in the group objecting to the agencies' initial margin proposal did not object to maintaining the Rule's variation margin requirement. As one commenter noted, variation margin performs a different function than initial margin. Where initial margin is calibrated to PFE, variation margin reflects the ongoing shift in market value of a swap contract between the covered swap entity and the counterparty on a daily basis. Because a non-cleared swap creates bilateral payment obligations between the two parties, the current market value of the cash flows due to be paid to one party will usually be higher than the current market value of the cash flows due to be paid to other party, depending on how the market value for the underlying reference asset or rate rises or falls. In this regard, the agencies note that variation margin requires ongoing daily payments from the party that is ''out of the money'' over to the party that is ''in the money.'' Internationally active banking organizations routinely exchange variation margin on inter-affiliate swaps, but not exclusively as a counterparty default risk mitigation tool. For strategic purposes, banking organizations internally measure and evaluate the relative profitability of their differing lines of business and locations (typically by comparing profits for the location as a ratio of the level of regulatory capital and funding costs associated with the location). The exchange of variation margin is a natural way for the two different locations (trading desks) to assign the profitability of the swap to the right desk for these internal measurements, and related purposes.

[22] One commenter expressed the view that these considerations would potentially address the commenter's concerns about PFE risk transfer from affiliates, but also posited that the agencies were unconcerned about the potential absence of these factors in issuing the proposal. The agencies note that the presence of these important risk management measures is a supervisory expectation for banking organizations engaged in the practice. The agencies also note the commenter presumes the Swap Margin Rule's methodology for determining the initial margin collection amount—which represents the agencies' implementation of Section 3.1 of the BCBS–IOSCO Framework's requirement for portfolio replacement costs designed to address unexpected third-party counterparty defaults based on a probability statistical model using a 10-day holding period and presuming a period of severe market stress—is properly calibrated for the close-out risk of interaffiliate transactions that are already subject to several additional prudential risk-reducing requirements and reduced information gaps. Moreover, the agencies note that Element 6 of the BCBS–IOSCO Framework itself excludes interaffiliate swaps from the scope of the Framework and did not contemplate that Section 3.1 of the BCBS–IOSCO Framework would be applied to them.

[23] *See, e.g., https://www.bis.org/ifc/publ/ifcb31n.pdf* (U.S.-based banking organizations engage in derivatives activities across G–10 countries actively, with non-U.S. market participation exceeding U.S. market participation in the aggregate); *see* also, Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies, 84 FR 1438 (February 4, 2019).

inter-affiliate non-cleared swaps.[24] For example, some internationally-active covered swap entities conducted their cross-border business through foreign branches, and others might have restructured to eliminate the need for inter-affiliate swaps. The agencies' past expectations of reductions in inter-affiliate swap activity have not been borne out through the completion of the Swap Margin Rule's implementation phase. In addition, among the prudential regulators, the banking agencies continue to assess the proper calibration of regulatory capital requirements including enhanced recognition of collateralization (or the lack of it) for closeout risk.[25]

2. System-Wide Effectiveness of Inter-Affiliate Initial Margin Requirements

Commenters objecting to the agencies' proposal also expressed the view that the agencies are engaging in a ''race to the bottom'' to the extent the agencies discussed how inter-affiliate initial margin requirements have not been universally applied by other domestic and foreign regulators. As stated in the proposal, the agencies raise this concern in the context of observing that limited application of the initial margin requirements to one slice of the market is a blunt tool for enhancing financial stability among interconnected financial market participants. With the benefit of hindsight, the agencies observe that other regulators developing their implementing rules in 2015 and beyond have not implemented the same comprehensive inter-affiliate margin collection requirements that the agencies did in 2015.[26] As a result, certain anticipated systemic protections that would have accrued from comprehensive inter-affiliate initial margin practices world-wide will not be realized.

Commenters opposing the agencies' proposal also expressed the view that the agencies were eliminating an estimated $40 billion of initial margin collateral that will serve a ''loss absorbing capacity'' to protect against potential affiliate default on their swaps exposures. Initial margin, however, is not loss-absorbing in the same sense as equity capital; initial margin collateral is funded with borrowings from the banking organization's creditors.[27] The practice in banking organizations of providing collateral to their bank affiliates as security for the banking organization's financial obligations is a routine and expected aspect of the business. But it is accompanied by market expectations on behalf of each banking organization's creditors if the aggregate extent to which it is employed in the banking organization materially exceeds established expectations. During periods of market distress, those creditors' claims are potentially subordinated to the bank's claim on the banking organization's assets, placing additional stress on the banking organization's access to funding if the subordination effects are materially beyond the norm.

C. Description of the Final Rule

After considering commenters' range of views about the proposed rule, the agencies have determined to finalize it consistent with the proposal, with two revisions.

First, the agencies are including a limit on the aggregate amount that a covered swap entity may recognize pursuant to the inter-affiliate initial margin exemption provided under the final rule. This limit, as further described below, is set at 15 percent of the covered swap entity's tier 1 capital. The agencies are incorporating the 15% Tier 1 Threshold into § __.11 as an augmentation to reflect safety and soundness and financial system risk concerns of the Board, the FDIC, and the OCC surrounding the status of covered swap entities that are U.S. insured depository institutions.[28] The agencies, in their supervisory experience, have observed that covered swap entities have collected inter-affiliate initial margin under the current rule at levels that do not exceed this limit. Nevertheless, the agencies' determinations underlying the decision to issue this final rule are informed significantly by the agencies' supervisory experience overseeing inter-affiliate swap activities at covered swap entities during the first four years the Swap Margin Rule has been in effect. Accordingly, the agencies believe it is appropriate to apply the 15% Tier 1 Threshold as an augmentation, as the agencies continue to supervise covered swap entities further into the maturation of the international derivatives market reforms that have been under development since 2010. This augmentation will address additional supervisory concerns that may arise at a covered swap entity whose tier 1 capital base is contracting in an unusually rapid pattern, a situation that evidences the institution is experiencing

[24] *See* 80 FR at 74,893 (''It is likely the behavior of swap market participants, including affiliate counterparties, will respond to incentives created by these swap margin requirements. Such changes could have a dramatic effect on the pattern of affiliate swap transactions which would itself have a significant impact on the amounts of initial margin that are ultimately collected on inter-affiliate transactions.'')

[25] In this regard, it is worth noting that the analysis in this Supplementary Information Section evaluates comments on the proposal from the perspective of the Swap Margin Rule. The evaluation of risk for inter-affiliate trades and the best way to address such risks from a regulatory perspective could change depending on, among other things, the statutory authority on which a regulatory requirement is premised.

[26] In the EU, intragroup transactions are fully exempt (not only initial margin, but also variation margin), unless the relevant affiliates are subject to specific and identified legal impediments to funds transfers between them, such as currency exchange restrictions, identified defects in one of the affiliate's formal resolution plans, or other specific legal restriction that significantly affects the transfer of funds between the affiliates. See Commodity Futures Trading Commission Comparability Determination for the European Union, 82 FR 48394, 48399–48400 (October 18, 2017) (comparing CFTC non-cleared swap margin rules to comparable EU rules, discussing EU reliance on appropriate centralized risk evaluation, measurement, and control procedures between cross-border affiliates, and margin rule comparability determinations outside the EU); see also Commission Implementing Decision (EU) 2017/1857 (October 13, 2017) (EU comparability determination for US transactions subject to the CFTC non-cleared margin rules), available at *https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1857&from=ES;* European Supervisory Authorities, EMIR RTS on various amendments to the bilateral margin requirements in view of the international framework (December 5, 2019) (notice of proposed amendments to EMIR non-cleared derivatives margin rule to grant an additional extension of the exemption from comparability determination requirements), available at *https://eba.europa.eu/sites/default/documents/files/document_library//ESAs%202019%2020%20-%20Final%20Report%20-%20Bilateral%20margin%20amendments.pdf.* In Japan, prudential regulators address inter-affiliate non-cleared derivatives with existing capital standards and risk-management principles in the first instance, with margin as a voluntary alternative. See Commodity Futures Trading Commission Amendment to Comparability Determination for the Japan, 84 FR 12074, 12079 (April 1, 2019). All other major jurisdictions also exempt inter-affiliate non-cleared derivatives from margin requirements, including Canada (*https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/e22.aspx,* both initial and variation margin); Australia (*https://www.apra.gov.au/sites/default/files/prudential_standard_cps_226_margining_and_risk_mitigation_for_non-centrally_cleared_derivatives.pdf,* initial margin); Hong Kong (*https://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/CR-G-14.pdf,* both initial and variation margin); and Singapore (*https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Guidelines/Guidelines-on-Margin-Requirements-for-NonCentrally-Cleared-OTC-Derivatives-Contracts-revised-on-5-October-2018.pdf,* both initial and variation margin).

[27] Two commenters suggested the affiliate's use of leverage to acquire initial margin collateral was a choice, and the affiliate could instead raise additional equity or retain earnings to fund it. This is not consistent with the agencies' supervisory and policy-making experience for internationally-active banks, where public policy and competitiveness concerns serve to establish and maintain capital requirements that must address not only adequacy, but regime equivalency.

[28] 7 U.S.C. 6s(e)(3); 15 U.S.C. 78o–10(e)(3).

heightened levels of stress, or whose inter-affiliate derivative exposures increase in an unusually rapid pattern. Thus, the agencies have set it at a level that exceeds the typical initial margin collection amounts at the affected covered swap entities, to accommodate expected levels and taking into consideration a range of those levels that varies somewhat across those covered swap entities.

This provision requires a covered swap entity to calculate the initial margin collection amount [29] each business day for each counterparty that is a swap entity or a financial end-user with a material swaps exposure that is an affiliate, and aggregate these amounts to determine whether the aggregate amount exceeds the 15% Tier 1 Threshold.[30] When a covered swap entity calculates the 15 percent threshold, it must include all non-cleared swaps between the covered swap entity and its affiliates (which includes subsidiaries of the covered swap entity) plus all non-cleared swaps between an covered swap entity subsidiary and other affiliates (but not double counting non-cleared swaps with the parent covered swap entity). So long as the aggregate remains below the 15% Tier 1 Threshold, the covered swap entity is exempt from the requirement to collect initial margin from its affiliates. If, however, the aggregate exceeds the 15% Tier 1 Threshold on any business day, the final rule requires the covered swap entity to collect initial margin on any additional non-cleared swap executed with an affiliated swap entity or financial end user.[31] Once the 15 percent threshold is exceeded, the covered swap entity is required to collect initial margin on all new transactions with its affiliates (which includes the covered swap entity subsidiaries). Also, if a covered swap entity subsidiary enters into a non-cleared swap with an affiliate other than the covered swap entity,[32] the covered swap entity must collect initial margin from the affiliate, and the subsidiary does not need to also collect initial margin for the affiliate for that non-cleared swap. This provision is designed to provide protection for the covered swap entity. Initial margin collection takes place pursuant to the generally-applicable initial margin requirement specified in § __.3(a) of the current rule, commencing the day after execution of the non-cleared swap and with updates each business day as specified in § __.3(c).[33] The covered swap entity is obligated to continue initial margin collection on these new swaps until they terminate under their own terms. If, however, the covered swap entity's aggregate initial margin collection amount calculation falls below the 15% Tier 1 Threshold, the covered swap entity is no longer obligated to maintain initial margin on these non-cleared swaps. Consistent with § __.11(d) of the current rule, the covered swap entity is permitted to maintain custody of non-cash initial margin collateral collected pursuant to these requirements with the covered swap entity itself or with an affiliate, but is otherwise subject to the segregation requirements of § __.7 of the current rule.[34]

As part of this addition, the agencies are making associated changes to § __.9 of the Swap Margin Rule. Section __.9 addresses cross-border application of the Swap Margin Rule to certain foreign financial firms that are organized under non-U.S. law and operate abroad, and that fall within the scope of the Rule because they are also registered with the CFTC or SEC as swap dealers or security-based swap dealers. These firms include foreign-chartered banks, and foreign-chartered subsidiaries of Edge corporations and agreement corporations.[35] Under the current rule, these foreign firms are currently not subject to comprehensive initial margin collection requirements for affiliate swap transactions under the laws of their home counties.[36] However, if they engage in a swap transaction with a U.S. affiliate, § __.9 currently requires them to collect initial margin from the U.S. affiliate.

The amendment to § __.11 that the agencies issue today would apply to these foreign firms, absent a change to § __.9. As discussed above, the 15 percent threshold in § __.11 is an augmentation reflecting safety and soundness and financial system risk concerns of covered swap entities that are U.S. insured depository institutions. Imposing the 15 percent threshold requirement on these foreign firms is not relevant to these concerns and could even have the incongruous result of requiring a U.S. covered swap entity to post initial margin collateral to an affiliated foreign firm. Accordingly, the agencies are adding a new subsection § __.9(h), which provides that these foreign firms are exempt from the requirement to collect initial margin from their affiliates under § __.3(a), and the foreign firms are not subject to the 15 percent threshold under § __.11(a) unless they are subsidiaries of a covered swap entity subject to the requirements of § __.11. In that case, the firm is treated the same as any other subsidiary, as described above, and the parent covered swap entity is required to treat inter-affiliate exposures between the subsidiary and an affiliate as if it is its own.[37]

Second, the agencies are also including an additional revision that is

[29] Section __.2 of the current rule defines the ''initial margin collection amount'' as the amount of initial margin the covered swap entity calculates for a counterparty using the covered swap entity's approved initial margin model under § __.8 (or if the covered swap entity does not have an initial margin model, the standardized approach under Appendix A).

[30] The final rule specifies that tier 1 capital for this purpose is comprised of common equity tier 1 capital and additional tier 1 capital, as defined in the agencies' respective regulations at 12 CFR 3.20(b)–(c) (OCC); 12 CFR 217.20(b)–(c) (Board); 12 CFR 324.20(b)–(c) (FDIC); 12 CFR 628.20(b)–(c) for Farm Credit System banks and associations and 12 CFR 652.61(b) for the Federal Agricultural Mortgage Corporation (FCA); and 12 CFR 1240(b)–(c) (FHFA). Covered swap entities are required to use the tier 1 capital amounts reported in their most recent Call Report.

[31] The final rule does not require the covered swap entity to begin collecting initial margin on its portfolio of interaffiliate swaps that were executed before the business day on which the 15% Tier 1 Threshold is exceeded.

[32] The rule provides that if any subsidiary of the covered swap entity executes a non-cleared swap with any other affiliated swap entity or financial end user, the covered swap entity must treat that swap as its own for purposes of complying with these requirements. Additionally, the agencies have added an expanded definition of a ''subsidiary'' to § __.11(d) for these purposes, consistent with the structure of the expanded ''affiliate'' definition. The agencies have also incorporated language in § __.11(a)(5)(ii) for multi-tier CSE structures that permit the lower tier CSEs to count their inter-affiliate non-cleared swaps as part of the top-tier IDI's 15% Tier 1 Threshold if the top-tier IDI collects initial margin for additional inter-affiliate swaps entered into by the lower tier CSEs after the limit is reached. This is intended to greatly simply the limit calculations for multi-tiered CSEs, while still ensuring the requirements of § __.11(a) are fully satisfied at the IDI level.

[33] Covered swap entities may avail themselves of the option, pursuant to § __.5(a)(3)(ii) of the current rule, to place these swaps in a separate netting set for purposes of calculating the initial margin collection amount on a portfolio basis under an eligible master netting agreement.

[34] The agencies have also made corresponding technical revisions to the language of § __.11 to provide an exemption from the requirements to post initial margin under § __.3(b), consistent with the current rule. This exemption is not subject to the 15% Tier 1 Threshold.

[35] Specifically, see §§ __.9(a) and __.9(d)(3)(i)–(ii). These entities are often governed by non-U.S. regulatory capital requirements and they do not file Call Reports; U.S. branches and agencies of foreign banks are not subject to stand-alone capital requirements.

[36] See footnote 27, *supra*.

[37] For applicable transactions with U.S. affiliates, these foreign firms will be covered by § __.11(b), exempting them from posting initial margin to affiliates pursuant to § __.3(b). These foreign firms will be subject to § __.4, requiring them to exchange variation margin, which is standard practice for these firms, and § __.11(c), requiring swap dealers to collect initial margin at such times and in such forms and such amounts (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of the swap, consistent with § __.3(d).

consistent with the Rule's current treatment of counterparties that are not subject to the Rule's quantitative requirement to exchange and segregate initial margin on a daily basis.

Section __.3 of the Rule contains the core initial margin requirement, directing covered swap entities to collect and post initial margin as calculated under § __.8. Accordingly, in drafting the proposed rule text for the initial margin exemption in proposed § __.11(a), the agencies exempted swaps between affiliates from § __.3 in its entirety. In the final rule, the agencies have revised the text of the exemption in § __.11, in order to preserve the applicability of § __.3(d).

Section __.3(d) addresses counterparties who are not financial end users with a material swaps exposure or swap entities. These counterparties are not subject to daily initial margin exchange pursuant to § __.3(a)–(c). For these other counterparties, § __.3(d) requires covered swap entities to collect initial margin at such times and in such forms and such amounts (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of the swap. When the agencies adopted the Rule in 2015, this provision was included to reflect prudent risk management practices in the industry before the Rule's issuance, whereby an institution would include initial margin on a case-by-case basis for any type of swap counterparty, as part of their internal risk management practices, if the institution judged it to be appropriate.[38]

The agencies, in assessing the risk of PFE to a covered swap entity in transacting swaps with an affiliate, have determined that an across-the-board requirement in the Swap Margin Rule to collect initial margin from affiliates is not the best approach. That being said, the agencies do not assess inter-affiliate swaps to be risk-free, and there can still be circumstances in which the agencies would expect a covered swap entity to incorporate initial margin as well as variation margin into its risk management for exposures to a particular affiliate or particular swaps. Accordingly, the agencies have revised the text of § __.11 to treat inter-affiliate swaps the same way as swaps with other counterparties pursuant to § __.3(d).

Commenters that addressed the agencies' proposed definition of an ''affiliate'' for purposes of § __.11 supported it. The agencies are adopting it without change.

[38] 80 FR 74840, 74844 (November 30, 2015).

D. Federal Reserve Board Statement on Sections 23A and 23B of the Federal Reserve Act

Although this final rule will exempt non-cleared swaps between a bank and its affiliates from the initial margin requirements of the swap margin rule under the conditions described above, swaps between a bank and its affiliates are of course also subject to sections 23A and 23B of the Federal Reserve Act and the Board's Regulation W.

The Board's position is that, under section 23A, bank-affiliate derivatives generally can be valued at the bank's current exposure to the affiliate. Accordingly, the Board believes that a bank must collect 23A-compliant variation margin from its affiliates to cover its current exposure on bank-affiliate derivatives, but generally is not required to collect initial margin to cover the bank's potential future exposure on the transactions.

Under section 23B, a bank's swaps with its affiliates must be on terms and conditions that are substantially the same, or at least as favorable to the bank, as those prevailing at the time for comparable transactions with third parties. In part because of the swap margin rule and in part due to natural evolution in the financial markets, comparable swap transactions between a bank and a third party today involve the bank collecting initial margin from, and posting initial margin to, the counterparty.

In many cases the Board finds it reasonable to conclude that a bank-affiliate swap with no initial margin requirement is at least as favorable to the bank as a comparable bank-nonaffiliate swap with two-way initial margin requirements. This occurs where the two-way initial margining described above requires each of the two counterparties to give the other counterparty a contractual term of roughly equivalent value. In the Board's view, situations where the bank and affiliate each agree not to require an equivalent exchange of initial margin from the other will generally create a set of contractual terms that is roughly equally favorable to the bank as a two-way initial margin regime.

Some cases of specific bank-affiliate swap arrangements without initial margin requirements could raise issues under section 23B, however, as can every affiliate transaction depending on the facts and circumstances of the arrangement. In the Board's view, relevant facts for the section 23B analysis include the relative creditworthiness of the bank vs. the affiliate, whether the bank-affiliate swap portfolio is more likely to create potential future exposure of the bank to the affiliate or vice versa, and whether or not the affiliate requires initial margin from the bank under the swap arrangement.

E. Other Comments

Four commenters expressed the view that the agencies are without the statutory authority to adopt the proposed rule. One among these commenters provided an analysis of the language Congress used in requiring the prudential regulators to issue the margin requirements. In this commenter's view, the meaning of the words Congress chose are so prescriptive that they compel the agencies to impose initial margin and variation margin requirements on all swap transactions within the scope of the legislation.

The agencies note that, in requiring the prudential regulators to issue margin and capital requirements, the statutory language also mandates that the requirements shall help ensure the safety and soundness of covered swap entities and be appropriate for the risk associated with the swaps held by the covered swap entity.[39] The agencies have previously considered the same line of analysis pursued by the commenters, in connection with adopting the Swap Margin Rule in 2015.[40] The agencies have concluded that the statutes direct the agencies to employ a risk-based approach to imposing margin requirements, and the agencies have done so by imposing rules that vary depending on the type of counterparty in light of the risks presented.[41]

Commenters that opposed the agencies' proposal also expressed the view that the agencies' discussion and analysis in the **SUPPLEMENTARY INFORMATION** section of the proposal was deficient. The commenters were of the view that the agencies discussed the same factors in 2015 and 2019, but in the first instance the agencies determined initial margin was required to address the risk of inter-affiliate swap exposures, whereas in the second instance the agencies drew the opposite conclusion.[42] In this regard, the

[39] 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A).

[40] 80 FR at 74866; *see also* 79 FR 57348, 57354–55 (September 24, 2014).

[41] The agencies also note that the Swap Margin Rule imposes margin requirements on a covered swap entity's non-cleared swaps with affiliates, specifically the variation margin collection requirement of § __4(a)–(b), and the above-described requirement of § __.3(d).

[42] Some commenters also expressed the view that the agencies are obligated to perform an analysis of the PFEs between covered swap entities and their affiliates, using the Swap Margin Rule's framework

agencies note that the analysis in 2015 did not propound the imposition of an across-the-board inter-affiliate initial margin requirement, and the agencies carefully evaluated the extent to which numerous aspects of the Rule's initial margin requirements should be reduced commensurate with the risks the agencies anticipated.[43] In issuing these revisions, the agencies have performed the same probing analysis of the relevant factors, based on industry practices as they have settled after the Rule's compliance period.

IV. Additional Compliance Date for Initial Margin Requirements

A. Proposal

The agencies proposed to give covered swap entities an additional year to implement initial margin requirements for certain smaller counterparties. The implementation of both initial and variation margin requirements started on September 1, 2016. With respect to initial margin requirements, the requirements in the Swap Margin Rule were implemented in five phases from September 1, 2016, through September 1, 2020, depending on the size of the covered swap entity's portfolio of non-cleared swaps and the counterparty's portfolio of non-cleared swaps. Variation margin requirements for all covered swap entities and counterparties were completely phased in by March 1, 2017. This schedule was consistent with BCBS/IOSCO Framework when the Swap Margin Rule was adopted in 2015.

The phase-in schedule for initial margin is based on the average daily aggregate notional amount (AANA) of non-cleared swaps for March, April, and May, held in each party's market-wide portfolio, measured separately from the standpoint of the covered swap entity and the standpoint of the counterparty.[44] With the recent occurrence of the fourth phase of initial margin compliance obligations on September 1, 2019—for covered swap entities and counterparties with an AANA of $750 billion to $1.5 trillion—the group currently scheduled for the fifth phase of compliance in the upcoming year includes all remaining entities within the scope of the initial margin requirements, spanning AANAs from $8 billion up to $750 billion.[45]

The industry raised significant concerns about the operational and other difficulties associated with beginning to exchange initial margin with the large number of relatively small counterparties encompassed in the Swap Margin Rule's fifth phase.[46] Following the revisions adopted in July 2019 to the BCBS/IOSCO Framework to permit an additional phase for smaller counterparties, the agencies proposed to amend the Swap Margin Rule to add an additional phase for smaller counterparties.[47] Specifically, the agencies proposed to amend the compliance schedule to add a sixth phase of compliance for certain smaller entities that are currently subject to the ''phase five'' compliance deadline. The proposed amendments would have required compliance by September 1, 2020, for counterparties with an AANA ranging from $50 billion up to $750 billion, while the compliance date for all other counterparties (with an AANA ranging from a ''material swaps exposure'' of $8 billion up to $50 billion) would have been extended to September 1, 2021.

B. Final Rule

Commenters supported the proposed amendments to the compliance schedule, specifically, the additional phase six for all other counterparties (*i.e.,* with an AANA of $8 billion up to $50 billion) with a compliance date of September 1, 2021. Commenters noted that the proposal did not clarify the convention that should be used for calculating the AANA for purposes of the proposed phase six and therefore, by default, the calculation would be based on the methodology for calculating ''material swaps exposure,'' which is determined based on an entity's and its affiliates AANA for June, July, and August of the previous calendar year (in this case, 2020). Several commenters recommended that the agencies clarify that, for purposes of the new phase six, the calculation is based on the AANA for March, April, and May of the same year, which is consistent with the BCBS/IOSCO Framework. One commenter recommended that the calculation of ''material swaps exposure'' be based on the AANA for March, April, and May, beginning in 2021 and thereafter, and asserted this approach would maintain consistency with the BCBS/IOSCO Framework and other foreign jurisdictions.

The final rule adopts the additional phase six as proposed. The agencies acknowledge that a change to the AANA calculation for phase six would result in greater consistency with the BCBS/IOSCO Framework, but are not adopting the recommended change to the month calculation convention because basing AANA on June, July, and August of the previous calendar year will provide end users subject to phase six with more time to prepare for compliance with initial margin requirements following meeting the material swaps exposure threshold. Moreover, the definition of material swaps exposure is not being amended as part of this final rule. The material swaps exposure definition was not raised as an issue in the proposal, as an amendment to that definition would affect more than just the phase-in periods in § __.1(e). The agencies confirm that the material swaps exposure is to be calculated based on the previous year.[48] For example, for the period January 1, 2022 through December 31, 2022, an entity would determine whether it had a material swaps exposure with reference to June, July, and August of 2021.

V. Documentation Requirements

A. Proposal

The agencies proposed to amend the documentation requirements under § __.10 of the Swap Margin Rule. Pursuant to § __.10 of the Rule, a covered swap entity must execute trading documentation with each counterparty that falls within the scope of the Rule's definition of a ''swap entity'' or a ''financial end user'' regarding credit support arrangements unless the swap entity or financial end user is explicitly exempt from the Rule pursuant to § __.1(d).[49] The documentation must provide the covered swap entity the contractual rights and obligations to collect and post initial and variation margin in such amounts, in such form, and under such circumstances as are required by the Rule. The documentation must also

for quantifying initial margin collection amounts, in order to quantify how much PFEs would increase as a result of the proposed change. As the agencies discussed above, however, the Rule's methodology for evaluating the PFE of an unaffiliated counterparty is not an appropriate measurement of inter-affiliate risk. Among other things, it does not take relevant additional risk management factors into account, and it was originally formulated with the expectation it would not be applied to inter-affiliate swaps.

[43] 80 FR 74887–889.

[44] See supra note 7.

[45] The Swap Margin Rule does not require initial margin to be exchanged with any counterparty whose AANA is less than $8 billion as of the previous June, July, and August. *See* § __.3 and the definition of ''material swaps exposure'' in § __.1.

[46] The industry's implementation work to execute new trading documentation to meet variation margin compliance obligations by 2017 largely excluded any required documentation for initial margin, due to the greater operational complexity associated with ''T+1'' portfolio reconciliation of internally-modeled initial margin amounts and third-party segregation of initial margin collateral.

[47] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (July 2019), available at *https://www.bis.org/bcbs/publ/d475.pdf.*

[48] See 80 FR 74857 (November 30, 2015).

[49] 80 FR 74886–74887 (November 30, 2015).

specify the methods, procedures, rules, and inputs for determining the value of each non-cleared swap for purposes of calculating variation margin and the procedures by which any disputes concerning the valuation of non-cleared swaps or the valuation of assets collected or posted as initial margin or variation margin may be resolved. Finally, the documentation must also describe the methods, procedures, rules, and inputs used to calculate initial margin for non-cleared swaps entered into between the covered swap entity and the counterparty.[50] The proposed rule clarified that under § __.10 of the Rule, a covered swap entity is not required to execute initial margin trading documentation with a counterparty prior to the time that it is required to collect or post initial margin pursuant to § __.3.[51]

B. Final Rule

Commenters supported the proposed amendment to § __.10 of the Rule. The agencies are adopting the amendment to § __.10 of the Rule as proposed.

In addition, the preamble to the proposal discussed the operation of the custody agreement requirements in § __.7 of the Swap Margin Rule. Under § __.7, custody agreements are required to be in place only after initial margin is required to be collected or posted pursuant to § __.3, or when initial margin is posted by a covered swap entity beyond an amount required by the Rule. The agencies explained that they expect that covered swap entities will closely monitor their exposures and take appropriate steps to ensure that trading documentation is in place at such time as initial margin is required to be exchanged pursuant to § __.3. The agencies noted that this view is consistent with statements of the BCBS and IOSCO with respect to internationally agreed standards for margin requirements for non-centrally cleared derivatives.[52] Commenters supported this clarification, and the agencies reaffirm their statement regarding the execution of custody agreements required pursuant to § __.7 of the Rule.

VI. Portfolio Compression Exercises and Other Amendments

A. Summary of Proposed Rule

The Swap Margin Rule applies to non-cleared swaps entered into on or after the applicable compliance date. The agencies are concerned about amendments to a swap that was entered into before the applicable compliance date if the amendments would have the effect of allowing covered swap entities and their counterparties to evade or otherwise artificially delay implementation of margin requirements. In particular, the agencies are concerned that market participants might amend legacy swaps, rather than entering into new swaps and exchanging margin pursuant to the Rule once the legacy swaps expire according to their original terms. The proposed rule permitted certain amendments, particularly non-material amendments to non-economic terms, as well as amendments that are made to reduce operational or counterparty risk, such as notional reductions and portfolio compressions, to be executed while still allowing those amended legacy swaps to remain exempt from the Swap Margin Rule.

The proposed rule clarified the agencies' implementation of the legacy swaps provisions of the Swap Margin Rule since its adoption in 2015. The proposed rule was intended to permit amendments to legacy swaps arising from certain routine industry practices over the life-cycle of a non-cleared swap that are carried out for logistical reasons, risk-management purposes, or IBOR replacement. The proposed rule covered amendments that do not raise concerns that the covered swap entity is seeking to evade or otherwise delay the application of margin requirements for non-cleared swaps.

B. Technical Changes

1. Proposal

The proposed rule recognized the legacy status of a non-cleared swap that has been amended to reflect technical changes, such as addresses, the identities of parties for delivery of formal notices, and other administrative or operational provisions of the non-cleared swap that do not alter the non-cleared swap's underlying asset or indicator, such as a security, currency, interest rate, commodity, or price index, the remaining maturity, or the total effective notional amount. For example, an interest rate swap documentation amendment that changes the counterparty's contact person or a weather swap documentation amendment that changes the margin payment instructions would not impact those swaps' legacy status. However, an interest rate swap amendment to the fixed leg interest rate or a weather swap amendment to the measurement of the precipitation level would impact those swaps' legacy status as it is intended to change the economic valuation of the swap. The technical changes permitted by the proposed rule are necessary to reflect changes in a counterparty's circumstances, but are not associated with a desire by either party to increase or decrease its exposure to market risk factors.

2. Final Rule

Commenters were supportive of the proposal. Commenters agreed with the agencies that amendments made for logistical or risk management purposes arising from routine industry practices over the life-cycle of the swap, should not cause legacy swaps to lose their legacy status. One commenter requested that the agencies permit any technical amendment that does not affect the economic obligations of the parties or the valuation of the legacy swap. Two commenters requested clarification that the language in the proposed rule aligns with the CFTC's Division of Swap Dealer and Intermediary Oversight's June 6, 2019 No Action Position wherein the CFTC took a no action position on legacy swaps that are amended, ''provided that no term is amended that would affect the economic obligations of the parties or the valuation'' of the swap or that are partially terminated or partially novated subject to certain conditions.[53] The agencies are clarifying that the language in the proposed rule is intended to align with the CFTC's No Action Position. With respect to the language in § __.1(h)(5)(i), a commenter requested a technical change from usage of the word ''indicator,'' because it is not a common term in the industry, to the word ''reference.'' The agencies are amending the rule to reflect this technical change.

The agencies did not receive any other comments on this part of the proposed rule and are adopting it, subject to the technical change discussed, as proposed.

[50] *Id.*

[51] Under § __.3, a covered swap entity must collect or post initial margin when it calculates an initial margin amount that, after subtracting the initial margin threshold amount (not including any portion of the initial margin threshold amount already applied by the covered swap entity or its affiliates to other non-cleared swaps or non-cleared security-based swaps with the counterparty or its affiliates), exceeds zero.

[52] BCBS/IOSCO statement on the final implementation phases of the *Margin requirements for non-centrally cleared derivatives,* March 5, 2019, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD624.pdf,* stating that ''the framework does not specify documentation, custodial or operational requirements if the bilateral initial margin amount does not exceed the framework's €50 million initial margin threshold. It is expected, however, that covered entities will act diligently when their exposures approach the threshold to ensure that the relevant arrangements needed are in place if the threshold is exceeded.''

[53] CFTC Letter No. 19–13 (June 06, 2019) at 8.

C. Reduction in Notional Amount

1. Proposal

The proposed rule recognized the legacy status of a non-cleared swap that has been amended solely to reduce the notional amount of the non-cleared swap, without altering other terms of the original non-cleared swap. For these purposes, a reduction in notional amount may be achieved through a partial termination of the original non-cleared swap, with the remaining non-terminated non-cleared swap being able to retain its legacy status. A reduction in notional amount could also be achieved by novating a portion of the original non-cleared swap's notional amount to a third party. The original non-cleared swap, with a lower notional amount, would retain legacy status, but the novated portion would not retain legacy status.

2. Final Rule

The agencies did not receive comments on this amendment and are adopting it as proposed.

C. Portfolio Compression Exercises

1. Proposal

The proposed rule recognized the legacy status of non-cleared swaps that have been modified as part of certain portfolio compression exercises used as a risk management tool or for IBOR replacement. In compression, offsetting trades between two or more parties are amended or torn up and replaced, which reduces the size of gross derivatives exposures and generally reduces the number or frequency of payments between parties, thus maintaining or reducing the overall risk profile of the portfolio.

In a simple bilateral form of compression between two counterparties, the dealer agrees with another dealer to compress trades so that offsetting positions are cancelled and only the net amount remains, without any change to the overall market exposures. The resulting net position is documented by amending one of the original swaps. This ''amended swap'' method is the predominant method used in compressions of non-cleared interest rate swaps. Compression can also be done on a multilateral basis among more than two counterparties, and is often even more efficient, as trades across multiple dealers involved in a compression exercise can be offset, reducing the risk in each relationship across the various counterparties involved in the compression. The resulting net position is documented by creating a replacement swap reflecting the net position. This ''replacement swap'' method is predominantly used in compression exercises for non-cleared credit default swaps, but it can also be used for interest rate swap compression. Compression often results in the cancellation of offsetting positions, but it could also result in new trades being booked into an existing non-cleared portfolio to reflect the netted-down risk of the original portfolio.

2. Final Rule

Commenters were generally supportive of this amendment to maintain legacy status of non-cleared swap after portfolio compression exercises. Commenters noted that portfolio compression generally reduces gross derivative exposures and reduces the frequency of payment, reducing the portfolio's risk profile.

The agencies are modifying the language in § __.1(h)(4) to make clear that when parties engage in portfolio compression, the resulting replacement swap from the compression exercise is accorded legacy treatment so long as it meets the limitations in § __.1(h)(4). As described above, in order to separate compression for the purposes of replacing an interest rate listed in § __.1(h)(3)(i) and compression for other risk reducing or risk neutral purposes, the rule now has a section for the former (under § __.1(h)(3)) and the latter (under § __.1(h)(4)). The rule also makes clear that the resulting non-cleared swap or non-cleared security-based swap from the portfolio compression exercises may not (1) exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap; or (2) exceed the longest remaining maturity of all the swaps submitted to the compression exercise. This is consistent with the proposal.

As in other areas of the final rule, supervisors may review these changes to confirm that covered swap entities are not purposefully avoiding the requirements of the rule.

VII. Technical Changes

The proposed rule would have deleted § __.1(e)(7), which includes an amendment relating to the QFC Rules. The text of § __.1(e)(7), with slight modifications, would have been moved to § __.1(h)(1), so that it would reside in the section of the Swap Margin Rule dedicated to legacy swap amendments. The methods of amendment listed in § __.1(h) would have applied not only to IBOR replacements, but also to any other contractual modifications permitted under § __.1(h), including amendments relating to the QFC Rules.

The agencies did not receive any comments on this part of the proposed rule and are adopting it as proposed.

VIII. Comments Regarding Broader Changes to the Swap Margin Rule

Several commenters that supported the proposed rule also requested broader changes to the rule. Some commenters requested a carve-out for seeded funds and an alternative approach to US GAAP accounting analysis for purposes of determining the application of the rule. These commenters asserted that the limited and passive nature of the relationship between seeded funds and their sponsors does not warrant the requirement to aggregate a seeded fund's swap exposures with those of its parent or other commonly consolidated entities for the purpose of calculation material swap exposure. One commenter requested the agencies make an announcement to deprioritize compliance with any enforcement of the swap margin rule with respect to seeded funds. Another commenter stated that non-public and mutual insurance companies that are not required to perform GAAP accounting analysis do not routinely do so because the cost to perform such analysis for limited purposes is significant. They suggested engagement with the regulators to determine if an alternative approach may be available.

Other commenters representing nonprofit organizations, asset managers, mutual funds, other institutional asset managers, and custodian banks recommended the types of eligible collateral be expanded to include certain types of money market mutual funds and exchange traded funds. Commenters also requested exclusion of seeded funds from the definition of a consolidated group through limited rule making. Other commenters raised concerns with the current $50 million initial margin threshold and requested that an additional 6-month grace period be provided after a financial end user crosses the initial margin threshold. In addition, commenters requested a less frequent calculation of the initial margin threshold amount because of the burden associated with the testing and monitoring in-scope counterparties. Commenters also requested that the agencies work with regulated entities to develop an approach for the allocation of the initial margin amounts and the minimum transfer amount across multiple asset managers for a given client.

Commenters also requested that the agencies exclude physically settled foreign exchange swaps from the material swaps exposure calculation and consider making comparability and substitute compliance determination for foreign jurisdictions.

The agencies are not adopting these broader proposed changes in this final rule because they fall outside the scope of the changes the agencies sought comment on in the proposed rule. The agencies will continue to evaluate the requirements of this rule to ensure they meet the agencies' objectives.

IX. Brexit IFR

The agencies issued an interim final rule, which became effective on March 19, 2019, to provide certainty for covered swap entities as they prepare for the event commonly described as ''Brexit.'' [54] In particular, the interim final rule provided a covered swap entity with the ability to continue to service its cross-border clients in the event that the U.K. withdraws from the E.U. without a Withdrawal Agreement. A Withdrawal Agreement between the UK and EU was ratified in January 2020.[55] The Withdrawal Agreement addresses certain EU-related matters that will immediately be affected by the withdrawal itself and a transition period. The transition period will run until December 31, 2020 and could be extended by one or two years.

The agencies received one comment letter on the interim final rule. The commenter requested that the agencies amend the interim final rule to exclude swaps with a flip clause. The comment raised an issue that was not within the scope of the interim final rule. Accordingly, the agencies are not making any revisions to the rule and are retaining it as a final rule as initially adopted.

X. Administrative Law Matters

Paperwork Reduction Act Analysis

Certain provisions of the final rulemaking contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The agencies reviewed the final rulemaking and determined that it reduces certain recordkeeping requirements that have been previously cleared under various OMB control numbers. In order to be consistent across the agencies, the agencies are also applying a conforming methodology for calculating the burden estimates. The agencies are proposing to extend for three years, with revision, these information collections. The OCC and FDIC have submitted to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board has reviewed the information collection under its delegated authority. The OMB control numbers are 1557–0251 (OCC), 3064–0204 (FDIC), and 7100–0364 (Board). The FCA has determined the final rulemaking has no PRA implications because Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of ''collection of information'' contained in 44 U.S.C. 3502(3). The FHFA has determined that the final rulemaking does not contain any collection of information for which the agency must obtain clearance under the PRA.

Current Actions

The final rulemaking removes the record keeping requirement in § __.11(b) that a covered swap entity shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to § __.3(b) and provide documentation of such amount to each affiliate on a daily basis.

Final Revision, With Extension, of the Following Information Collections

Title of information collection: Reporting and Recordkeeping Requirements Associated with Swaps Margin and Swaps Push-Out.

Frequency: Annual and event generated.

Affected public: Businesses or other for-profit.

Estimated average hours per response:

Reporting

Section __.1(d)—1 hour (on average of 1,000 times per year).

Sections __.8(c) and __.8(d)—240 hours.

Section __.8(f)(3)—50 hours.

Section __.9(e)—10 hours (on average of 3 times per year).

Sections 237.22(a)(1) and 237.22(e) (*Board only*)—7 hours.

Recordkeeping

Sections __.2 (definition of ''eligible master netting agreement,'' item 4), 237.8(g), and 237.10—5 hours.

Section __.5(c)(2)(i)—4 hours.

Section __.7(c)—100 hours.

Sections __.8(e) and 237.8(f)—40 hours.

Section __.8(h)—20 hours.

Disclosure

Section __.1(h)—1 hour.

OCC

Respondents: Any national bank or a subsidiary thereof, Federal savings association or a subsidiary thereof, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 10.

Proposed revisions only estimated annual burden: −2,500 hours.

Total estimated annual burden: 14,900 hours.

Board

Respondents: Any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 41.

Proposed revisions only estimated annual burden: −10,209 hours.

Total estimated annual burden: 61,104 hours.

FDIC

FDIC: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 1.

Proposed revisions only estimated annual burden: −249 hours.

[54] 84 FR 9940 (March 19, 2019).

[55] *See* European Council Press Release ''Brexit: Council adopts decision to conclude the withdraw agreement'' (January 30, 2020), available at *https://www.consilium.europa.eu/en/press/press-releases/2020/01/30/brexit-council-adopts-decision-to-conclude-the-withdrawal-agreement/.*

Total estimated annual burden: 1,490 hours.

Regulatory Flexibility Act Analysis

OCC: In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a final rulemaking, an agency publish a final regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

As part of our analysis, we consider whether, pursuant to the RFA, the final rule would have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 745 small entities.[56] Among these 745 small entities, 42 could be affected by the final rule if one or more of these small entities are a party to a financial contract with a covered swap entity. Because we believe banks will incur *de minimis* costs, if any, to comply with the final rule, we conclude that the final rule would not have a significant economic impact on a substantial number of small entities.[57]

Board: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment a final regulatory flexibility analysis in connection with a final rulemaking or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[58]

As described above, the final rule amends the Swap Margin Rule as follows:

First, the final rule provides relief by allowing legacy swaps to be amended to replace interbank offered rates (IBORs) and other interest rates that are reasonably expected to be discontinued or are reasonably determined to have lost their relevance as a reliable benchmark due to a significant impairment, without such swaps losing their legacy status.

Second, the final rule adds an additional initial margin compliance period for swaps with certain smaller counterparties, and clarifies the existing trading documentation requirements in § __.10 of the Rule.

Third, the final rule permits amendments driven by certain routine life-cycle activities that covered swap entities may conduct for legacy swaps, such as reduction of notional amounts and portfolio compression exercises, without triggering margin requirements.

Fourth, the final rule would make final a previously issued interim final rule that preserve the status of legacy swaps meeting certain criteria after the United Kingdom withdraws from the European Union without a negotiated settlement agreement.

Lastly, the final rule amends the treatment of affiliate transactions by amending the regulatory requirement that a covered swap entity collect initial margin for non-cleared swaps from its affiliates. The final rule retains the requirement that affiliates exchange variation margin. It also makes clear that affiliates should continue to use sound judgment to impose initial margin on non-cleared swaps when appropriate.

This final rule applies to financial institutions that are covered swap entities that are subject to the requirements of the Swap Margin Rule. Under SBA regulations, the finance and insurance sectors include commercial banking, savings institutions, credit unions, other depository credit intermediation and credit card issuing entities (financial institutions). With respect to financial institutions that are covered swap entities under the Swap Margin Rule, a financial institution generally is considered small if it has assets of $600 million or less.[59] Covered swap entities would be considered financial institutions for purposes of the RFA in accordance with SBA regulations. The Board does not expect that any covered swap entity is likely to be a small financial institution, because a small financial institution is unlikely to engage in the level of swap activity that would require it to register as a swap dealer or a major swap participant with the CFTC or a security-based swap dealer or security-based major swap participant with the U.S. Securities and Exchange Commission (SEC).[60] None of the current Board-regulated covered swap entities are small entities for purposes of the RFA.

The Board does not believe that this final rule will result in any new reporting, recordkeeping or other compliance requirements resulting in increased burden to any small entities, nor, therefore, that there are any significant alternatives to the final rule that would reduce the impact on small entities. In light of the foregoing, the Board certifies pursuant to section 605(b) of the RFA that the final rule will not have a significant economic impact on a substantial number of small entities.

FDIC: The RFA generally requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis describing the impact of the final rule on small entities. However, a regulatory flexibility analysis is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[61] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-

[56] We base our estimate of the number of small entities on the Small Business Administration's (SBA's) size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2019, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the SBA's Table of Size Standards.

[57] As one way of determining whether any of the small entities is a covered swap entity, the OCC reviewed the CFTC's listing of registered swap dealers at *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

[58] *See* 5 U.S.C. 603(a).

[59] *See* 13 CFR 121.201 (effective December 2, 2014, as amended by 84 FR 34261, effective August 19, 2019); *see also* 13 CFR 121.103(a)(6) (noting factors that the SBA considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[60] The CFTC has published a list of provisionally registered swap dealers as of February 27, 2020, that does not include any small financial institutions. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

[61] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

supervised institutions. For the reasons described below, the FDIC certifies pursuant to section 605(b) of the RFA that the final rule will not have a significant economic impact on a substantial number of small entities.

According to data from recent Consolidated Reports of Income and Condition (Call Report),[62] the FDIC supervised 3,344 institutions. Of those, 2,581581 are considered ''small,'' according to the terms of the RFA. As discussed previously, the final rule directly applies to covered swap entities (which includes persons registered with the CFTC as swap dealers or major swap participants pursuant to the Commodity Exchange Act of 1936 and persons registered with the SEC as security-based swap dealers and major security-based swap participants under the Securities Exchange Act of 1934) that are subject to the requirements of the Swap Margin Rule. The FDIC has identified 108 swap dealers and major swap participants that, as of February 27, 2020, have registered as swap entities.[63] One of these institutions is supervised by the FDIC, however that institution holds in excess of $460 billion in assets and does not meet the definition of ''small'' for the purpose of RFA.

As an amendment to the Swap Margin Rule, the final rule also affects counterparties to swaps entered into by covered swap entities. However, the Terrorism Risk Insurance Program Reauthorization Act of 2015 excludes non-cleared swaps entered into for hedging purposes by a financial institution with total assets of $10 billion or less from the requirements of the Swap Margin Rule. Given this exclusion, a non-cleared swap between a covered swap entity and a small FDIC-supervised entity that is used to hedge a commercial risk of the small entity will not be subject to the Swap Margin Rule. The FDIC believes that it is unlikely that any small entity it supervises will engage in non-cleared swaps for purposes other than hedging.

Given that no FDIC-supervised small entities are covered swap entities and that it is unlikely that FDIC-supervised small entities enter into non-cleared swaps for purposes other than hedging, this final rule is not expected to have a significant economic impact on a substantial number of small entities supervised by the FDIC. For these reasons, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities; nor does the Federal Agricultural Mortgage Corporation meet the definition of ''small entity.'' Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

FHFA: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include a final regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act, and certifies that the final rule does not have a significant economic impact on a substantial number of small entities because the final rule is applicable only to FHFA's regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[64] Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC analyzed the amendments proposed in this final rulemaking and has determined that they would not result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $157 million in any one year. Accordingly, the OCC has not prepared a written statement under sections 202 and 205.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[65] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[66]

Each Federal banking agency has determined that the final rule would not impose additional reporting, disclosure, or other requirements on IDIs; therefore, the requirements of the RCDRIA do not apply.

A. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[67] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the final rule in a simple and straightforward

[62] FDIC Call Report, December 31, 2019.

[63] While the SEC had adopted a regulation that would require registration of security-based swap dealers and major security-based swap participants, as of June 28, 2019, there was no date established as the compliance date and no SEC-published list of any such entities that so registered (*see* 84 FR 4906 at 4925). Accordingly, no security-based swap dealers and no major security-based swap participants have been identified as swap entities by the FDIC. In identifying the 105 institutions referred to in the text, the FDIC used the list of swap dealers set forth, on March 22, 2020 (providing data as of February 27, 2020) at *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html.* Major swap participants, among others, are required to apply for registration through a filing with the National Futures Association. Accordingly, the FDIC reviewed the National Futures Association *https://www.nfa.futures.org/members/sd/index.html* to determine whether there were registered major swap participants. As of March 22, 2020, there were no major swap participants listed on this link.

[64] 2 U.S.C. 1531 *et seq.*

[65] 12 U.S.C. 4802(a).

[66] 12 U.S.C. 4802.

[67] 12 U.S.C. 4809.

manner and did not receive comment on the use of plain language.

B. The Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule.[68] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[69]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[70] As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin requirements, National Banks, Federal Savings Associations, Reporting and recordkeeping requirements, Risk.

12 CFR Part 237

Administrative practice and procedure, Banks, Banking, Foreign Banking, Holding companies, Reporting and recordkeeping requirements, Swaps.

12 CFR Part 349

Administrative practice and procedure, Banks, Banking, Holding companies, Capital, Margin requirements, Reporting and recordkeeping requirements, Savings associations, Risk, Swaps.

12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency amends part 45 of Title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

■ 2. Section 45.1 is amended by revising paragraphs (e)(6) and (7) and (h) introductory text and adding paragraphs (h)(1) and (3) through (5) to read as follows:

§ 45.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2020, with respect to requirements in § 45.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April, and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021, with respect to requirements in § 45.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, other amendment of a contract or confirmation, or execution of a new contract or confirmation in replacement of and immediately upon termination of an existing contract or confirmation, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of 12 CFR part 47, 12 CFR part 252 subpart I, or 12 CFR part 382, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be replaced or discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

[68] 5 U.S.C. 801 *et seq.*

[69] 5 U.S.C. 801(a)(3).

[70] 5 U.S.C. 804(2).

(ii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also incorporate spreads or other adjustments to the replacement interest rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates. The changes may not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap beyond what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(iii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also be effectuated through portfolio compression between or among covered swap entities and their counterparties. Portfolio compression under this paragraph is not subject to the limitations in paragraph (h)(4) of this section but any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression may not have a longer maturity or increase the total effective notional amount more than what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(4) Amendments solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties, as long as any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression do not:

(i) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap; or

(ii) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or reference, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 3. Section 45.9 is amended by adding paragraph (h) to read as follows:

§ 45.9 Cross-border application of margin requirements.

* * * * *

(h)(1) A covered swap entity described in paragraphs (d)(3)(i) and (ii) of this section is not subject to the requirements of § 45.3(a) or § 45.11(a) for any non-cleared swap or non-cleared security-based swap executed with an affiliate of the covered swap entity; and

(2) For purposes of paragraph (h)(1) of this section, ''affiliate'' has the same meaning provided in § 45.11(d).

■ 4. Section 45.10 is amended by revising paragraph (a) to read as follows:

§ 45.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 45.3 or § 45.4, as applicable; and

* * * * *

■ 5. Section 45.11 is revised to read as follows:

§ 45.11 Special rules for affiliates.

(a)(1) A covered swap entity shall calculate on each business day an initial margin collection amount for each counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity.

(2) If the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section does not exceed 15 percent of the covered swap entity's tier 1 capital, the requirements for a covered swap entity to collect initial margin under § 45.3(a) do not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(3) On each business day that the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section exceeds 15 percent of the covered swap entity's tier 1 capital:

(i) The covered swap entity shall collect initial margin under § 45.3(a) for each additional non-cleared swap and non-cleared security-based swap executed that business day with a counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity, commencing on the day after execution and continuing on a daily basis as required under § 45.3(c), until the earlier of:

(A) The termination date of such non-cleared swap or non-cleared security-based swap, or

(B) The business day on which the aggregate of all initial margin collection amounts calculated under § 45.11(a)(1) falls below 15 percent of the covered swap entity's tier 1 capital;

(ii) Notwithstanding § 45.7(b), to the extent the covered swap entity collects initial margin pursuant to paragraph (a)(3)(i) of this section in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity;

(4) For purposes of this paragraph (a), ''tier 1 capital'' means the sum of common equity tier 1 capital as defined in 12 CFR 3.20(b) and additional tier 1 capital as defined in 12 CFR 3.20(c), as reported in the institution's most recent Consolidated Reports of Income and Condition (Call Report); and

(5) If any subsidiary of the covered swap entity (including a subsidiary described in § 45.9(h)) executes any non-cleared swap or non-cleared security-based swap with any counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity:

(i) The covered swap entity shall treat such non-cleared swap or security-based swap as its own for purposes of this paragraph (a); and

(ii) If the subsidiary is itself a covered swap entity, the compliance by its parent covered swap entity with this paragraph (a)(5) shall be deemed to establish the subsidiary's compliance with the requirements of this paragraph (a) and to exempt the subsidiary from the requirements for a covered swap entity to collect initial margin under § 45.3(a) from an affiliate.

(b) The requirement for a covered swap entity to post initial margin under § 45.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(c) Section 45.3(d) shall apply to a counterparty that is an affiliate in the same manner as it applies to any counterparty that is neither a financial end user without a material swap exposure nor a swap entity.

(d) For purposes of this section:

(1) An *affiliate* means:

(i) An affiliate as defined in § 45.2; or

(ii) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

(2) A *subsidiary* means:

(i) A subsidiary as defined in § 45.2; or

(ii) Any company that is controlled by the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System amends 12 CFR part 237 as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH-OUT (REGULATION KK)

■ 6. The authority citation for part 237 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 15 U.S.C. 8305, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 343–350, 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.,* and 12 U.S.C. 1461 *et seq.*

■ 7. Revise the heading of part 237 to read as shown above.

Subpart A—Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

■ 8. Section 237.1 is amended by revising paragraphs (e)(6) and (7) and (h) introductory text and adding paragraphs (h)(1) and (3) through (5) to read as follows:

§ 237.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2020, with respect to requirements in § 237.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April, and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021, with respect to requirements in § 237.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this subpart for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this subpart if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, other amendment of a contract or confirmation, or execution of a new contract or confirmation in replacement of and immediately upon termination of an existing contract or confirmation, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of 12 CFR part 47, 12 CFR part 252 subpart I, or 12 CFR part 382, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be replaced or discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also incorporate spreads or other adjustments to the replacement interest rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates. The changes may not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap beyond what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(iii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also be effectuated through portfolio compression between or among covered swap entities and their counterparties. Portfolio compression under this paragraph is not subject to the limitations in paragraph (h)(4) of this section, but any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression may not have a longer maturity or increase the total effective notional amount more than what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(4) Amendments solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties, as long as any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression do not:

(i) Exceed the sum of the total effective notional amounts of all of the

swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap; or

(ii) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or reference, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 9. Section 237.9 is amended by adding paragraph (h) to read as follows:

§ 237.9 Cross-border application of margin requirements.

* * * * *

(h)(1) A covered swap entity described in paragraphs (d)(3)(i) and (ii) of this section is not subject to the requirements of § 237.3(a) or § 237.11(a) for any non-cleared swap or non-cleared security-based swap executed with an affiliate of the covered swap entity; and

(2) For purposes of paragraph (h)(1) of this section, ''affiliate'' has the same meaning provided in 12 CFR 237.11(d).

■ 10. Section 237.10 is amended by revising paragraph (a) to read as follows:

§ 237.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 237.3 or § 237.4, as applicable; and

* * * * *

■ 11. Section 237.11 is revised to read as follows:

§ 237.11 Special rules for affiliates.

(a)(1) A covered swap entity shall calculate on each business day an initial margin collection amount for each counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity.

(2) If the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section does not exceed 15 percent of the covered swap entity's tier 1 capital, the requirements for a covered swap entity to collect initial margin under § 237.3(a) do not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(3) On each business day that the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section exceeds 15 percent of the covered swap entity's tier 1 capital:

(i) The covered swap entity shall collect initial margin under § 237.3(a) for each additional non-cleared swap and non-cleared security-based swap executed that business day with a counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity, commencing on the day after execution and continuing on a daily basis as required under § 237.3(c), until the earlier of:

(A) The termination date of such non-cleared swap or non-cleared security-based swap, or

(B) The business day on which the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section falls below 15 percent of the covered swap entity's tier 1 capital;

(ii) Notwithstanding § 237.7(b), to the extent the covered swap entity collects initial margin pursuant to paragraph (a)(3)(i) of this section in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity; and

(4) For purposes of this paragraph (a), ''tier 1 capital'' means the sum of common equity tier 1 capital as defined in 12 CFR 217.20(b) and additional tier 1 capital as defined in 12 CFR 217.20(c), as reported in the institution's most recent Consolidated Reports of Income and Condition (Call Report).

(5) If any subsidiary of the covered swap entity (including a subsidiary described in § 237.9(h)) executes any non-cleared swap or non-cleared security-based swap with any counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity:

(i) The covered swap entity shall treat such non-cleared swap or security-based swap as its own for purposes of this paragraph (a); and

(ii) If the subsidiary is itself a covered swap entity, the compliance by its parent affiliated covered swap entity with this paragraph (a)(5) shall be deemed to establish the subsidiary's compliance with the requirements of this paragraph (a) and to exempt the subsidiary from the requirements for a covered swap entity to collect initial margin under § 237.3(a) from an affiliate.

(b) The requirement for a covered swap entity to post initial margin under § 237.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(c) Section 237.3(d) shall apply to a counterparty that is an affiliate in the same manner as it applies to any counterparty that is neither a financial end user without a material swap exposure nor a swap entity.

(d) For purposes of this section,

(1) An *affiliate* means:

(i) An affiliate as defined in § 237.2; or

(ii) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

(2) A *subsidiary* means:

(i) A subsidiary as defined in § 237.2; or

(ii) Any company that is controlled by the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION** section, the Federal Deposit Insurance Corporation amends 12 CFR chapter III as follows:

PART 349—DERIVATIVES

Subpart A—Margin and Capital Requirements for Covered Swap Entries

■ 12. The authority citation for subpart A of part 349 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 1818 and 12 U.S.C.

1819(a)(Tenth), 12 U.S.C. 1813(q), 1818, 1819, and 3108.

■ 13. Section 349.1 is amended by revising paragraphs (e)(6) and (7) and (h) introductory text, and adding paragraphs (h)(1) and (3) through (5) to read as follows:

§ 349.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2020, with respect to requirements in § 349.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April, and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021, with respect to requirements in § 349.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this subpart for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this subpart if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, other amendment of a contract or confirmation, or execution of a new contract or confirmation in replacement of and immediately upon termination of an existing contract or confirmation, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of 12 CFR part 47, 12 CFR part 252 subpart I, or 12 CFR part 382, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be replaced or discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also incorporate spreads or other adjustments to the replacement interest rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates. The changes may not have a longer maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap beyond what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(iii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also be effectuated through portfolio compression between or among covered swap entities and their counterparties. Portfolio compression under this paragraph is not subject to the limitations in paragraph (h)(4) of this section, but any non-cleared swap[s] or non-cleared security-based swaps resulting from the portfolio compression may not extend the maturity or increase the total effective notional amount more than what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(4) Amendments solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties, as long as any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression do not:

(i) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap; or

(ii) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or reference, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 14. Section 349.9 is amended by adding paragraph (h) to read as follows:

§ 349.9 Cross-border application of margin requirements.

* * * * *

(h)(1) A covered swap entity described in paragraphs (d)(3)(i) and (ii) is not subject to the requirements of § 349.3(a) or § 349.11 for any non-cleared swap or non-cleared security-based swap executed with an affiliate of the covered swap entity; and

(2) For purposes of paragraph (h)(1) of this section, ''affiliate'' has the same meaning provided in § 349.11(d).

■ 15. Section 349.10 is amended by revising paragraph (a) to read as follows:

§ 349.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 349.3 or § 349.4, as applicable; and

* * * * *

■ 16. Section 349.11 is revised to read as follows:

§ 349.11 Special rules for affiliates.

(a)(1) A covered swap entity shall calculate on each business day an initial margin collection amount for each counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity.

(2) If the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section does not exceed 15 percent of the covered swap entity's tier 1 capital, the requirements for a covered swap entity to collect initial margin under § 349.3(a) do not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(3) On each business day that the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section exceeds 15 percent of the covered swap entity's tier 1 capital:

(i) The covered swap entity shall collect initial margin under § 349.3(a) for each additional non-cleared swap and non-cleared security-based swap executed that business day with a counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity, commencing on the day after execution and continuing on a daily basis as required under § 45.3(c), until the earlier of:

(A) The termination date of such non-cleared swap or non-cleared security-based swap, or

(B) The business day on which the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section falls below 15 percent of the covered swap entity's tier 1 capital;

(ii) Notwithstanding § 349.7(b), to the extent the covered swap entity collects initial margin pursuant to paragraph (a)(3)(i) of this section in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity;

(4) For purposes of this paragraph (a), ''tier 1 capital'' means the sum of common equity tier 1 capital as defined in 12 CFR 324.20(b) and additional tier 1 capital as defined in 12 CFR 324.20(c), as reported in the institution's most recent Consolidated Reports of Income and Condition (Call Report); and

(5) If any subsidiary of the covered swap entity (including a subsidiary described in § 349.9(h)) executes any non-cleared swap or non-cleared security-based swap with any counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity:

(i) The covered swap entity shall treat such non-cleared swap or security-based swap as its own for purposes of this paragraph (a); and

(ii) If the subsidiary is itself a covered swap entity, the compliance by its parent covered swap entity with this paragraph (a)(5) shall be deemed to establish the subsidiary's compliance with the requirements of this paragraph (a) and to exempt the subsidiary from the requirements for a covered swap entity to collect initial margin under § 349.3(a) from an affiliate.

(b) The requirement for a covered swap entity to post initial margin under § 349.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(c) Section 349.3(d) shall apply to a counterparty that is an affiliate in the same manner as it applies to any counterparty that is neither a financial end user without a material swap exposure nor a swap entity.

(d) For purposes of this section:

(1) An *affiliate* means:

(i) An affiliate as defined in § 349.2; or

(ii) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

(2) A *subsidiary* means:

(i) A subsidiary as defined in § 349.2; or

(ii) Any company that is controlled by the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

Authority and Issuance

For the reasons set forth in the preamble, the Farm Credit Administration amends chapter VI of title 12, Code of Federal Regulations, as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 17. The authority citation for part 624 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, 12 U.S.C. 2279bb–1.

■ 18. Section 624.1 is amended by revising paragraphs (e)(6) and (7) and (h) introductory text and adding paragraphs (h)(1) and (3) through (5) to read as follows:

§ 624.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2020, with respect to requirements in § 624.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April, and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021, with respect to requirements in § 624.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this subpart for non-cleared swaps and non-cleared security-

based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this subpart if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, other amendment of a contract or confirmation, or execution of a new contract or confirmation in replacement of and immediately upon termination of an existing contract or confirmation, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of 12 CFR part 47, 12 CFR part 252 subpart I, or 12 CFR part 382, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be replaced or discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also incorporate spreads or other adjustments to the replacement interest rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates. The changes may not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap beyond what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(iii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also be effectuated through portfolio compression between or among covered swap entities and their counterparties. Portfolio compression under this paragraph is not subject to the limitations in paragraph (h)(4) of this section, but any non-cleared swap[s] or non-cleared security-based swaps resulting from the portfolio compression may not extend the maturity or increase the total effective notional amount more than what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(4) Amendments solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties, as long as any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression do not:

(i) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap; or

(ii) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or reference, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 19. Section 624.9 is amended by adding paragraph (h) to read as follows:

§ 624.9 Cross-Border application of margin requirements.

* * * * *

(h)(1) A covered swap entity described in paragraphs (d)(3)(i) and (ii) of this section is not subject to the requirements of § 624.3(a) or § 624.11(a) for any non-cleared swap or non-cleared security-based swap executed with an affiliate of the covered swap entity; and

(2) For purposes of paragraph (h)(1) of this section, ''affiliate'' has the same meaning provided in § 624.11(d).

■ 20. Section 624.10 is amended by revising paragraph (a) to read as follows:

§ 624.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 624.3 or § 624.4, as applicable; and

* * * * *

■ 21. Section 624.11 is revised to read as follows:

§ 624.11 Special rules for affiliates.

(a)(1) A covered swap entity shall calculate on each business day an initial margin collection amount for each counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity.

(2) If the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section does not exceed 15 percent of the covered swap entity's tier 1 capital, the requirements for a covered swap entity to collect initial margin under § 624.3(a) do not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(3) On each business day that the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section exceeds 15 percent of the covered swap entity's tier 1 capital:

(i) The covered swap entity shall collect initial margin under § 624.3(a) for each additional non-cleared swap and non-cleared security-based swap executed that business day with a counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered

swap entity, commencing on the day after execution and continuing on a daily basis as required under § 624.3(c), until the earlier of;

(A) The termination date of such non-cleared swap or non-cleared security-based swap, or

(B) The business day on which the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section falls below 15 percent of the covered swap entity's tier 1 capital;

(ii) Notwithstanding § 624.7(b), to the extent the covered swap entity collects initial margin pursuant to paragraph (a)(3)(i) of this section in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity; and

(4) For purposes of this paragraph (a), ''tier 1 capital'' means:

(i) For Farm Credit System banks and associations, the sum of common equity tier 1 capital as defined in 12 CFR 628.20(b) and additional tier 1 capital as defined in 12 CFR 628.20(c), and as reported in the institution's most recent Uniform Reports of Financial Condition and Performance (Call Report); or

(ii) For the Federal Agricultural Mortgage Corporation, as defined and required in in 12 CFR 652.61, and as reported in the institution's most recent Call Report.

(5) If any subsidiary of the covered swap entity (including a subsidiary described in § 624.9(h)) executes any non-cleared swap or non-cleared security-based swap with any counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity:

(i) The covered swap entity shall treat such non-cleared swap or security-based swap as its own for purposes of this paragraph (a); and

(ii) If the subsidiary is itself a covered swap entity, the compliance by its parent covered swap entity with this paragraph (a)(5) shall be deemed to establish the subsidiary's compliance with the requirements of § 624.11(a) and to exempt the subsidiary from the requirements for a covered swap entity to collect initial margin under § 624.3(a) from an affiliate.

(b) The requirement for a covered swap entity to post initial margin under § 624.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(c) Section 624.3(d) shall apply to a counterparty that is an affiliate in the same manner as it applies to any counterparty that is neither a financial end user without a material swap exposure nor a swap entity.

(d) For purposes of this section:

(1) An *affiliate* means:

(i) An affiliate as defined in § 624.2; or

(ii) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

(2) A *subsidiary* means:

(i) A subsidiary as defined in § 624.2; or

(ii) Any company that is controlled by the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Chapter XII

Authority and Issuance

For the reasons set forth in the preamble, the Federal Housing Finance Agency amends chapter XII of title 12, Code of Federal Regulations, as follows:

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 22. The authority citation for part 1221 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513, and 12 U.S.C. 4526(a).

■ 23. Section 1221.1 is amended by revising paragraphs (e)(6) and (7) and (h) introductory text and adding paragraphs (h)(1) and (3) through (5) to read as follows:

§ 1221.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2020, with respect to the requirements in § 1221.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April, and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021, with respect to requirements in § 1221.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, other amendment of a contract or confirmation, or execution of a new contract or confirmation in replacement of and immediately upon termination of an existing contract or confirmation, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of 12 CFR part 47, 12 CFR part 252 subpart I, or 12 CFR part 382, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), the Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be replaced or discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph

(h)(3)(i)(A) or (B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also incorporate spreads or other adjustments to the replacement interest rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement interest rate, including changes to determination dates, calculation agents, and payment dates. The changes may not have a longer maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap beyond what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(iii) Amendments to accommodate replacement of an interest rate described in paragraph (h)(3)(i) of this section may also be effectuated through portfolio compression between or among covered swap entities and their counterparties. Portfolio compression under this paragraph (h)(3)(iii) is not subject to the limitations in paragraph (h)(4) of this section, but any non-cleared swap[s] or non-cleared security-based swaps resulting from the portfolio compression may not have a longer maturity or increase the total effective notional amount more than what is necessary to accommodate the differences between market conventions for an outgoing interest rate and its replacement.

(4) Amendments solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties, as long as any non-cleared swaps or non-cleared security-based swaps resulting from the portfolio compression do not:

(i) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the resulting swap; or

(ii) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or reference, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 24. Section 1221.9 is amended by adding paragraph (h) to read as follows:

§ 1221.9 Cross-Border application of margin requirements.

* * * * *

(h)(1) A covered swap entity described in paragraphs (d)(3)(i) and (ii) of this section is not subject to the requirements of § 1221.3(a) or § 1221.11(a) for any non-cleared swap or non-cleared security-based swap executed with an affiliate of the covered swap entity; and

(2) For purposes of paragraph (h)(1) of this section, ''affiliate'' has the same meaning provided in § 1221.11(d).

■ 25. In § 1221.10 revise paragraph (a) to read as follows:

§ 1221.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this part, and at such time as initial margin or variation margin is required to be collected or posted under § 1221.3 or § 1221.4, as applicable; and

* * * * *

■ 26. Section 1221.11 is revised to read as follows:

§ 1221.11 Special rules for affiliates.

(a)(1) A covered swap entity shall calculate on each business day an initial margin collection amount for each counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity.

(2) If the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section does not exceed 15 percent of the covered swap entity's tier 1 capital, the requirements for a covered swap entity to collect initial margin under § 1221.3(a) do not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(3) On each business day that the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section exceeds 15 percent of the covered swap entity's tier 1 capital:

(i) The covered swap entity shall collect initial margin under § 1221.3(a) for each additional non-cleared swap and non-cleared security-based swap executed that business day with a counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity, commencing on the day after execution and continuing on a daily basis as required under § 1221.3(c), until the earlier of;

(A) The termination date of such non-cleared swap or non-cleared security-based swap, or

(B) The business day on which the aggregate of all initial margin collection amounts calculated under paragraph (a)(1) of this section falls below 15 percent of the covered swap entity's tier 1 capital;

(ii) Notwithstanding § 1221.7(b), to the extent the covered swap entity collects initial margin pursuant to paragraph (a)(3)(i) of this section in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity; and

(4) For purposes of paragraph (a) of this section, ''tier 1 capital'' means:

(i) The sum of common equity tier 1 capital as defined in 12 CFR 1240.20(b) and additional tier 1 capital as defined in 12 CFR 1240.20(c).

(5) If any subsidiary of the covered swap entity (including a subsidiary described in § 1221.9(h)) executes any non-cleared swap or non-cleared security-based swap with any counterparty that is a swap entity or financial end user with a material swaps exposure and an affiliate of the covered swap entity;

(i) The covered swap entity shall treat such non-cleared swap or security-based swap as its own for purposes of this paragraph (a); and

(ii) If the subsidiary is itself a covered swap entity, the compliance by its parent covered swap entity with this paragraph (a)(5) shall be deemed to establish the subsidiary's compliance

with the requirements of this paragraph (a) and to exempt the subsidiary from the requirements for a covered swap entity to collect initial margin under § 1221.3(a) from an affiliate.

(b) The requirement for a covered swap entity to post initial margin under § 1221.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(c) Section 1221.3(d) shall apply to a counterparty that is an affiliate in the same manner as it applies to any counterparty that is neither a financial end user without a material swap exposure nor a swap entity.

(d) For purposes of this section:

(1) An *affiliate* means:

(i) An affiliate as defined in § 1221.2; or

(ii) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

(2) A *subsidiary* means:

(i) A subsidiary as defined in § 1221.2; or

(ii) Any company that is controlled by the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Brian P. Brooks,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about June 25, 2020.

James P. Sheesley,

Acting Assistant Executive Secretary.

Dated: June 24, 2020.

Dale Aultman

Secretary, Farm Credit Administration Board.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2020–14097 Filed 6–30–20; 8:45 am]

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Part IV

Department of Labor

Wage and Hour Division

29 CFR Part 810

High-Wage Components of the Labor Value Content Requirements Under the United States-Mexico-Canada Agreement Implementation Act; Interim Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 810

RIN 1235–AA36

High-Wage Components of the Labor Value Content Requirements Under the United States-Mexico-Canada Agreement Implementation Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: In accordance with section 210(b) of the United States-Mexico-Canada Agreement Implementation Act, the U.S. Department of Labor is issuing regulations necessary to administer the high-wage components of the labor value content requirements as set forth in section 202A of that Act.

DATES: This interim final rule is effective on July 1, 2020. Interested persons are invited to submit written comments on this interim final rule (''IFR'') on or before August 31, 2020.

ADDRESSES: To facilitate the receipt and processing of written comments on this IFR, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA36, by either of the following methods:

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

Mail: Address written submissions to Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: This IFR is available through the **Federal Register** and the *http://www.regulations.gov* website. You may also access this document via the Wage and Hour Division's (WHD) website at *https://www.dol.gov/agencies/whd.* All comment submissions must include the agency name and Regulatory Information Number (RIN 1235–AA36) for this IFR. Response to this IFR is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this IFR. Submit only one copy of your comment by only one method (*e.g.,* persons submitting comments electronically are encouraged not to submit paper copies). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this IFR; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via *http://www.regulations.gov* enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this IFR may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1–877–889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be emailed to *WHD-USMCA-General@dol.gov.* Alternatively, if unable to send by email, inquiries can also be made by calling (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone.

I. Executive Summary

On January 29, 2020, the United States-Mexico-Canada Implementation Act (''USMCA Implementation Act'' or ''Act'') was signed into law, which ratified the Agreement between the United States of America, the United Mexican States, and Canada (''USMCA'') and implemented its provisions. In general, and as relevant to the Department of Labor (''Department'') for this IFR, the Act requires that to receive preferential tariff treatment, a producer of a covered vehicle must file a certification that the production of the covered vehicle meets the high-wage components of the labor value content (''LVC'') requirements. The Act authorizes the Secretary of Labor (''Secretary''), in consultation with the Commissioner of U.S. Customs and Border Protection (''CBP''), to check the certification for omissions or errors and to verify whether a covered vehicle is in compliance with the high-wage components of the LVC requirements. This IFR implements the Act's requirements and establishes procedures for producers to follow concerning the high-wage components of the LVC requirements. Any entity seeking preferential tariff treatment when importing covered vehicles into the United States must comply with the Department's regulations set forth in this IFR, including for plants located in Mexico and Canada that it uses to satisfy the high-wage components of the LVC requirements.

The Act tasks the Department with enforcing the high-wage components of the three LVC requirements: The high-wage material and manufacturing expenditures, the high-wage technology expenditures credit, and the high-wage assembly expenditures credit. The high-wage material and manufacturing expenditures component requires a producer to have records demonstrating that a minimum percentage of the cost of the covered vehicle is composed of vehicle assembly labor and/or parts and materials from a North American (United States, Mexico, or Canada) plant or facility with a production wage rate, or average hourly base wage rate,[1] of at least US$16 per hour (or its equivalent in Mexican or Canadian currency). The high-wage assembly expenditures credit component allows a producer to receive a credit of five percent towards the total LVC requirement if it demonstrates that it operates, or has a long term contract with, a qualified assembly plant that has an average hourly base wage rate of at least US$16 per hour for hours worked in direct production. This IFR explains how producers must calculate the average hourly base wage rate, including what kind of work must be included in the calculation and how to treat certain workers for purposes of the calculation. The high-wage technology expenditures credit component allows a producer to receive an up to 10 percent credit towards its total LVC requirement based on its annual expenditures in North America on wages for research and development and information technology. This IFR explains how

[1] The USMCA refers to the ''average hourly base wage rate'' while the Uniform Regulations use the term ''average base hourly wage rate.'' *See* Uniform Regulations, Part IV, Sec. 12, ¶ 1. This rule uses the treaty language.

producers must calculate the high-wage technology expenditures credit. Other agencies administer the other components of the LVC requirements, and these regulations explain how the Department will coordinate with CBP and other federal agencies to fulfill its statutory mandate.

The Act requires that for a covered vehicle to receive preferential tariff treatment, a producer must certify that its production of covered vehicles meets the LVC requirements, including the high-wage components, and requires the Secretary, in consultation with CBP, to review the certification for omissions or errors before it is considered properly filed. This IFR details what information the producer submits to CBP in its certification that the Department will review for omissions or errors. The Act further gives the Secretary, in conjunction with the Secretary of the Treasury, authority to verify whether a covered vehicle complied with the LVC requirements. This IFR defines the scope of the Secretary's role in conducting these verifications and the process by which the Secretary will conduct these verifications.

To aid the Secretary in verifying producer compliance, the Act gives the Secretary authority to require a producer to make, keep, and render for examination and inspection, records and supporting documentation related to a producer's certification of compliance with the high-wage components of the LVC requirements. Pursuant to this authority and consistent with the USMCA's recordkeeping provisions, this IFR explains producers' recordkeeping responsibilities and the scope of the Secretary's authority to inspect such records.

This IFR also provides for an administrative review process of the Department's analysis and findings concerning a producer's compliance with the high-wage components of the LVC requirements. The administrative review will be conducted by either the WHD Administrator (''Administrator'') or by an official the Administrator designates as the presiding official; the presiding official may refer disputed questions of fact to the Chief Administrative Law Judge for a recommended decision.

The Act provides whistleblower protections to individuals who provide information relating to, or otherwise cooperate or seek to cooperate in, a verification of the LVC requirements. To implement these protections, this IFR describes the Department's whistleblower enforcement processes, including the filing of complaints, investigations, issuance of determinations, and the administrative review process.

The Department's estimates of the economic impact of this IFR are discussed in sections V. and VI. Pursuant to Executive Order 12866, the Office of Management and Budget's (''OMB'') Office of Information and Regulatory Affairs (''OIRA'') has determined that this IFR is economically significant. The Department has conducted a Regulatory Impact Analysis (''RIA'') to demonstrate the IFR's potential effects through a qualitative and quantitative analysis, consistent with Executive Order 13563. The Department quantified two direct costs to businesses: (1) Regulatory familiarization costs and (2) recordkeeping costs. Annualizing over 10 years, these costs are estimated to be $6.1 million per year at both a 3 percent and 7 percent discount rate. Producer adjustment costs, consumer costs, economic costs, and Departmental costs are discussed qualitatively. This IFR is exempt from Executive Order 13771, because this Executive Order expressly exempts regulations issued with respect to foreign affairs functions (5 U.S.C. 553).

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), OIRA designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

II. Background

A. The Agreement Between the United States of America, the United Mexican States, and Canada

On May 23, 2017, the United States Trade Representative (''USTR'') published in the **Federal Register** a notice of the United States' intention to begin negotiations with Canada and Mexico regarding modernization of the North American Free Trade Agreement (''NAFTA''). *See* 82 FR 23699. Through these negotiations, the United States sought to create more balanced, reciprocal trade that supports high-paying jobs for Americans and grows the North American economy. On November 30, 2018, the Governments of the United States of America, the United Mexican States, and Canada signed the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada (''USMCA''), and on December 10, 2019 the three countries agreed to a Protocol of Amendments to the USMCA. All three countries ratified the USMCA; Mexico on December 12, 2019, the United States on January 29, 2020, and Canada on March 13, 2020.

The USMCA recognizes that international trade, investment, and economic growth can be facilitated through the implementation of government-wide practices that promote regulatory quality through greater transparency, objective analysis, accountability, and predictability. The USMCA also seeks to promote the protection and enforcement of labor rights, the improvement of working conditions, and the strengthening of cooperation on labor issues.

In support of these goals, the USMCA includes new rules of origin criteria for claiming preferential tariff treatment for automotive goods, including LVC requirements as set forth in Article 7 of the Appendix to Annex 4–B of the USMCA (''Automotive Appendix''). The LVC requirements promote more high-wage jobs for the U.S. auto industry by requiring that a significant portion of motor vehicles be made with high-wage labor.[2] The LVC requirements state that for a passenger vehicle, light truck, or heavy truck (''covered vehicle'') to be eligible for preferential tariff treatment, a minimum percentage of the cost of the vehicle must involve certain high-wage expenditures. After a transition period of 3 years with gradually increasing percentages (or longer if a producer successfully petitions to be covered under the USMCA's alternative staging regime),[3] as discussed in Articles 7 and 8 of the Automotive Appendix, at least 40 percent of the value of passenger vehicles and 45 percent of the value of light and heavy trucks must meet these high-wage expenditure requirements. The three categories of high-wage expenditures are as follows:

i. High-wage material and manufacturing expenditures.[4] The high-wage material and manufacturing expenditures provision requires that, after a phase-in period, beginning on July 1, 2023 at least 25 percent of the annual purchase value or net cost of a passenger vehicle, or 30 percent of the annual purchase value or net cost of a light truck or heavy truck, come from parts and materials used in the production of those vehicles, and

[2] *United States-Mexico-Canada Trade Fact Sheet: Rebalancing Trade to Support Manufacturing,* Office of the United States Trade Representative, *https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/fact-sheets/rebalancing.*

[3] The alternative staging regime provides for a phase-in period of the LVC requirements and additional time to meet those requirements. *See* 85 FR 22238, 22239 (Apr. 21, 2020).

[4] The USMCA refers to ''high-wage material and manufacturing expenditures'' while the Uniform Regulations use the term ''high-wage material and labor expenditures.'' *See, e.g.,* Uniform Regulations, Part IV, Sec. 18, ¶ 1. This rule uses the treaty language.

produced in a North American production plant or facility, or from any labor costs in a North American vehicle assembly plant or facility, with a production wage rate of at least US$16 per hour.

ii. High-wage technology expenditures. The high-wage technology expenditures provision allows producers to claim a credit towards the LVC requirements of up to 10 percent. The credit is equal to the vehicle producer's total annual expenditures on wages in North America for research and development or information technology as a percentage of the producer's total annual expenditures on production wages.

iii. High-wage assembly expenditures. The high-wage assembly expenditures provision permits producers to claim a single credit of five percent towards the LVC requirements if the producer has an engine, transmission, or advanced battery assembly plant meeting certain production capacity standards, or has a long term contract with such a plant, in North America with an average production wage rate of at least US$16 per hour.

The USMCA also states that a claim for preferential tariff treatment, including preferential tariffs for automotive goods, must be based on a certification of origin completed by the importer, exporter, or producer. An importer claiming preferential tariff treatment for a good imported into a USMCA Country (the United States, Mexico, or Canada) must maintain all documentation, records, and information necessary to demonstrate the basis for the claim. Exporters and producers must maintain all records necessary to support a claim for preferential tariff treatment for a good for which the exporter or producer provided a certification of origin.

The USMCA further provides that the USMCA Countries may conduct a verification of a certification or claim for preferential tariff treatment. Pursuant to the USMCA, such verifications may include written requests for information and documentation, onsite visits to production plants and facilities, as well as other procedures to be decided by the USMCA Countries.

B. United States-Mexico-Canada Agreement Implementation Act

On January 29, 2020, the United States-Mexico-Canada Implementation Act (''USMCA Implementation Act'' or ''Act'') was signed into law, ratifying the USMCA and implementing its provisions. Section 202A of the Act, codified at 19 U.S.C. 4532, provides that a covered vehicle is eligible for preferential tariff treatment when imported into the United States only if the producer has provided a certification that the production of the covered vehicle meets the LVC requirements, including the high-wage components. *See* 19 U.S.C. 4532(c)(1)(A). The producer must have information on record to support the calculations on which its certification is based, and maintain records supporting such calculations. *See* 19 U.S.C. 4532(c)(1)(A). The Secretary, in consultation with the Commissioner of CBP, must review these certifications for errors or omissions before the certification can be considered properly filed. *See* 19 U.S.C. 4532(c)(1)(B).

The Act also describes the procedures for verification of preferential tariff claims, including preferential tariff claims for covered vehicles. Section 4532(e)(1) authorizes the Secretary of the Treasury, in conjunction with the Secretary, to verify whether a covered vehicle is in compliance with the LVC requirements. *See* 19 U.S.C. 4532(e)(1). The Secretary is charged, in cooperation with the Secretary of the Treasury, with verifying whether the production of covered vehicles meets the high-wage components of the LVC requirements, including the high-wage material and manufacturing expenditures, high-wage technology expenditures, and high-wage assembly expenditures discussed above. *See* 19 U.S.C. 4532(e)(2). As part of these verifications, the Act authorizes the Secretary to examine any record, and request information from any officer, employee, or agent of a producer of automotive goods that may be relevant with respect to whether the production of the covered vehicle complied with the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(A). Relevant records and information include records and information relating to wages, hours, job responsibilities, and other information in any plant or facility relied on by the producer to demonstrate compliance with the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(B). The Act also prohibits retaliation against any person who discloses information relating to a verification or otherwise cooperates in a verification. *See* 19 U.S.C. 4532(e)(5).

C. Interim Guidance From USTR and CBP

CBP published its USMCA Interim Implementing Instructions on April 20, 2020, and on June 16, 2020 published a revised version (''CBP Implementing Instructions''). This guidance is intended to provide information as to how to make preferential tariff claims under the USMCA pending the issuance of applicable regulations.[5] These instructions, which do not have legal or binding effect, provide general guidelines as to the rules of origin and regional value content requirements for goods imported into the United States from Canada or Mexico, how importers may claim preferential tariff treatment for imported goods, and the general process for submitting a certification of origin.[6] The instructions also describe CBP's general recordkeeping requirements for importers who have made a preferential treatment claim and for any person who has completed a USMCA certification of origin or provided a written representation for a good exported from the United States to another USMCA Country. They also provide information as to how CBP will conduct a verification of a claim to preferential tariff treatment and issue a determination conveying the verification results.

In addition to this general guidance on preferential tariff claims under the USMCA, the CBP Implementing Instructions provide more specific information about the additional requirements applicable to automotive goods. For example, the CBP Implementing Instructions provide, in part, information relating to the rules of origin for automotive goods and LVC certification procedures and requirements. Annex B of the CBP Implementing Instructions, developed in coordination with the Department, provides guidance on what certification information the Department will review for omissions or errors. This topic is discussed in more detail in this IFR. Certain aspects of the Department's regulations may differ from the information provided in the CBP Implementing Instructions. If there are such differences, the Department's regulations are controlling.

On April 21, 2020, USTR published the Procedures for the Submission of Petitions by North American Producers of Passenger Vehicles or Light Trucks

[5] U.S. Customs and Border Protection, *United States-Mexico-Canada Agreement (USMCA) Interim Implementing Instructions,* modified June 16, 2020, *available at https://www.cbp.gov/document/guidance/usmca-interim-implementation-instructions.*

[6] The CBP Implementing Instructions state: ''This document is for advance informational and advisory purposes only. It is not final and is subject to further revision. It is not intended to have legal or binding effect. Any decisions a reader makes based on this draft document are made with the understanding that the information in this document is advisory only and may change. The reader is responsible for monitoring the CBP website to ensure awareness of the status of any revisions to this document.''

To Use the Alternative Staging Regime for the USMCA Rules of Origin for Automotive Goods, a notice in the **Federal Register** providing guidance to vehicle producers for requesting an alternative to the standard staging regime for the USMCA rules of origin for automotive goods, including the LVC requirements. *See* 85 FR 22238. The notice specifies the vehicle producers that are eligible to petition for an alternative staging regime and the requirements that must be met during and after the alternative staging regime. It sets forth the timeline for filing petitions for alternative staging and details the information that must be included in the petitions. The notice also describes the process that USTR will use to review and approve such petitions. The notice also explains the process for requesting a modification of an approved alternative staging plan, which the vehicle producer must make whenever there are material changes to information contained in a petition that will affect the producer's ability to meet any of the requirements set forth in Articles 2 through 7 of the Automotive Appendix after the alternative staging period has expired. The notice also specifies that vehicle producers that do not meet the requirements of the alternative staging regime are not eligible for preferential tariff treatment pursuant to the alternative staging regime.

D. Uniform Regulations

The USMCA provides that the parties to the agreement shall, by entry into force of the agreement, adopt Uniform Regulations regarding the interpretation, application, and administration of, in part, Chapter 4 (Rules of Origin) and other matters as may be decided by the parties to the agreement. *See* USMCA, Article 5.16. The Uniform Regulations regarding, in part, Chapter 4 (Rules of Origin) and Chapter 5 (Origin Procedures) adopted on June 3, 2020 represent a trilateral agreement between the United States of America, the United Mexican States, and Canada regarding the interpretation, application, and administration of Chapter 4 and Chapter 5 of the USMCA. The Department intends the regulations set forth in this IFR to be consistent with the Uniform Regulations.

E. Inapplicability of Notice and Delayed Effective Date Requirements Procedures

Pursuant to 5 U.S.C. 553(a)(1), public notice and comment procedures are inapplicable to these interim regulations because they involve a ''foreign affairs function of the United States.'' The delay caused by public notice and comment procedures would prevent these regulations from being in place on the date that the USMCA enters into force. A failure to have the regulations in place setting forth the procedures implementing important rules for preferential tariff treatment of automobiles would provoke undesirable international consequences by inhibiting the execution of the United States' obligations under the USMCA and creating international uncertainty about the United States' enforcement of tariff preferences.

In addition, the Department for good cause finds, pursuant to 5 U.S.C. 553(b)(B), that the public notice and comment requirements are impracticable and contrary to the public interest, and thus should not apply to these regulations. The USMCA's LVC requirements, which the Department is tasked in part with enforcing, apply once the USMCA enters into force. *See* 19 U.S.C. 4532(h). Accordingly, these regulations establish procedures that the public must know by the entry-into-force date in order to claim the benefit of a tariff preference under the USMCA. The Uniform Regulations, which required the agreement of the United States of America, the United Mexican States, and Canada, were only adopted on June 3, 2020. This IFR's regulations, however, must be consistent with the Uniform Regulations and could not be completed and prepared for public notice and comment until the Uniform Regulations were adopted. Given the recent adoption of the Uniform Regulations and the approaching date on which the USMCA enters into force, following public notice and comment procedures could prevent the implementation of these regulations by the entry-into-force date, leading to harmful consequences for stakeholders throughout the automotive industry. Furthermore, because these are interim regulations, the public will have an opportunity to comment and provide input for the final rule, reducing any impact from the lack of notice.

Finally, for the above-listed reasons, the Department has determined that good cause exists under 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

III. Additions for 29 CFR Part 810

The provisions relating to the Department's role in enforcing the high-wage components of the LVC requirements of the USMCA are described and interpreted by the Secretary in regulations to appear in new part 810 of Title 29 of the Code of Federal Regulations, and addressed below.

Subpart A—General

Section 810.2 Purpose and Scope

This section briefly describes the purpose of the USMCA and the Act, and the Department's role in enforcing the wage-related components of the USMCA's LVC requirements. WHD is issuing the regulations in part 810 in accordance with 19 U.S.C. 4535(b), which requires the Secretary to prescribe regulations necessary to carry out the LVC determination under 19 U.S.C. 4532, and 19 U.S.C. 1508(b)(4), which grants the Secretary authority to prescribe regulations relating to the recordkeeping requirements detailed in 19 U.S.C. 1508(b)(4). The Secretary has delegated this authority to the Administrator. The Department administers the high-wage components of the LVC determination. Other agencies administer the other components of the LVC requirements, and the regulations in this part explain how the Department will coordinate with CBP and other federal agencies to fulfill its statutory mandate.

The Department's principal responsibility under the USMCA is to evaluate and verify worker wage rates. For assessing high-wage material and manufacturing expenditures and high-wage assembly expenditures, the Department must determine whether workers earned an average hourly base wage rate of at least US$16 per hour for the time worked in direct production. For assessing the high-wage technology expenditures credit, the Department must evaluate wages paid to research and development and information technology workers.

Section 810.3 Definitions and Use of Terms

This section defines terms that are used throughout this IFR. Many of the terms in this IFR are already defined in the USMCA. Where noted in this section, these terms invoke the USMCA's definitions; however, because of variations in how certain terms are used in the USMCA, the meanings of certain terms vary slightly across the IFR. For example, the terms ''importer'' and ''exporter'' are defined in Appendix 5 of the USMCA. Except where indicated otherwise, the term ''producer'' as used in this rule encompasses the terms ''importer'' and ''exporter,'' as these three terms are often referenced together in the treaty, and the regulations generally apply uniformly to all three types of entities. However, when used in § 810.405, for example, the term ''producer'' means only ''producer of the covered vehicle.'' This exception is necessary because

only the producer of the covered vehicle may provide a certification that the covered vehicle meets the applicable LVC requirements. *See* 19 U.S.C. 4532(c)(1)(A).

Many of the terms used in this rule are most relevant to the portions of the LVC requirements within CBP's purview. Unless otherwise stated, the definitions used in these regulations are intended to be consistent with CBP's use of the terms. Where these regulations use terms relating to the LVC requirements without providing a corresponding definition, the Department intends such terms to have the meaning as understood by CBP and (where applicable) explained in its guidance and regulations.

Other definitions are provided in this rule to ensure that there is a uniform use and understanding of the terms, which will aid in this rule's administration. These terms, such as ''Administrative Law Judge'' and ''Administrator,'' adopt standard Department definitions used in other rules.

Subpart B—Calculating the High-Wage Component of Material and Manufacturing Expenditures

Section 810.100 Scope and Purpose of This Subpart

The USMCA Implementation Act authorizes the Secretary, in conjunction with the Secretary of the Treasury, to verify whether covered vehicle production complies with the high-wage components of the LVC requirements set forth in the USMCA. *See* 19 U.S.C. 4532(e). The high-wage material and manufacturing expenditures component of the LVC requires producers to demonstrate that a minimum percentage of the cost of the vehicle is composed of vehicle assembly labor costs, and/or parts and materials expenditures, from a North American plant or facility with an average hourly base wage rate of at least US$16 per hour. The Department works in conjunction with CBP to verify producer compliance. Specifically, the Department is responsible for verifying whether workers engaged in direct production work at a plant or facility included in a producer's material and manufacturing expenditures calculation earn an average hourly base wage rate of at least US$16 per hour. This subpart addresses calculation of this high-wage aspect. All other aspects of material and manufacturing expenditures, including determining the percentage of the cost of a covered vehicle that assembly labor or specific parts and components constitutes, are within the purview of CBP and/or other federal agencies and addressed by their regulations and other guidance.

Section 810.105 Calculating the Average Hourly Base Wage Rate

Subsection 810.105(a) sets forth the overarching rule that the average hourly base wage rate for a plant or facility is calculated by dividing the total base wages paid for all hours worked in direct production by the total number of hours worked in direct production. The USMCA does not define ''average hourly base wage rate,'' but instead defines ''production wage rate'' for a plant or facility as ''the average hourly base wage rate, not including benefits, of employees directly involved in the production of the part or component used to calculate the LVC[.]'' *See* Automotive Appendix, Article 7.3 n.77. Thus, the terms ''production wage rate'' and ''average hourly base wage rate'' are interchangeable for purposes of calculating a producer's high-wage material and manufacturing expenditures for a plant or facility. The Department considers the term ''average hourly base wage rate'' more descriptive and useful for calculation purposes, and generally uses that term.

Subsection 810.105(b) describes the three components of the average hourly base wage rate calculation: The hourly base wage rate, hours worked in direct production, and total base wages.

The hourly base wage rate is the rate of compensation a worker is paid for each hour worked in direct production work. The hourly base wage rate refers to the base rate of pay for an individual worker, whereas the average hourly base wage rate refers to the average rate of pay for a group of workers in a plant or facility. In determining the hourly base wage rate for each worker, the producer must exclude all benefits, bonuses, premium payments, incentive pay, overtime premiums, and all other similar payments. ''Similar payments'' include, for example, profit-sharing bonuses, tooling allowances, collective bargaining agreement ratification bonuses, and performance bonuses. Excluding such payments from the average hourly base wage rate calculation adopts a bright-line rule that is consistent with both the plain meaning of the term ''base'' and with the USMCA's language that the ''production wage rate is the average hourly base wage rate, not including benefits[.]'' *See* Automotive Appendix, Article 7, n.77. In contrast, including other types of payments in the base wage rate would undermine the treaty's plain meaning and increase administrative complexity. The Department's approach also strengthens the US$16 per hour standard, which increases the likelihood that producers will use American plants to meet the LVC requirements, and in turn promotes more high-wage jobs for U.S. auto industry workers.

Amounts deducted from a worker's pay generally may be included in the hourly base wage rate to the extent they are for the benefit of the worker and are reasonable. WHD will look to the principles outlined in 29 CFR part 531 to determine whether a deduction is for the benefit of the employee and is reasonable, and therefore may be included in the hourly base wage rate. For example, reasonable amounts deducted for board and lodging may be included in a worker's hourly base wage rate, *see* 29 CFR 531.3, as may amounts deducted for taxes assessed against the employee, *see* 29 CFR 531.38, and amounts deducted for payments to third persons pursuant to a court order, *see* 29 CFR 531.39. Conversely, amounts deducted for tools, equipment, or uniforms may not be included in a worker's hourly base wage rate, *see* 29 CFR 531.32(c).

The second component of the average hourly base wage rate calculation is to determine the number of hours worked in direct production by each worker. This means all time a worker spends personally involved in the production of passenger vehicles, light trucks, heavy trucks, or parts used in the production of these vehicles at a plant or facility located in North America, or directly involved in the set-up, operation, or maintenance of equipment or tools used in the production of those vehicles or parts at that plant or facility. The total number of hours worked in direct production at a plant or facility, as referenced in subsection (a), is calculated by adding together hours in direct production (as calculated under subsections (b)(2)(i) and (b)(2)(ii)) for all workers who perform direct production work at that plant or facility.

Subsection (b)(2)(i) provides that, except for executive and management staff, certain engineers, and other workers described in § 810.130, if at least 85 percent of a worker's total work hours are worked in direct production during the time period the producer uses to calculate the average hourly base wage rate, *see* § 810.105(d), the worker's total work hours are considered hours worked in direct production, and are included in the average hourly base wage rate calculation. This is consistent with the Uniform Regulations, which provide that ''[f]or direct production workers, the average base hourly wage rate of pay is calculated based on all their working hours[,]'' and define

''direct production worker'' as ''any worker whose primary responsibilities are direct production work, meaning at least 85 percent of the worker's time is spent performing direct production work.'' Uniform Regulations, Part VI, Sec. 12, ¶ 1. Subsection (i) is also consistent with the USMCA's production wage rate definition, which emphasizes the wage rate of workers ''directly involved in the production of the part or component used to calculate the LVC.'' *See* Automotive Appendix, Article 7, n.77.

Subsection (b)(2)(ii) provides that, except for workers described in § 810.130 (for whom all hours worked are excluded), if less than 85 percent of a worker's total work hours are worked in direct production, only the worker's hours worked in direct production are included in the average hourly base wage rate calculation. This is similarly consistent with the Uniform Regulations provision that ''[f]or other workers performing direct production work [who are not direct production workers], the average hourly rate is calculated based on the amount of hours performing direct production work.'' Uniform Regulations, Part VI, Sec. 12, ¶ 1.

The 85 percent threshold described in § 810.105(b) should simplify compliance with the high-wage components of the LVC requirements by permitting producers to count all hours (and pay) for workers who spend most of their time performing direct production work. This bright-line approach minimizes compliance burdens and promotes administrative efficiency. Also, including in the average hourly base wage rate all direct production hours for any worker who performs direct production work (except for workers described in § 810.130), helps ensure that the average hourly base wage rate appropriately reflects wages paid for direct production work.

The third component of the average hourly base rate calculation is calculating ''total base wages''—*i.e.,* the cumulative base wages for all time that workers spend performing direct production work. This calculation involves two steps. First, multiply each worker's hourly base wage rate by that worker's number of hours worked in direct production at that rate. The hourly base wage rate is set forth in subsection (b)(1) and hours worked in direct production is set forth in subsection (b)(2). Second, total the values calculated in step one to obtain total base wages paid for all hours worked in direct production at the plant or facility. As previously discussed, all of a worker's hours worked are considered hours worked in direct production (and are included in the average hourly base wage rate calculation) for workers who satisfy the 85 percent threshold in § 810.105(b)(2)(i), while for workers under § 810.105(b)(2)(ii), only hours worked in direct production are included. This calculation does not include any hours (whether in direct production or otherwise) for workers described in § 810.130 (*e.g.,* executives, management, research and development workers, certain engineers, and other personnel).

Once the above calculations are performed (for the appropriate time period as set forth below), the average hourly base wage rate is calculated by dividing the total base wages by the total number of hours worked in direct production.

Neither the USMCA, its implementing legislation, nor the Uniform Regulations address how to calculate the hourly base wage rate ''average.'' The Department has chosen to calculate this average by dividing workers' total base wages for direct production work by their total number of hours worked in direct production, rather than by calculating the hourly base wage rate for each worker, and then averaging those individual rates.[7] The Department believes that its chosen approach is more consistent with the Department counting hours worked in direct production toward the average hourly base wage rate. In contrast, the alternative approach is less consistent because it uses a single wage rate for each worker, including for workers who receive that rate in part for performing work that is not direct production work. The chosen approach may also strengthen the US$16 per hour standard because computing the average using the total number of hours worked in direct production may prevent an upward skewing of the average that could occur under the alternative method, under which highly paid workers working relatively few hours in direct production would have equal computational weight to lower-paid workers who work all or virtually all hours in direct production. Finally, as addressed in more detail in the discussion of § 810.120, by dividing by the total number of hours workers spend performing direct production work, the Department's chosen approach allows employers to appropriately weight the wages of full- and part-time workers, without having to apply any special rules or computations for part-time workers. This uniform approach decreases administrative complexity and promotes efficiency.

Subsection 810.105(c) provides that a producer must include all hours worked in direct production at a plant or facility (other than by workers described in § 810.130), and the pay for such hours, when calculating the average hourly base wage rate for that plant or facility. This is consistent with the Article 7.3 of the Automotive Appendix, which provides that the average hourly base wage rate at a ''vehicle assembly plant or facility'' must be at least US$16 per hour for the parts or materials produced in that facility and, if the producer elects, labor costs in vehicle assembly at that facility count towards the high-wage material and manufacturing expenditures. Automotive Appendix, Article 7.3(a). Additionally, where a worker is paid by a third party (such as a temporary employment agency), only the wages received by the worker (and deductions that are for the worker's benefit and are reasonable, as described in § 810.105(b)(1)(ii)) are included in the average hourly base wage rate calculation.

Subsection 810.105(d) provides the time period over which a producer can calculate the average hourly base wage rate. The time period options are taken from Article 7.5 of the Automotive Appendix, which permits calculating the LVC over any one of the following periods: (1) The previous fiscal year of the producer; (2) the previous calendar year; (3) the quarter or month to date in which the vehicle is produced or exported; (4) the producer's fiscal year to date in which the vehicle is produced or exported; or (5) the calendar year to date in which the vehicle is produced or exported. In computing the average hourly base wage rate, the producer may use only base wages earned and hours worked in direct production (as set forth in subsection 810.105(b)(2)) during the selected time period. Thus, for example, if in 2022 a producer elects to calculate

[7] These approaches can yield different results. For example, assume Worker A earned $800 in base wages for 40 hours of direct production work and Worker B earned $200 in base wages for 20 hours of direct production work. Under the chosen approach, a producer would compute the average by dividing the total base wages ($1,000) by the total hour worked in direct production (60), producing an average hourly base wage rate of $16.67 (which satisfies the US$16 per hour LVC threshold). Under the alternative approach, the producer would average the hourly rate for each worker ($20 for Worker A and $10 for Worker B), resulting in an average hourly base wage rate of $15 per hour, which is less than the LVC threshold. The outcome could change (with the chosen approach resulting in a lower rate than the alternative approach) depending on the facts in a particular case. How to compute the average is distinct from determining what pay to include in the hourly base wage rate (under § 810.105(b)(1)) and what work hours to include when calculating the average hourly base wage rate (as discussed in § 810.105(b)(2)).

the average hourly base wage rate using the previous calendar year (under § 810.105(d)(2)), its calculations would encompass hourly base wage rates for hours worked in direct production from January 1, 2021 through December 31, 2021.

Section 810.110 Examples of Direct Production Work

Section 810.110 provides a non-exhaustive list of examples of types of work that constitute direct production work for purposes of calculating the average hourly base wage rate. The Department includes these examples to help producers understand which types of work to include when properly calculating the average hourly base wage rate. These examples are consistent with the USMCA, as they describe types of work performed by ''employees directly involved in . . . production[.]'' Automotive Appendix, Article 7.3 n.77.

Consistent with the Uniform Regulations, subsection (a) explains that direct production work includes production of vehicles and parts, including both manufacture and assembly, as well as the operation or maintenance of equipment used in the production of vehicles and parts. Direct production work is not specific to a single location in the plant or facility; it may take place on a production line, at a workstation, on the shop floor, or in another production area. As to specific tasks, direct production work includes material handling of vehicles or parts; inspections of vehicles or parts, including inspections that are normally categorized as quality control, and for heavy trucks, pre-sale inspections carried out at the place where the vehicle is produced; on-the-job training regarding the execution of a specific production task; and maintaining and ensuring the operation of the production line or production area and the operation of tools and equipment used in the production of vehicles or parts, including the cleaning of the line or production area and the places around it. Direct production work may be performed by skilled tradespeople, such as process or production engineers, mechanics, technicians, and other employees, responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the direct production of vehicles or parts. Consistent with Article 7.3 of the Automotive Appendix and the Uniform Regulations, direct production work does not include research and development work or engineering work unrelated to maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts.

Subsection (b) explains that except for workers described in § 810.130, time spent, for example, by line supervisors and team leads, engaged in providing on-the-job training regarding the execution of a specific production task or relieving a worker in the performance of direct production duties is direct production work. On-the-job training generally involves direct production work and often occurs on the production line, at a workstation, on the shop floor, or in another production area. Such activities would include, for example, a line supervisor staying at a workstation with a worker to guide the worker through how to perform a task the worker has been assigned. Relief work also constitutes hours worked in direct production because in such instances the supervisor is performing the same direct production work performed by the relieved worker, and which would normally be included in that worker's hours worked in direct production. However, time spent managing workers, including supervising workers performing direct production work, is not itself direct production work, and therefore is not included in the average hourly base wage rate calculation.

The Department invites comments from stakeholders concerning what, if any, additional examples of direct production work should be included in the final rule.

Section 810.115 Paid Meal Time and Paid Break Time

Section 810.115 explains how to treat paid meal and break times when calculating the average hourly base wage rate. Such time counts as direct production work for purposes of determining (under § 810.105(b)(2)(i)) whether at least 85 percent of a worker's total work hours—a figure that includes paid meal time and paid break time for purposes of the USMCA—are hours worked in direct production. However, if less than 85 percent of a worker's total work hours are worked in direct production, paid meal time and paid break time are not considered hours worked in direct production when applying § 810.105(b)(2)(ii). Unpaid meal time and unpaid break time are never included in the average hourly base wage rate calculation.

Counting paid meal and break time toward the 85 percent threshold is a fair approach that will simplify the average hourly base wage rate calculation and ease burdens on producers. In contrast, a simple example illustrates how excluding such time from the 85 percent threshold could undermine the threshold and thus the USMCA's objectives. A full-time worker who works 8 hours per day, 5 days per week, during the producer's certification period must spend at least 34 hours per week (*i.e.,* 85 percent of 40 hours) performing direct production work to meet the 85 percent threshold. If such a worker received a 30-minute paid meal break and two 15-minute paid rest breaks each work day (totaling 5 hours per week), and such hours did not count toward the 85 percent threshold (but were considered part of total hours worked), the worker would not meet the 85 percent threshold if the worker spent more than 1 additional hour per week performing work that is not direct production work. This outcome could result in more workers who spend virtually all of their time performing direct production work nonetheless not meeting the 85 percent threshold. Such a result could undermine the interests in administrative efficiency underlying the 85 percent threshold, and create disincentives to providing workers paid meal and break times—time which may help to promote worker efficiency. Given such consequences, the Department believes its treatment of paid meal time and paid break time is consistent with the Uniform Regulations.

Section 810.120 Part-Time, Temporary, Seasonal, and Contract Workers

Subsection 810.120(a) provides that hours of part-time workers, temporary workers, and seasonal workers are treated the same as hours of full-time workers for purposes of calculating the average hourly base wage rate. The Department understands that such workers are common in the automobile industry, and sees no basis in the USMCA or the Act for treating such workers differently than permanent full-time workers when calculating the average hourly base wage rate. What matters for USMCA purposes is the worker's base rate of pay and the type of work the worker performs, not the timing of the worker's work or whether it technically is provided on a part-time or full-time basis. The Department's equal treatment of all workers is reflected in the average hourly base wage rate calculation, which appropriately weights the pay and hours worked for all workers by simply dividing the total base wages paid for all hours worked in direct production by the total number of hours worked in direct production. A different approach (such as granting producers discretion to exclude these workers from its

calculations under certain circumstances) could skew the calculations so that they do not accurately represent the actual average hourly base wage rates for time workers spent performing direct production work. Without accurate average hourly base wage rates, the Department could not effectively verify whether producers have complied with the high-wage components of the LVC requirements, thereby undermining the purpose of the USMCA and the Act.

Subsection 810.120(b) provides that workers' hours are included in the average hourly base wage rate calculation even if the workers do not have an employment relationship with the producer. This could include, for example, contract workers and workers employed by staffing agencies who perform direct production work. This approach is consistent with the treaty text, which emphasizes whether employees are directly involved in production work, *see* Automotive Appendix, Article 7.3 n.77, not whether they are directly employed by the producer or another entity. In addition, § 810.120(b) promotes transparency by helping ensure that all direct production work is included in the average hourly base wage rate calculation, regardless of how a working relationship is structured. As with the workers addressed in § 810.120(a), the inclusion of these workers' hours will result in more representative calculations that more precisely reflect the actual average hourly base wage rates, which will allow the Department to accurately verify whether producers have complied with the high-wage components of the LVC requirements.

Section 810.125 Workers Paid on a Non-Hourly Basis

Section 810.125 explains how to factor the wages of workers paid on a non-hourly basis into the average hourly base wage rate calculation. While the USMCA refers to the average hourly base wage rate, the Department recognizes that not all workers who perform direct production work are paid on an hourly basis. Given this reality, and to help ensure that the average hourly base wage rate calculation does not exclude workers who perform direct production work based solely on whether they are paid hourly, the Department interprets the USMCA as permitting workers paid on a basis other than hourly to be included in the average hourly base wage rate calculation. To do otherwise would in effect force a producer to convert to hourly status any worker it wants to include in its average hourly wage rate calculations. This promotes neither the USMCA's purpose nor efficient business practices.

Accordingly, if any worker performing direct production work is compensated by a method other than hourly, such as a salary, piece-rate, or day-rate basis, the worker's hourly base wage rate shall be calculated by converting the salary, piece-rate, or day-rate to an hourly equivalent. The Department will follow standard WHD practices in converting non-hourly wages to an hourly equivalent. WHD regularly does such conversions in the Fair Labor Standards Act (''FLSA'') context and for several other statutes it enforces. After performing the conversion, the hourly equivalent rate is then multiplied by the worker's number of hours worked in direct production for purposes of calculating the average hourly base wage rate.

Subsection 810.125(b) provides examples of specific types of conversions using standard WHD practices where a salary, piece-rate, or day-rate wage is paid to a worker on a (1) weekly or bi-weekly, (2) semi-monthly, or (3) a monthly basis.

Section 810.130 Executive, Management, Research and Development, Engineering, and Other Personnel

Section 810.130 provides a list of the types of workers whose hours worked are never included in the average hourly base wage rate calculation. Subsection (a) excludes from the average hourly base wage rate any hours worked by executive or management staff who generally have the authority to make final decisions to hire, fire, promote, transfer, and discipline employees. This regulation, which largely tracks the Uniform Regulations and is consistent with its intent, is meant to provide helpful guidance to the regulated community on the duties indicative of executive or management staff. It is not intended to condone including in the average hourly base wage rate direct production work hours of executive or management staff who, for example, perform all but one of the enumerated duties, or make decisions on all of the listed duties, but not ''final decisions'' on one of the listed duties. The Department will closely scrutinize the designation of employees as not falling within this category when conducting verifications in order to ensure compliance with the USMCA's position that the average hourly base wage rate exclude the ''salaries of management[.]'' *See* Automotive Appendix, Article 7, n.77.

Subsection 810.130(b) excludes from the average hourly base wage rate any hours worked by workers engaged in research and development. Subsection 810.130(c) excludes engineers, mechanics, or technicians, if such personnel are not responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts. These provisions are consistent with the Uniform Regulations, which provide that direct production work does not include ''any work by workers engaged in research and development, or work by engineering or other personnel that are not responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts.'' Uniform Regulations, Part VI, Sec. 12, ¶ 1. The Department interprets ''or other personnel'' in the Uniform Regulations to encompass mechanics or technicians—skilled workers who, under the Uniform Regulations, perform direct production work when they are ''responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts,'' but who do not perform direct production work, and thus cannot be included in the average hourly base wage rate calculation, when they do not meet that requirement. Uniform Regulations, Part VI, Sec. 12, ¶ 1. A contrary interpretation of ''other personnel'' that, for example, encompassed all other types of workers, could unduly exclude direct production work from the average hourly base wage rate calculation in a manner that the Department believes is contrary to the USMCA and the intent underlying the Uniform Regulations.

Section 810.135 Interns, Students, and Trainees

Section 810.135 provides that hours worked by an intern, student, or trainee who does not have an express or implied compensation agreement with the employer are not considered hours worked in direct production. Accordingly, the hours worked by such workers are not included in the average hourly base wage rate calculation. Conversely, if an intern, student, or trainee has an express or implied compensation agreement with the employer, the intern, student, or trainee's hours and pay are treated like any other worker in the average hourly base wage rate calculation, as described in § 810.105. This approach is consistent with the Uniform Regulations, which address interns, students, and trainees in the average

base hourly wage rate and direct production work definitions. *See* Uniform Regulations, Part VI, Sec. 12, ¶ 1.

Section 810.140 High-Wage Transportation or Related Costs for Shipping a High-Wage Part or Material

Section 810.140 provides that a producer may include in its high-wage material and manufacturing costs high-wage transportation or related costs for shipping a high-wage part or material within the USMCA Countries, if these high-wage transportation or related costs have not otherwise already been included in the annual purchase value calculations. This section tracks the Automotive Appendix, Article 7.3 n.75, and properly credits a producer who uses high-wage labor to perform transportation and shipping work. As defined and described in more detail in the Uniform Regulations, ''high-wage transportation or related costs for shipping'' refers to the costs that a producer incurs on transportation, logistics, or material handling services where the relevant service provider paid an average hourly base wage rate of at least US$16 per hour to the provider's direct production workers performing these services. For purposes of this section, such workers include, for example, drivers and loaders performing the transportation, logistics, or material handling of a part or component. The Department may verify the hourly base wage rate for such workers by examining the transportation or shipping providers' contracts, including collective bargaining agreements entered into by the transportation or shipping company, and other indications of the wages paid to these workers.

Section 810.145 Currency Exchange

Section 810.145 explains that the high-wage component of material and manufacturing expenditures (and assembly expenditures under § 810.300) is expressed in U.S. dollars—US$16 per hour. Pursuant to the USMCA and its implementing statute, the Department may review certifications and conduct verifications of plants or facilities in Mexico and Canada that pay wages in the Mexican peso or Canadian dollar. Accordingly, the Department may need to review average hourly base wage rate calculations of producers based on wages paid in the respective domestic currencies. In reviewing those calculations, the Department will follow the rules governing currency exchange set forth in the Uniform Regulations, *e.g.,* Uniform Regulations, Part I, Sec. 2, ¶ 1; Part IV, Sec. 12, ¶ 1, and regulations and/or guidance issued by the Department of the Treasury and/or CBP.

Section 810.150 Adjustment of the Average Hourly Base Wage Rate

This section provides that in the event the USMCA Countries agree to adjust the average hourly base wage rate from US$16 per hour, the Department's regulations will continue to apply and the Department will use the new average hourly base wage rate. A change in this dollar amount does not affect the principles set forth in the Department's regulations, and so continuing to apply these regulations is appropriate. This section will ensure continuity and avoid the misimpression that a change to the average hourly base wage rate would require the Department to promulgate new regulations. In addition, to ensure that the regulated community is aware of the change, WHD will publish a notice in the **Federal Register** alerting the public of the new dollar amount of the average hourly base wage rate requirement.

Subpart C—Calculating the High-Wage Technology Expenditures Credit

Section 810.200 High-Wage Technology Expenditures Credit

This section explains how to calculate the second high-wage component of the LVC requirements, the high-wage technology expenditures credit. Article 7.3 of the Automotive Appendix provides that a producer is entitled to a high-wage technology expenditures credit equal to ''the annual vehicle producer expenditures in North America on wages for research and development (''R&D'') or information technology (''IT'') as a percentage of total annual vehicle producer expenditures on production wages in North America.'' As explained in this section, a producer may receive a 10 percent credit towards its total LVC requirement by demonstrating that the sum of its annual expenditures in North America on wages for R&D and IT is equal to or greater than 10 percent of its annual expenditures on production wages in North America. If a producer's annual expenditures in North America on wages for R&D and IT are less than 10 percent of the producer's annual expenditures in North America on production wages, then the producer is eligible for a credit equal to the actual percentage of the producer's annual expenditures in North America on wages for R&D and IT as a percentage of its total annual expenditures in North America on production wages. In other words, the high-wage technology expenditures credit is calculated as follows, with a maximum allowable credit of 10 percent:

$$\text{High-wage technology expenditures credit} = \frac{\text{Total annual expenditures in North America on wages for R\&D + IT}}{\text{Total annual expenditures in North America on production wages}} \times 100$$

Consistent with the USMCA, and as described in more detail in the Uniform Regulations, for purposes of the calculation, ''annual expenditures in North America on wages for R&D'' means total annual corporate spending in North America on wages for research and development, including prototype development, design, engineering, testing, or certifying operations. *See* Automotive Appendix, Article 7.3, n. 79; *see also* Uniform Regulations, Part VI, Sec. 12, ¶ 1. Likewise, ''annual expenditures in North America on wages for IT'' means total annual corporate spending in North America on wages for information technology, including software development, technology integration, vehicle communications, and information technology support operations. *See* Automotive Appendix, Article 7.3, n. 80. The Department invites comment on the types of R&D and IT work performed for automotive producers, including how often such workers perform other types of work in addition to their R&D and IT duties. Similarly, consistent with the USMCA, ''annual expenditures in North America on production wages'' means total annual corporate spending on wages for production of passenger vehicles, light trucks, and heavy trucks in North America. *See* Automotive Appendix, Article 7.

The Department interprets the term ''wages'' for purposes of the high-wage technology expenditures credit as meaning all wages paid to relevant

workers, including bonuses, premium payments, incentive pay, and overtime premiums. ''Wage'' in this context is distinct from the ''hourly base wage rate'' defined in § 810.105(b)(1), as the treaty language addressing the high-wage technology expenditures credit refers to ''wages'' broadly as opposed to the narrower ''base wages'' used for calculating the high-wage material and manufacturing expenditures component and the high-wage assembly expenditures credit. Thus, for purposes of calculating the numerator in the above formula, producers must total expenditures for all wages paid to workers in North America for the research and development and information technology work described above. Similarly, for purposes of calculating the denominator in the above formula, producers must total expenditures for all wages paid to workers in North America who perform direct production work. Producers often keep this data regarding total expenditures on wages in the normal course of business, and thus this interpretation of ''wages'' should provide administrative efficiency for producers.

Subpart D—Calculating the High-Wage Assembly Expenditures Credit

Section 810.300 High-Wage Assembly Expenditures Credit

This section describes the requirements for calculating the high-wage assembly expenditures credit, the third high-wage component of the LVC requirements. Consistent with Article 7 of the Automotive Appendix, § 810.300(a) explains that a producer may receive a credit of five percent towards the total LVC requirement if it demonstrates that it operates, or has a long term contract with, a qualified assembly plant. An assembly plant qualifies a producer for the high-wage assembly expenditures credit if it is a North American high-wage engine assembly plant, transmission assembly plant, or advanced battery assembly plant that meets certain minimum annual production capacity requirements. Five percent is the only possible assembly expenditures credit that producers may receive; producers may not receive a credit of less than five percent if they qualify for the high-wage assembly expenditures credit and may not receive a credit of greater than five percent if they identify more than one qualified assembly plant.

Subsections 810.300(a)(1)–(3) explain the three types of assembly plants that may qualify a producer for the high-wage assembly expenditures credit. Qualified assembly plants may be engine, transmission, or advanced battery assembly plants, must be ''high-wage,'' and must meet certain levels of minimum annual production capacities of originating parts. As detailed in § 810.300(c), these minimum annual production capacity levels are set forth in Article 7 of the Automotive Appendix and in the Uniform Regulations. The required minimum annual production capacity levels are not included in this section because they are outside of the Department's authority and are instead within CBP's purview. Thus, producers should consult the Uniform Regulations and CBP guidance to ensure that relevant assembly plants meet the required minimum annual production capacity levels required for the producer to qualify for the high-wage assembly expenditures credit.

Subsection 810.300(b) further explains that in order to be considered ''high-wage'' for purposes of the high-wage assembly expenditures credit, an assembly plant must have an average hourly base wage rate of at least US$16 per hour for the entire plant. This requirement is consistent with Article 7 of the Automotive Appendix, which requires an assembly plant to have an average production wage of at least US$16 per hour to qualify for the high-wage assembly expenditures credit. To ensure consistency across calculations for the LVC requirements, the average production wage for the high-wage assembly expenditures credit is determined by calculating the average hourly base wage rate in the same manner as for the high-wage material and manufacturing expenditures credit, as detailed in § 810.105.

Subsection 810.300(d) clarifies that the definition of ''long term contract'' for purposes of this section is set forth in the Uniform Regulations. *See* Uniform Regulations, Part IV, Sec. 18, ¶¶ 12–14.

Subsection 810.300(e) allows a producer to use an assembly plant that it relied on to satisfy the high-wage material and manufacturing expenditures component of the LVC requirement to also qualify for the high-wage assembly expenditures credit if that assembly plant meets the requirements of § 810.300(a). The Department recognizes that an assembly plant used by a producer to meet the high-wage material and manufacturing expenditures component could also be a qualified plant for purposes of the high-wage assembly expenditures component. Therefore, this section permits producers to use the same plant for both high-wage components if all requirements are met.

Subpart E—Certification Provisions

Section 810.400 Scope and Purpose of This Subpart

In order to receive preferential tariff treatment under the Act, a producer must certify that its production of covered vehicles meets the LVC requirements, including the high-wage components of the LVC requirements that the Department administers. *See* 19 U.S.C. 4532(c)(1)(A). The Secretary, in consultation with CBP, must ensure that the producer's certification submitted to CBP does not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(1)(B)(i). Consistent with the Act, the Department's certification role is limited to reviewing the high-wage components of the LVC certification for omissions or errors. All other certification matters are outside of the Secretary's purview, and are addressed in the Uniform Regulations and regulations and/or guidance issued by CBP or other federal agencies.

Section 810.405 Certification

Consistent with the requirements of the Act, and to aid the Department in fulfilling its statutory mandate, this section lists the information submitted by producers to CBP that WHD will review for omissions or errors. The certification information described in this section that WHD will review relates to the high-wage components of the LVC requirements that the Department administers.

Under subsection 810.405(a)(1), WHD will review the certifying vehicle producer's name, corporate address, Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, and a point of contact. This information will provide context for the certification and help streamline the verification process.

Under subsection 810.405(a)(2), WHD will review the vehicle class, model line, or other relevant category the motor vehicles covered by the certification. The producer need not provide a detailed description of the vehicles, but need only provide

sufficient information to enable WHD to distinguish other certifications filed by the same producer. This information will enable WHD to review certifications more efficiently by eliminating potentially duplicative submissions.

Under subsection 810.405(a)(3), WHD will review the time period the producer is using for its LVC calculations. The time period options are taken from Article 7 of the Automotive Appendix, which permits calculating the LVC over any one of the following periods: (1) The previous fiscal year of the producer; (2) the previous calendar year; (3) the quarter or month to date in which the vehicle is produced or exported; (4) the producer's fiscal year to date in which the vehicle is produced or exported; or (5) the calendar year to date in which the vehicle is produced or exported. The period a producer selects will be the period its LVC certification is valid. *See* 19 U.S.C. 4532(c)(1)(B)(ii). WHD must know the date range the producer used to perform its calculations in order to ensure that the high-wage components of the certification are properly filed for a given import, and to review the relevant records in the event of a verification.

Under subsection 810.405(a)(4), WHD will review the name, address, and Federal Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number used by CBP, for each plant or facility the producer of the covered vehicle is relying on to meet the high-wage material and manufacturing expenditures component of the LVC requirements. WHD will use this information to learn what plants and facilities the producer is relying on to meet the LVC requirements. In addition, this information will streamline the verification process if WHD needs to contact a plant or facility during a verification.

Under subsection 810.405(a)(5), WHD will review the producer's affirmative statement that the average hourly base wage rate meets or exceeds US$16 per hour for each plant or facility identified in § 810.405(a)(4). Including this information in the certification form will assist WHD in identifying potential errors in the producer's determination that it may use a particular plant or facility to meet the high-wage components of the LVC requirements, and will streamline the verification process.

If the producer is using high-wage transportation or related costs to meet the high-wage material and manufacturing expenditures component, under § 810.405(a)(6) WHD will review the producer's affirmative statement that indicates such use, and review the company name and other identifying information for each company the producer used to calculate its high-wage transportation or related costs. This information will allow WHD to identify the transportation companies that the producer is using so that, in the event of a verification, WHD can confirm the companies' average hourly base wage rates.

If the producer is using the high-wage technology expenditures credit to meet the LVC requirements, under § 810.405(a)(7) WHD will review the producer's affirmative statement that indicates such use, and the percentage the producer is claiming as a credit towards the total LVC requirement. Documenting the percentage the producer is claiming as a high-wage technology expenditures credit as part of the certification will demonstrate that the producer has performed this calculation as required, ensure that producers recognize that a record of qualifying expenditures must be maintained in connection with this certification, and streamline the verification process.

If the producer is using the high-wage assembly expenditures credit to meet the LVC requirements, under § 810.405(a)(8) WHD will review the producer's affirmative statement that indicates such use, and the plant name and other identifying information for the assembly plant the producer used to qualify for the high-wage assembly expenditures credit. Under this subsection, WHD will also review the producer's affirmative statement that the average hourly base wage rate meets or exceeds US$16 per hour for the assembly plant identified in the certification. This information will assist WHD in identifying potential errors or omissions in the producer's certification and will streamline the verification process.

Subsection 810.405(b) requires a producer of the covered vehicle to ensure that records are kept of information to support its compliance with the high-wage components of the LVC requirements, including the calculations submitted under §§ 810.405(a)(5), (a)(7), and (a)(8)(ii). This subsection is consistent with the implementing statute. *See* 19 U.S.C. 4532(c)(1)(A)(ii). Such information will generally be in records that producers must ensure are kept under the recordkeeping requirements set forth at § 810.600, and should not be submitted as part of the certification. This subsection further explains that producers are responsible for ensuring that records are provided to the Department upon request, as described in § 810.600(c), but that these records may be physically maintained by a supplier or contractor and that the Department will accept records directly from a supplier or contractor if, for example, the producer has contracted for such an arrangement. As discussed in more detail later in this preamble, the Department may request this supporting information when conducting a verification to determine whether a producer met the high-wage components of the LVC requirements.

Subsection 810.405(c) explains that requirements in subsection 810.405(a) apply to all producers of covered vehicles whether or not they are subject to the alternative staging regime. While the LVC percentage benchmarks change for producers subject to the alternative staging regime period, the high-wage components of the LVC requirements that the Department verifies do not change. Specifically, the US$16 per hour requirement (for high-wage material and manufacturing expenditures and assembly expenditures) and the wage calculation for high-wage technology expenditures are fixed. Accordingly, producers subject, and not subject, to the alternative staging regime will submit, and WHD will review, the same information described in § 810.405. This uniform approach decreases regulatory complexity and will simplify and help expedite the Department's review of producer certifications.

Section 810.410 Administrator's Review for Omissions or Errors

The Act requires the Secretary, in consultation with CBP, to ensure that each producer's certification does not contain omissions or errors before the certification is considered properly filed. *See* 19 U.S.C. 4532(c)(1)(B)(i). The Administrator will review each certification for omissions or errors relating to the high-wage components of the LVC requirements. An omission would include, for example, the producer failing to include with its certification any portion of the information listed in § 810.405(a). An error would include, for example, a certification based on the wrong type of information (such as a time period not

listed in § 810.405(a)(3)). If the Administrator determines that the high-wage components of the certification contain no omissions or errors, WHD will notify CBP that the high-wage components of the certification have been properly filed.

USMCA Article 5.7 states that a USMCA Country ''shall not reject a certification of origin due to minor errors or discrepancies that do not create doubts concerning the correctness of the import documentation'' and provides importers ''not less than five working days to provide the customs administration [of the importing country] a corrected certification of origin.'' Consistent with this requirement and as described in § 810.410(b), if the Administrator determines that the certification contains an omission or error, WHD will notify CBP, and CBP will require the producer to submit a modified certification, or otherwise contest the Administrator's determination that the certification contains an omission or error. If the producer submits a modified certification in response to this notice, the Administrator will review the modified certification for omissions or errors.

If, upon review of the original or modified certification, the Administrator determines that it contains no omissions or errors, WHD will notify CBP that the high-wage components of the certification have been properly filed. If the producer does not successfully contest the notice of deficiency or submit a modified certification in response to the notice, or if the modified certification contains omissions or errors, WHD will notify CBP that the high-wage components of the certification have not been properly filed. The producer may appeal this decision pursuant to the regulation at § 810.700. Regardless of the Administrator's determination of filing status, however, CBP retains complete authority over all decisions concerning whether to grant or deny preferential tariff treatment based on certification information reviewed by WHD.

Subpart F—Verification of the Labor Value Content's Wage Components

Section 810.500 Scope and Purpose of This Subpart

This provision details the authority of the Secretary to participate in verifications of compliance with the USMCA's LVC requirements as well as the scope of the Secretary's role in those verifications. The Act gives the Secretary of the Treasury, in conjunction with the Secretary, authority to verify whether a covered vehicle complied with the LVC requirements set forth in the USMCA. *See* 19 U.S.C. 4532(e)(1). The purpose of the regulations in this subpart is to define the Secretary's role in conducting these verifications and the process by which the Secretary will conduct these verifications. Specifically, the Secretary, through the Administrator, will verify compliance with the high-wage components of the LVC requirements. Verifications of other components of the LVC requirements are outside of the Secretary's purview and are described in the Uniform Regulations and regulations and guidance issued by CBP and/or the Department of the Treasury.

Section 810.505 Scope of Verification

Subsection 810.505(a) permits the Administrator, or the Administrator's designee, to verify, through investigation, whether a producer complied with the high-wage components of any part of the LVC requirements. The regulation explains that the producer is responsible for all aspects of compliance with the high-wage components of the LVC requirements at its plants and facilities as well as the plants and facilities of the suppliers and contractors listed in its certification. For example, notwithstanding any agreement between the producer and a supplier or contractor, as discussed in § 810.600(d), it is ultimately the responsibility of the producer to ensure that records are properly maintained and provided to the Department upon request. For the wage component of the high-wage material and manufacturing expenditures provision of the LVC requirements, the Administrator may verify whether the average hourly base wage rate in any plant or facility relied on by the producer in its certification meets the US$16 per hour requirement. If the producer's certification claims transportation or related costs for shipping as part of its high-wage material and manufacturing expenditures calculation, as detailed in § 810.405(a)(6), the Administrator may verify whether any transportation, logistics, or material handling provider relied on by the producer in its certification meets the US$16 per hour requirement. Verifications of other components of the material and manufacturing expenditures provision of the LVC requirements are conducted by CBP. The Administrator may also verify that the producer properly claimed a credit for high-wage technology expenditures, as explained in § 810.200. For verifications of the high-wage assembly expenditures provision of the LVC requirements, the Administrator may also verify whether an engine, transmission, or advanced battery assembly facility that a producer relied on in its certification has an average hourly base wage rate of at least US$16 per hour. Verifications of any other component of the high-wage assembly expenditures credit are conducted by CBP.

Subsection 810.505(b) provides the investigation methods the Administrator may use in the course of a verification. The Act grants the Secretary authority, which has been delegated to the Administrator, to examine, or cause to be examined, upon reasonable notice, any record (including any statement, declaration, document, or electronically generated or machine-readable data) described in the Administrator's notice with reasonable specificity. *See* 19 U.S.C. 4532(e)(4)(A)(i). The Act states that the Secretary shall assist the Secretary of the Treasury to carry out these actions. 19 U.S.C. 4532(e)(4)(A). The Department interprets this provision to mean that the Secretary of the Treasury, through CBP, has the primary role of conducting verifications of the LVC requirements, and that the Secretary will assist CBP by using these methods to verify whether the production of covered vehicles meets the high-wage components of the LVC requirements.

The Administrator may examine these records in person as part of a verification visit, or may request the producer to provide them electronically or by mail. Article 5.9, paragraph 7 of the USMCA explains that for verifications, each USMCA Country must provide producers at least 30 days to respond to written requests for information and 30 days to respond to requests to open facilities for a verification visit. Accordingly, the Department interprets the term ''reasonable notice'' as used in the Act to mean 30 days' notice. The Act grants the Secretary authority to request information from any officer, employee, or agent of a producer of automotive goods, as necessary, that may be relevant with respect to whether the production of covered vehicles meets the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(A)(ii). As the statute gives the Secretary broad authority to request information that may be relevant, the Department interprets the term ''employee'' in this context to include any worker at a plant or facility relied on in the producer's certification, regardless of the worker's employment relationship with the producer. This encompasses, for example, workers

employed by a staffing agency. To help ensure receipt of accurate information, the information may be obtained under oath, at the discretion of the Administrator.

Subsection 810.505(c) describes the specific content of the records the Administrator is authorized to request and examine. As the Administrator's role in verifications is to verify the high-wage components of the LVC requirements, the Administrator may request and examine records relating to wages, hours, job responsibilities, or any other information related to the producer's certification that it meets the high-wage components of the LVC requirements. The specific types of records that the Administrator may request are those that producers are required to maintain under this rule's recordkeeping requirements, *see* § 810.600, and will often include worker time records, payroll records, and information that the producer is required (under 19 U.S.C. 1508(b)(4)) to keep on record to support its certification calculations. The Administrator will review the provided records to verify that the high-wage components of the producer's LVC calculations are correct.

Subsection 810.505(d) explains that the Administrator will conduct its verification consistent with the timelines in Article 5.9 of the USMCA. Article 5.9 details the requirements for verification of all the rules of origin, of which the LVC requirements make up just one. It provides timelines for requesting verification visits or information from producers, producers' responses to those requests, completion of the verification, and issuance of a written determination. Most of the timelines apply to actions within the purview of CBP, *e.g.,* issuance of a written determination. However, the Administrator will conduct verifications consistent with these timelines to the extent they are applicable to the Administrator's verification. For example, paragraph 10 of Article 5.9 pertains to requests from producers for postponement of a verification visit. Consistent with paragraph 10, the Administrator (acting through, and subject to approval by, CBP) will allow a producer, on a single occasion, within 15 days of receipt of a notification requesting a verification visit, to request the postponement of the proposed verification visit for a period not exceeding 30 days from the proposed date of the visit.

Section 810.510 Notice to a Producer That a Verification of Compliance With Labor Value Content Requirements Has Been Initiated

This section provides that CBP will notify a producer that a verification of LVC compliance has been initiated, regardless of which component(s) of the LVC requirements are the subject of that verification. CBP makes determinations regarding grants or denials of preferential tariff treatment and thus is responsible for notifying producers if a verification of LVC compliance that may implicate such preferential tariff treatment has been initiated.

CBP is responsible for notifying a producer that a verification of LVC compliance has been initiated, both for verifications that CBP initiates, and for verifications the Administrator has initiated with CBP. The Administrator's role in initiating verifications with CBP is limited to verifications concerning all aspects of the high-wage components of a producer's LVC certification and supporting records and calculations. CBP may initiate and conduct verifications of the components of a producer's LVC certification and may ask the Administrator to conduct a verification of the high-wage components. Regardless of how the verification is initiated, CBP will provide notice to the producer.

Section 810.515 Conduct of Verifications

This section explains how the Administrator will conduct verification visits, where appropriate. Article 5.9 of the USMCA authorizes an importing USMCA Country to use a variety of techniques to conduct verifications, including verification visits to the premises of the producer of the good in order to request documents and other information, and observe the production process and the related facilities. As the Administrator is authorized to conduct verifications, the Administrator may conduct verification visits. During these visits, the Administrator may request and inspect documents, interview workers or others on the premises, inspect the facility, and gather any other information as the Administrator deems necessary to the verification. As the Administrator can verify compliance only with a portion of the LVC requirements, the Administrator will coordinate with CBP and other federal agencies in the course of conducting any verifications, as appropriate. The Administrator also retains discretion to involve other federal agencies, as well as agencies within the Department such as the Bureau of International Labor Affairs, in its verifications, as appropriate.

Section 810.520 Confidentiality

This section provides that the Administrator will protect the confidentiality of any person who provides information to the Department in confidence in the course of a verification under this subpart to the full extent possible under existing law. This includes, for example, invoking the government informant's privilege where appropriate. The intent of this section is to provide assurances of confidentiality, to the extent possible, to any person who provides information to the Department, in the hope that such assurances encourage those with information relevant to the Department's investigations or verifications to provide information to, or speak openly with, the Department. Retaliation against any person who provides such information is prohibited under the Act's whistleblower provisions, as implemented in § 810.800.

Section 810.525 Notice Provided to CBP Regarding the Administrator's Findings

This section provides that upon completion of a verification, the Administrator will provide CBP with the verification findings and a written analysis explaining the basis for those findings. Article 5.9, paragraph 14, of the USMCA requires the importing USMCA Country to provide the producer subject to a verification with a written determination of whether the goods at issue qualify for preferential tariff treatment, including the findings of facts and legal basis for that determination. As discussed *supra,* CBP makes all determinations regarding grants or denials of preferential tariff treatment. Accordingly, CBP will provide this written determination to the producer at the conclusion of a verification. If, however, the Administrator participated in a verification because it involved the verification of one or more of the high-wage components of the LVC requirements, the Administrator will provide CBP with the verification findings and an analysis explaining the basis of those findings so that CBP can include relevant information in the written determination ultimately provided to the producer.

Section 810.530 Verification of Labor Value Content Compliance for Producers Subject to Alternative Staging Regime

Verification procedures outlined in this subpart apply to producers as soon as the USMCA enters into force, whether or not the producers are subject to the alternative staging regime. The Act provides that the Administrator may conduct verifications of compliance with the LVC requirements, regardless of whether the producer is subject to the alternative stage regime. *See* 19 U.S.C. 4532(d)–(e). The Administrator's role in administering the LVC requirements does not change if a producer is subject to the alternative staging regime. Accordingly, verifications conducted by the Administrator are conducted in the same manner when a producer is subject to the alternative staging regime.

Subpart G—Recordkeeping Requirements

Section 810.600 Recordkeeping Requirements

Article 5.8 of the USMCA requires USMCA Countries to require importers, exporters, and producers to maintain records necessary to demonstrate the validity of certifications of origin. These records include those relating to the production of goods, including covered vehicles. Article 5.9 of the USMCA authorizes USMCA Countries to request such documentation during the verification process. The Act requires importers who claim preferential tariff treatment under the USMCA for goods imported into the United States from a USMCA Country, and vehicle producers whose goods are the subject of a claim for preferential tariff treatment under the USMCA, to make, keep, and, pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection records and supporting documents related to the labor value content requirements. *See* 19 U.S.C. 1508(b)(4). The Act further grants the Secretary authority during the course of a verification to request any records relating to wages, hours, job responsibilities, or any other information in any plant or facility relied on by a producer of covered vehicles to demonstrate that the production of those vehicles meets the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(B). Pursuant to these authorities, this section of the rule details the recordkeeping obligations of importers, exporters, and producers of covered vehicles necessary to demonstrate compliance with the high-wage components of the LVC requirements.

Subsection 810.600(b) provides that although electronic records are generally preferred, as such records are easily generated, maintained, and made available for inspection, the records described in this section may be made and maintained in any form or format. However, pursuant to Article 5.8, paragraph 3 of the USMCA, the records must be in a form or format that allows the records to be promptly retrieved and printed or copied.

Consistent with the verification procedures set forth in Article 5.9 of the USMCA and 19 U.S.C. 4532(e), § 810.600(c) provides that the records described in this section must be made available to an authorized representative of the Department for inspection, copying, and transcription upon written request to the producer. The request will describe the records that are being sought, and the party receiving the request will have 30 days from the date of the written request to provide the requested records to the Department in an accessible format, unless the party has requested and obtained an extension of that time.

Consistent with Article 5.8 of the USMCA, § 810.600(d) provides that importers must ensure that the records described in § 810.600 are maintained for 5 years from the date of importation of any vehicle for which preferential tariff treatment was claimed, and exporters and producers must ensure that the records described in § 810.600 are maintained for 5 years from the date on which the certification of origin was completed. To the extent the producer relies in its certification on plants or facilities it does not operate, the plant or facility may maintain its records relevant to the producer's certification, provided the producer can ensure such records to support its certification are properly maintained and provided to the Department upon request within the 30-day timeframe provided for in § 810.600(c). The same obligation applies where a plant or facility, whether operated by the producer or another entity, uses contract workers, such as workers employed through a staffing agency, or where the producer counts high-wage transportation or related costs for shipping toward its LVC obligations. Thus, in such instances, the producer must either have or be able to produce (or have the contractor produce) upon request within the 30-day timeframe provided for in § 810.600(c) the records described in this section for such workers, if such records are relevant to the producer's certification. The Department will accept records directly from a supplier or contractor where, for example, the producer and supplier or contractor have contracted for such an approach.

Subsection 810.600(e) details the specific records that must be preserved and maintained to demonstrate compliance with the high-wage material and manufacturing expenditures component and eligibility for the high-wage assembly expenditures credit. These records are necessary for the Department to verify that wages for all hours worked in direct production have been appropriately included in the computation of the average hourly base wage rate, and to ensure that benefits, bonuses, premium payments, incentive pay, overtime premiums, or other similar payments have been properly excluded from that calculation. Moreover, to enable the Department to verify that a producer's average hourly base wage rate calculation is correct, the records described in this section must cover the entirety of the time period used by the producer to calculate the average hourly base wage rate for each plant or facility relied upon to meet the LVC requirements.

Subsection 810.600(e) provides that producers must maintain certain records for all workers who worked at any plant or facility relied upon by the producer to meet the high-wage material and manufacturing expenditures component or to qualify for the high-wage assembly expenditures credit and who are subject to the FLSA recordkeeping requirements under 29 CFR 516.2. If such workers are employed outside the United States, but if employed in the United States would be subject to the recordkeeping requirements under 29 CFR 516.2, the producer must also maintain the records detailed in this subsection for such workers. Since, due to recordkeeping obligations under the FLSA, plants and facilities in the United States generally already maintain records for most workers who work in direct production, the requirements in § 810.600(e) should impose little to no additional recordkeeping burden for those plants and facilities.

Producers must also maintain the records required under subsection 810.600(e) for workers in any USMCA Country who have performed direct production work during the relevant time period but who are exempt from the recordkeeping requirements of 29 CFR 516.2, if the producer relied on those workers in its computation of the average hourly base wage rate. Such workers include, for example, workers who are exempt from the FLSA's minimum wage and overtime requirements under 29 CFR part 541

and those workers who would be exempt if employed in the United States (*i.e.,* where the FLSA applies).

The specific records producers are required to maintain for the workers discussed above are outlined in §§ 810.600(e)(1)–(6). Subsection 810.600(e)(1) explains that these records must contain, for each worker, the full name (or identifying symbol or number if one is used in place of the worker's name on any time, work, or payroll records), job title, home address, and other available contact information. These records are needed for the Department to determine which workers should be interviewed during a verification to obtain information about hours worked in direct production, job duties, and pay. This information also enables the Department to locate for interviews workers who are no longer working at the plant or facility in question.

Subsection 810.600(e)(2) provides that producers must keep records of the total number of daily and weekly hours worked by each worker. Such records are necessary to help the Department determine whether all hours worked in direct production were correctly included in the computation of the hourly base wage rate by, for example, comparing workers' hours worked in direct production with their total hours worked in the same time period. This subsection also explains that if a worker has a fixed schedule, working the same shifts and the same number of hours each week, the producer may instead maintain a record of the worker's scheduled hours. However, if this recordkeeping method is used, there must be verification by some method each week that the worker did in fact work the scheduled hours, and, in the occasional workweeks when the worker does not work the scheduled hours, a record of the actual hours worked each day and in total for those workweeks.

Subsection 810.600(e)(3) requires producers to keep certain earnings records. These earnings records include payroll records showing the date wages were paid and the time period covered by such wage payments, each worker's hourly rate of pay and basis of pay (*e.g.,* hourly, salary, piece rate, day rate, etc.), total daily or weekly straight-time earnings, total premium pay for any overtime hours worked, total pay for the pay period, and any deductions taken from each worker's pay. To the extent that a worker's rate of pay or straight-time earnings include benefits, bonuses, premium payments, incentive pay, or other similar payments excluded from the hourly base wage rate, as defined in § 810.105(b)(1), the producer must keep records that clearly identify those payments and state the amount of such payments. This information is necessary for the Department to verify that each worker's hourly base wage rate was correctly calculated when computing the average hourly base wage rate for the relevant time period. For example, identifying the hourly rate and the basis of pay allows the Department to confirm that the hourly base wage rate has been correctly computed for workers who are paid on a salary, piece-rate, day-rate, or other basis. Identification of premiums, benefit payments, and other similar payments, such as incentive pay or bonuses, is necessary to ensure that such payments were not incorrectly included in the hourly base wage rate, while deductions must also be examined to ensure that the deductions were properly factored into the hourly base wage rate. WHD will apply the principles outlined in 29 CFR part 531 to determine whether a deduction may be included in the hourly base wage rate. For example, amounts deducted for board and lodging generally will be included in a worker's hourly base wage rate, while amounts deducted for tools and equipment will not.

Subsection 810.600(e)(4) provides that producers must keep records of any collective bargaining agreements, written agreements or memoranda, individual contracts, plans, trusts, employment contracts, or written memorandum summarizing oral agreements or understandings applicable to any workers who work in direct production. Such agreements help verify the average hourly base rate by showing the pay rates that have been agreed upon for such workers, as well as disclosing additional agreed-upon payments or benefits, so that the Department can confirm that such payments or benefits were not included in the computation of the average hourly base wage rate.

To ensure that the average hourly base wage rate has been calculated correctly for the high-wage material and manufacturing expenditures and the high-wage assembly expenditures components, § 810.600(e)(5) requires a record to be maintained of all hours worked in direct production, as defined at § 810.105(b)(2), by workers at any plant or facility used to meet the high-wage component of the LVC requirements during the relevant time period. This record must include each worker's name, type of direct production work performed, hours worked by each worker that constitute direct production work, the hourly base wage rate paid to each worker for the direct production hours worked, and the total wages paid to workers for those direct production hours worked. These records must distinguish hours worked in direct production from other hours worked, to the extent that workers perform both direct production work and work not in direct production during the relevant time period. However, if at least 85 percent of a worker's total work hours are hours worked in direct production, a record may be kept of total work hours during the time period used for certification purposes. In that case, the recordkeeping system must also record hours worked in direct production and hours spent not performing direct production work in weeks when both types of work are performed, must record the hours at the time the work is performed, and must ensure the hours worked in direct production are clearly ascertainable so that WHD can verify, if necessary, that the 85 percent threshold was in fact reached for such workers.

If a producer uses high-wage transportation or related costs for shipping a high-wage part or component in calculating the high-wage material and manufacturing costs, § 810.600(e)(6) requires maintenance of records demonstrating that the transportation, logistics, or material handling provider paid production workers performing the transportation of the part or component, such as drivers and loaders, an average hourly base wage rate of at least US$16. Such records might include, for example, the contracts with the transportation or shipping provider, collective bargaining agreements entered into by the transportation or shipping company, and other indications of the wages paid to these workers. This information is necessary to enable the Department to verify the accuracy of the producer's LVC calculations in those instances where transportation or related costs have been used to calculate the high-wage material and manufacturing expenditures.

Subsection 810.600(f) requires any producer claiming a credit for high-wage technology expenditures to maintain records demonstrating the wages paid by the producer for research and development or information technology work in North America, as well as the wages paid by the producer for production work in North America. The credit for high-wage technology expenditures is obtained through a comparison of expenditures on wages for research and development and information technology work in North America to expenditures on wages for production work in North America. Producers claiming this credit must therefore maintain a record of all wages

paid to workers who perform research and development and information technology work in North America, including the workers' names and the type of research and development or information technology work performed by each worker. Producers also must maintain a record of the total wages paid to workers who perform direct production work in North America, including the workers' names and the type of production work performed by each worker. Maintenance of records demonstrating this information is necessary for the Department to verify that the credit was calculated correctly.

The records listed in § 810.600(e) are not necessarily an exhaustive list of the records producers must keep. As explained in § 810.600(g), if a producer relied on any additional records not listed in §§ 810.600(e) or (f) to support its calculations demonstrating that it meets the high-wage components of the LVC requirements, then the producer must also maintain those additional records. This requirement is consistent with 19 U.S.C. 4532(c)(1)(a)(ii), which requires producers to have information on record to support the LVC calculations submitted in its certification.

Subsection 810.600(h) provides that nothing in § 810.600 shall excuse any producer with facilities in the United States from complying with any recordkeeping or reporting requirement imposed by any other federal, state, or local law, ordinance, regulation, or rule. This includes, but is not limited to, recordkeeping requirements under the FLSA, the Family and Medical Leave Act, and state wage and hour laws, as well as any recordkeeping requirements concerning other components of the LVC requirements as set forth in regulations issued by CBP or any other federal agency.

Subpart H—Administrative Review of the Department's Analysis and Findings

Section 810.700 Administrative Review Procedures

This section describes the procedures the Department will use to engage in an administrative review of its initial verification analysis conducted under subpart F. As set forth in 19 U.S.C. 4532(e)(6), a protest filed with CBP under 19 U.S.C. 1514 (the Tariff Act of 1930) may relate to a producer's eligibility for preferential tariff treatment of a covered vehicle. If such a protest involves the Department's analysis relating to the high-wage components of the LVC requirements, the Secretary must conduct an administrative review of the decision and provide the results of that review to CBP. *See* 19 U.S.C. 4532(e)(6)(A)(i)–(ii). The procedures outlined in this section describe how the Department will implement these requirements. In addition, and to promote simplicity and uniformity, the Department will follow these procedures when responding to a producer's appeal of a written notification under § 810.410(b) that the high-wage components of the producer's certification were not properly filed due to an omission or error.

Under § 810.700(a), consistent with 19 U.S.C. 4532(e)(6)(A)(i), upon being notified by CBP that a protest has been filed under 19 U.S.C. 1514 that relates to the Department's analysis of the high-wage components of the LVC requirements, the Department will conduct an administrative review of its initial analysis.

Subsection 810.700(b) provides that this administrative review will be conducted either by the Administrator or by an official designated to be the presiding official by the Administrator. During the proceedings described below, the presiding official will possess the full authority of the Administrator. The presiding official must be of higher rank than the official who issued the initial verification analysis under review. This tiered approach ensures a robust administrative review process, and is consistent with WHD's process for reviewing its investigative findings under several other existing statutory enforcement regimes. Under subsection 810.700(c), the presiding official has the discretion to refer disputed questions of fact to the Chief Administrative Law Judge for a recommended decision. The Chief Judge must then designate an Administrative Law Judge to hear the disputed questions under the Department's rules of practice and procedure at 29 CFR part 18. The Administrative Law Judge must issue a recommended decision within 120 days of when the Administrator referred the questions of fact to the Chief Administrative Law Judge, or longer with consent of the parties. Ultimately, the Administrative Law Judge will issue a recommended decision to the presiding official on the referred question(s), which the presiding official has the discretion to accept or reject in whole or in part. Relatedly, under § 810.700(d), the presiding official has discretion to consider any evidence he or she deems relevant to rendering a determination and may request additional information from the protestor or additional verification from WHD.

Subsections 810.700(c) and (d) are intended to provide the Administrator with the flexibility and additional resources needed for ruling on the difficult factual questions that administrative reviews may present. This approach is similar to a process the Department may use when enforcing section 14(c) of the FLSA (which concerns payment of subminimum wages to workers with disabilities), and will help ensure that issues raised by producers are fully and properly considered. This thorough review will also promote efficiency by increasing the likelihood of satisfactorily resolving a protest at the administrative level, thereby decreasing the need for review before the Court of International Trade. The presiding official retains sole discretion to determine whether to refer factual questions to an administrative law judge, request additional verification by WHD, or to take both or neither of these steps. Factors that may influence the presiding official's decision may include, for example, the complexity of the factual issues presented or whether the protest raises issues or factual questions that did not arise during the initial verification.

Under subsection 810.700(e), the Administrator will strive to issue a decision within one year from the date the Administrator receives notice of the protest from CBP, not including any time during which additional verification or collection of information is taking place. While there is no adverse consequence to the Department for failing to meet this goal, *see, e.g., Hitachi Home Electronics (America), Inc.* v. *U.S.,* 661 F.3d 1343 (Fed. Cir. 2011) (holding that Tariff Act did not provide a consequence for agency's failure to meet statutory deadline for government action), this timeframe comports with CBP's regulations, which state that CBP will review and act on a protest filed in accordance with 19 U.S.C. 1514 within two years from the date the protest was filed. *See* 19 CFR 174.21(a).

Under § 810.700(f), and consistent with 19 U.S.C. 4532(e)(6)(A)(ii), the Administrator will provide a copy of the Administrator's decision to CBP before the end of that time period.

Subpart I—Whistleblower Protections

Section 810.800 Prohibited Acts

Subpart I outlines anti-retaliation provisions provided for whistleblowers pursuant to 19 U.S.C. 4532(e)(5), which explicitly protects any person from retaliation for providing information relating to, or otherwise cooperating or seeking to cooperate with, a verification

of the LVC requirements, including a verification under subpart F. The Act provides that it is unlawful to ''intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against any person'' for such cooperation. 19 U.S.C. 4532(e)(5)(A). These protections are applicable to any person who engages in the protected activities, regardless of the person's employment status. Such protections are integral to effective verification of producers' compliance with the high-wage components of the LVC requirements, as verification of the average hourly base wage rate is dependent upon receiving accurate information from workers and others that they may not be willing to provide in the absence of such protections.

The Act authorizes the Secretary to ''take such actions under existing law, including imposing appropriate penalties and seeking appropriate injunctive relief, as may be necessary to ensure compliance with this subsection and as provided for in existing regulations.'' 19 U.S.C. 4532(e)(5)(B). Accordingly, the enforcement processes described in this section, including the filing of complaints, investigations, issuance of determinations, and the administrative review process, are modeled upon the Department's existing whistleblower and anti-retaliation protections, primarily the Department's regulations relating to the temporary employment in the United States of nonimmigrants under H–1B visas. The H–1B regulations provide an appropriate model of ''existing law'' to follow, in part because the statutory language relating to whistleblower protections under the H–1B program, as set forth in section 212(n)(2)(C)(iv) of the Immigration and Nationality Act, is very similar to the whistleblower protection language in the USMCA Implementation Act. *See* 8 U.S.C. 1182(n)(2)(C)(iv). Moreover, as the H–1B program whistleblower protections essentially codified Department whistleblower regulations at the time, the H–1B statute and regulations are particularly appropriate to use as a basis to ensure that the regulations for enforcement of the USMCA whistleblower protections are consistent with existing whistleblower regulations. *See* 144 Cong. Rec. S12752 (Oct. 21, 1998).

Subsection 810.800(b) of this subpart establishes the procedure for filing complaints and is modeled after the H–1B program's complaint process as set forth in 20 CFR 655.806. A complaint must be filed within 12 months after the alleged discriminatory act occurs, with the date of filing being the date of the postmark, facsimile transmittal, phone call, email communication, or, where a complaint is made in person, the date upon which the complaint is received. No particular form or method of complaint is required, so long as the complaint provides sufficient facts for the Administrator to determine whether there is reasonable cause to believe that a violation has occurred and an investigation is warranted. Where the Administrator determines that an investigation is warranted, the complaint shall be accepted for filing and an investigation shall be conducted. After the investigation, a written determination will be issued within 30 calendar days of the date on which the complaint was filed, unless both the complainant and the subject of the investigation agree that additional time is warranted, or if, for reasons outside of the control of the Administrator, the Administrator needs additional time to obtain information from either party or other sources to determine whether a violation has occurred. Such reasons may include, for example, delays in receiving requested information from either the complainant or the subject of the investigation, difficulty scheduling interviews in the course of the investigation, or impediments in obtaining other information necessary to the investigation.

Subsection 810.800(c) explains the contents of a determination by the Administrator at the conclusion of an investigation. This subsection provides that the Administrator's determination, which is served on all interested parties and a copy of which is provided to the Chief Administrative Law Judge, will describe the Administrator's findings and the reason(s) for the Administrator's determination. Where the Administrator has determined that a violation has occurred, the determination will prescribe any appropriate remedies, including monetary relief, injunctive relief, civil money penalties of up to $50,000 per violation, and/or any other remedies assessed. Such remedies may include equitable relief, such as employment, reinstatement, promotion, compensation for any monetary loss incurred by the complainant as the result of the violation, or any other relief necessary to make the complainant whole. These remedies are consistent with the statutory language authorizing the Department to impose appropriate penalties and seek appropriate injunctive relief as may be necessary to ensure compliance with the whistleblower provisions, *see* 19 U.S.C. 4532(e)(5)(B), and are also consistent with existing whistleblower statutes and regulations. *See, e.g.,* 20 CFR 655.810. For example, the regulation provides that the Administrator has the authority to impose civil money penalties of up to $50,000 per violation of this section. This interpretation of ''penalties'' as used in the statute is consistent with the Department's interpretation of ''penalties'' as used in other statutes the Department enforces. *See, e.g.,* 8 U.S.C. 1188(g)(2); 29 CFR 501.19. Additionally, the maximum penalty amount is appropriate to ensure compliance with these prohibitions on retaliation given the size of the firms that will be certifying under the USMCA and the centrality of these whistleblower provisions to the verification of the LVC provisions. The Administrator's determination will also inform the interested parties of their right to request a hearing, and that if a hearing is not requested within 15 days of the date of the determination, that determination becomes final.

Subsection 810.800(d) explains the procedures for administrative review of the Administrator's determination, which are consistent with standard Department administrative review procedures. Any party desiring review of a determination of the Administrator may request an administrative hearing by writing to the Chief Administrative Law Judge, who must receive the request no later than 15 calendar days from the date of the determination for it to be considered timely. Once a request for a hearing is timely filed, the Administrator's determination is inoperative unless and until the case is dismissed or an administrative law judge issues an order affirming the determination of the Administrator. All hearings shall be conducted in accordance with the standard procedures for administrative law judge hearings in 29 CFR part 18. The administrative law judge will issue a decision within 60 days after the date of the hearing, and if any party desires review of the decision, the party must file a timely petition for review with the Administrative Review Board.

Subsection 810.800(e) details the process by which a party may appeal a decision of the administrative law judge, and is consistent with standard Department procedure for appeals to the Administrative Review Board. A party may appeal a decision of the administrative law judge by filing a petition for review with the Administrative Review Board within 30 days of the date of the administrative law judge's decision. If a petition for review is filed with the Administrative Review Board, the decision of the administrative law judge becomes

inoperative unless and until the Administrative Review Board issues an order affirming the administrative law judge's decision, or unless and until 30 calendar days have passed after the Administrative Review Board received the petition for review and the Administrative Review Board has not notified the parties that it will review the administrative law judge's decision.

Subsection 810.800(f) provides that an order of the Administrative Review Board is subject to discretionary review by the Secretary of Labor. *See* Secretary of Labor's Order 01–2020 (Feb. 21, 2020), 85 FR 13186 (Mar. 6, 2020); *see also* Discretionary Review by the Secretary Direct Final Rule, 85 FR 13024–01 (Mar. 6, 2020). Secretary's Order 01–2020, *inter alia,* delegates to the Administrative Review Board authority and assigns responsibility to act for the Secretary of Labor in review or on appeal of ''any laws or regulations. . .enacted or promulgated [after the date of the Order] that provide for final decisions by the Secretary of Labor upon appeal,'' which encompasses these regulations. The Order further provides for Secretarial review of Administrative Review Board decisions regarding any of the covered laws or regulations. As the Order applies to decisions of the Administrative Review Board regarding these regulations, the procedures outlined in the Order apply to Secretarial review of Administrative Review Board decisions under this subpart, including the processes for referral of cases to the Secretary for review, review of cases by the Secretary, and the finality of Secretarial review.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. The Department is seeking emergency approval related to the collection of information described herein. Persons are not required to respond to the information collection requirements until OMB approves them under the PRA. This IFR creates a new information collection specific to recordkeeping requirements necessary to verify compliance with the high-wage components of the LVC requirements under the USMCA and the Act. The Department has created a new information collection request and submitted the request to OMB for approval under OMB control number 1235–0NEW (''High-wage components of Labor Value Content requirements under the USMCA'') for this action.

Summary: The Act implements the USMCA. Section 202A of the Act, codified at 19 U.S.C. 4532, in part implements Article 7 of the Automotive Appendix of the USMCA. The USMCA establishes LVC requirements for passenger vehicles, light trucks, and heavy trucks, pursuant to which an importer can only obtain preferential tariff treatment for a covered vehicle if the covered vehicle meets certain high-wage component requirements. The Act requires importers who claim preferential tariff treatment under the USMCA for goods imported into the United States from a USMCA Country, and vehicle producers whose goods are the subject of a claim for preferential tariff treatment under the USMCA, to make, keep, and, pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection records and supporting documents related to the LVC requirements. *See* 19 U.S.C. 1508(b)(4). The Act further grants the Secretary authority during the course of a verification to request any records relating to wages, hours, job responsibilities, or any other information in any plant or facility relied on by a producer of covered vehicles to demonstrate that the production of those vehicles meets the high-wage components of the LVC requirements. *See* 19 U.S.C. 4532(e)(4)(B).

Purpose and Use: This information collection requires certain data to be maintained and/or produced upon request. WHD staff will use the records provided by the producer upon request to verify producer compliance with the high-wage components of the LVC requirements, as set forth in the USMCA and the Act.

Technology: The regulations prescribe no particular order or form of records, and a producer may preserve records in forms of their choosing, provided that the producer can produce the specified records upon request and the producer's facilities are available for inspection and transcription of the records.

Minimizing Small Entity Burden: Although the recordkeeping requirements may involve small businesses, the Department minimizes respondent burden by requiring no specific order or form of records in responding to this information collection.

Public Comments: The Department is requesting emergency processing of this collection. As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and money) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Department seeks public comments regarding the burdens imposed by this IFR. Commenters may send their views about this information collection to the Department in the same manner as all other comments (*e.g.,* through the *regulations.gov* website). Anyone who submits a comment (including duplicate comments) should understand and expect that the comment will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. Any comments received specific to the information collection during the IFR comment period will be combined and submitted to OMB with comments received during the subsequent public notice and comment period that the Department will provide (in a notice in the **Federal Register**) to invite comments on the information collection requirements established through this IFR.

The Department has submitted the new information collection under 1235–0NEW. Interested parties may receive a copy of the full supporting statement by sending a written request to the mailing address shown in the **ADDRESSES** section at the beginning of this preamble. In addition to having an opportunity to file comments with the Department, comments about the paperwork implications may also be addressed to OMB. Comments to OMB should be directed to: Office of Information and Regulatory Affairs, Attention OMB Desk Officer for the Wage and Hour Division, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* OMB will consider all written comments that the agency receives. Commenters are encouraged, but not required, to send the Department a courtesy copy of any comments sent to OMB. The courtesy

copy may be sent in the same manner as other comments directed to the Department.

The Department is particularly interested in comments that do the following:

- 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;
- Comment on ways to enhance the quality, utility, and clarity of the information to be collected;
- 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;
- Comment on ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Total annual burden estimates, which reflect the new responses for the recordkeeping information collection, are summarized as follows:

Type of Review: Approval of a new collection.

Agency: Wage and Hour Division, Department of Labor.

Title: High-Wage Components of the Labor Value Content Requirements under the USMCA.

OMB Control Number: 1235–0NEW.

Affected Public: Private Sector: businesses or other for-profits, farms, and not-for-profit institutions.

Estimated Number of Respondents: 9,455.

Estimated Number of Responses: 5,796,460.

Estimated Burden Hours: 205,911 hours.

Estimated Time per Response: Various.

Frequency: Various.

V. Analysis Conducted in Accordance With Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improved Regulation and Regulatory Review

A. Introduction to Executive Orders

Under Executive Order 12866, OIRA determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.[8] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (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 set forth in the Executive Order. The Department has conducted a Regulatory Impact Analysis (RIA) to demonstrate this IFR's potential effects. The Department includes this analysis notwithstanding that this rule falls under 5 U.S.C. 553(a)(1).

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected the approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

B. Overview of Analysis

This RIA discusses the costs, benefits, and transfers associated with the IFR. The baseline for this analysis is current production, prices, and trade under NAFTA. These impacts are limited to producers that import covered vehicles into the United States and parts manufacturers in America supplying parts to Canadian and Mexican producers for use in vehicles imported to the United States. They do not include, for example, the costs for U.S. vehicle exporters to comply with Mexican and Canadian USMCA regulations, which are outside the scope of this IFR. Where possible, the impacts are limited to the LVC requirement and exclude other changes from NAFTA to the USMCA.

The Department quantified two direct costs to businesses: (1) Regulatory familiarization costs and (2) recordkeeping costs. Annualizing over 10 years these costs are estimated to be $6.1 million per year at both a 3 percent and 7 percent discount rate. Producer adjustment costs, consumer costs, and Departmental costs are discussed qualitatively.

The Department estimated there are 6,140 establishments in the United States potentially impacted by this rulemaking. There may be transfers from employers to employees in some of these establishments if companies increase employee pay to meet the LVC requirements.[9] The Department does not have the data necessary to estimate the magnitude of these transfers; however, the Department expects these to be small because the majority of U.S. workers presently performing direct production work in the affected industries already earn more than the required average of US$16 per hour. Another potential impact of the rule is shifting jobs from Mexico to the United States (and Canada), and a corresponding increase in the wages associated with those jobs.

The Department also discusses benefits and other intended effects qualitatively due to data limitations. These effects include new capital investments, increased U.S. automotive parts purchases, and increased employment.

The costs and benefits draw on the existing literature. These papers are referenced throughout this analysis and are summarized in Table 1.

[8] 58 FR 51735 (Oct. 4, 1993).

[9] The Department uses the terms ''employee'' and ''worker'' interchangeably in this section.

TABLE 1—SUMMARY OF REPORTS ON THE EFFECTS OF THE USMCA

Report	Method	Main findings
Burfisher et al	—Used a global, multisector, computable-general-equilibrium model to provide an analytic assessment of five key provisions of the USMCA. —Examined the effect of the removal of U.S. tariffs on steel and aluminum imports from Canada and Mexico.	—Estimated aggregate effects of USMCA were relatively small. —Reduction in trade among the three North American partners but a combined net welfare gain. —Reductions in trade costs and border inefficiencies. —Decline in automotive production in U.S., Canada, and Mexico. —Aggregate wages are unaffected in Canada and the U.S.
Center for Automotive Research (CAR).	—Projected impacts on the U.S. new vehicle market and broader economy based on ten scenarios of policy combinations in Section 232 tariffs, USMCA, and Section 301 tariffs. —Data on current vehicle models produced and sold in North America not meeting USMCA ROO requirements.	—In all scenarios, estimated increases in new vehicle prices and decreases in new light-duty vehicle sales, U.S. GDP, and vehicle dealership employment. —Majority of the economic harm is due to Section 232 tariffs. —USMCA leads to a slight average increase in the U.S. consumer prices of vehicles assembled in Canada or Mexico
Office of the U.S. Trade Representative (USTR).	—Short-term quantitative impact of the USMCA's automotive ROO. —Data compiled from vehicle producers' compliance plans and public announcements from automobile companies.	—Estimated that over five years: —$34 billion in new automotive investments. —$23 billion in new annual auto parts purchases. —76,000 new automotive jobs.
Reinsch et al	—Examined the North American automobile industry and rules of origin to make broad conclusions about the impact on global supply chains.	—May result in higher vehicle prices or fewer vehicle options. —Costs due to USMCA's ROO are miniscule compared to those from proposed Section 232 tariffs. —Increase production in U.S. parts suppliers and automobile industries. —Increase investment in the North American automotive supply chain.
U.S. International Trade Commission (USITC).	—Assessment of the likely impact of the USMCA on the U.S. economy and specific industry sectors.	—Increase in GDP of $68.2 billion. —Increase of 176,000 jobs. —Increases in U.S. exports to Canada and Mexico of $19.1 and $14.2 billion, respectively. —Manufacturing industries experience the largest percentage gains in output, exports, wages, and employment.

C. Industry Profile

The Department estimated that in the United States there are 4,999 firms and 6,140 establishments potentially affected by this rulemaking (Table 2).[10] However, some of these firms and establishments will be only indirectly affected. Firm and establishment data are from the U.S. Census Bureau's 2017 Statistics of U.S. Businesses (SUSB).[11] The Department believes that most affected companies will be in the North American Industry Classification System (NAICS) industries motor vehicle manufacturing (NAICS 3361), motor vehicle body manufacturing (NAICS 336211), motor vehicle parts manufacturing (NAICS 3363), and tire manufacturing (except retreading) (NAICS 326211). In this analysis, we refer to NAICS 336211, 3363, and 326211 collectively as ''parts manufacturing.''

Among motor vehicle manufacturing firms, predominately affected companies are those with final assembly operations in Mexico or Canada, and that import covered vehicles (*i.e.,* a passenger vehicle, light truck, or heavy truck) into the United States. In 2016, there were 17.5 million new vehicles sold in the United States. Of these, 9.8 million were made in the United States and almost 2 million were made in Mexico.[12] Importers include Fiat Chrysler, Ford, General Motors, Honda, Nissan, Toyota, Volkswagen, and more.[13] The motor vehicle manufacturing NAICS also includes companies that are engaged in the vehicle manufacturing process but do not produce and sell covered vehicles, who may not be materially affected by this rulemaking. Because the Department is unable to determine exactly which companies may not be affected, all companies in this industry have been included in this analysis.

Among U.S. parts manufacturers, those predominately affected are companies who export parts to Mexico or Canada for use in vehicles imported

[10] An establishment is commonly understood as a single economic unit, such as a farm, a mine, a factory, or a store, that produces goods or services. Establishments are typically at one physical location and engaged in one, or predominantly one, type of economic activity for which a single industrial classification may be applied. An establishment contrasts with a firm, or a company, which is a business and may consist of one or more establishments. *See* BLS, ''Quarterly Census of Employment and Wages: Concepts,'' *https://www.bls.gov/opub/hom/cew/concepts.htm.*

[11] The 2017 data are the most recently available. *See* U.S. Census Bureau, Statistics of U.S. Businesses (SUSB). *https://www.census.gov/programs-surveys/susb.html.*

[12] The Journal Times. 2018. 10 popular cars that were made in Mexico. *https://journaltimes.com/news/national/10-popular-cars-that-were-made-in-mexico/collection_4e1650e4-ae47-505e-b4ce-d2191781a990.html#2.* Note that this data may include vehicles that were produced or assembled in Mexico, and thus these figures may not reflect only final assembly operations.

[13] *Car and Driver. 2019.* Every New Car That May Jump in Price from U.S. Tariffs on Mexican Imports. *https://www.caranddriver.com/news/a27702580/car-prices-us-tariffs-mexican-imports/.*

into the United States. The Department does not have information on how many of the 4,723 parts manufacturers in the United States do so. However, exports of parts to Mexico and Canada are widespread. Additionally, even parts manufacturers who do not export to Mexico or Canada may be indirectly impacted if parts production increases in the United States, where wages are generally higher, to meet the LVC requirements (*see* section V.F.). Some motor vehicle parts manufacturers may not be producing parts for covered vehicles (*e.g.,* parts for vehicle repairs), but the Department does not have data on the number of these firms.

Other industries also may be affected but are not included in this profile. First, some entities in the transportation industry (NAICS 48) may also be affected due to the provision allowing producers to claim high-wage transportation or related costs in their calculation of high-wage material and manufacturing expenditures. Second, some entities that produce automotive advanced batteries in the storage battery manufacturing industry (NAICS 335911) may be affected due to the high-wage assembly expenditures credit. This NAICS includes 11 components, one of which is automobile storage battery manufacturing. In 2017, this detailed industry included only 123 firms and 164 establishments.[14] Third, some entities in the research and development (R&D) or information technology (IT) industries may be impacted by the high-wage technology expenditure credit if the work is contracted out.[15] Because the number of these entities in these industries is expected to be a small percentage of all firms in these industries, the Department has not included these entities in the industry profile.[16]

TABLE 2—IMPACTED INDUSTRIES

Industry	Firms	Establishments	Employees [a]	Annual payroll (billions $2019)	Annual receipts (billions $2019)
Total	4,999	6,140	886,061	$54.0	$650.8
3361: Motor vehicle manuf	276	328	208,364	16.8	348.0
336111: Automobile manuf	*162*	*175*	*82,780*	*7.2*	*119.0*
336112: Light truck & utility vehicle	*49*	*66*	*99,097*	*7.9*	*201.6*
336120: Heavy duty truck manuf	*74*	*87*	*26,487*	*1.8*	*27.4*
Parts and manufacturing	4,723	5,812	677,697	37.2	302.8
336211: Motor vehicle body manuf.	*632*	*733*	*47,964*	*2.5*	*15.1*
336300: Motor vehicle parts manuf.	*4,010*	*4,965*	*584,224*	*31.9*	*269.5*
326211: Tire manuf. (except retreading)	*81*	*114*	*45,509*	*2.8*	*18.2*

Source: SUSB 2017.
[a] Employees on payroll in the pay period including March 12. Includes employees on paid sick leave, holidays, and vacations.

The volume of trade in vehicles and parts between the United States, Mexico, and Canada is substantial. According to the International Trade Administration, the United States exported $29.5 billion in new automobiles and trucks to Canada and $3.3 billion to Mexico in 2019 (56 percent of total U.S. vehicle exports) (Figure 1). The United States also exported $62.1 billion in parts to these two countries (73 percent of all U.S. automotive parts exports). The United States imported $191.0 billion in new vehicles and parts from Canada and Mexico in 2019. Combined, the United States, Canada, and Mexico produced 18 percent of passenger cars and commercial vehicles globally in 2018.[17]

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[14] SUSB 2017.

[15] If the R&D or IT work is performed by the automotive producer, these entities are already captured in the industry profile. Only outsourced R&D and IT would result in additional entities being impacted.

[16] Additionally, to receive the high-wage assembly expenditures credit a producer needs to demonstrate only that a battery, transmission, *or* engine assembly plant meets the high-wage requirement. Because all transmission and engine plants are included in this industry profile, any associated costs at battery plants may just offset costs already attributed to engine or transmission plants.

[17] Bureau of Transportation Statistics. 2020. Table 1–23: World Motor Vehicle Production, Selected Countries (Thousands of vehicles). *https://www.bts.gov/content/world-motor-vehicle-production-selected-countries.*

Figure 1: Value of Exports and Imports of New Vehicles and Parts, 2019

Source: International Trade Administration. 2020. Motor Vehicle Trade Data. https://legacy.trade.gov/td/otm/autostats.asp.

Note: FAS value (free alongside ship).

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D. Costs

The Department quantified two direct costs to businesses: (1) Regulatory familiarization costs and (2) recordkeeping costs. Annualizing over 10 years, these costs are estimated to be $6.1 million per year at both a 3 percent and 7 percent discount rate (Table 3). Other potential costs are discussed qualitatively. These include additional costs to manufacturers (setup costs and pay adjustment costs), consumer costs (increase in vehicle prices due to costs more immediately borne by foreign manufacturers, decrease in vehicle options), and Departmental costs (setup and enforcement costs to DOL).

TABLE 3—OVERVIEW OF COSTS ($2019)

	Costs ($1,000s)		
	Regulatory familiarization	Recordkeeping	Total
Individual Years			
Year 1	$481.9	$6,060.4	$6,542
Subsequent years	0	6,060.4	6,060
10-Year Annualized Costs			
3% real discount rate	56.5	6,060.4	6,117
7% real discount rate	8.6	6,060.4	6,129

In addition to calculating aggregate costs, the Department also considers how the IFR would impact individual firms. The following numbers use Year 1 costs because costs will be largest in that year. For motor vehicle manufacturers, where 276 firms incur aggregate first year costs of $367,000, each firm would incur an average cost of $1,300. For parts manufacturers, where 4,723 firms incur aggregate first year costs of $6.2 million, the average cost per firm would be $1,308. If parts suppliers' costs for recordkeeping are fully passed on to motor vehicle manufacturers, and all costs are thus ultimately borne by motor vehicle manufacturers, and all manufacturers import affected vehicles into the United States, then the aggregate costs of $6.5 million are incurred by 276 firms, for an average of $23,700 per firm.

Considered in relation to receipts, costs per firm are negligible, amounting to less than 0.002 percent of receipts when costs are passed along to vehicle manufacturing firms. Total costs per vehicle imported into the United States from Mexico or Canada are $1.42 per vehicle ($6.5 million divided by 4.6 million vehicles).[18]

[18] Imports of New Passenger Vehicles, Light Trucks, Medium Trucks, and Heavy Duty Trucks in 2019. Source: International Trade Administration.

Continued

i. Regulatory Familiarization Costs

Regulatory familiarization costs represent direct costs to businesses for time spent reviewing the new regulation. To estimate the total regulatory familiarization costs, the Department used (1) the number of firms in the affected industries; (2) the number of estimated hours that each firm will spend reviewing the rule; and (3) the wage rate for the staff reviewing the rule. The Department applied different time estimates based on the type of manufacturing.

First, to estimate the number of firms in the affected industries, the Department used the 2017 SUSB to estimate that there are 276 firms in the motor vehicle manufacturing industry and 4,723 in the parts manufacturing industries. As discussed in section V.C., the Department believes that (1) most of the affected firms will be in these industries and (2) some of these firms may be only marginally affected if the vehicles, or parts manufactured for use in these vehicles, are not imported from Mexico or Canada. However, the Department includes all firms in these industries in calculating regulatory familiarization costs. The Department believes regulatory familiarization costs will occur at the firm level rather than the establishment level because importing decisions and processes happen at a centralized level.

Second, to estimate the number of hours each firm will spend reviewing the rule, the Department used two estimates that vary by industry. For firms in the motor vehicle manufacturing industry, the Department assumes that it will take, on average, 2.5 hours for each firm to review the rule. For parts manufacturers, the Department estimates that it will require, on average, 1.5 hours per firm. The first category of firms import vehicles and must perform the LVC calculations and apply for certification, thus necessitating more time to understand the rule's requirements. The parts manufacturers, on the other hand, will need only to become familiar enough with the rule to understand the type of wage data required to be kept.

Third, the Department assumes that a business operations specialist (SOC 13–1000) (or a staff member in a similar position) will review the rule.[19] According to the Bureau of Labor Statistics' (BLS) Occupational Employment Statistics (OES), these workers in the transportation equipment manufacturing industry (NAICS 336) had a median wage of $38.03 per hour in 2019. Assuming benefits are paid at a rate of 46 percent[20] of the base wage, and overhead costs are 17 percent[21] of the base wage, the reviewer's loaded hourly rate is $61.99.

To derive the aggregate regulatory familiarization costs, the number of affected firms is multiplied by the number of hours per firm and the wage rate. In Year 1, regulatory familiarization costs are estimated to be $481,900 ([276 × 2.5 × $61.99] + ([4,723 × 1.5 × $61.99]). Regulatory familiarization costs in future years are assumed to be *de minimis.* This amounts to a 10-year annualized cost of $56,500 at a discount rate of 3 percent or $68,600 at a 7 percent rate.

ii. Recordkeeping Costs

In order to qualify for preferential tariff treatment, producers must demonstrate that they meet the high-wage components of the LVC requirements. This may require companies to keep additional records, request records from parts producers, perform the high-wage calculations, submit certification information, and respond to any DOL or CBP inquiries. Recordkeeping costs are quantified here, and comments are requested regarding the extent to which certification costs (*e.g.,* time spent filling out and submitting certifications forms) are attributable to this rule or to forthcoming CBP regulations (because CBP is the agency receiving producer certifications). One-time costs to adjust payroll or implement new recordkeeping systems are discussed qualitatively in section V.D.iii.

In its estimate of recordkeeping costs, the Department has included all establishments in affected industries in the calculation, even though some establishments may not be engaged in imports from Mexico or Canada. The Department also believes that once the systems are in place and establishments have been trained on the necessary requirements, the ongoing recordkeeping costs will be minimal. Although establishments will need to track employees' hours worked in direct production and the hours worked not in direct production, the Department does not believe that this additional burden will be substantial. Many firms use sophisticated payroll software to track workers' wages and hours, and many manufacturing employees likely already clock in and out for their hours worked. Therefore, compiling these values for the LVC computation should be relatively straightforward. The Department estimates that additional recordkeeping will require 1 hour of recordkeeping per establishment every two weeks (assuming a pay period is two weeks), for a total of 26 hours per year. The same time estimate is used for both motor vehicle manufacturers and parts manufacturers.[22] Small parts manufacturers may not have similarly advanced payroll software, and thus recordkeeping may be more onerous, but these small establishments also have fewer employees' data to track. Thus, the Department has chosen to use the same time estimate for all establishments.

The Department believes a payroll and timekeeping clerk (SOC 43–3051), or similar worker, would be responsible for this work.[23] Payroll and timekeeping clerks in the transportation equipment manufacturing industry earn a loaded hourly wage rate of $37.96 ($23.29 × 1.46 × 1.17). Multiplying the number of affected establishments (328 motor vehicle manufacturers plus 5,812 parts manufacturers) by the number of hours per establishment per year (26) by the loaded hourly wage rate ($37.96) yields a total annual recordkeeping cost of $6.1 million ($0.3 million for motor vehicle manufacturers and $5.7 million for parts manufacturers).

iii. Producer Adjustment Costs

Firms may incur three types of one-time adjustment costs: Those to implement new systems; those to adjust employee pay; and those to adjust their supply chain. These costs may differ between vehicle manufacturers and parts manufacturers. They will also differ between firms meeting the LVC requirements and those that do not. The Department has not quantified these costs due to lack of data. For example, the Department does not have data showing how many firms will incur few adjustment costs because they already meet the LVC requirements. For those not meeting the LVC requirements, the

2020. Motor Vehicle Trade Data. *https://legacy.trade.gov/td/otm/autostats.asp.*

[19] Occupational Employment Statistics (OES). 2019. 13–1000 Business Operations Specialists. *https://www.bls.gov/oes/current/oes_stru.htm#13-0000.*

[20] Bureau of Labor Statistics (BLS). 2020. Employer Costs for Employee Compensation—December 2019. *https://www.bls.gov/news.release/pdf/ecec.pdf.*

[21] Rice, C. 2002. Wage Rates for Economic Analysis of the Toxics Release Inventory Program. *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2003-0006-0067.*

[22] Most assembly plants used in the high-wage assembly expenditure credit are included in the affected entities counts and costs, but R&D and IT firms are not included. However, these additional companies would be affected only if the automobile producers contract out for R&D or IT services.

[23] OES. 2019. 43–3051 Payroll and Timekeeping Clerks. *https://www.bls.gov/oes/current/oes433051.htm.*

Department does not have data showing whether (and how) firms will adjust pay, contract with new suppliers, or forego the preferential tariff treatment. The Department requests comments on the time and expense required for these adjustments.

In general, the Department believes the average annualized adjustment cost per firm will be small. The Department believes most producers in the United States either already meet the LVC requirements or would be able to with minor adjustments. Additionally, these are predominately one-time costs. However, for firms not meeting the LVC requirements, these costs may be more substantial.

Producers generally use advanced payroll and inventory software and already track production workers' hours and wages. Therefore, setting up systems to compile internal wage and hour data is expected to be straightforward. However, producers also may need to coordinate with and request wage data from parts suppliers, assembly plants used to obtain the high-wage assembly expenditures credit, and entities used to obtain the high-wage technology expenditures credit. According to the United States International Trade Commission (USITC), a ''single vehicle manufacturer can have hundreds of suppliers providing thousands of parts for a single vehicle.'' [24] Even a small amount of time spent per supplier could result in a sizable amount of time when aggregated.[25] However, vehicle producers only need to request data from enough suppliers to meet the high-wage components of the LVC requirements. If these requirements can be met using wages paid by companies owned by the vehicle producer, no records from outside parts manufacturers would be necessary.

Parts manufacturers, which tend to be smaller, may not have as advanced payroll software and thus may require more adjustments to their systems to track wages and hours. According to USITC, ''[m]any parts manufacturers do not have the compliance staff necessary to demonstrate to manufacturers that they meet RVC [regional value content] or LVC requirements and will need to hire staff and develop new compliance processes.'' However, as USITC noted, industry and government are working to minimize these costs by standardizing the certification process.[26] Additionally, the smallest companies, which would be the least likely to have systems in place, would also likely have small contributions to meeting the LVC requirements, and thus their data may not be necessary.

Pay adjustment costs would occur if a firm either increases base pay or adjusts pay components (*e.g.,* a shift from benefits to base pay) to meet the LVC requirements. This would include time to assess whether increasing pay is preferable to paying the higher tariff rates, determine which employees' pay rates to adjust, and enact these changes. The Department believes that pay adjustment costs would be small because U.S. vehicle manufacturing firms are generally able to meet the LVC requirements without adjusting pay at their U.S. plants (*see* section V.E.).

If vehicle producers do not meet the LVC requirements, they may begin purchasing parts from higher-wage suppliers.[27] These supply chain adjustments involve multiple costs. Producers would have to identify which suppliers to change, negotiate new contracts, and validate the new parts. The Department believes that supply-chain adjustments would predominately occur for high-cost parts, which would have a larger impact on the LVC calculation. Alternatively, producers may move R&D or IT services to North America to qualify for the high-wage technology credit. Additional information on impacts to the supply chain are provided in Reinsch et al., (2019).[28]

iv. Increase in Vehicle Prices

Vehicle prices for U.S. consumers may increase as a result of the high-wage components of the LVC requirements. The Department has identified five channels through which prices may increase. Which increases, if any, actually occur will depend on the manufacturers' cost-minimizing responses.

1. U.S. manufacturers increase pay to meet the high-wage component (although this impact would be experienced as a cost by consumers, it is categorized as a transfer under Circular A–4; as explained in section V.E., on rule-induced transfers, the Department believes this will be uncommon).

2. Mexican manufacturers increase pay to meet the high-wage component.

3. Production is shifted from the lower-wage Mexican market to the higher-wage U.S. or Canadian markets, due to a reduction in Mexico's competitive advantage (*see* section V.F.).

4. R&D or IT is moved from lower-wage labor markets overseas to North America (resulting in cost increases) to qualify for the high-wage technology expenditures credits.

5. Higher tariffs on Mexican or Canadian imports to the United States result in higher prices for U.S. consumers (although the amounts collected as tariffs would be experienced as costs by consumers, under Circular A–4, they would be categorized as a transfer to the federal government; accompanying deadweight loss is a cost, with consumer welfare reductions discussed below).[29]

Researchers have generally predicted small impacts of the USMCA on vehicle prices. The aggregate effect is small because many vehicle models meet the LVC requirements (and will have few new costs) or do not qualify under the current NAFTA requirements (and will likely not be impacted by these changes). The literature has generally not disaggregated the impact of the high-wage components of the LVC requirements from other parts of USMCA's vehicle rules of origin (ROO) requirements. The following studies discuss the potential impact on consumer prices:

[24] United States International Trade Commission (USITC). 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.*

[25] For a somewhat analogous example, please see *https://www.regulations.gov/document?D=FAR-2014-0025-0933.*

[26] *Id.*

[27] Even if prices at these higher-wage parts facilities are higher, this may still be a cost-minimizing solution if using such suppliers qualifies the producer for preferential tariff treatment.

[28] Reinsch, W. et al., 2019. The Impact of Rules of Origin on Supply Chains: USMCA's Auto Rules as a Case Study. CSIS Scholl Chair of International Business. *https://www.csis.org/analysis/impact-rules-origin-supply-chains-usmcas-auto-rules-case-study.*

[29] The most-favored-nation (MFN) tariff rates would apply. These are 2.5 percent for passenger vehicles and 25 percent for cargo vehicles, including light-duty pickup trucks and vans.

• The Office of the United States Trade Representative (USTR) wrote that ''automakers and parts manufacturers have indicated to USTR that the USMCA's rules will not [. . .] significantly affect consumer vehicle prices.'' [30]

• The Center for Automotive Research (CAR) expects the change in price for U.S. vehicle imports to be ''relatively small.'' [31]

• The USITC estimated ''prices for all vehicles would undergo a modest increase (ranging from 0.37 percent for pickup trucks to 1.61 percent for small cars).'' [32]

• Burfisher et al. (2019) contend that the new automotive rules of origin would lead to higher vehicle prices.[33] They estimated that the LVC requirements would result in a welfare loss to Americans of $380 million. This loss is attributed to the increased prices of the vehicles and parts imported from Canada and Mexico.

CAR considered specifically the impact that tariffs would have on prices paid by U.S. consumers. They estimated 24 vehicle models produced in Canada and Mexico that meet the current NAFTA requirements would not meet the new USMCA ROO requirements (considering both the LVC and the RVC requirements). The average potential tariff for these 24 vehicle models is estimated to be $635.[34] CAR notes that these 24 vehicles fail multiple criteria of the USMCA ROO. Thus, producers are unlikely to make the necessary changes to obtain the preferential tariff. Because these tariff costs are on a small subset of models, the average impact on vehicle prices will be small. Additionally, these tariffs may result in a shift in consumption towards U.S.-manufactured models or models meeting the USMCA requirements.

v. Decrease in Consumer Choice

As explained above, CAR has identified 24 vehicle models produced in Canada and Mexico that meet the current NAFTA requirements but would not meet the new USMCA ROO requirements. Because these vehicles fail multiple criteria of the USMCA ROO, the sale of these vehicles in the United States may cease or significantly decrease. This is demonstrated by the fact that manufacturers have already announced plans to end North American production or U.S. sales of half of these models. This possibility has also been confirmed by an industry representative interview conducted by USITC.[35] To the extent that these discontinued model lines would be the first preference of some consumers, this decrease in consumer choice may result in a decrease in consumer welfare. Additionally, producers may reduce the number of options in order to streamline the production process and offset USMCA compliance costs.[36]

vi. Decrease in Vehicle Sales and Impact on Gross Domestic Product (GDP)

If vehicle prices increase, this may result in fewer new vehicle sales and smaller domestic production. According to USITC, the price increase resulting from the USMCA requirements would lead to an estimated 140,200 fewer cars sold, representing about 1.25 percent of vehicles sold in the United States in 2017.[37] Similarly, it estimates that U.S. passenger vehicle production would decline by 1.31 percent and pickup truck production by 0.07 percent. This may result in a decrease in consumer welfare and a negative impact on GDP. However, the Department believes the increase in domestic parts production may offset any, and will offset some, negative impact on GDP (*see* section V.F.).

If vehicle sales decrease, there may be secondary impacts on vehicle dealerships. However, some of the decrease in new vehicle sales may be offset by an increase in used car sales. And, as noted above, the potential reduction is fairly small as a share of total sales.

vii. Competitiveness of U.S. Produced Vehicles and Exports

If Mexican or Canadian exporters do not meet the high-wage components of the LVC requirements, then they (or their suppliers) must either increase employee compensation or pay the higher non-preferential tariff rates. This would likely increase the cost of these vehicles, and make domestically produced vehicles more competitive. The USMCA's impact on U.S. vehicle exports is outside the scope of this rule because those costs will be incurred largely due to the corresponding Mexican or Canadian regulations. As discussed in section V.F., estimates differ regarding the net effect on U.S. exports of vehicle parts.

viii. Department of Labor Costs

Under this IFR, the Department would evaluate certifications submitted by vehicle producers for omissions or errors, participate in the verification of whether production meets the high-wage components of the LVC requirements, conduct administrative reviews of these verifications if necessary, and review whistleblower complaints. The Department would incur both one-time setup costs and recurring costs. It is unclear how much time would be spent on these tasks or how frequently they will be performed. For example, the Department does not yet know how many certifications it will review, or verifications it will conduct, each year. Accordingly, these costs have not been estimated.

E. Potential Transfers

Earnings transfers from automobile and automobile parts manufacturing companies to U.S. employees may occur if wages are raised to meet the high-wage components of the LVC requirements in order to qualify for preferential tariff treatment. The Department has not quantified this potential transfer because (1) it is expected to be small and (2) there are data limitations, such as a lack of wage rates by firm or the labor share of value in production of parts or assembly of cars.

The Department provides some numbers here to demonstrate why transfers in the United States are expected to be small. The Department used the 2019 Current Population Survey (CPS) Outgoing Rotation Group

[30] Office of the United State Trade Representative (USTR). 2019. Estimated Impact of the United States-Mexico-Canada Agreement (USMCA) on the U.S. Automotive Sector. *https://ustr.gov/sites/default/files/files/Press/Releases/USTR%20USMCA%20Autos%20White%20Paper.pdf.*

[31] Center for Automotive Research (CAR). 2019. U.S. Consumer & Economic Impacts of U.S. Automotive Trade Policies. *https://www.cargroup.org/wp-content/uploads/2019/02/US-Consumer-Economic-Impacts-of-US-Automotive-Trade-Policies-.pdf.*

[32] USITC. 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.*

[33] Burfisher, M. et al., 2019. NAFTA to USMCA: What is Gained? International Monetary Fund Working Paper. *https://www.imf.org/en/Publications/WP/Issues/2019/03/26/NAFTA-to-USMCA-What-is-Gained-46680.*

[34] CAR. 2019. U.S. Consumer & Economic Impacts of U.S. Automotive Trade Policies. *https://www.cargroup.org/wp-content/uploads/2019/02/US-Consumer-Economic-Impacts-of-US-Automotive-Trade-Policies-.pdf.*

[35] USITC. 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.*

[36] Reinsch, W. et al., 2019. The Impact of Rules of Origin on Supply Chains: USMCA's Auto Rules as a Case Study. CSIS Scholl Chair of International Business. *https://www.csis.org/analysis/impact-rules-origin-supply-chains-usmcas-auto-rules-case-study.*

[37] USITC. 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.* (Using a partial equilibrium model with a price elasticity of −1. Using a less price-elastic value of −0.4, the projected decrease in new vehicle sales would be 66,200, *see* Table G.1.)

data to estimate current earnings of employees working in production occupations in the automobile manufacturing industry. The CPS is a monthly survey of about 60,000 households that is jointly sponsored by the U.S. Census Bureau and BLS. The CPS Outgoing Rotation Group is a subset of the CPS sample with more detailed information.

The Department estimated the average hourly rates earned by production workers in the motor vehicle manufacturing industry.[38] About 89 percent of these workers are paid hourly. For hourly workers, their reported regular hourly wage rate, excluding tips, overtime, and commissions was used.[39] For non-hourly workers, the Department calculated an hourly wage rate using usual weekly earnings and usual hours worked per week.[40] If a non-hourly worker usually worked overtime (more than 40 hours per week), a regular hourly rate was calculated based on an assumption of the worker receiving 1.5 times their regular hourly rate for overtime hours worked.

Based on the CPS data, the Department estimated that the national average hourly rate was $18.81 and about 36 percent of these production workers earned less than $16 per hour.[41] Additionally, to better approximate the hourly rates of workers by plant, the Department estimated the average hourly wage of workers by state. Among states with at least 5 observations, the average hourly wage was less than $16 in only 4 of the 26 states. However, the average hourly wage rate was at least $15.70 in these four states, so any increases in wages to meet the $16 average rate will likely be minimal. Additionally, any potential transfers would likely decrease over time as wages grow.

These findings are consistent with other studies evaluating the impact of the USMCA's automotive ROO requirements. USTR indicated that automobile manufacturers would have at most minor changes to meet the USMCA rules as ''all automakers with a presence in North America have indicated to USTR that they will be able to meet the requirements of the new rules—and that they intend to do so (rather than forego preferential tariff treatment)—if they are able to benefit from the reasonable transition periods available in the agreement to make changes to their supply chains.''[42] Burfisher modeled the impacts of the change from NAFTA to USMCA, finding that for the economy as a whole, ''[w]ages for unskilled and skilled labor are unchanged in Canada and the United States due to USMCA.''[43]

A secondary wage effect may occur if the inflow of production, assembly, parts manufacturing, R&D, and IT into the U.S. drives up demand for this work and consequently labor prices. The Department expects these secondary impacts to be small because the expected increase in employment is small relative to the size of the labor market.

F. Benefits

The inclusion of the high-wage components in the LVC requirements may incentivize domestic investment, production, and employment, and the accompanying gain in producer surplus would qualify as a benefit for purposes of this regulatory impact analysis. As noted in section V.E., most domestic production is already conducted by workers earning at least $16 per hour. Canadian workers also generally meet this requirement. However, Mexican workers tend to earn less than workers in other USMCA Countries and so producers may need to increase Mexican wages or transfer vehicle or parts production to higher-wage U.S. (or Canadian) plants to meet this requirement.[44] If not, Mexican-produced covered vehicles would not qualify for preferential tariff treatment. Regardless, the cost for Mexican imports would likely increase. This would reduce the competitive advantage of Mexican manufacturing and may result in production flowing into the United States.

These effects are explained and quantified in several papers. The analyses consider the impacts of all changes to the automotive ROO. Therefore, the quantified impacts associated with the high-wage components of the LVC requirements may be smaller than the totals presented.

A USTR white paper quantified three main impacts in the United States of USMCA's changes in the ROO:[45]

- New capital investments of $34 billion over 5 years.
- Increased U.S. automotive parts purchases of $23 billion annually.
- A gain of 76,000 jobs.

The USITC also estimated the impacts of USMCA's automotive ROO on employment and investment.[46] They conducted a more complex analysis using a partial equilibrium model. Their numbers are smaller than those estimated by USTR. They estimated a net increase of approximately 28,100 full-time equivalent employees and an increase in investment of $632 million per year. These net increases consider both expected decreases in vehicle production in the United States and increased parts production.[47] The USITC estimated that the increase in parts production will outweigh the decrease in vehicle production.

Conversely, in a working paper by Burfisher, the authors argue that the new automotive ROO would lead to a decline in both North American vehicle and parts production by shifting production outside the region and reducing demand for new vehicles.[48] If so, the impacts projected by USTR and USITC would not be realized. The authors used a global, multisector, computable-general-equilibrium model to assess the impacts of certain USMCA provisions on trade, welfare, GDP, vehicle prices, wages, and rents. They

[38] Occupation is identified with the variable ''peio1ocd'' and codes 7710 to 8965. Industry is identified with the variable ''peio1icd'' and code 3570 (motor vehicles and motor vehicle equipment manufacturing). Census industry code 3570 equates to NAICS codes 3361, 3362, and 3363.

[39] The CPS variable is ''prernhly.''

[40] The CPS variables are ''prernwa'' and ''pehrusl1.'' The Department excluded two observations of non-hourly workers who responded to the usual hours question that their ''hours vary.''

[41] The Department excluded four observations from this analysis with hourly rates less than the applicable minimum wage.

[42] USTR. 2019. Estimated Impact of The United States-Mexico-Canada Agreement (USMCA) On the U.S. Automotive Sector. *https://ustr.gov/sites/default/files/files/Press/Releases/USTR%20USMCA%20Autos%20White%20Paper.pdf.*

[43] Burfisher, M. et al., 2019. NAFTA to USMCA: What is Gained? International Monetary Fund Working Paper. *https://www.imf.org/en/Publications/WP/Issues/2019/03/26/NAFTA-to-USMCA-What-is-Gained-46680.*

[44] Average assembly and parts hourly wages are above US$20 per hour in Canada. Mexican hourly wages for auto assembly averaged US$7.34 and for automotive parts averaged US$3.41 in 2017. CAR. 2018. NAFTA Briefing: Review of Current NAFTA Proposals and Potential Impacts on the North American Automotive Industry. *https://www.cargroup.org/wp-content/uploads/2018/04/nafta_briefing_april_2018_public_version-final.pdf.*

[45] USTR. 2019. Estimated Impact of The United States-Mexico-Canada Agreement (USMCA) On the U.S. Automotive Sector. *https://ustr.gov/sites/default/files/files/Press/Releases/USTR%20USMCA%20Autos%20White%20Paper.pdf.*

[46] USITC. 2019. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors. *https://www.usitc.gov/publications/332/pub4889.pdf.*

[47] The net increase in employment is comprised of an increase of 29,700 for parts production and a reduction of 1,600 for vehicle production. The net increase in investment includes an increase of $683 million for parts production and a reduction of $51 million for vehicle production.

[48] Burfisher, M. et al., 2019. NAFTA to USMCA: What is Gained? International Monetary Fund Working Paper. *https://www.imf.org/en/Publications/WP/Issues/2019/03/26/NAFTA-to-USMCA-What-is-Gained-46680.*

argue that the increased compliance costs associated with the RVC and LVC requirements would lead to an increase in imports from non-USMCA Countries because the advantage associated with preferential tariff treatment has been reduced. If North American manufacturers no longer qualify for preferential tariff treatment, the previous incentive to produce parts or vehicles in North America has been removed and manufacturing may shift overseas.[49]

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (1996), requires federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined the regulatory requirements of the IFR to determine whether it would have a significant economic impact on a substantial number of small entities. Costs to small businesses are expected to be *de minimis.*

The Department used the Small Business Administration (SBA) size standards to identify the number of businesses that are small entities.[50] For the affected industries, the SBA small business size standards range from 1,000 to 1,500 employees. These thresholds are shown in Table 4.

TABLE 4—SBA SMALL BUSINESS SIZE STANDARDS FOR AFFECTED INDUSTRIES

NAICS	Industry	Size threshold (number of employees)
326211	Tire manufacturing (except retreading)	1,500
336100	Motor vehicle manufacturing	1,500
336211	Motor vehicle body manufacturing	1,000
336310	Motor vehicle gasoline engine and engine parts manufacturing	1,000
336320	Motor vehicle electrical and electronic equipment manufacturing	1,000
336330	Motor vehicle steering and suspension components (except spring)	1,000
336340	Motor vehicle brake system manufacturing	1,250
336350	Motor vehicle transmission and power train parts manufacturing	1,500
336360	Motor vehicle seating and interior trim manufacturing	1,500
336370	Motor vehicle metal stamping	1,000
336390	Other motor vehicle parts manufacturing	1,000

The Department applied these thresholds to the U.S. Census Bureau's 2012 Economic Census to obtain the number of entities with employment below the small business threshold.[51] The ratios of small to large establishments, firms, and receipts were then applied to the more recent 2017 SUSB data. Lastly, receipts were inflated to 2019 dollars using the GDP deflator.[52] The Department estimated there are 4,835 small affected firms (97 percent of the total affected) and 5,218 small affected establishments (85 percent of the total) (Table 5).

Costs include two components: (1) Regulatory familiarization and (2) recordkeeping (as calculated in section V.D.). The Department used the same assumptions for costs regardless of entity size. However, because larger entities have more establishments, their estimated costs tend to be larger than for smaller entities. Some types of costs may be higher for small entities than large entities and some may be lower, so the Department has chosen not to adjust per-entity costs based on entity size. For example, smaller entities have fewer employees that will need to be considered in the LVC calculation, making recordkeeping costs lower. Conversely, smaller entities may have less advanced payroll software, making recordkeeping costs higher. According to Reinsch, ''larger, multinational firms in general are better equipped to examine and adapt to new rules of origin, whereas smaller firms will face upfront costs related to analysis of the rule and administrative tasks in adapting to them. Those unequal costs could cause smaller firms to unwittingly be out of compliance with the new rules or forced into financial belt tightening that otherwise would not occur.'' [53]

Total costs to small businesses in Year 1 are estimated to be $5.6 million (86 percent of total costs) (Table 5). This equates to an average of $1,162 per small firm ($1,165 for vehicle manufacturers and $1,161 for parts manufacturers). Costs in subsequent years would be smaller because regulatory familiarization costs are limited to Year 1. These estimates do not include producer adjustment costs, as explained in section V.D.iii. Inclusion of adjustment costs would increase the estimated cost per small business in the first few years when these adjustments are being made.

[49] Reinsch, W. et al., 2019. The Impact of Rules of Origin on Supply Chains: USMCA's Auto Rules as a Case Study. CSIS Scholl Chair of International Business. *https://www.csis.org/analysis/impact-rules-origin-supply-chains-usmcas-auto-rules-case-study.*

[50] SBA, Summary of Size Standards by Industry Sector, 2019, *www.sba.gov/document/support--table-size-standards.*

[51] The 2012 data are the most recently available with receipts data disaggregated by detailed size categories. *https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.*

[52] Bureau of Economic Analysis. 2020. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product. *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=13.*

[53] Reinsch, W. et al., 2019. The Impact of Rules of Origin on Supply Chains: USMCA's Auto Rules as a Case Study. CSIS Scholl Chair of International Business. *https://www.csis.org/analysis/impact-rules-origin-supply-chains-usmcas-auto-rules-case-study.*

TABLE 5—SMALL BUSINESSES AFFECTED, APPLYING 2012 SMALL BUSINESS PROPORTIONS TO 2017 DATA

Industry	Firms	Establishments	Annual receipts (billions $2019)	Total year 1 costs (millions $2019)	Costs as a percent of receipts
Total	4,835	5,218	$138.2	$5.6	0.004
336100: Motor vehicle manuf	255	261	12.2	0.3	0.002
336111: Automobile manuf	*147*	*147*	*4.3*	*0.2*	*0.004*
336112: Light truck & utility vehicle	*42*	*46*	*2.8*	*0.1*	*0.002*
336120: Heavy duty truck manuf	*66*	*69*	*5.1*	*0.1*	*0.002*
Parts manufacturing	4,580	4,957	126.0	5.3	0.004
336211: Motor vehicle body manuf	*606*	*661*	*9.1*	*0.7*	*0.008*
336300: Motor vehicle parts manuf	*3,903*	*4,224*	*115.2*	*4.5*	*0.004*
326211: Tire manuf. (except retreading)	*71*	*73*	*1.6*	*0.1*	*0.005*

Source: SUSB 2017, SUSB 2012.
[a] Employees on payroll in the pay period including March 12. Includes employees on paid sick leave, holidays, and vacations.

The impact of this rule was calculated as the ratio of annual cost per entity to average receipts per entity. The annual cost per entity is less than 0.01 percent of average annual receipts. The impact of this IFR on small entities will be *de minimis.* The Department certifies that the IFR will not have a significant economic impact on a substantial number of small entities.

The Department also considered costs relative to receipts for the smallest affected firms by both industry and size. As shown in Table 6, even for the smallest firms (those with fewer than 500 employees), costs are well below one percent of receipts in Year 1. These costs assume single-establishment firms. Costs would be somewhat higher for multi-establishment firms; however, multi-establishment firms are uncommon in these industries and size categories.

TABLE 6—YEAR 1 COSTS AND RECEIPTS OF THE SMALLEST BUSINESSES, WITH ONE ESTABLISHMENT, BY INDUSTRY AND SIZE

Industry	Year 1 cost per firm ($2019)	Receipts per firm per year (millions $2019)	Year 1 cost as a percent of receipts
336100: Motor vehicle manuf.:			
0–4 employees	$1,142	$1.58	0.07
5–9 employees	1,142	3.81	0.03
10–19 employees	1,142	29.64	0.00
20–99 employees	1,142	25.14	0.00
100–499 employees	1,142	95.43	0.00
336211: Motor vehicle body manuf.:			
0–4 employees	1,080	0.96	0.11
5–9 employees	1,080	1.80	0.06
10–19 employees	1,080	3.30	0.03
20–99 employees	1,080	10.75	0.01
100–499 employees	1,080	44.12	0.00
336300: Motor vehicle parts manuf.:			
0–4 employees	1,080	0.76	0.14
5–9 employees	1,080	1.79	0.06
10–19 employees	1,080	3.73	0.03
20–99 employees	1,080	12.62	0.01
100–499 employees	1,080	67.13	0.00
326211: Tire manuf. (except retreading):			
0–4 employees	1,080	0.49	0.22
5–9 employees	1,080	1.71	0.06
10–19 employees	1,080	2.87	0.04
20–99 employees	1,080	10.78	0.01
100–499 employees	1,080	164.27	0.00

Source: SUSB 2017.

VII. Unfunded Mandates Reform Act Analysis

The Unfunded Mandates Reform Act of 1995 (UMRA) [54] requires agencies to prepare a written statement for rules with a federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $156 million ($100 million in 1995 dollars adjusted for inflation) or more in at least 1 year.[55] This statement must (1) identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate

[54] *See* 2 U.S.C. 1501.

[55] Calculated using growth in the Gross Domestic Product deflator from 1995 to 2019. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative. This IFR is not expected to result in aggregate costs of $156 million per year to governments; however, costs may reach this threshold for the private sector.

VIII. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order No. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

IX. Effects on Families

The undersigned hereby certifies that this rule would not adversely affect the well-being of families, as discussed under section 654 of the Treasury and General Government Appropriations Act, 1999.

X. Executive Order 13175, Indian Tribal Governments

This rule would not 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.

List of Subjects in 29 CFR Part 810

Labor, Wages, Hours of work, Trade agreement, Motor vehicle, Tariffs, Imports, Whistleblowing.

Signed at Washington, DC, this 24th day of June, 2020.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

■ For the reasons set out in the preamble, the Department of Labor amends Title 29 of the Code of Federal Regulations by adding part 810 to read as follows:

PART 810—HIGH-WAGE COMPONENTS OF THE LABOR VALUE CONTENT REQUIREMENTS UNDER THE UNITED STATES-MEXICO-CANADA AGREEMENT IMPLEMENTATION ACT

Subpart A—General

810.1 Introduction.
810.2 Purpose and scope.
810.3 Definitions and use of terms.

Subpart B—Calculating the High-Wage Component of Material and Manufacturing Expenditures

810.100 Scope and purpose of this subpart.
810.105 Calculating the average hourly base wage rate.
810.110 Examples of direct production work.
810.115 Paid meal time and paid break time.
810.120 Part-time, temporary, seasonal, and contract workers.
810.125 Workers paid on a non-hourly basis.
810.130 Executive, Management, Research and Development, Engineering, and Other Personnel.
810.135 Interns, students, and trainees.
810.140 High-wage transportation or related costs for shipping a high-wage part or material.
810.145 Currency exchange.
810.150 Adjustment of the average hourly base wage rate.

Subpart C—Calculating the High-Wage Technology Expenditures Credit

810.200 High-wage technology expenditures credit.

Subpart D—Calculating the High-Wage Assembly Expenditures Credit

810.300 High-wage assembly expenditures credit.

Subpart E—Certification Provisions

810.400 Scope and purpose of this subpart.
810.405 Certification.
810.410 Administrator's review for omissions or errors.

Subpart F—Verification of the Labor Value Content's Wage Components

810.500 Scope and purpose of this subpart.
810.505 Scope of verification.
810.510 Notice to a producer that a verification of compliance with labor value content requirements has been initiated.
810.515 Conduct of verifications.
810.520 Confidentiality.
810.525 Notice provided to CBP regarding the Administrator's findings.
810.530 Verification of labor value content compliance for producers subject to alternative staging regime.

Subpart G—Recordkeeping Requirements

810.600 Recordkeeping requirements.

Subpart H—Administrative Review of the Department's Analysis and Findings

810.700 Administrative review procedures.

Subpart I—Whistleblower Protections

810.800 Prohibited acts.

Authority: 19 U.S.C. 1508(b)(4) & 19 U.S.C. 4535(b).

Subpart A—General

§ 810.1 Introduction.

This part provides the Department of Labor's rules to implement and administer the high-wage components of the labor value content requirements, as provided in the Agreement between the United States of America, the United Mexican States, and Canada, and the United States-Mexico-Canada Agreement Implementation Act.

§ 810.2 Purpose and scope.

(a) The USMCA replaces the 1994 North American Free Trade Agreement. The USMCA Preamble states that the parties to the agreement are resolved to, among other things, ''facilitate trade in goods and services between the Parties by preventing, identifying, and eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting good regulatory practices,'' and that the Parties are resolved to ''promote the protection and enforcement of labor rights, the improvement of working conditions, the strengthening of cooperation and the Parties' capacity on labor issues.''

(b) The purpose of the USMCA Implementation Act is to implement the USMCA. Section 202A of the Act, codified at 19 U.S.C. 4532, in part implements Article 7 of the Automotive Appendix. This Article establishes a labor value content requirement for passenger vehicles, light trucks, and heavy trucks, pursuant to which an importer can obtain preferential tariff treatment for a covered vehicle only if it meets certain minimum percentage benchmarks concerning the portion of the vehicle produced by workers who meet certain wage requirements, as described in subparts B, C, and D.

§ 810.3 Definitions and use of terms.

As used in this part—

Administrative law judge. Administrative law judge means a Department of Labor official appointed pursuant to 5 U.S.C. 3105.

Administrator. Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under this part.

Alternative staging regime. Alternative staging regime means the alternative to the standard staging regime, and provides for a different phase-in of the LVC requirements and additional time to meet those requirements.

Annual purchase value. Annual purchase value, as defined in the Uniform Regulations, means the sum of the values of high-wage materials purchased annually by a producer for use in the production of passenger vehicles, light trucks, or heavy trucks in

a plant located in the territory of a USMCA Country.

Automotive Appendix. Automotive Appendix means the Appendix to Annex 4–B of the USMCA.

Automotive good. Automotive good means a covered vehicle or a part, component, or material listed in the Automotive Appendix.

CBP. CBP means United States Customs and Border Protection, including its Commissioner.

Covered vehicle. Covered vehicle means a passenger vehicle, light truck, or heavy truck.

Department. Department means the United States Department of Labor.

High-wage components of the LVC requirements. High-wage components of the LVC requirements means the high-wage components of material and manufacturing expenditures, information technology expenditures, and assembly expenditures.

LVC. LVC means labor value content.

Plant and/or Facility. These terms are used interchangeably throughout this part and invoke the terms' meanings as found in the USMCA, Uniform Regulations, and applicable CBP guidance and regulations.

Producer. Producer means an individual or entity who engages in the production and/or assembly of automotive goods in North America. Except where indicated otherwise, the term ''producer'' encompasses the terms ''importer'' and ''exporter'' and their definitions as found in the Uniform Regulations, CBP regulations, and Appendix 5, Article 5.1 of the USMCA.

Secretary. Secretary means the Secretary of Labor or the Secretary's designee.

Uniform Regulations. Uniform Regulations means the regulations agreed upon by the United States of America, the United Mexican States, and Canada, pursuant to Chapter 5, Article 5.16 of the USMCA, regarding, in part, the interpretation, application, and administration of Chapter 4 (Rules of Origin) and Chapter 5 (Origin Procedures) of the USMCA.

USMCA. USMCA means the Agreement between the United States of America, the United Mexican States, and Canada.

USMCA Country(ies). USMCA Country means the United States of America, the United Mexican States, or Canada. USCMA Countries means any combination of the United States of America, the United Mexican States, and Canada. These regulations use these terms interchangeably with the term ''North America.''

USMCA Implementation Act. USMCA Implementation Act means the United States-Mexico-Canada Agreement Implementation Act, Pub. L. 116–113, 134 Stat. 11 (2020), which is codified at 19 U.S.C. 1508, as amended, and 19 U.S.C. 4501 *et seq.*

WHD. WHD means the Wage and Hour Division of the U.S. Department of Labor.

Subpart B—Calculating the High-Wage Component of Material and Manufacturing Expenditures

§ 810.100 Scope and purpose of this subpart.

(a) Section 202A(e) of the USMCA Implementation Act authorizes the Secretary, in cooperation with the Secretary of the Treasury, to participate in a verification of whether covered vehicle production complies with the high-wage components of the LVC requirements set forth in Article 7 of the Automotive Appendix or, if the producer is subject to the alternative staging regime, under Articles 7 and 8 of the Automotive Appendix. This subpart addresses calculation of the high-wage material and manufacturing expenditures component of the LVC (referred to in the Uniform Regulations as high-wage material and labor expenditures).

(b) The regulations in this subpart describe how producers can meet the high-wage-related aspect of the material and manufacturing expenditures component, which concerns whether workers engaged in direct production work at a plant or facility included in a producer's material and manufacturing expenditures calculation earn an average hourly base wage rate of at least US$16 per hour. All other aspects of material and manufacturing expenditures are addressed in the Uniform Regulations and regulations and/or guidance issued by CBP or other federal agencies.

§ 810.105 Calculating the average hourly base wage rate.

(a) The average hourly base wage rate (also referred to in the USMCA as the production wage rate, and in the Uniform Regulations as the average base hourly wage rate) is calculated by dividing the total base wages paid for all hours worked in direct production at a plant or facility by the total number of hours worked in direct production at that plant or facility. The average hourly base wage rate must be at least US$16 per hour for the plant or facility to count toward a producer's LVC obligation.

(b) The three components of this calculation are computed as follows:

(1) *Hourly base wage rate* is the rate of compensation a worker is paid for each hour worked in direct production.

(i) Benefits, bonuses, premium payments, incentive pay, overtime premiums, and all other similar payments are excluded from the hourly base wage rate.

(ii) Amounts deducted from a worker's pay that are for the benefit of the worker and are reasonable may be included in the hourly base wage rate. The principles in determining whether deductions are for the benefit of the worker and are reasonable, and thus may be included as part of the hourly base wage rate, are explained in more detail in 29 CFR part 531.

(2) *Hours worked in direct production* means all time a worker spends personally involved in the production of passenger vehicles, light trucks, heavy trucks, or parts used in the production of these vehicles at a plant or facility located in a USMCA Country, or directly involved in the set-up, operation, or maintenance of equipment or tools used in the production of those vehicles or parts at that plant or facility. The total number of hours worked in direct production at a plant or facility, as referenced in paragraph (a) of this section, is calculated by adding together hours in direct production (as calculated under paragraphs (b)(2)(i) and (ii)) for all workers who perform direct production work at that plant or facility.

(i) Except for workers described in § 810.130, if at least 85 percent of a worker's total work hours are hours worked in direct production, the worker's total work hours are considered hours worked in direct production, and are included in the average hourly base wage rate calculation.

(ii) Except for workers described in § 810.130, if less than 85 percent of a worker's total work hours are hours worked in direct production, only the worker's hours worked in direct production are included in the average hourly base wage rate calculation.

(3) *Total base wages* is calculated using a two-step process. First, multiply each worker's hourly base wage rate (for the time period described in paragraph (d) of this section) by that worker's number of hours worked in direct production at that rate (for the same time period). Second, add the values calculated in step one to obtain total base wages paid for all hours worked in direct production at the plant or facility.

(c) The producer must include all hours worked in direct production at a plant or facility (other than by workers described in § 810.130) when calculating the average hourly base wage rate for that plant or facility. Where a worker is paid by a third party

(such as a temporary employment agency), only the wages received by the worker are included in the average hourly base wage rate calculation.

(d) The producer must elect one of the following periods to calculate the average hourly base wage rate:

(1) The producer's previous fiscal year;

(2) The previous calendar year;

(3) The quarter or month to date in which the vehicle is produced or exported;

(4) The producer's fiscal year to date in which the vehicle is produced or exported; or

(5) The calendar year to date in which the vehicle is produced or exported.

§ 810.110 Examples of direct production work.

(a) Direct production work includes production of passenger vehicles, light trucks, or heavy trucks, or parts for these vehicles, as well as the set-up, operation or maintenance of tools or equipment used in the production of those vehicles and parts. The work may take place on a production line, at a workstation, on the shop floor, or in another production area. Direct production work includes material handling of vehicles or parts; inspections of vehicles or parts, including inspections that are normally categorized as quality control and, for heavy trucks, pre-sale inspections carried out at the place where the vehicle is produced; on-the-job training regarding the execution of a specific production task; and maintaining and ensuring the operation of the production line or production area and the operation of tools and equipment used in the production of vehicles or parts, including the cleaning of the line or production area and the places around it.

(b) Except for workers described in § 810.130, time spent (by, for example, line supervisors and team leads) providing on-the-job training regarding the execution of a specific production task or relieving a worker in the performance of direct production duties is direct production work. Time spent managing or supervising workers is not direct production work.

§ 810.115 Paid meal time and paid break time.

Paid meal time and paid break time are counted as direct production work for purposes of determining whether at least 85 percent of a worker's total work hours are hours worked in direct production. However, if less than 85 percent of a worker's total work hours are worked in direct production, paid meal time and paid break time are not included in the average hourly base wage rate calculation.

§ 810.120 Part-time, temporary, seasonal, and contract workers.

(a) *Part-time, temporary, and seasonal workers.* Hours of part-time workers, temporary workers, and seasonal workers are treated the same as hours of full-time workers for purposes of calculating the average hourly base wage rate.

(b) *Employees.* The average hourly base wage rate calculation includes workers' hours regardless of whether the workers have an employment relationship with the producer.

§ 810.125 Workers paid on a non-hourly basis.

(a) *General.* If any worker performing direct production work is compensated by a method other than hourly, such as a salary, piece-rate, or day-rate basis, the worker's hourly base wage rate shall be calculated by converting the salary, piece-rate, or day-rate to an hourly equivalent. This hourly equivalent is then multiplied by the number of hours worked in direct production for purposes of calculating the average hourly base wage rate.

(b) *Examples.* (1) Where the salary, piece-rate, or day-rate wage is paid to a worker on a weekly or bi-weekly pay period basis, the total salary, piece-rate, or day-rate compensation for that pay period will be divided by the total number of hours worked in the pay period to determine the hourly equivalent.

(2) Where the salary, piece-rate, or day-rate wage is paid to a worker on a semi-monthly pay period basis, the total salary, piece-rate, or day-rate compensation will be converted to a weekly equivalent by multiplying the compensation by 24 (semi-monthly pay periods in a year) and dividing by 52 (weeks per year). This weekly equivalent will be divided by the total number of hours worked in the week to determine the hourly equivalent.

(3) Where the salary, piece-rate, or day-rate wage is paid to a worker on a monthly pay period basis, the total salary, piece-rate, or day-rate compensation will be converted to a weekly equivalent by multiplying the compensation by 12 (monthly pay periods in a year) and dividing by 52 (weeks per year). This weekly equivalent will be divided by the total number of hours worked in the week to determine the hourly equivalent.

§ 810.130 Executive, Management, Research and Development, Engineering, and Other Personnel.

The average hourly base wage rate does not include any hours worked by:

(a) Executive or management staff who generally have the authority to make final decisions to hire, fire, promote, transfer and discipline employees;

(b) Workers engaged in research and development; or

(c) Engineers, mechanics, or technicians, if such personnel are not responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts.

§ 810.135 Interns, students, and trainees.

Hours worked by an intern, student, or trainee who does not have an express or implied compensation agreement with the employer are not considered hours worked in direct production, and therefore are not included in the average hourly base wage rate calculation.

§ 810.140 High-wage transportation or related costs for shipping a high-wage part or material.

(a) High-wage transportation or related costs for shipping a high-wage part or material within the USMCA Countries may be used to calculate high-wage material and manufacturing costs if those costs are not otherwise included in the annual purchase value.

(b) Where the requirements of paragraph (a) of this section are met, the producer may claim in its calculation of high-wage material and manufacturing expenditures high-wage transportation or related costs for shipping a high-wage part or material within the USMCA Countries, for each transportation, logistics, or material handling provider that paid an average hourly base wage rate of at least US$16 per hour to its direct production workers performing these services. Such workers would include drivers and loaders.

§ 810.145 Currency exchange.

The high-wage component of material and manufacturing expenditures (and assembly expenditures under § 810.300) is expressed in U.S. dollars—US$16 per hour. Rules governing currency exchange are set forth and addressed in the Uniform Regulations and regulations and/or guidance issued by the Department of the Treasury and/or CBP.

§ 810.150 Adjustment of the average hourly base wage rate.

If the USMCA Countries agree to adjust the dollar amount of the average hourly base wage rate requirement, WHD will publish a notice of the

adjusted rate in the **Federal Register**. The regulations in this part will apply with respect to the adjusted rate in the same manner they applied with respect to the US$16 per hour rate.

Subpart C—Calculating the High-Wage Technology Expenditures Credit

§ 810.200 High-wage technology expenditures credit.

(a) A producer may receive a 10 percent credit towards its total LVC requirement by demonstrating that the sum of its annual expenditures in North America on wages for research and development and information technology is equal to or greater than 10 percent of its annual expenditures on production wages in North America. If a producer's annual expenditures in North America on wages for research and development and information technology is less than 10 percent of the producer's annual expenditures in North America on production wages, then the producer is eligible for a credit equal to the actual percentage of the producer's annual expenditures in North America on wages for research and development and information technology as a percentage of its total annual expenditures in North America on production wages.

(b) The three components of this calculation are computed as follows:

(1) *Annual expenditures in North America on wages for research and development* means total annual corporate spending in North America on wages for research and development, including prototype development, design, engineering, testing, or certifying operations.

(2) *Annual expenditures in North America on wages for information technology* means total annual corporate spending in North America on wages for information technology, including software development, technology integration, vehicle communications, and information technology support operations.

(3) *Annual expenditures on production wages in North America* means total annual corporate spending on wages for production of passenger vehicles, light trucks, and heavy trucks in North America.

Subpart D—Calculating the High-Wage Assembly Expenditures Credit

§ 810.300 High-wage assembly expenditures credit.

(a) A producer may receive a single credit of five percent towards the total LVC requirement if it demonstrates any one of the following:

(1) Operation of (or a long term contract with) a ''high-wage'' engine assembly plant in North America with a minimum annual production capacity of originating engines;

(2) Operation of (or a long term contract with) a ''high-wage'' transmission assembly plant in North America with a minimum annual production capacity of originating transmissions; or

(3) Operation of (or a long term contract with) a ''high-wage'' advanced battery assembly plant in North America with a minimum annual production capacity of originating advanced battery packs.

(b) A plant is ''high-wage'' for purposes of this section if it has an average hourly base wage rate of at least US$16 per hour for the entire plant. The US$16 per hour average hourly base wage rate for high-wage assembly expenditures credit is determined by calculating the average hourly base wage rate in the same manner as detailed in § 810.105.

(c) Minimum annual production capacity levels are set forth in the USMCA and in guidance issued by CBP and are outside the Department's authority.

(d) The definition of ''long term contract'' is set forth in the Uniform Regulations.

(e) If a plant used by a producer to satisfy the material and manufacturing expenditures component of the LVC requirement meets the requirements of paragraph (a) of this section, the producer may use that plant to qualify for the high-wage assembly expenditures credit.

Subpart E—Certification Provisions

§ 810.400 Scope and purpose of this subpart.

Section 202A(c)(1)(B) of the USMCA Implementation Act requires the Secretary, in consultation with CBP, to ensure that a vehicle producer's LVC certification does not contain omissions or errors before the certification is considered properly filed. The regulations in this subpart describe the scope of the Secretary's review under this statutory provision, and what certification information a vehicle producer submits to CBP related to that review. All matters other than reviewing the high-wage components of the LVC certification for omissions or errors are outside of the Secretary's purview, and are addressed in the Uniform Regulations and regulations and/or guidance issued by CBP or other federal agencies.

§ 810.405 Certification.

(a) To satisfy its certification obligation under section 202A(c)(1)(B)(i) of the USMCA Implementation Act pertaining to the high-wage components of the LVC requirements, WHD will review for omissions or errors the following information relating to the high-wage components of the LVC requirements, which the producer of the covered vehicle (rather than the importer or exporter) submits to CBP.

(1) The certifying vehicle producer's name, corporate address, Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, and a point of contact for the certifying vehicle producer.

(2) The vehicle class, model line, and/or other category indicating the motor vehicles covered by the certification.

(3) The time period the producer of the covered vehicle is using for its LVC calculations. For purposes of calculating the LVC, a producer of the covered vehicle may use any one of the time periods used for calculating the average hourly base wage rate, as described in § 810.105(d).

(4) The name, address, and Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, for each plant or facility the producer of the covered vehicle is relying on to meet the high-wage material and manufacturing expenditures component of the LVC requirements.

(5) A statement that the average hourly base wage rate, calculated consistent with § 810.105, meets or exceeds US$16 per hour for each plant or facility identified in paragraph (a)(4) of this section.

(6) If applicable, a statement that the producer is using high-wage transportation or related costs to meet the high-wage material and

manufacturing expenditures component. If the producer is using high-wage transportation or related costs, the producer must identify the company name, address, and Federal Employer Identification Number or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP, for each company the producer used to calculate its high-wage transportation or related costs.

(7) If applicable, a statement that the producer is using the high-wage technology expenditures credit to meet the LVC requirements. If the producer is using the high-wage technology expenditures credit, a producer must identify the percentage the producer is claiming as a credit towards the total LVC requirement.

(8) If applicable, a statement that the producer is using the high-wage assembly expenditures credit to meet the LVC requirements. If the producer is using the high-wage assembly expenditures credit, the producer must identify the following:

(i) The name, address, and Federal Employer Identification Number (for U.S. plants) or alternative unique identification number of the producer's choosing, such as a Business Number (BN) issued by the Canada Revenue Agency, *Registro Federal de Contribuyentes* (RFC) number issued by Mexico's Tax Administration Service (SAT), Legal Entity Identifier (LEI) number issued by the Global Legal Entity Identifier Foundation (GLEIF), or an identification number issued to the person or enterprise by CBP for the assembly plant the producer used to qualify for the high-wage assembly expenditures credit; and

(ii) A statement that the average hourly base wage rate, calculated consistent with §§ 810.300 and 810.105, meets or exceeds US$16 per hour for the assembly plant used to qualify for the high-wage assembly expenditures credit.

(b) Producers of covered vehicles must ensure that records are kept of information to support the calculations submitted under paragraphs (a)(5), (7), and (8)(ii). Producers must be able to provide records upon request by the Department, as described in § 810.600(c), but the records may be physically maintained by a supplier or contractor. The Department will accept records directly from a supplier or contractor where, for example, the producer and supplier or contractor have contracted for such an approach.

(c) This section applies to all producers of covered vehicles during the alternative staging regime period and after the alternative staging regime period ends.

§ 810.410 Administrator's review for omissions or errors.

(a) The Administrator will review the information submitted under § 810.405(a) for omissions or errors. If the Administrator determines that the high-wage components of the certification contain no omissions or errors, WHD will notify CBP that the high-wage components of the certification have been properly filed.

(b) If the Administrator determines that the high-wage components of the certification contain an omission or error, and therefore the certification has not been properly filed, WHD will provide written or electronic notice of the deficiency to CBP. CBP will require the producer of the covered vehicle to respond with a modified certification or otherwise. If, upon review of the response, the Administrator determines that the high-wage components of the certification contain no errors or omissions, WHD will notify CBP that the high-wage components of the certification have been properly filed. If, upon review of the response, the Administrator continues to find an omission or error, or if no response is submitted, WHD will provide written or electronic notification to CBP that the high-wage components of the certification have not been properly filed. The producer may appeal the Administrator's determination pursuant to § 810.700.

Subpart F—Verification of the Labor Value Content's Wage Components

§ 810.500 Scope and purpose of this subpart.

Section 202A(e)(1) of the USMCA Implementation Act gives the Secretary, in conjunction with the Secretary of the Treasury, authority to verify whether a covered vehicle complied with the LVC requirements set forth in Article 7 of the Automotive Appendix, or if the producer is subject to the alternative staging regime, under Articles 7 and 8 of the Automotive Appendix. The Secretary's role in conducting verifications is limited to verifying compliance with the high-wage components of the LVC requirements. All matters other than the high-wage components of the LVC verification are outside of the Secretary's purview and are addressed in the Uniform Regulations and regulations and/or guidance issued by the Department of the Treasury, CBP, or other federal agencies.

§ 810.505 Scope of verification.

(a) The Administrator may verify, through investigation, whether the producer complied with the high-wage components of any part of the LVC requirements, including material and manufacturing expenditures, technology expenditures, and assembly expenditures. The producer is responsible for all aspects of compliance with the high-wage components of the LVC requirements at its plants and facilities as well as the plants or facilities of the suppliers and contractors listed in the producer's certification.

(1) For verifications of the wage component of high-wage material and manufacturing expenditures, the Administrator may verify whether the average hourly base wage rate in any plant or facility relied on by the producer in its certification meets the US$16 per hour requirement. If the producer's certification includes transportation or related costs for shipping as part of its LVC calculation, the Administrator may verify whether any transportation, logistics, or material handling provider relied on by the producer in its certification meets the US$16 per hour requirement.

(2) For verifications of high-wage technology expenditures, the Administrator may verify that a producer properly claimed a credit for annual expenditures on wages for research and development, information technology, and production in North America.

(3) For verifications of high-wage assembly expenditures, the Administrator may verify whether an engine, transmission, or advanced battery assembly facility that a producer relied on in its certification has an average hourly base wage rate of at least US$16 per hour.

(b) The Administrator may, as appropriate:

(1) Examine, or cause to be examined, upon 30-day notice, any record (including any statement, declaration, document, or electronically generated or machine-readable data) described in the notice with reasonable specificity.

(2) Request information from any officer, worker, or agent of a producer of automotive goods, as necessary, that may be relevant with respect to whether the production of covered vehicles

meets the high-wage components of the LVC requirements set forth in Article 7 of the Automotive Appendix, or if the producer is subject to the alternative staging regime, Articles 7 and 8 of the Automotive Appendix. This information may be obtained under oath, by deposition or otherwise, at the discretion of the Administrator.

(c) The Administrator is authorized to request and examine records relating to wages, hours, job responsibilities, or any other information in any plant or facility relied on by a producer of covered vehicles to demonstrate that the production of such vehicles by the producer meets the LVC requirements set forth in Article 7 of the Automotive Appendix or, if the producer is subject to the alternative staging regime, Articles 7 and 8 of the Automotive Appendix.

(d) The Administrator will conduct its verification consistent with the timelines set forth in Article 5.9 of the USMCA.

§ 810.510 Notice to a producer that a verification of compliance with labor value content requirements has been initiated.

CBP will notify a producer that a verification of LVC compliance has been initiated, including whether the verification concerns the high-wage components of the producer's LVC certification. This notification applies to verifications of compliance with the LVC referred to the Administrator by CBP, as well as verifications the Administrator has initiated with CBP.

§ 810.515 Conduct of verifications.

The Administrator shall conduct verifications as may be appropriate and, in connection therewith, enter and inspect any places, inspect any records and make transcriptions or copies thereof, question any persons, and gather any other information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the verification. Upon request by the Administrator, an employer or other entity whose plant or facility is subject to verification shall make available to the Administrator all records, information, persons, and places that the Administrator deems necessary to copy, transcribe, question, or inspect to determine compliance regarding the matters which are the subject of the verification. In conducting any verifications, the Administrator will coordinate with CBP and other federal agencies (including requesting information from such agencies) as appropriate.

§ 810.520 Confidentiality.

The Administrator shall, to the full extent of the law, protect the confidentiality of any person who provides information to the Department in confidence in the course of a verification or otherwise under this subpart.

§ 810.525 Notice provided to CBP regarding the Administrator's findings.

The Administrator will provide verification findings and analysis to CBP, which retains the authority to make the final determination of LVC compliance, based in part on the Administrator's verification findings.

§ 810.530 Verification of labor value content compliance for producers subject to alternative staging regime.

The verification procedures outlined in this subpart apply to producers whether or not they are subject to the alternative staging regime, as outlined in Articles 7 and 8 of the Automotive Appendix.

Subpart G—Recordkeeping Requirements

§ 810.600 Recordkeeping requirements.

(a) *General.* The Administrator is authorized by section 206(b)(4)(B) of the USMCA Implementation Act to require a producer to make, keep, and render for examination and inspection, records and supporting documentation related to a producer's certification of compliance with the LVC requirements set forth in Article 7 of the Automotive Appendix or, if the producer is subject to the alternative staging regime, under Articles 7 and 8 of the Automotive Appendix.

(b) *Form of records.* No particular order or form of records is required, and records may be maintained in any medium; however, the Administrator prefers electronically generated or machine-readable data.

(c) *Inspection of records.* The records described in this section must be made available to an authorized representative of the Department for inspection, copying, and transcription upon written request to the producer. The request will describe with reasonable specificity the records that are being sought, and the party receiving the request will have 30 days from the date of the written request to provide the requested records, unless the party receiving the request has requested and obtained an extension of this time period at the discretion of the Department.

(d) *Period of retention.* Importers must ensure that records specified in these regulations are kept for 5 years from the date of importation of any vehicle for which preferential tariff treatment was claimed, and exporters and producers must ensure that records specified in these regulations are kept for 5 years from the date on which the certification of origin was completed, or for a longer period if the USMCA Countries so specify. Producers must be able to provide records upon request by the Department, as described in § 810.600(c), but the records may be physically maintained by a supplier or contractor. The Department will accept records directly from a supplier or contractor where, for example, the producer and supplier or contractor have contracted for such an approach.

(e) *Records to be preserved to demonstrate compliance with the high-wage material and manufacturing expenditures component and eligibility for the high-wage assembly expenditures credit.* The records and information listed in this paragraph must be maintained for each worker for whom records must be maintained pursuant to 29 CFR 516.2 and who worked at any plant or facility relied upon by a producer to meet the high-wage material and manufacturing expenditures component or the high-wage assembly expenditures credit of the LVC requirements, during the time period the producer used for calculating the LVC. For workers who are employed outside the United States, but if employed in the United States would be subject to the recordkeeping requirements under 29 CFR 516.2, the producer must also maintain the records detailed in this paragraph for such workers. These records must also be maintained for any other worker (in any USMCA Country) who performed direct production work at the plant or facility during the time period used for calculating the LVC, even if such workers do not fall within the recordkeeping requirements of 29 CFR 516.2.

(1) *Worker information.* Full name (and identifying symbol or number if used in place of the worker's name on any time, work, or payroll records), job title, home address, and other available contact information.

(2) *Time records.* The total number of daily and weekly hours worked. For workers who work a fixed schedule, the producer may instead maintain records that show the schedule of daily and weekly hours the worker normally works instead of the hours worked each day and each workweek. However, if this method is used, in weeks in which a worker adheres to this schedule, the worker must indicate by check mark, statement or other method that such hours were in fact actually worked, and

in weeks in which more or less than the scheduled hours are worked, the records must show the exact number of hours worked each day and each week.

(3) *Earnings records.* Payroll records showing the date wages were paid and the time period covered by such wage payments, each worker's hourly rate of pay and basis of pay (hourly, salary, piece rate, day rate, etc.), total daily or weekly straight-time earnings, total premium pay for overtime hours (if any), total pay for the pay period, and any deductions taken from each worker's pay, including the amount and reason for the deduction. To the extent that a worker's rate of pay or straight-time earnings include benefits, bonuses, premium payments, incentive pay, or other similar payments excluded from the hourly base wage rate, as defined at § 810.105, records must clearly identify those payments and state the amount of such payments.

(4) *Certificates, agreements, plans, notices, collective bargaining agreements, etc.* Any collective bargaining agreements, written agreements or memoranda, individual contracts, plans, trusts, employment contracts, or written memorandum summarizing oral agreements or understandings applicable to any workers who work in direct production.

(5) *Direct production records.* A record of all hours that workers have worked in direct production, as defined at § 810.105(b)(2), including the workers' names, type of direct production work performed, hours worked by each worker that constitute direct production, hourly base wage rate paid to each worker for the direct production hours worked, and total wages paid to workers for those direct production hours worked. A producer's records must distinguish hours worked in direct production from other hours worked, to the extent that workers perform both direct production work and work not in direct production during the relevant time period. However, if at least 85 percent of a worker's total work hours are hours worked in direct production, the producer may simply record such workers' total hours worked during the relevant time period, so long as the producer can show that its recordkeeping system indicates when such workers work hours not in direct production when such situations occur.

(6) *Records relating to high-wage transportation or related costs for shipping.* Producers must maintain any records relied upon to establish the wages their transportation, logistics, or material handling service providers paid to their direct production workers performing these services. Such records may include, for example, contracts for transportation or shipping, union contracts entered into by transportation or shipping providers, and other contracts that reflect the rates paid to workers employed by transportation or shipping contractors that are relied upon by producers to establish transportation or related costs for shipping.

(f) *Records to be preserved to demonstrate eligibility for the high-wage technology expenditures credit.* If a producer is using high-wage technology expenditures to meet the high-wage components of the LVC requirements, the producer must maintain a record of the total wages paid to workers in North America who perform research and development or information technology work, as defined at § 810.200(b)(1) and (2), including the workers' names and type of research and development or information technology work performed. The producer must also maintain a record of the total wages paid to workers in North America who perform direct production work, as defined at § 810.200(b)(3), including the workers' names and type of production work performed.

(g) *Calculations relating to labor value content requirements.* Producers must also maintain any additional records not described in paragraphs (e) and (f) of this section that they relied on to support the calculations used to establish they meet the high-wage components of the LVC requirements.

(h) *Relation to other recordkeeping requirements.* Nothing in this section shall excuse any producer from complying with any recordkeeping or reporting requirement imposed by any other federal, state or local law, ordinance, regulation, or rule. This includes, but is not limited to, any recordkeeping requirements concerning other components of the LVC requirements as set forth in regulations issued by CBP or any other federal agency.

Subpart H—Administrative Review of the Department's Analysis and Findings

§ 810.700 Administrative review procedures.

(a) *Initiation of review.* Upon receipt from CBP of a notice of a protest filed under 19 U.S.C. 1514 that meets the requirements of the regulations at 19 CFR part 174 and relates to the Department's analysis of the high-wage components of the LVC requirements, the Department will conduct an administrative review of its initial analysis.

(b) *Procedure for review.* Review of the Department's analysis will be conducted by the Administrator, or the Administrator's designee, as the presiding official. When a presiding official is designated by the Administrator, the official must rank higher than the official who issued the decision that is the subject of the protest.

(c) *Proceeding before an administrative law judge.* In any case where the presiding official determines, in the discretion of that official, that it is appropriate, and there exist disputed questions of fact, the presiding official may refer those questions to the Chief Administrative Law Judge for a recommended decision.

(1) Upon receipt from the Administrator, the Chief Administrative Law Judge shall designate an administrative law judge to hear the disputed questions of fact.

(2) Hearings held under this subpart shall be conducted under the Department's rules of practice and procedure for administrative hearings found in 29 CFR part 18.

(3) The recommended decision of the administrative law judge shall be issued within 120 days of when the Administrator referred the questions of fact to the Chief Administrative Law Judge, or longer with consent of the parties.

(4) The recommended decision shall be limited to a determination of the questions of fact presented by the Administrator, and shall include a statement of findings and recommendations, with reasons and bases therefore, for each question of fact presented by the Administrator.

(5) The Administrator shall have discretion to accept or reject the findings of the administrative law judge in full or in part.

(d) *Scope of review.* The presiding official, in a review under paragraph (b) of this section, shall have the discretion to consider any evidence relevant to rendering a determination under this section. In the event that new evidence or a new legal argument is made by the protestor in a review under paragraph (b) of this section, the presiding official may request additional information from the protestor, and/or additional verification by WHD.

(e) *Time frame for review.* The Administrator will strive to issue a decision under this section within 1 year from the date the Administrator receives the notice of protest from CBP. This timeframe does not include the time during which any additional

verification or collection of additional information may take place in response, for example, to newly raised issues.

(f) *Results of review.* After considering the relevant evidence and issues, the Administrator shall provide a determination containing the results of the administrative review to CBP.

Subpart I—Whistleblower Protections

§ 810.800 Prohibited acts.

(a) *Discrimination.* (1) It is unlawful to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against any person because the person has—

(i) Disclosed information to a federal agency or to any person relating to a verification of the producer's compliance with the LVC requirements, or

(ii) Cooperated or sought to cooperate in a verification concerning the producer's compliance with the LVC requirements.

(b) *Complaints.* (1) Any person who believes that he or she has been discriminated against in violation of this section may file a complaint alleging such discrimination.

(2) The complaint shall be filed with WHD. A complaint may be filed at any WHD local office; the address and telephone number of local offices may be found in telephone directories or at the following internet address: *http://www.dol.gov/whd.*

(3) Within 12 months after the alleged discriminatory act occurs, a person who believes that he or she has been discriminated against may file, or have filed by any person on that person's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, phone call, or email communication will be considered to be the date of filing. If the complaint is filed in person, by hand-delivery, or other means, the complaint is filed upon receipt.

(4) No particular form of complaint is required, and complaints may be filed in person, in writing, or over the telephone. If oral, the complaint shall be reduced to writing by the WHD official who receives the complaint. The complaint shall set forth sufficient facts for the Administrator to determine whether there is reasonable cause to believe that a violation as described in paragraph (a) of this section has been committed and, therefore, that an investigation is warranted.

(5) If the Administrator determines that an investigation of a complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing. The time for the investigation may be increased with the consent of both parties (the whistleblower and the party that allegedly engaged in discrimination), or if, for reasons outside of the control of the Administrator, the Administrator needs additional time to obtain information from either party or other sources to determine whether a violation has occurred. No hearing or appeal pursuant to this subpart shall be available regarding the Administrator's determination of whether an investigation on a complaint is warranted.

(c) *Administrator's determination.* (1) Following an investigation, the Administrator shall issue a written determination. Such determination shall be served on all known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(2) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(3) The Administrator's determination shall:

(i) Set forth the determination of the Administrator and the reason or reasons therefore, and in the case of a finding of violation(s), prescribe any remedies, including monetary relief, injunctive relief, civil money penalties of up to $50,000 per violation, and/or any other remedies assessed.

(ii) Inform the interested parties that they may request a hearing pursuant to paragraph (d) of this section.

(iii) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(iv) Set forth the procedure for requesting a hearing, and give the addresses of the Chief Administrative Law Judge (with whom the request must be filed) and the representative(s) of the Solicitor of Labor (upon whom copies of the request must be served).

(d) *Administrative review of the Administrator's determination.* (1) Any party desiring review of a determination issued under paragraph (c) of this section, including judicial review, shall make a request for such an administrative hearing in writing to the Chief Administrative Law Judge at the address stated in the notice of determination. If such a request for an administrative hearing is timely filed, the Administrator's determination shall be inoperative unless and until the case is dismissed or the administrative law judge issues an order affirming the decision.

(2) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(3) Copies of the request for a hearing shall be sent by the requestor to the WHD official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

(4) The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 18.

(5) Within 60 calendar days after the date of the hearing, the administrative law judge shall issue a decision. If the Administrator or any party desires review of the decision, including judicial review, a petition for review by the Administrative Review Board shall be filed pursuant to paragraph (e) of this section.

(e) *Appeal of a decision of the administrative law judge.* Any party desiring review of the decision of the administrative law judge may appeal that decision by filing a petition for review with the Administrative Review Board within 30 days of the date of the administrative law judge's decision. If a petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Administrative Review Board issues an order affirming the decision, or unless and until 30 calendar days have passed after the Administrative Review Board's receipt of the petition for review and the Administrative Review Board has not issued notice to the parties that the Administrative Review Board will review the administrative law judge's decision.

(f) *Review of an order of the Administrative Review Board.* An order of the Administrative Review Board under this subpart is subject to discretionary review by the Secretary of Labor (as provided in Secretary of Labor's Order 01–2020 or any successor to that order).

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FEDERAL REGISTER

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Part V

The President

Proclamation 10053—To Take Certain Actions Under the United States-Mexico-Canada Agreement Implementation Act and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 10053 of June 29, 2020

To Take Certain Actions Under the United States-Mexico-Canada Agreement Implementation Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. On November 30, 2018, the United States, Mexico, and Canada entered into the Agreement between the United States of America, the United Mexican States, and Canada (the ''USMCA''), attached as an Annex to the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada (the ''Protocol''), and on December 10, 2019, the United States, Mexico, and Canada amended the USMCA through the Protocol of Amendment to the Agreement between the United States of America, the United Mexican States, and Canada. The Congress approved the Protocol and the USMCA, as amended, in section 101(a) of the United States-Mexico-Canada Agreement Implementation Act (the ''USMCA Implementation Act'')(Public Law 116–113, 134 Stat. 11, 14 (19 U.S.C. 4511(a))).

2. On April 24, 2020, pursuant to authority delegated to the United States Trade Representative (USTR), the USTR submitted to the Congress the written notice required under section 106(a)(1)(G) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (title I of Public Law 114–26, 129 Stat. 319, 350 (19 U.S.C. 4205(a)(1)(G))) and, in accordance with section 101(b) of the USMCA Implementation Act, notified the Congress that the USMCA will enter into force on July 1, 2020.

3. Section 103(c)(1) of the USMCA Implementation Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.4, 2.5, 2.7, 2.8, 2.9, 2.10, 6.2, and 6.3, the Schedule of the United States to Annex 2–B, including the appendices to that Annex, Annex 2–C, and Annex 6–A of the USMCA.

4. Section 103(c)(4) of the USMCA Implementation Act requires the President to take such actions as may be necessary in implementing the tariff-rate quotas set forth in the Schedule of the United States to Annex 2–B of the USMCA to ensure that imports of agricultural goods do not disrupt the orderly marketing of agricultural goods in the United States.

5. Section 103(c)(5)(A) of the USMCA Implementation Act authorizes the President to proclaim, as part of the Harmonized Tariff Schedule of the United States (HTS), the provisions set forth in Annex 4–B; the provisions set forth in paragraph 2 of article 3.A.6 of Annex 3–A; the provisions set forth in paragraph 5 of Annex 3–B; and the provisions set forth in paragraphs 14(b), 14(c), and 15(e) of section B of Appendix 2 to Annex 2–B of the USMCA.

6. Section 103(c)(5)(A) of the USMCA Implementation Act also authorizes the President to proclaim any additional subordinate category that is necessary to carry out section 202 and section 202A of the USMCA Implementation Act consistent with the USMCA.

7. Section 103(c)(5)(B) of the USMCA Implementation Act authorizes the President to proclaim modifications to the provisions proclaimed under the authority of section 103(c)(5)(A), subject to the consultation and layover provisions of section 104, as are necessary to implement an agreement under article 6.4 of the USMCA.

8. Section 105(a) of the USMCA Implementation Act authorizes the President to establish or designate within the Department of Commerce an office to serve as the United States Section of the Secretariat established under article 30.6 of the USMCA.

9. Section 202 of the USMCA Implementation Act sets forth certain rules for determining whether a good is an originating good for purposes of implementing preferential tariff treatment provided for under the USMCA. Section 202A of the USMCA Implementation Act sets forth certain rules for determining whether certain automotive goods are originating goods for purposes of implementing preferential tariff treatment provided for under the USMCA. I have decided that it is necessary to include the rules of origin set forth in sections 202 and 202A of the USMCA Implementation Act in the HTS.

10. Section 207 of the USMCA Implementation Act authorizes the President to take certain actions relating to trade with Canada and Mexico, including with respect to textile and apparel goods.

11. Executive Order 11651 of March 3, 1972 (Textile Trade Agreements), as amended, established the Committee for Implementation of Textile Agreements (CITA), consisting of representatives of the Departments of State, the Treasury, Commerce, and Labor, and the Office of the USTR, with the representative of the Department of Commerce as Chairman, to supervise the implementation of textile trade agreements. Consistent with section 301 of title 3, United States Code, when carrying out functions vested in the President by statute and assigned by the President to the CITA, the officials collectively exercising those functions are all to be officers required to be appointed by the President with the advice and consent of the Senate.

12. Section 324 of the USMCA Implementation Act authorizes the President to take certain actions if the United States International Trade Commission (the ''Commission'') finds that United States long-haul trucking services are being, or are threatened with being, materially harmed.

13. Section 611(a) of the USMCA Implementation Act requires the President to consult with the appropriate congressional committees and stakeholders before each joint review under article 34.7 of the USMCA.

14. Section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (Public Law 100–418, 102 Stat. 1107, 1151 (19 U.S.C. 3006(a))) authorizes the President to proclaim modifications to the HTS based on the recommendations of the Commission under section 1205 of the 1988 Act (19 U.S.C. 3005) if the President determines that the modifications are in conformity with United States obligations under the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'') and do not run counter to the national economic interest of the United States.

15. In Proclamation 9549 of December 1, 2016, pursuant to section 1206(a) of the 1988 Act, the President proclaimed modifications to the HTS to conform it to the Convention, to promote the uniform application of the Convention, to establish additional subordinate tariff categories, and to make technical and conforming changes to existing provisions. These modifications to the HTS were set forth in Annex I of Publication 4653 of the Commission, which was incorporated by reference into the proclamation.

16. On May 6, 2003, the President entered into the United States-Singapore Free Trade Agreement (the ''USSFTA''). The USSFTA was approved by the Congress in section 101(a) of the United States-Singapore Free Trade Agreement Implementation Act (the ''USSFTA Act'') (Public Law 108–78, 117 Stat. 948, 949 (19 U.S.C. 3805 note)).

17. Proclamation 7747 of December 30, 2003, implemented the USSFTA with respect to the United States and, pursuant to the USSFTA Act, incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the USSFTA.

18. Section 201 of the USSFTA Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.2, 2.5, 2.6, and 2.12 and Annex 2B (including the schedule of United States duty reductions with respect to originating goods) of the USSFTA. The United States and Singapore are parties to the Convention.

19. I have determined that, pursuant to section 201 of the USSFTA Act and section 1206(a) of the 1988 Act, modifications to the HTS are necessary or appropriate to ensure the continuation of tariff and certain other treatment accorded to originating goods under tariff categories modified in Proclamation 9549 and to carry out the duty reductions proclaimed in Proclamation 7747.

20. On November 22, 2006, the United States entered into the United States-Colombia Trade Promotion Agreement (the ''USCTPA''), and on June 28, 2007, the United States and Colombia amended the USCTPA. The Congress approved the USCTPA, as amended, in section 101(a) of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''USCTPA Act'') (Public Law 112–42, 125 Stat. 462, 463–64 (19 U.S.C. 3805 note)).

21. Proclamation 8818 of May 14, 2012, implemented the USCTPA with respect to the United States and, pursuant to sections 201(a) and 203(o) of the USCTPA Act, incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the USCTPA.

22. Section 201 of the USCTPA Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, and 3.1.13, and Annex 2.3 (including the schedule of United States duty reductions with respect to originating goods) of the USCTPA. The United States and Colombia are parties to the Convention.

23. I have determined that, pursuant to section 201 of the USCTPA Act and section 1206(a) of the 1988 Act, modifications to the HTS are necessary or appropriate to ensure the continuation of tariff and certain other treatment accorded to originating goods under tariff categories modified in Proclamation 9549 and to carry out the duty reductions proclaimed in Proclamation 8818.

24. Section 203 of the USCTPA Act provides rules for determining whether goods imported into the United States originate in the territory of a party to the USCTPA and thus are eligible for the tariff and other treatment contemplated under the USCTPA. A rule of origin was inadvertently omitted from general note 34 to the HTS in Proclamation 8818. I have determined that a technical correction to general note 34 to the HTS is necessary to provide for the intended tariff and certain other treatment accorded under the USCTPA to originating goods of Colombia.

25. On June 30, 2007, the United States entered into the United States-Korea Free Trade Agreement (the ''KORUS''). The Congress approved the KORUS in section 101(a) of the United States-Korea Free Trade Agreement Implementation Act (the ''KORUS Act'') (Public Law 112–41, 125 Stat. 428, 430 (19 U.S.C. 3805 note)).

26. Proclamation 8783 of March 6, 2012, implemented the KORUS with respect to the United States and, pursuant to sections 201(a) and 202(o) of the KORUS Act, incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the KORUS.

27. Section 202 of the KORUS Act provides rules for determining whether goods imported into the United States originate in the territory of a party

to the KORUS and thus are eligible for the tariff and other treatment contemplated under the KORUS. Section 202(o)(2)(B)(i) of the KORUS Act authorizes the President to proclaim, as a part of the HTS, the rules of origin set forth in the KORUS, and, subject to the consultation and layover requirements of section 104, to proclaim modifications to such previously proclaimed rules of origin.

28. The United States and Korea have agreed to modify a certain rule of origin under the KORUS and to apply the modified rule to their bilateral trade. On August 14, 2019, in accordance with section 104 of the KORUS Act, the USTR submitted a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives that sets forth the proposed modification to the specific textile rule of origin of the KORUS incorporated in the HTS. The consultation and layover period specified in section 104 expired on October 14, 2019.

29. In order to reflect the agreement between the United States and Korea related to the KORUS rules of origin, I have determined that it is necessary to modify the HTS.

30. Proclamation 8783 inadvertently omitted a rule of origin from general note 33 to the HTS. I have determined that a technical correction to general note 33 to the HTS is necessary to provide for the intended tariff and certain other treatment accorded under the KORUS to originating goods of Korea.

31. On June 28, 2007, the United States entered into the United States-Panama Trade Promotion Agreement (the ''USPATPA''). The Congress approved the USPATPA in section 101(a) of the United States-Panama Trade Promotion Agreement Implementation Act (the ''USPATPA Act'') (Public Law 112–43, 125 Stat. 497, 498–99 (19 U.S.C. 3805 note)).

32. Proclamation 8894 of October 29, 2012, implemented the USPATPA with respect to the United States, and, pursuant to sections 201(a) and 203(o) of the USPATPA Act, incorporated in the HTS the tariff modifications and rules of origin necessary or appropriate to carry out the USPATPA.

33. Section 203 of the USPATPA Act provides rules for determining whether goods imported into the United States originate in the territory of a party to the USPATPA and thus are eligible for the tariff and other treatment contemplated under the USPATPA.

34. A rule of origin was inadvertently omitted from general note 35 to the HTS in Proclamation 8894. I have determined that a technical correction to general note 35 to the HTS is necessary to provide for the intended tariff and certain other treatment accorded under the USPATPA to originating goods of Panama.

35. In Proclamation 9955 of October 25, 2019, after considering the factors set forth in sections 501 and 502(c) of the Trade Act of 1974, as amended, (the ''1974 Act'') (Public Law 93–618, 88 Stat. 1978, 2066–69 (19 U.S.C. 2461 and 2462(c))), and in particular section 502(c)(7) of the 1974 Act (19 U.S.C. 2462(c)(7)), I suspended the duty-free treatment accorded under the Generalized System of Preferences (GSP) (19 U.S.C. 2461 *et seq.*) to certain eligible articles that are the product of Thailand. In order to reflect in the HTS this suspension of certain benefits under the GSP with respect to Thailand, Annex 2 of Proclamation 9955 modified general note 4(d) and certain subheadings of the HTS.

36. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

37. Annex 2 of Proclamation 9955 inadvertently omitted changes with respect to seven subheadings of the HTS. I have determined, pursuant to section

604 of the 1974 Act, that it is necessary to modify the HTS to correct those inadvertent omissions so that the intended tariff treatment is provided.

38. Proclamation 9466 of June 30, 2016, modified the HTS to provide for the tariff treatment of goods covered by the 2015 World Trade Organization Declaration on the Expansion of Trade in Information Technology Products, pursuant to section 111(b) of the Uruguay Round Agreements Act (Public Law 103–465, 108 Stat. 4809, 4819–20 (19 U.S.C. 3521(b))). Proclamation 9466 modified the HTS in part by deleting all rates of duty in the ''Rates of Duty 1-Special'' subcolumn for certain subheadings.

39. In Proclamation 9687 of December 22, 2017, after considering the factors set forth in section 502(b) of the 1974 Act (19 U.S.C. 2462(b)), and in particular section 502(b)(2)(E) of the 1974 Act (19 U.S.C. 2462(b)(2)(E)), I terminated the suspension of Argentina's designation as a GSP beneficiary developing country. In order to reflect in the HTS the termination of the suspension of Argentina's designation as a GSP beneficiary developing country, Annex IV of Proclamation 9687 modified general note 4(d) and certain subheadings of the HTS.

40. In Proclamation 9687, after considering the factors set forth in sections 501 and 502(c) of the 1974 Act, and in particular section 502(c)(5) of the 1974 Act (19 U.S.C. 2462(c)(5)), I suspended the duty-free treatment accorded under the GSP to certain eligible articles that are the product of Ukraine. In order to reflect in the HTS the suspension of certain benefits with respect to Ukraine, Annex III of Proclamation 9687 modified general note 4(d) and certain subheadings of the HTS.

41. Proclamation 9687 inadvertently modified general note 4(d) to the HTS to include certain subheadings for which the rates of duty in the ''Rates of Duty 1-Special'' subcolumn were deleted by Proclamation 9466. I have determined, pursuant to section 604 of the 1974 Act, that it is necessary to modify the HTS to reflect the deletion of the rates of duty in the ''Rates of Duty 1-Special'' column for those subheadings.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including sections 103(c), 105(a), 207, 324, and 611(a) of the USMCA Implementation Act; section 1206(a) of the 1988 Act; section 201 of the USSFTA Act; sections 201 and 203(o) of the USCTPA Act; sections 201 and 202(o) of the KORUS Act; sections 201 and 203(o) of the USPATPA Act; section 604 of the 1974 Act; and section 301 of title 3, United States Code, do proclaim that:

(1) In order to provide generally for the preferential tariff treatment being accorded under the USMCA, to set forth rules for determining whether goods imported into the customs territory of the United States are eligible for preferential tariff treatment under the USMCA, to provide tariff-rate quotas with respect to certain originating goods of Canada, and to provide certain other treatment to originating goods for purposes of the USMCA, the HTS is modified as set forth in Annex I of Publication 5060 of the Commission, entitled ''Modifications to the Harmonized Tariff Schedule of the United States to Implement the United States-Mexico-Canada Agreement'' (Publication 5060). Publication 5060 is incorporated by reference into this proclamation.

(2) In order to implement the initial stage of duty reduction provided for in the USMCA, to provide for future staged reductions in duties for originating goods provided for in the USMCA, and to provide tariff-rate quotas with respect to certain goods provided for in the USMCA, the HTS is modified as set forth in Annex II of Publication 5060.

(3) The modifications to the HTS made by paragraphs (1) and (2) of this proclamation shall enter into effect on the dates indicated in Annexes I and II of Publication 5060.

(4) In order to reflect in the HTS the termination of tariff treatment under the North American Free Trade Agreement, the HTS is modified as set forth in Annex III of Publication 5060.

(5) The USTR is authorized to exercise my authority under section 103(c)(4) of the USMCA Implementation Act to take such action as may be necessary in implementing the tariff-rate quotas set forth in the Schedule of the United States to Annex 2–B of the USMCA to ensure that imports of agricultural goods do not disrupt the orderly marketing of agricultural goods in the United States. This action is set forth in Annex II of Publication 5060.

(6) The CITA, after consultation with the Commissioner of U.S. Customs and Border Protection (the ''Commissioner''), is authorized to consult with representatives of Canada and Mexico for the purpose of identifying particular textile or apparel goods that are mutually agreed to be hand-loomed fabrics of a cottage industry, hand-made cottage industry goods made of those hand-loomed fabrics, traditional folklore handicraft goods, or indigenous handicraft goods, as provided in article 6.2 of the USMCA. The CITA is authorized to exercise my authority under section 103(c)(1) of the USMCA Implementation Act to provide duty-free treatment with respect to a good provided for under article 6.2 of the USMCA. The Commissioner shall take action as directed by the CITA to carry out any such determination by the CITA.

(7) The USTR is authorized to fulfill the obligations of the President under section 104 of the USMCA Implementation Act to obtain advice from the appropriate advisory committees and the Commission on the proposed implementation of an action by Presidential proclamation; to submit a report on such proposed action to the appropriate congressional committees; and to consult with those congressional committees regarding the proposed action.

(8) The Secretary of Commerce is authorized to exercise the authority of the President under section 105(a) of the USMCA Implementation Act to establish or designate an office within the Department of Commerce to carry out the functions set forth in that section.

(9) The CITA is authorized to review requests for modifications to a rule of origin for textile and apparel goods based on a change in the availability in the territories of the United States, Canada, and Mexico of a particular fiber, yarn, or fabric; to establish procedures governing such a request, providing that the person making the request bears the burden of demonstrating that a change is warranted, and ensuring appropriate public participation in review of a request; and to make a recommendation as to whether a requested modification to a rule of origin for a textile good based on a change in the availability of a particular fiber, yarn, or fabric is warranted.

(10) The CITA is authorized to exercise my authority under section 207(a)(2)(B) of the USMCA Implementation Act to direct appropriate action under section 207(a)(2)(D) with respect to textile and apparel goods.

(11) The CITA is authorized to exercise my authority under section 207(a)(1)(B) of the UMSCA Implementation Act to direct action under section 207(c) with respect to textile and apparel goods.

(12) The Secretary of the Treasury is authorized to exercise my authority under section 207(a)(1)(B) of the USMCA Implementation Act to direct action under section 207(a)(1)(B)(i) or section 207(c) with respect to goods other than textile or apparel goods.

(13) The USTR is authorized, after consultation with the Secretary of Transportation, to exercise my authority under section 324 of the USMCA Implementation Act.

(14) The USTR is authorized to exercise the function assigned to the President under section 611(a) of the USMCA Implementation Act to consult

with the appropriate congressional committees and stakeholders regarding joint reviews under article 34.7 of the USMCA.

(15) In order to reflect in the HTS the modifications to the rules of origin under the USSFTA, general note 25 to the HTS is modified as set forth in Annex IV of Publication 5060.

(16) The modifications to the HTS made by paragraph (15) of this proclamation shall enter into effect on the date indicated in Annex IV of Publication 5060.

(17) In order to reflect in the HTS the modifications to the rules of origin under the USCTPA, general note 34 to the HTS is modified as set forth in Annex V of Publication 5060.

(18) The modifications to the HTS made by paragraph (17) of this proclamation shall enter into effect on the date indicated in Annex V of Publication 5060.

(19) In order to implement agreed amendments to a textile rule of origin under the KORUS, general note 33 to the HTS is modified as set forth in Annex VI of Publication 5060.

(20) The modifications to the HTS made by paragraph (19) of this proclamation shall enter into effect on the date indicated in Annex VI of Publication 5060.

(21) In order to make technical corrections necessary to provide the intended rules of origin under the USCTPA, the KORUS, and the USPATPA, the HTS is modified as set forth in Annex VII of Publication 5060.

(22) The modifications to the HTS made by paragraph (21) of this proclamation shall enter into effect on the dates indicated in Annex VII of Publication 5060.

(23) In order to provide the intended tariff treatment with respect to certain articles that are the product of Thailand, general note 4(d) and pertinent subheadings of the HTS are modified as set forth in Annex VIII of Publication 5060.

(24) The modifications to the HTS made by paragraph (23) of this proclamation shall enter into effect on the date indicated in Annex VIII of Publication 5060.

(25) In order to make technical corrections to reflect the rates of duty in the ''Rates of Duty 1-Special'' subcolumn for certain subheadings with respect to certain articles of Argentina and Ukraine, general note 4(d) and pertinent subheadings of the HTS are modified as set forth in Annex IX of Publication 5060.

(26) The modifications to the HTS made by paragraph (25) of this proclamation shall enter into effect on the date indicated in Annex IX of Publication 5060.

(27) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth 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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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**.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 2020

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
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July 2	Jul 17	Jul 23	Aug 3	Aug 6	Aug 17	Aug 31	Sep 30
July 6	Jul 21	Jul 27	Aug 5	Aug 10	Aug 20	Sep 4	Oct 5
July 7	Jul 22	Jul 28	Aug 6	Aug 11	Aug 21	Sep 8	Oct 5
July 8	Jul 23	Jul 29	Aug 7	Aug 12	Aug 24	Sep 8	Oct 6
July 9	Jul 24	Jul 30	Aug 10	Aug 13	Aug 24	Sep 8	Oct 7
July 10	Jul 27	Jul 31	Aug 10	Aug 14	Aug 24	Sep 8	Oct 8
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